

# Answering Policymakers' Most Common Questions (And Debunking Their Most Common Misconceptions) About Gun Policy

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## KEY TAKEAWAYS

Far too often, gun control advocates fail to understand the true nature of violent crime, and their proposals are ill-designed to address actual problems.

Rogue prosecutors and pandemic-related societal changes are likely far more to blame for recent increases in violent crime than “lax” gun laws.

Policymakers must prioritize robust enforcement of existing laws, invest in mental health infrastructure, and remove unnecessary barriers to lawful gun ownership.

This *Legal Memorandum* addresses many of the questions that have been posed to the author during and following congressional testimony regarding gun ownership. Many of these questions, and the statements that accompany them, reflect and repeat common talking points that are actually misconceptions. The purpose of this *Legal Memorandum* is to address head on those questions and the profound issues they raise.

## I. The Relationship Between Gun Crime, Gun Laws, and Lawful Gun Ownership

During the 20th century, the United States experienced two significant violent crime waves, including one that began building during the late 1960s and reached its peak in the early 1990s.<sup>1</sup> After hitting an apex in 1992, however, violent crime rates began a

This paper, in its entirety, can be found at <http://report.heritage.org/lm325>

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decades-long national decline.<sup>2</sup> By 2014, homicide rates had dropped by 50 percent, while important measures like non-fatal firearm crime had dropped to just one-sixth of the rates seen two decades earlier.<sup>3</sup>

In more recent years, there have been occasional (but largely localized) hiccups in this broader trend. In 2016, for example, Chicago elected a “progressive” prosecutor, the first in a series of victories for the progressive-prosecutor movement that continues to this day.<sup>4</sup> Almost immediately, Chicago experienced a stunning increase in crime rates, including violent crime rates, bucking the general national trend and reversing the city’s previous public safety gains.<sup>5</sup> From 2015 through the first half of 2020, sudden and significant increases in violent crime were common in those cities whose progressive or “rogue” prosecutors undermined the rule of law by loudly and proudly declining to enforce entire categories of crimes: Among other pro-criminal, anti-victim policies, they watered down felonies to misdemeanors, refused to prosecute juveniles in adult court for homicides or other violent crimes, refused to add sentence enhancements or allegations to indictments, and prohibited prosecutors from protecting communities by asking for bail.<sup>6</sup>

In every city with a rogue prosecutor during this time, crimes rates exploded. Meanwhile, the United States as a whole continued its 30-year trend of stable, low rates of violent victimization.<sup>7</sup>

It is undeniable, however, that beginning in the summer of 2020, something—or some series of things—abruptly destabilized the overall public safety even further in major cities around the nation, including in many (but not all) cities with traditional “law and order” prosecutors. A broad swath of urban areas around the United States were wracked by a rapid, significant, and sustained increase in certain types of violent crime, including homicides, non-fatal shootings, and carjackings.<sup>8</sup> While there is some evidence that these spikes in violent crime may be slowing in some areas, on the whole, the violence has continued largely unabated for more than two years.

During this same time period, lawful gun sales have skyrocketed, and the number of first-time gun owners has grown in unprecedented ways.<sup>9</sup> Many politicians and gun control advocates pointed to the simultaneous trends in lawful gun sales and violent crime as evidence that the former was to blame for the latter. The available evidence, however, does not support that conclusion.

On the contrary, it is far more likely that the same factors driving the surge in violent crime are also driving increased lawful gun sales—and that the increased violence is itself a factor driving more law-abiding Americans to buy firearms for self-defense. It is therefore not only unnecessary

to impose stricter gun laws as a means of combating violent crime, but the imposition of such laws would likely prove entirely unhelpful. It may even have the unintended consequence of exacerbating violent crime by lessening the protective impact lawful gun owners have on crime rates.

### **A. Increasing Lawful Gun Sales Are Not to Blame for the Nation’s Ongoing Spike in Violent Crime**

While it is actually quite difficult to reliably calculate rates of lawful gun ownership in most states, there are nonetheless several indications that broad measures of lawful gun ownership are not causally related to violent crime rates. For example, violent crime and homicide rates in the United States plummeted during the 1990s and early 2000s—and then remained relatively stable at these new low rates for the next 15 years—despite the fact that the number of guns per capita increased by about 50 percent during that same time.<sup>10</sup> Meanwhile, urban areas routinely experience far greater problems with violent crime than do rural areas, even though they tend to have far lower rates of gun ownership.<sup>11</sup> Finally, the most methodologically sound studies on gun ownership and gun violence “consistently find no support for the hypothesis” that higher gun ownership rates cause higher crime rates.<sup>12</sup>

The lack of a clear causal link between lawful gun ownership and violent crime rates is unsurprising, given that lawful gun owners have never been the primary facilitators of gun crime. Of course, in any given year, a small number of lawful gun owners will commit crimes with their firearms, but the overwhelming majority of America’s tens of millions of gun owners will never constitute a danger to themselves or others.

On the contrary, the best available evidence suggests that a small number of serial offenders commit the majority of violent crimes, and that many of these serial offenders are already legally prohibited from possessing the firearms they use to perpetrate their crimes.<sup>13</sup> Consider, for example, a recent report analyzing gun violence in Washington, DC, which concluded that 60 percent to 70 percent of all gun violence in the nation’s capital in any given year is tightly concentrated in a group of 500 “very high risk” individuals, almost all of whom have significant prior or ongoing interactions with the District’s criminal justice system.<sup>14</sup> Almost half of all homicide suspects in DC have been previously incarcerated, while more than one in four were on active probation or parole supervision.<sup>15</sup> According to the report, “most victims and suspects with prior criminal offenses had been arrested about 11 times for about 13 different offenses by the time of the homicide” in which they were involved—not including juvenile arrests.<sup>16</sup>

Washington, DC, is not an outlier. An analysis of more than 2,200 individuals arrested for shootings in Philadelphia since 2015 produced similar results: Forty percent of suspects had a prior felony conviction, 52 percent had a prior felony charge, and 76 percent had at least one prior arrest.<sup>17</sup> One in five of the suspects had a pending court case at the time of his or her arrest for a shooting.<sup>18</sup> The same is true of recent analyses of homicide and shooting suspects in Indianapolis,<sup>19</sup> Portland,<sup>20</sup> Knoxville,<sup>21</sup> and San Francisco.<sup>22</sup> In other words, the trend holds true across the nation, irrespective of an array of factors like geography, demographics, and politics—the bulk of criminal gun violence falls on the shoulders of a small and predictable subset of the population who could not have been in lawful possession of any of the firearms they used to commit their crimes.

These analyses of known gun violence perpetrators are consistent with studies on the efforts of law enforcement to trace so-called crime guns. In cases in which the possessor of a crime gun can be successfully identified, that possessor is rarely the original lawful possessor of the firearm, based upon the record at the last initial point of purchase that was generated for, and which are maintained by, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).<sup>23</sup>

These findings are also consistent with a comprehensive 2019 Department of Justice survey of state and federal prisoners who possessed guns during their offenses, which provides additional evidence that perpetrators of criminal gun violence are not commonly in *lawful* possession of legally obtained firearms. The survey found that 90 percent of prisoners who possessed a gun during their offenses did not obtain the weapon from a retail source, where they would have been required to undergo a criminal background check under federal law.<sup>24</sup>

A plurality—43 percent—obtained their guns “off the street” or through an “underground market,” while another 6 percent obtained them by theft.<sup>25</sup> Meanwhile, 25 percent obtained guns from a friend or family member, either through purchase, loan, or gift, and there is good reason to believe that a significant percentage of these would constitute illegal transfers to prohibited persons.<sup>26</sup> Moreover, it is entirely possible—in fact, almost certain—that at least some of the small minority of respondents who initially obtained a firearm through a retail source and were presumably in lawful possession at the time of purchase later became prohibited possessors, but evaded efforts to have those firearms removed from their possession by law enforcement.<sup>27</sup>

It is little wonder, then, that recent comprehensive analyses have not found any association between state-level increases in lawful gun purchases

and increases in violent crime.<sup>28</sup> In short, there were always serious logical flaws with the assertion that increased lawful gun sales during the COVID-19 pandemic were causing the simultaneous surge in criminal gun violence. Those firearms, by definition, were not purchased by the small subset of repeat offenders who are responsible for most gun violence.

It is far more likely that the same factors largely responsible for increased crime—explained in greater detail below—also facilitated lawful gun sales by increasing the law-abiding public’s sense that the foundations of civil society were threatened by chaos and disorder. Surveys routinely show that most Americans who choose to own guns do so primarily for out of concern for their personal safety.<sup>29</sup> It is therefore also plausible that increased numbers of Americans chose to purchase firearms in recent years *because of* spikes in violent crime, which led to increased fears that they would need to defend themselves from criminal activity.

## **B. Most Common Proposals for Stricter Gun Laws Fail to Address Real Problems and Therefore Do Not Make Americans Safer**

Even when it becomes clear that more lawfully owned guns are not the driving force behind increased gun crime, gun control advocates nonetheless often insist that, at the very least, stricter gun laws are necessary to combat the rise in violent crime because the evidence—in their view—shows that “stricter gun laws mean less gun violence.” Note, however, the precarious framing of the issue. “Gun violence rates” are not a particularly useful measure of overall public safety, as they exclude any type of similarly concerning violence or death carried out with other implements.

Far more useful than the relationship between gun laws and gun violence is the relationship between gun laws and measures of overall violence or mortality, such as age-adjusted suicide or homicide rates. Analyses of these relationships show that violence is far more complicated a phenomenon than gun control advocates care to admit—the relationship between most of their proposed gun laws and the overall public safety is, at best, uncertain and limited.

Consider, for example, Democratic Senator Mazie Hirono’s (HI) implication that Hawaii’s residents are far safer than residents of states with less restrictive gun laws, simply because the state has a lower rate of gun violence.<sup>30</sup> In 2019, Hawaii’s overall age-adjusted suicide rate was 15.64 deaths per 100,000 residents, significantly higher than the national average of 13.93, and even further behind Texas’ rate of 13.38.<sup>31</sup> In fact, Hawaii’s age-adjusted suicide rate was higher than the national average

in seven of the 10 years between 2011 and 2020, and higher than Texas' rate in six of those 10 years.<sup>32</sup> In 2019, Hawaii's age-adjusted homicide rate was 2.5 deaths per 100,000 residents, higher than Idaho, Maine, and Vermont, which received F, F, and C- ratings, respectively, that year from the Giffords State Gun Law Scorecard.<sup>33</sup> It was also roughly on par with homicide rates in Iowa, Minnesota, New Hampshire, and Utah, which received a C, C+, F, and D, respectively.<sup>34</sup>

Hawaii's low rate of gun violence does not, in fact, make its residents less likely on the whole to die of suicide or homicide than millions of residents in states with less restrictive gun control laws. This is not unique to Hawaii or to any specific year. States like Oregon and Washington—which are highly rated by gun control groups—routinely have age-adjusted suicide rates far above the national average, and far above states like Texas and Florida, which are rated poorly by gun control groups.<sup>35</sup> Meanwhile, Illinois and Maryland in recent years suffered from far higher homicide rates than states like Arizona, Texas, and Georgia.<sup>36</sup>

Along those same lines, if there truly existed a serious relationship between the strictness of a state's gun laws and its homicide rate, one would think that a state like New Hampshire or Maine—neither of which bans the civilian possession of so-called assault weapons," limits magazine capacity, or requires a license to carry guns in public—would be awash with violent crime. In reality, most years both of these states have a homicide rate that is functionally zero.<sup>37</sup> How can this be, unless gun crime is far more than a mere measure of a state's gun laws, and is instead greatly affected by a variety of sociological factors?

Beyond the complex nature of violence and the importance of analyzing general measures of public safety as opposed to just "gun violence," no compelling evidence demonstrates that the types of gun control laws promoted by gun control advocates would successfully reduce *gun violence* specifically. In fact, many of these policies are designed to address factors that are, at best, only tangentially related to the primary mechanisms of gun violence.

In other words, to whatever extent states with stricter gun laws have lower rates of gun violence, it is unlikely a measure of the success of those gun laws, as there is little logical ability to explain how those laws could have caused those lower gun violence rates. Proponents of these gun laws also generally assume a type of widespread compliance that would be entirely unprecedented, as well as law enforcement capabilities far beyond those of already overwhelmed American police departments operating under normal constitutional limitations. Analysis of just a few of these commonly proposed policies should suffice to make the point.

**Bans on So-Called Assault Weapons.** There is no standard definition of “assault weapon,” but the phrase generally refers to a semi-automatic rifle with a detachable magazine and one or more of a handful of common cosmetic features, such as a pistol grip, forward grip, barrel shroud, collapsing or folding stock, or threaded barrel.<sup>38</sup> Despite purposeful attempts by gun control advocates to conflate these guns in the public mind with machine guns and select-fire assault rifles, semi-automatic rifles with pistol grips and barrel shrouds are functionally identical to all other semi-automatic rifles.<sup>39</sup>

There are, of course, serious constitutional problems with bans on these so-called assault weapons. While the Supreme Court has never reviewed a challenge to bans on the civilian possession of so-called assault weapons, including the federal prohibition on new sales of such weapons between 1994 and 2004, it is difficult to see how a court could uphold these while also remaining faithful to *Heller v. District of Columbia*<sup>40</sup> and *New York Rifle & Pistol Association v. Bruen*.<sup>41</sup> Semi-automatic rifles—with or without the cosmetic features decried by gun control advocates as being “military-style”—are the exact type of bearable small arms whose civilian possession is protected by the Second Amendment.<sup>42</sup>

Tens of millions of Americans own these firearms for the same reasons that police departments across the country now routinely issue them to their peace officers, who are, by definition, not authorized to wage offensive warfare or “kill as many people as possible in the shortest amount of time.”<sup>43</sup> In short, they are incredibly useful tools against criminal threats that commonly arise in a civilian context. And, importantly, after *Bruen*, it is difficult to see how modern bans on firearms that “traditionally have been widely accepted as lawful possessions” are consistent with the nation’s historical tradition of firearms regulation.<sup>44</sup>

Constitutional problems notwithstanding, there are a whole host of practical problems with the notion that banning semi-automatic rifles with certain cosmetic features would significantly impact gun violence rates. There exists no plausible causal mechanism explaining how such a ban could lead to fewer gun crimes given how rarely rifles of any kind are actually used in crime and how easily “non-assault weapon” versions of the same firearm could be used just as effectively by criminals in the vast majority of cases.

During the past decade, rifles of any kind were known to be used in only 3 percent to 4 percent of homicides, without any clarity on how many of those rifles were “assault weapons” compared to other types of “non-assault” rifles.<sup>45</sup> The average American is, in fact, several times more likely to be stabbed to death than he or she is to be shot to death with a rifle of any kind.<sup>46</sup>

Similarly, handguns are by far the weapon of choice in non-fatal firearm crimes.<sup>47</sup> Even if enforcement were immediate and total, such that no criminal could ever again access a pistol-gripped semi-automatic rifle, most crimes (in fact, virtually all crimes) could just as easily and effectively be carried out with a ban-compliant firearm of the same caliber. It is little wonder, then, the official government report on the 1994 federal assault weapons ban—which expired in 2004—determined that “[s]hould it be renewed, the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement. [Assault weapons] were rarely used in gun crimes even before the ban.”<sup>48</sup>

Indeed, the primary concern raised by advocates of banning so-called assault weapons is related to the least common type of firearm violence—mass public shootings, which account for a fraction of a percent of all gun homicides every year, although they certainly garner a lot of attention for understandable reasons.<sup>49</sup> Gun control advocates, politicians, and the media routinely characterize semi-automatic rifles, specifically the AR-15, as the “weapon of choice” for mass public shooters. This is far from an accurate depiction of the facts. Of 82 mass public shootings that occurred between 2012 and 2022, 38 involved shooters who used handguns alone while only 17 involved shooters who used rifles alone.<sup>50</sup> Even if this analysis includes the 19 mass public shootings in which the perpetrator possessed a combination of firearms including a rifle, most mass public shootings still would not involve the use of a rifle.<sup>51</sup>

To the extent that semi-automatic rifles are utilized by mass shooters, it is because they are popular among *all* Americans, the vast majority of whom will never use them for any unlawful purpose, much less a mass shooting. Moreover, some of the deadliest mass public shootings in United States history have been carried out with nothing more than handguns. This includes the worst school shooting in U.S. history at Virginia Tech in 2006, where the shooter was able to fire 174 rounds in roughly 11 minutes, killing 30 people and wounding 17 others with nothing more than common, relatively low-caliber handguns.<sup>52</sup> Similarly, in 1991, a shooter at a Luby’s Cafeteria in Killeen, Texas, fatally shot 23 people and wounded another 19 with two handguns.<sup>53</sup>

The reality is that, even if all would-be mass public shooters were successfully diverted to the use of “non-assault weapons,” it would likely have no meaningful impact on their ability to kill large numbers of unarmed civilians.<sup>54</sup> With only a few arguable exceptions, such as the 2018 Las Vegas shooting, the type of firearm was not a major factor in the ability of mass shooters to cause significant casualties, particularly compared to other



important factors such as the time the shooter remained unopposed by a meaningful response.<sup>55</sup> This is because both “assault weapons” and “non-assault weapons” are functionally the exact same firearms and expel the exact same caliber of bullets with the exact same muzzle velocity, impacting the victim’s body in the exact same manner.

**Magazine Capacity Limits.** Often demanded hand-in-glove with bans on certain semi-automatic rifles are bans on the possession of “high-capacity magazines.” As with the term “assault weapon,” the term “high-capacity magazine” is an arbitrary and flexible one created by gun control advocates to frame the national conversation in a manner advantageous for their policy goals. In reality, magazines capable of holding more than 10 rounds have been in common use by civilians since the late 19th century and for many decades have been the factory standard for a variety of commonly owned handgun and rifle models.<sup>56</sup>

Advocates of bans on “high-capacity magazines” typically argue that these magazines may increase the ability of would-be mass public shooters to inflict high numbers of casualties by decreasing the number of times they need to reload during the shootings. Even assuming that it is practical as a matter of policy to confiscate the tens of millions of these magazines already owned by law-abiding citizens—while somehow eliminating any means of replacement for would-be criminals—limiting magazine capacity is unlikely to meaningfully lower casualty rates for mass public shootings.

First, mass public shooters can (and routinely do) side-step these laws by bringing several firearms and extra loaded magazines, easily replacing expended magazines within seconds.<sup>57</sup> Second, analysis of data from mass public shootings show that most perpetrators do not actually use magazines capable of holding more than 10 rounds, and that regardless, mass public shooters typically do not fire at a fast enough rate for casualty counts to be attributed to magazine capacity.<sup>58</sup> This conclusion is supported by the findings of various panels analyzing the effect of magazine capacity for individual mass shootings, as well as by the reality that high casualty counts have occurred during shootings where only “limited-capacity” magazines were used.<sup>59</sup>

Additionally, many “acceptable” low-capacity magazines can be illegally modified within a matter of minutes by anybody with access to the Internet and a screwdriver—a reality that played out to horrific effect in Buffalo, New York, where the shooter easily modified his legally purchased low-capacity magazines to hold more than 10 rounds.<sup>60</sup> Notably, his manifesto also recorded his personal satisfaction in knowing that New York’s gun laws all but ensured that his victims would be unarmed and limited in their fire-power even if they were, in fact, armed.<sup>61</sup>

Not only would such bans have little practical effect on criminal actions, but they would also handicap millions of peaceable gun owners who would otherwise own and carry standard-capacity magazines for purposes of self-defense. Civilians—like the law enforcement officers who are universally exempt from these restrictions, including while off-duty—sometimes need more than 10 rounds of ammunition to successfully defend themselves.<sup>62</sup> While the majority of defensive gun uses by either civilians or law enforcement officers likely do not involve more than 10 defensive rounds being fired, in those cases in which more than 10 rounds are needed, the ability to fire those rounds without reloading can be the difference between life and death or serious injury. Those cases often involve a defensive gun user who is outnumbered by multiple armed assailants or who is engaged in a sustained gun battle with an assailant who is heavily armed.<sup>63</sup>

Finally, as with bans on “assault weapons,” policymakers should not expect Americans to widely comply with laws requiring them to turn in hundreds of millions of standard-capacity magazines and should be skeptical of any promise that such laws could somehow be meaningfully enforced in a non-police state.<sup>64</sup> Moreover, widespread enforcement against even a fraction of non-compliant citizens would likely have devastating consequences from a criminal justice perspective.

**Universal Background Checks.** Most people agree that it is both constitutional and reasonable to prohibit certain individuals from possessing firearms because they have demonstrated a high risk of danger to themselves or others. Federal law reflects this consensus by barring convicted felons and those with histories of serious mental health problems from legally purchasing or possessing firearms unless their civil rights have been restored.<sup>65</sup> In 1993, Congress strengthened the means of enforcing these prohibitions by establishing the National Instant Criminal Background Check System (NICS) index and requiring that Federal Firearms Licensees (FFLs) request FBI background checks through this index on all prospective firearm purchasers.<sup>66</sup> Moreover, any person or entity “engage[d] in the business of...dealing in firearms” and who regularly sells firearms for profit must go through the arduous process of obtaining a federal firearms license.<sup>67</sup>

Under current federal law, then, it does not matter whether the gun sale or transfer takes place at a gun show, in a brick-and-mortar store, or over the Internet. The vast majority of lawful gun transfers require a background check. The only time federal law does not mandate a background check is when a non-FFL sells or transfers a gun to a resident of the same state. Even then, it is unlawful for a person to sell or transfer a gun to anyone he or she “know[s] or [has] reasonable cause to believe” is prohibited from

possessing that firearm.<sup>68</sup> Importantly, part of the reason for this limited exception for the background check mandate is that only FFLs can request NICS background checks. Private citizens cannot simply call the FBI and easily determine the status of prospective buyers.

Nevertheless, universal background checks are arguably centered on a legitimate concern: Would-be criminals can plausibly use private intrastate sales by non-FFLs to circumvent background checks that would catch their prohibited status. Recent decades have given rise to online gun advertising platforms for stranger-to-stranger sales—situations in which the seller is unlikely to have sufficient knowledge of the buyer to believe he or she is anything other than a law-abiding citizen. It is not inherently unreasonable to be concerned about how criminals in general might abuse these types of publicly advertised private gun sales.

As a practical matter, however, universal background checks have a very low ceiling for potential crime reduction. Recall, the evidence shows that most gun crimes are committed by individuals who bypass existing background check laws through illegal or illegitimate channels, not through lawful private intrastate transfers. Most individuals who are already willing to sell to known felons, engage in straw purchasing, or deal in black market firearms are unlikely to be dissuaded from continuing to do so simply because their conduct would be considered doubly illegal.

Moreover, while most lawful gun owners looking to sell their firearms would presumably abide by requirements to pay a third-party FFL to conduct the transfer, the risk of consequences for those who do not would be minimal, at best. This is because law enforcement could only find evidence for such an unlawful transfer after law enforcement has recovered the firearm, connected it to criminal activity, and determined that the firearm was intentionally transferred to a prohibited person without a background check (as opposed to having been lost by or stolen from the previous owner). There is a reason why studies routinely show that universal background checks, in and of themselves, have no effect on crime or suicide rates.<sup>69</sup>

The methodology of universal background checks is particularly flawed with respect to stopping mass public shooters, though for slightly different reasons. Unlike other criminal acts of gun violence, which are overwhelmingly perpetrated by people who obtain firearms through illicit channels precisely because they cannot obtain them through legal ones, the problem with would-be mass public shooters is not that they circumvent background checks to obtain their weapons. It is, rather, that these shooters—with very few exceptions—are not prohibited from possessing firearms, often despite significant evidence that they are a danger to themselves or others.<sup>70</sup> They

rarely obtain their firearms through lawful private intrastate transfers, and even if such transfers required a background check, most of them are perfectly capable of passing that check.<sup>71</sup>

Despite this low-reward reality, many universal background check bills that are actually put forward by gun control advocates seemingly go out of their way to impose heavy burdens on law-abiding gun owners making common, low-risk transfers or temporary transfers. Perhaps worse, they have been written in ways that deter gun owners from taking some of the most commonsense, responsible, and even life-saving measures with their firearms. The fact that these bills keep getting traction without these very real concerns being addressed only underscores a very real fear by many gun owners that universal background checks will be used as the gateway to a *de facto* national gun registry.

**Mandatory Gun-Owner Liability Insurance.** In recent years, it has become increasingly popular to suggest that one way of forcing gun owners to shoulder the costs associated with gun violence is by mandating that they acquire some form of gun owner liability insurance. In 2021, the City of San Jose, California, became the first in the nation to implement this policy, roundly touting it as a viable solution for combating the costs of gun violence.

This idea, however, suffers from a plethora of practical problems that limit coverage to the point of being effectively useless as a policy tool to lower costs associated with gun violence.<sup>72</sup> First, as a general rule, states currently prevent insurance policies from covering intentional or criminal actions, which together comprise the vast majority of annual acts of gun violence. Insurance would only be used to cover the much rarer acts of reckless, negligent, or accidental conduct, and even then, only when such acts are committed by an insured individual and injure innocent third parties. Moreover, policies covering liability for reckless or negligent conduct perversely risk disincentivizing gun owners from acting responsibly, because they would be indemnified against any financial consequences stemming from irresponsible actions.

Finally, the effectiveness of any such mandate would depend largely on widespread enforcement. But a majority of gun crimes and at least some portion of accidental deaths and injuries are the fault of unlawful gun owners, who could not obtain liability insurance even if they were inclined to comply with this specific gun law, which is highly unlikely since they do not follow other gun laws. And unless a state has a gun owner registry, requires gun owners to submit proof of insurance on a regular basis, actively monitors which lawful gun owners have not obtained insurance,

then meaningfully sanctions them for noncompliance, it cannot ensure the type of widespread compliance necessary to render such a mandate even remotely effective for the limited scenarios in which insurance policies would apply in the first place.

**Waiting Periods.** According to the RAND Corporation, evidence that waiting periods reduce either overall suicide rates or firearm homicide rates is limited, at best.<sup>73</sup> Additionally, even where some studies purport to find a connection between waiting periods and decreases in certain types of gun violence, there is little plausible causal nexus between the waiting period and the alleged decrease. Recall, again, that most criminal gun violence is perpetrated by individuals who do not obtain their firearms through lawful channels and for whom mandatory waiting periods have no practical effect on their ability to obtain a firearm for immediate use.

The best available evidence indicates that most acts of criminal gun violence are not committed by individuals in lawful possession of a recently purchased gun. According to the ATF, the national average “time-to-crime”—that is, the time between when the gun was last known to have been purchased and when it was used in a crime—for guns traced from crime scenes in 2020 was just over seven years.<sup>74</sup> While the ATF does not collect or publish data on how many firearms are used to commit crimes within 10 days of a lawful purchase, the majority of recovered crime guns have a time-to-crime of more than three months.<sup>75</sup>

The lack of a logical causal mechanism linking waiting periods and decreases in any subset of gun violence is particularly acute in states that only require a waiting period for certain types of firearms, such as handguns, as any homicidal or suicidal individual would nonetheless have immediate access to other types of firearms. Additionally, some states that do not impose waiting periods nonetheless require would-be gun buyers to first obtain either a gun purchase permit or a gun owner’s license, both of which act as barriers to “impulse” gun purchases in the exact same manner as waiting periods. Nebraska, for example, requires would-be handgun buyers to apply for and receive a Firearm Purchase Permit, the process for which involves the applicant delivering the paperwork in-person to his or her local sheriff’s department and then waiting up to three weeks for the permit to be delivered via mail.<sup>76</sup> This applies to handgun purchases both from licensed dealers and private sellers.<sup>77</sup> Any studies purporting to show a causal connection between waiting periods and reduced gun violence rates must be capable of explaining why that causal connection would not also exist for states that require gun licenses prior to purchase or must account for such laws in the original analysis.

Advocates of waiting periods also have yet to explain why or how any beneficial impact of delaying firearm purchases would extend beyond first-time buyers. If an individual already has access to a firearm, any “cooling off” period would not apply with respect to the weapons already in his or her possession, and there are few contexts in which a person bent on violence might reasonably delay a criminal act simply because he or she does not have ready access to a second or third firearm.

While some mass public shooters have procured their firearms shortly before their attacks, most such shooters plan their crimes weeks, sometimes even months, in advance and bring multiple firearms purchased over an extended period of time. They are highly motivated to commit these acts of mass murder, and it is unclear how the implementation of a waiting period would plausibly act as either a deterrent or an effective “cooling off” period.<sup>78</sup>

Even given these problems of establishing a logical causal nexus, it is possible that waiting periods may slightly reduce rates of some subsets of gun violence carried out by individuals who do not already own guns. However, any potential benefit must then be balanced with the potential cost to the overwhelming majority of lawful gun purchasers, who were never at risk of harming themselves or others with their guns during the waiting period. These waiting periods can be acutely problematic at the precise times when the exercise of the right to keep and bear arms is most important—for example, during times of sudden civil unrest or when an abusive former dating partner begins making threats.

## **II. Other Common Misconceptions That Drive Bad Gun Policy**

“Lawful gun sales are causing violent crime” and “stricter gun laws mean less violent crime” are not the only misconceptions driving bad gun policy. While it would be nearly impossible to address every single misconception currently muddying the waters of the national conversation on firearms, it is worth addressing just a few of the more common—and more egregious—errors.

### **A. Misconception No. 1: States with Less-Restrictive Gun Laws Are to Blame for the Gun Violence in States with More Restrictive Gun Laws**

In response to evidence that stricter gun control laws do not necessarily solve a state’s gun violence problem, politicians and gun control advocates will often argue that any failures of gun control really lay at the feet of states

with less restrictive laws. One persistent and widespread version of this myth is that Chicago's perpetual gun violence problem is driven in large part by the allegedly "lax" gun laws in neighboring Indiana. Proponents of this theory invariably point to evidence that a significant percentage of crime guns recovered in Chicago can be traced back to sales conducted by gun stores in Indiana.<sup>79</sup>

There are some glaring logical problems with this reasoning. First, if Indiana's supposedly lax gun laws were a major cause of Chicago's violent crime problem, it would make sense that those same laws would create the same havoc in major urban areas in Indiana. The historical reality, however, paints a very different picture.<sup>80</sup> From a purely practical perspective, it is also utterly unclear why the origin of the firearm matters, given the reality of federal law on interstate gun sales and transfers. It is no easier for an Illinois resident to legally obtain a firearm across the border in Indiana than it is for him or her to obtain the same firearm in Illinois. It is certainly true that an Illinois resident who buys a gun in Illinois is subject to far more burdens than an Indiana resident who buys a gun in Indiana. But is not true, however, that an Illinois resident may avoid burdensome Illinois laws by simply buying a gun across the border in Indiana, or that Indiana residents who wish to purchase or possess a firearm in Illinois are exempt from Illinois restrictions.

Under federal law, all interstate long-gun sales or transfers must be conducted through an FFL, which must ensure both that the buyer passes a background check and that the sale fully complies with the laws of the buyer's state of residence.<sup>81</sup> Therefore, regardless of whether an Illinois resident buys a long gun in-state or out-of-state, he or she must first obtain an Illinois Firearm Owner's Identification (FOID) card and undergo a background check, and the long gun itself must be one that Illinois residents may lawfully possess. If the firearm at issue is a handgun—overwhelmingly the type of firearm most likely to be used in gun crime both in Chicago and elsewhere—federal law requires that the gun first be shipped to an FFL in Illinois, which then must process the sale exactly as it would for any firearm purchase.<sup>82</sup>

At the same time, the rules for possessing, transporting, and carrying a firearm in Illinois apply equally to Illinois and Indiana residents. It is no more lawful for an Indiana resident to possess a firearm in Illinois without a FOID card or to carry a loaded handgun in public without an Illinois-issued (or Illinois-recognized) concealed carry permit than it is for an Illinois resident to do either of those things. The fact that one Indiana resident may, under some circumstances, purchase a firearm from another Indiana

resident without going through a background check, or may publicly carry a handgun in Indiana without a license, does not make it any less illegal for that same resident to circumvent restrictions on selling guns to Illinois residents or carrying firearms across the border in Illinois.

The most rational explanation for why so many Chicago firearms originate in Indiana is not that Illinois or Indiana residents are exploiting some non-existent loophole in interstate gun sales. It is, rather, that there are no brick-and-mortar licensed gun stores within Chicago city limits, that Indiana is a stone's throw away from Chicago, and that many Chicago residents [law-abiding or otherwise] are physically closer to Indiana suburbs than to Illinois suburbs—especially when considering the location of gun stores in those respective suburbs.

## **B. Misconception No. 2: “Assault Weapons” Are “Weapons of War” That Have No Legitimate Purpose Outside of Combat**

A common spin in favor of banning certain semi-automatic rifles is to paint them as “weapons of war” that have no legitimate purpose outside of a combat zone. While such a characterization would not, per se, render a firearm outside the scope of Second Amendment protection, it is certainly useful when trying to gain the public's support for laws prohibiting civilians from owning them.

As should be evident from the fact that “assault weapon” bans universally exempt police officers, including in their off-duty capacity, despite the fact that these officers are not, by definition, engaged in offensive warfare, semi-automatic rifles with pistol grips and barrel shrouds are clearly useful outside of a war zone. A semi-automatic rifle with a pistol grip or barrel shroud is a “weapon of war” only insofar as any and every firearm, knife, or club is a “weapon of war”—some version of it can be useful to a soldier in combat, though for much the same reason as it would be useful to a civilian in a lawful non-combat scenario. Moreover, to any extent that it is a “weapon of war,” it is also a bearable small arm commonly possessed by law-abiding citizens for lawful purposes, and its civilian possession is therefore protected by the Second Amendment.

Ironically, bans on “assault weapons” do not prohibit the possession of many firearms that were, quite literally, used in combat by millions of soldiers. For example, the M1 Garand was the U.S. Army's standard service rifle through World War II and the Korean War, and General George Patton called it “the greatest battle implement ever devised.”<sup>83</sup> Like the AR-15, it is a semi-automatic rifle that fires only as fast as the shooter can pull the trigger.



Unlike the AR-15, which is typically chambered in .223 or 5.56, the M1 Garand fires a much larger, more powerful .30-06 Springfield round. And while the M1 Garand does not have a detachable magazine, its *en bloc* clip system allows it to be reloaded just as quickly as any modern AR-15. And yet, despite being a literal weapon of war utilized by the military for decades, the M1 Garand is not an “assault weapon” under any existing definition. This is also true of the Colt 1911 handgun, which was the standard service pistol for over 70 years, used by American soldiers everywhere from the Somme to Ia Drang.

### **C. Misconception No. 3: Lawful Gun Owners Rarely Use Their Firearms in Self-Defense**

Just as advocates of stricter gun control laws often overstate the impact of such laws on violent crime, they often seriously downplay (or completely ignore) the protective impact of lawful gun ownership. According to a 2013 report by the Centers for Disease Control and Prevention, almost every major study on defensive gun uses has concluded that Americans use their firearms defensively somewhere between 500,000 and several million times every year.<sup>84</sup> In 2021, the most comprehensive survey of gun owners and gun use ever conducted appeared to vindicate these earlier studies, estimating an average of just over 1.6 million annual defensive gun uses.<sup>85</sup> Importantly, this latest analysis reveals that, unlike criminal gun uses, defensive gun uses are quite common amongst lawful gun owners, with approximately one-third of all gun owners reporting having used a firearm to defend themselves or their property.<sup>86</sup>

Not only are armed civilians better able to resist criminal activity when it occurs, but according to criminals themselves, knowing that potential victims might be armed effectively deters many crimes in the first place. According to one survey of imprisoned felons, roughly one-third reported being “scared off, shot at, wounded or captured by an armed victim,” while 40 percent admitted that they had refrained from attempting to commit a crime out of fear that the victim was armed.<sup>87</sup> Well over half of the surveyed felons acknowledged that they would not attack a victim they knew was armed, and almost three-quarters agreed that “one reason burglars avoid houses where people are at home is that they fear being shot.”<sup>88</sup> Importantly, the study also found that felons from states with the greatest relative number of privately owned firearms registered the highest levels of concern about confronting an armed victim.<sup>89</sup>

This is consistent with the conclusions of a study that analyzed the effect of a Memphis newspaper listing all Tennessee residents with a handgun carry permit in a publicly accessible database, locating them within their

five-digit zip code. The database received more than a million views in 2009.<sup>90</sup> The study's authors concluded that, in the months following a newspaper article that dramatically increased online traffic to the database, zip codes with higher densities of carry permit holders experienced a 20 percent relative decrease in burglaries compared to zip codes with lower densities of carry permit holders.<sup>91</sup>

International data, too, seems to indicate that criminals generally consider the likelihood of armed resistance and adapt their behavior accordingly. According to one study, only about 13 percent of burglaries in the United States take place when the occupants are home, a rate far lower than in many other developed countries like Canada, Great Britain, and the Netherlands.<sup>92</sup> Because these “hot burglaries” are far more likely to result in an assault against a victim than are burglaries of unoccupied homes, it is relatively easy to predict—as several researchers have—that the lower percentage of hot burglaries in the United States results in over half a million fewer assaults every year than would otherwise occur if the percentage of hot burglaries was on par with these other countries, saving the nation billions of dollars in avoided crime costs.<sup>93</sup>

Finally, armed civilians played a significant but underacknowledged role in stopping active shooters, including those bent on acts of mass public violence. Between 2014 and 2021, armed citizens successfully stopped 51 percent of active shooters who carried out attacks in public places that allowed civilians to lawfully carry their own firearms for self-defense.<sup>94</sup> In none of those incidents did the armed citizen injure innocent bystanders.<sup>95</sup>

#### **D. Misconception No. 4: Because Red Flag Laws Can Be Constitutional in Theory, the Ones That Actually Exist Are Perfectly Constitutional in Reality**

Red flag laws—also known as extreme risk protection orders—have come into the national spotlight during the past four years as a potential method of addressing a real and serious concern with respect to mass public shooters. Very rarely are would-be mass shooters prohibited from lawfully purchasing or possessing firearms, despite often showing serious signs of being a danger to themselves or others. With perhaps two notable exceptions, every mass public shooter in recent history either passed a background check or was capable of doing so.<sup>96</sup> This is also unfortunately the case for many people who commit suicide with a firearm, which accounts for approximately six in 10 gun deaths every year.<sup>97</sup>

Perpetrators of mass public violence in particular pass background checks largely because federal law provides only a limited number of ways in which individuals lose their Second Amendment rights, most commonly by conviction of a felony or domestic violence misdemeanor, or by involuntary commitment to an inpatient mental health facility.<sup>98</sup> People who have their Second Amendment rights revoked in this manner face a real likelihood of never having them restored, and these are, therefore, severe measures requiring very high legal thresholds to be met.<sup>99</sup> Involuntary commitment, in particular, is often reserved for only the most serious of mental health crises, a problem often compounded by a lack of an adequate inpatient mental health infrastructure in many states.<sup>100</sup>

There are, at least in theory, constitutional ways of temporarily restricting gun ownership for individuals who are clearly a danger to themselves or others, regardless of whether they suffer from a diagnosable mental illness or have yet to commit a disqualifying felony. That said, the right to keep and bear arms is a fundamental constitutional right, and any deprivation of that right—even temporarily and for compelling reasons—requires the highest standards of due process. The closest corollary to red flag laws is the civil mental health commitment process for individuals alleged to be mentally ill and dangerous.

While red flag laws raise additional concerns and are not perfectly analogous, the civil commitment process provides at least a starting point for bare minimum due-process standards—the right to an attorney, to cross-examine witnesses, and to testify on one’s own behalf; the burden of the state to continually prove its case by clear and convincing evidence; *ex parte* or emergency orders limited only to serious threats of imminent harm; and principles limiting deprivations to the least restrictive means necessary and for limited periods of time.

Moreover, from the perspective of sound public policy, any red flag law should include comprehensive and detailed practical considerations, like specifying the methods for notifying defendants of the allegations and their rights, for storing seized firearms and returning them to their owners, for immediately remedying clear mistakes (such as cases of mistaken identity), and for promptly restoring a person’s Second Amendment rights after orders expire. Just as importantly, any palatable law should be fully integrated with existing mental health, domestic violence, and addiction treatment infrastructures, and otherwise ensure that the process adequately addresses the underlying problems that led a person to be dangerous in the first place. It should never be about simply disarming people, but about restoring them to a point at which they are no longer dangerous.

Unfortunately, of the 20 red flag laws currently on the books at a state level, none adequately addresses all of the very real practical and constitutional concerns that come with deprivations of a fundamental right. While an exhaustive review of these failings is beyond the scope of this *Legal Memorandum*, problems universally arise in the follow key areas: (1) protections afforded during *ex parte* proceedings, (2) protections afforded during final order proceedings, and (3) evidence that the law is founded on comprehensive, well-considered principles of public policy—not just a desire to seize guns.

*Ex parte* orders—in which defendants are not given notice of legal proceedings or provided the opportunity to defend themselves—should be limited to scenarios in which there is substantial evidence of a true emergency and the risk of danger is so serious and imminent that due process cannot reasonably be afforded in the interest of protecting life. At the very least, states should require, by a heightened standard of proof, a finding that the defendant poses a substantial or significant risk. They should also require evidence of urgency, such as that the substantial or significant risk is imminent or “in the near future.”

Finally, the length of time between the issuance of an *ex parte* order and full hearing in which the defendant has the full panoply of due-process protections should be roughly equivalent to the time frame in which states may hold an individual for an emergency mental health evaluation without a hearing or additional forms of due process, such as an in-person evaluation by a medical professional. In all but four states, this additional hearing or evaluation must take place within 72 hours of the emergency hold being initiated.<sup>101</sup>

Unfortunately, 14 states allow *ex parte* orders to be issued based on low and sometimes vague standards like probable or reasonable cause, “reasonable grounds,” or “good cause.”<sup>102</sup> Six states fail to require a finding of substantial or significant risk for *ex parte* orders.<sup>103</sup> Four states fail to require any finding that the risk be imminent or in the near future for *ex parte* orders.<sup>104</sup>

Only six states—Maryland, Massachusetts, Nevada, New Jersey, New Mexico, and New York—have time frames between *ex parte* orders and full hearings that are even arguably on par with those constructed under some emergency mental health evaluation laws.<sup>105</sup> Even then, their *ex parte* time frames are on par only with a small number of outlier state emergency mental health hold laws, and none is consistent with the time frames of *their own* emergency mental health hold laws.<sup>106</sup> Most of the remaining states allow up to 14 days between the issuance of *ex parte* orders and hearings in

which the defendant is afforded any semblance of due process. California permits *ex parte* orders to last up to 21 days, while in Oregon, a hearing must be held within 21 days of the respondent's request for a hearing.<sup>107</sup> If the respondent does not actively request a hearing within 30 days, the *ex parte* order lasts for one year.<sup>108</sup>

With respect to final orders, states should use “clear and convincing evidence” as their burden of proof, which is the same burden of proof constitutionally required in civil commitment proceedings.<sup>109</sup> And yet, six states allow a person's Second Amendment rights to be fully rescinded for a significant period of time based on a preponderance of the evidence—a standard that many legal scholars and jurists have explained means little more than a “coin flip” of probability that a person is dangerous.

While a state need not necessarily require for a final order that the threat be imminent or in the near future, the risk of potential threat should be heightened (i.e., substantial or significant). Six states do not require this showing of heightened risk, while another two (Indiana and New York) use language of heightened risk that is ambiguous and may not, in practice, be the equivalent of a showing of substantial or significant risk.<sup>110</sup>

Red flag orders are supposed to be temporary measures and should not last more than one year before the government must once again show by clear and convincing evidence that the person remains dangerous. However, Indiana and New Jersey essentially issue indefinite orders in which the person must actively petition to have his or her rights restored (in some cases with the burden of proof falling on the petitioner to show that he or she is no longer dangerous).<sup>111</sup> California allows final orders to be issued for up to five years.<sup>112</sup>

Shockingly, it appears that only one state, Colorado, explicitly guarantees that respondents have a right to an attorney, to present evidence on their own behalf, and to cross-examine witnesses.<sup>113</sup> A majority of states allow courts to rely on inappropriate factors, such as the lawful acquisition of firearms or arrest records in which the arrest did not result in a plea or conviction, as evidence of dangerousness. Only eight states protect against potential abuse of the system by making it a crime to knowingly file petitions containing false information or with the intention of harassing the respondent.<sup>114</sup>

With respect to statutes showing evidence of well-considered public policy principles, only five states explicitly integrate mental health services or addiction resources, either by automatically providing information about those resources to respondents or by mandating evaluations when appropriate.<sup>115</sup> Only four states explicitly provide protections against these

records becoming permanently weaponized against respondents, either by declaring them confidential records, expunging records of *ex parte* orders when final orders are not granted, or by sealing records after a set period.<sup>116</sup> Unfortunately, in one of those states—New York—these sealed records may nonetheless be viewed by officials for purposes of granting, denying, or revoking gun licenses, meaning that, at least when it comes to Second Amendment rights, subjects of these orders may be punished in perpetuity.<sup>117</sup> Most states fail to ensure some basic level of protection for firearms while in police custody, such as by imposing a duty of reasonable care or specifying standards for storage.

### **E. Misconception No. 5: Repealing the Protection of Lawful Commerce in Arms Act Would Save Lives by “Holding the Gun Industry Accountable” for Its Role in Gun Violence**

In recent years, the Protection of Lawful Commerce in Arms Act (PLCAA) has become a sort of bogeyman for gun control advocates who claim that it immunizes a gun industry full of bad actors who intentionally facilitate criminal violence. Advocates of repealing the PLCAA routinely assert that it was passed by Members of Congress beholden to gun lobbyists and has enabled gun manufacturers and sellers to, among other things, intentionally sell unsafe products, make misleading advertisements, and generally entice criminals to buy their products.

In reality, Congress passed the PLCAA in 2005 with overwhelming bipartisan support. It did so as a direct response to a concerted effort by gun control advocates to sue the lawful gun industry into submission to their policy whims, misusing the court system to achieve through abusive litigation tactics what they could not achieve through the democratic process. Gun control advocacy groups, supported by anti-gun public officials and emboldened by the success of these tactics against the tobacco industry, sought to keep gun manufacturers and sellers perpetually bogged down in expensive (but frivolous) civil lawsuits. In this way, they hoped to eventually strong-arm the industry into “voluntarily” adopting gun control measures that were either too politically unpopular to be passed into law or that would be patently unconstitutional if mandated by the government.

While the PLCAA does protect the gun industry against this type of abusive litigation, it does not—contrary to the assertions of many gun control advocates—completely immunize gun manufacturers and sellers from all civil liability. It merely protects them from lawsuits that seek to hold them liable for harm caused by *third parties* who used the guns in an unlawful

manner. But gun manufacturers and sellers may still be held liable for a plethora of widely recognized tort claims, such as selling defective products, making false advertisements, or failing to abide by the numerous state and federal laws regarding product safety, sales, and recordkeeping. This includes, at least according to one state court, being held liable for negligent entrustment for selling a gun when the seller has reason to know the buyer intends to use the gun to commit a crime.<sup>118</sup>

The PLCAA's explicit protection against liability for criminal third-party actions is uncommon, but it is not unique or even necessarily broad compared to protections received by other industries.<sup>119</sup> And to whatever extent the protection is unique, it is because the lawful gun industry faced a unique set of threats to its very existence. Repealing the PLCAA would not meaningfully impact gun violence rates. It would, however, risk endangering the right of the people to keep and bear arms by allowing gun control advocacy groups to kneecap the lawful industry responsible for producing and distributing the means by which the right may be exercised.

### **III. Why Violent Crime Rates Are Rising and What Can Be Done About It**

If lawful gun sales are not the primary force driving recent spikes in violent crime—and if commonly proposed gun control laws are not likely to quell the wave of violence facing many American cities—then what, exactly, is behind the increased violence and what, if anything, can actually be done about it?

#### **A. Factors Most Likely Facilitating Violent Crime Spikes**

It is abundantly clear that something—or some combination of things—happened around the summer of 2020 that suddenly and severely disrupted the nation's three-decade track record of decreasing, then relatively stable, violent crime rates. In analyzing what factors might be at play, it is important to ask the question, “What changed in recent years that might affect violence at a macro level?”

Immediately, three major factors come to the forefront: COVID-19 dramatically disrupted society, a small handful of high-profile instances of police brutality led to nationwide civil unrest and condemnation that altered police practices and the distribution of police resources, and many major cities saw the rise of self-described “progressive prosecutors” and the implementation of significant bail-reform measures. All three of these

sudden, drastic changes likely had great effects on their own, but together they coalesced into a perfect storm for violence. This “perfect storm” theory, while incomplete and perhaps working in confluence with other factors that we still do not fully understand, offers a far more convincing and reasonable explanation for the spikes in gun violence than do theories centered on the lawful acquisition of firearms.

**COVID-19 dramatically increased societal stressors while disrupting formal and informal violence mitigators.** It is becoming increasingly clear that drastic government efforts to combat the spread of COVID-19 had serious and devastating sociological impacts, the extent of which we are just now beginning to fully comprehend. The research is clear about the vital role certain types of community programs and nonprofit organizations play in reducing gun-violence rates.<sup>120</sup> State and local efforts to combat the spread of COVID-19 suddenly and severely disrupted these important social networks and services, to the detriment of countless high-risk community members.

Stay-at-home and social-distancing policies made it far more difficult—and sometimes, impossible—for these organizations to carry out their vital work. Those that could switched to virtual case management, which often proved to be a poor substitute. Funding and volunteer rates plummeted. Former outlets for high-risk young men, such as recreational centers, sports leagues, and gymnasiums, were suddenly closed off. Schools went to virtual learning, where many districts saw large drop-offs in the percentage of students actually logging on to “attend” class.<sup>121</sup>

Additionally, the weight of the evidence suggests that people experiencing significant physical, social, or emotional “stressors” are more likely to act in violent ways than people who are not experiencing those same stressors.<sup>122</sup> Obviously, the pandemic and related restrictions brought sudden and significant stressors into the lives of countless Americans. Millions suffered sudden job losses, financial worries, disruption of their routines, and a lost sense of purpose that often accompanies long-term unemployment. Lock-downs drove feelings of isolation. Deep political tensions played themselves out on national television to a largely captive audience. Fears about health and well-being were widespread, not to mention the grief for countless Americans who lost friends and loved ones or the general apprehension about truly unprecedented times. Far too many people, including youths in the highest categories of risk for violence, have had far too much time on their hands while experiencing far too much stress and with far too few of their normal support networks for deterrence. This is, from a sociological standpoint, a recipe for disaster.



Pandemic-related school closures have proven particularly damaging to an entire generation of school-age juveniles, many of whom simply never went back to school and have, as a result, increasingly found destructive methods of biding their time. While conclusions are still hard to draw from the available data, it does seem that pandemic-related school closures are proving to have been particularly damaging to juveniles who were already at high risk for criminal activity, and may be one of the driving factors behind the rise in juvenile violent crime.

Even though most schools are now more or less back to in-person classes, the reality is that tens of thousands of students—including many of those who were already most at-risk for violence—have simply refused to return to school.<sup>123</sup> Long-standing evidence supports a strong connection between truancy and criminality.<sup>124</sup> Moreover, the spike in violent crimes committed by juveniles appears to directly coincide with spikes in chronic absenteeism. As one nonprofit leader recently noted, during the COVID-19 shutdowns, “We just plain lost some kids.”<sup>125</sup> On top of this, it appears that these truant juveniles know that in many places, they are unlikely to face serious consequences for their actions.<sup>126</sup> They also may be doing it because of some combination of social influence and boredom—to some, engaging in criminal behavior is simply more entertaining than available alternatives.<sup>127</sup>

Other COVID-19 policy decisions—even the most necessary and reasonable ones—had consequences. According to one study, family-related gun homicides in particular increased by 34 percent in 2020 and 2021.<sup>128</sup> Instances of domestic violence, including domestic violence homicides, shot up dramatically in many states.<sup>129</sup> That is, unfortunately, what one might expect when dysfunctional families are effectively forced into long-term quarantine together without their normal means of finding healthy outlets, accessing help, or having dangerous warning signs noticed by others. And consider other indications that large swaths of the American public simply reached the end of their emotional capacity to deal with relatively minor grievances in a calm manner, such as significant and sudden spikes in the number of road-rage incidents and violent attacks by airline passengers.<sup>130</sup>

**Acute, widespread changes in policing practices, the distribution of police resources, and levels of community trust.** There is substantial evidence that police departments around the nation suddenly and significantly altered the ways in which they deployed resources and interacted with communities as a result of COVID-19-related necessities, widespread civil unrest, and high-profile, anti-police sentiment. These changes very likely played—and continue to play—a role in the ability of impacted police departments to deter criminal acts, investigate violent crimes, and bring the perpetrators of those crimes to justice before they can reoffend.

Consider the slew of problems faced by officers during the height of the pandemic, when many departments found themselves demolished by the virus itself. At one point in the spring of 2020, nearly 20 percent of NYPD's uniformed workforce was out sick or in quarantine, with many other major police departments facing similar shortages.<sup>131</sup> Almost overnight, police forces around the country began taking steps to minimize interactions with civilians.<sup>132</sup> This not only hampered proactive policing efforts, but also brought community-policing tactics and trust-building outreach initiatives to a screeching halt. At the same time, in many cities, officers were diverted to the enforcement of COVID-19-related social-distancing and closure orders.

There is also ample evidence that widespread social unrest and the widespread proliferation of anti-police sentiment measurably shifted the deployment of police resources and led to unconscious (or perhaps entirely conscious) changes in policing styles.<sup>133</sup> Because proactive, officer-initiated law enforcement is precisely the type of policing designed to disrupt patterns of violence, its sudden scaling back was bound to have devastating consequences for gun violence. Worse, it coincided in many cities with “defunding” measures, the cutting of vacant job openings, higher rates of retirement or quitting, and lower recruitment rates to fill the emptying ranks.<sup>134</sup>

How, then, might these acute problems during the height of the pandemic lead to the continued problems the nation faces nearly three years later? The modern consensus, based on decades of studies, is that the certainty and celerity of punishment are likely far more important than severity when it comes to deterring criminal activity.<sup>135</sup> In other words, if criminals know they are unlikely to face any consequences, they are far more likely to continue committing crimes even if the severity of the potential consequences is significantly increased. On the other hand, sufficiently increasing the likelihood that offenders will face swift but moderate punishments is far more likely to actually deter criminal activity in the first place than simply increasing potential sentences for criminals who are unlikely to ever actually face such a sentence.

In a nation that is already significantly under-policed compared to the rest of the developed world, and where criminals are already substantially more likely to escape punishment, changes that further decrease the certainty and celerity of punishment—for example, by reducing the number of police officers available to investigate crimes, detailing offenses for which prosecutors will no longer seek meaningful punishment, and delaying the imposition of sanctions for extended periods of time due to COVID-19-related courtroom procedures—will have drastic effects on the willingness of would-be offenders to engage in criminal activity.<sup>136</sup>

Years later, police departments are still demoralized, understaffed, and struggling to keep up with increased levels of crime.<sup>137</sup> Witnesses who do not believe that the police will be able to keep them safe from retaliation are also less likely to cooperate with investigations, exacerbating the problems of unsolved crimes in which criminals are not held accountable and underscoring the potential impact of lowered levels of trust between police departments and the communities they serve.

Violence also begets more violence—like a viral pandemic, once a cycle of retaliatory violence begins, it is increasingly hard to stop its spread.<sup>138</sup> This seems to be particularly true during periods of significant, acute, and widespread increases in violence, though we do not yet fully understand why and under what conditions this snowball effect occurs.<sup>139</sup> Moreover, it is clear that gang-related violence tends to be more “contagious” than non-gang-related violence.<sup>140</sup> Proactive types of policing—like, for example, “hot spot” policing—seem to be one of the best means of combating gang-related violence. These are also the very types of police activity that were most significantly impacted by, and restricted because of, widespread changes in recent years.

It would certainly make sense that these changes led to a lower and less active police presence (or at the very least, a lesser perceived presence), which would pave the way for increased cycles of retaliatory gang violence—perhaps even reaching a point at which a mere return to the previous status quo of more active policing may not on its own be sufficient to stem the retaliatory violence in the near future. This would also explain why the violent crime wave has failed to ebb in many areas of the country, even as the nation begins to move toward a state of post-pandemic normalcy.

**Politically motivated bail and prosecutorial changes in many cities that pre-dated or coincided with COVID-19-related problems.** Finally, there is significant evidence that the violent crime wave is being exacerbated by the widespread implementation of ill-conceived bail policies and rise of “progressive” prosecutors in major American cities. While some of these changes pre-date the rise in violent crime, so do their negative consequences.<sup>141</sup> There is ample reason to believe that the toxic combinations of progressive prosecutorial practices and overly lenient bail reform played an integral role in creating—and continue to play a role in maintaining—the “perfect storm” for unchecked violence.

For example, after Cook County, Illinois, which includes Chicago, implemented new bail policies in 2017, 45 percent more defendants released on bail were charged with committing new crimes, while 33 percent more were charged with committing new violent crimes.<sup>142</sup> One local media outlet

found that, based on publicly available information alone, in 2021, 62 individuals were arrested for killing, attempting to kill, or shooting someone while released on felony bail in Cook County, affecting 111 victims.<sup>143</sup> The problem is clearly not limited to Chicago.

In 2020, New York made significant changes to its bail policies and implemented a slew of progressive criminal justice “reforms.” By 2022, New York City experienced a more than 30 percent increase in the number of violent felonies committed every month by individuals released on bail.<sup>144</sup> Meanwhile, another recent study has estimated that progressive “de-prosecution” tactics are responsible for 70 excess homicides a year in Baltimore, 74 excess homicides a year in Philadelphia, and a staggering 169 excess homicides a year in Chicago.<sup>145</sup>

As noted earlier, American law enforcement has comparatively low clearance rates, and in most cases, perpetrators of violent crimes will not be held accountable. This also means that, for purposes of analyzing violent reoffending, there is no real way of assessing how many of these uncleared crimes were, in fact, committed by individuals released on felony bail who re-offended but were never caught.<sup>146</sup> Given the plethora of data showing that most gun violence is perpetrated by a statistically small subset of repeat offenders, and that recent violent behavior is a good predictor of future violent behavior, it is almost certain that analyses of known felony bail violations significantly undercount the rates at which many of these individuals actually reoffend while on bail.<sup>147</sup>

## B. Potential Solutions

Given these realities, what can actually be done to reverse the staggering and acute increase in violent crime since 2020? To be sure, there is no quick or easy fix. Some questions do not have readily apparent answers. For example, how do thousands of school districts undo the massive damage wrought to millions of students during the pandemic in the form of learning loss? How do demoralized and understaffed police departments gain back a meaningful sense of trust from communities wracked by violent crime that often goes unsolved and unpunished when the lack of trust itself inhibits officers’ ability to hold criminals accountable? Interrupting the downward spiral and restoring the nation to pre-pandemic levels of violence will take time and will require a comprehensive and multi-faceted approach. And, given the unprecedented nature of the problem, it will also likely take a healthy dose of creativity and innovation.

Policymakers undertaking this tremendous task should start by building on the following key premises:

1. **Require More Robust Enforcement of Existing Laws.** The more robust enforcement of existing laws will necessarily require more police officers who are better trained to engage in active policing and investigative work. This, of course, is not a “solution” that can be implemented overnight, even in a nation that requires far fewer hours of training to become a police officer than do most of its peers in the developed world. In the meantime, this also means prioritizing resources. For example, instead of increasing the ATF’s budget for compliance with recent unnecessary and comparatively low-value policy changes the agency made under political pressure, it should be prioritizing the most helpful aspects of its role—crime-gun tracing and assisting state and local entities with tackling black-market firearm sales.

Obviously, enforcement efforts are seriously undermined by bail reforms and prosecutorial strategies that all but ensure many violent offenders escape meaningful containment or punishment, even when they are promptly identified by law enforcement. To the extent that local authorities steadfastly decline to prosecute violent offenses under state law, federal officials should consider whether those cases also involve prosecutable offenses under federal law.

2. **Remove Unnecessary and Burdensome Barriers to the Exercise of Second Amendment Rights by Peaceable Citizens.** As evidence above, lawful gun owners both deter a substantial number of crimes every year and successfully intervene to thwart ongoing crimes on a routine basis. They are rarely responsible for criminal gun violence. Policymakers should remove unnecessary burdens on the ability of peaceable citizens to exercise their Second Amendment rights. This includes reconsidering not only laws that make acquiring firearms a more expensive and time-consuming process, but also those which seriously inhibit gun owners’ ability to protect themselves with firearms in common public places.
3. **Invest in the Nation’s Mental Health Infrastructure.** To be clear, most individuals with mental illness are not dangerous and are far more likely to be victims of violence than to commit acts of violence

against others. However, certain types of untreated serious mental illness are associated with increased risks of violence. Moreover, 60 percent of gun deaths are suicides, which are inherently a mental health problem. Policymakers should work to increase access to—and lower costs associated with—mental health treatment.<sup>148</sup> They should remove administrative burdens that exacerbate the national shortage of mental health practitioners and make it more difficult for practitioners to provide tele-health services across state lines.<sup>149</sup>

Additionally, states and relevant federal agencies should increase numbers of public psychiatric beds of last resort.<sup>150</sup> Finally, states in particular should create and actively support constitutional frameworks for targeted, time-limited interventions for those who are a danger to themselves or others, ensuring that they actually receive the help they clearly need.

- 4. Remove Any Remaining COVID-19-Related Barriers to Formal and Informal Violence Prevention.** To any extent that COVID-19-related restrictions remain that significantly impact daily life—and particularly that impact the normal operation of formal and informal violence prevention programs—they should be removed. The nation cannot begin any meaningful recovery from the effects of these pandemic shutdowns until normal life returns.

Policymakers should also take steps to ensure that mistakes made during the past several years are not repeated. They should carefully evaluate the performances of both federal and state governments during the pandemic and adopt a broad agenda of public health reform to prepare the nation for any future national health emergencies.<sup>151</sup>

## Conclusion

Gun control advocates have imbued the national conversation on gun violence with standard talking points that seemingly play out on repeat. These talking points are almost universally based on misunderstandings of the actual problems and therefore rarely have any real capacity to meaningfully address those problems or increase the general public safety. At the same time, they almost universally undermine the fundamental constitutional rights of peaceable, law-abiding Americans. It is well past time for policymakers to move on from these “solutions”—which at best give only a

veneer of having “just done something” about gun violence—and at worst threaten to exacerbate existing problems.

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## Endnotes

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2. See sources *supra* note 1, and *infra* note 3.
3. See Jens Manuel Krogstad, *Gun Homicides Steady After Decline in '90s; Suicide Rate Edges Up*, PEW RESEARCH CTR (Oct. 21, 2015), <https://www.pewresearch.org/fact-tank/2015/10/21/gun-homicides-steady-after-decline-in-90s-suicide-rate-edges-up/>; Jennifer L. Truman & Lynn Langton, *Criminal Victimization, 2013*, BUREAU OF JUSTICE STATISTICS NCJ 247648 (Revised Sept. 19, 2014), <https://bjs.ojp.gov/content/pub/pdf/cv13.pdf>.
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5. See Stimson & Smith, *Meet Kim Foxx*, *supra* note 4.
6. *Id.*; Stimson & Smith, “Progressive” Prosecutors, *supra* note 4.
7. See *Crime Data Explorer Interactive Tool, Trend of Violent Crime from 1993 to 2019*, FEDERAL BUREAU OF INVESTIGATION (last accessed Feb. 6, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.
8. See, e.g., Richard Rosenfeld et al., *Pandemic, Social Unrest, and Crime in U.S. Cities: 2020 Year-End Update*, COUNCIL ON CRIMINAL JUSTICE (Jan. 2021), [https://build.neoninspire.com/counciloncj/wp-content/uploads/sites/96/2021/07/Year-End-Crime-Update\\_Designed.pdf](https://build.neoninspire.com/counciloncj/wp-content/uploads/sites/96/2021/07/Year-End-Crime-Update_Designed.pdf); Richard Rosenfeld et al., *Pandemic, Social Unrest, and Crime in U.S. Cities: Mid-Year 2022 Update*, COUNCIL ON CRIMINAL JUSTICE (July 2022), [https://www.researchgate.net/publication/362568187\\_Pandemic\\_Social\\_Unrest\\_and\\_Crime\\_in\\_US\\_Cities\\_Mid-Year\\_2022\\_update](https://www.researchgate.net/publication/362568187_Pandemic_Social_Unrest_and_Crime_in_US_Cities_Mid-Year_2022_update).
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26. *Id.* More than 170 million Americans live in states that require some form of background check for all or most private transfers. However, studies show that compliance with these background checks is incredibly low. Gary Kleck, *Compliance With Universal Background Check Gun Laws*, 44 J. CRIME & JUST. 414 (Sept. 2020), <https://www.tandfonline.com/doi/abs/10.1080/0735648X.2020.1815555>; Lisa Hepburn et al., *Firearm Background Checks in States With and Without Background Check Laws*, 62 AM. J. PREV. MED. 227 (2021), <https://pubmed.ncbi.nlm.nih.gov/34706846/>.
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28. Julia P. Schleimer et al., *Firearm Purchasing and Firearm Violence During the Coronavirus Pandemic in the United States: A Cross-Section Study*, 8 INJURY EPIDEMIOLOGY 1 (2021); Paul G. Cassell, *Explaining the Recent Homicide Spikes in U.S. Cities: The “Minneapolis Effect” and the Decline in Proactive Policing*, 33 FED. SENT’G REP. 83 (Dec. 2020) (last revised May 4, 2021, as University of Utah College of Law Research Paper No. 377). An additional study found that while 28 states saw significantly higher risk of gun violence during the pandemic compared to the same time pre-pandemic, 22 states did not experience a statistically significant higher risk—including states like Florida and South Carolina, which at the same time set record numbers for gun sales and traditionally receive poor gun control law ratings from advocacy groups. *Compare Paddy Ssentongo et al., Gun Violence Incidence During the COVID-19 Pandemic Is Higher Than Before the Pandemic in the United States*, SCI. REPORTS No. 20654 (Oct. 2021), <https://www.nature.com/articles/s41598-021-98813-z>, with Julius Whigham II, *Gun Background Checks Down in Florida But Still Ahead Of Pre-COVID Years, State Data Shows*, PALM BEACH POST (updated 11:05 a.m. ET Oct. 18, 2021), <https://www.palmbeachpost.com/story/news/local/2021/10/18/florida-gun-background-checks-concealed-carry-permit-renewal-firearms-supply-problems/5791342001/>.
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31. AM. FOUND. SUICIDE PREVENTION, *Suicide Rates in the United States [Interactive Tool]* (last accessed Jan. 20, 2023), <https://afsp.org/suicide-statistics/#:~:text=The%20age%2Dadjusted%20suicide%20rate,are%20130%20suicides%20per%20day>.
32. *Id.* In one of the four years during that time frame in which Hawaii had a lower age-adjusted suicide rate than Texas, both states were significantly below the national average, and their rates were within 0.1 deaths per 100,000 individuals.
33. *Compare Homicide Mortality by State*, Centers for Disease Control and Prevention (last accessed Sept. 8, 2022), [https://www.cdc.gov/nchs/pressroom/sosmap/homicide\\_mortality/homicide.htm](https://www.cdc.gov/nchs/pressroom/sosmap/homicide_mortality/homicide.htm) with *2019 Gun Law State Scorecard*, Giffords Law Center (Jan. 1, 2020), <https://gunviolence.issuelab.org/resource/2019-gun-law-state-scorecard.html>.
34. *Id.*
35. *Interactive Tool supra* note 31.
36. See *Homicide Mortality by State, supra* note 33.
37. *Id.*
38. For an extensive analysis of these features, see generally STEPHEN P. HALBROOK, *AMERICA’S RIFLE: THE CASE FOR THE AR-15* (2022).
39. The widespread confusion many laymen have about the differences between automatic “machine guns,” select-fire “assault rifles,” and semi-automatic “assault-style” rifles is perhaps one of the most profound problems underlying the national conversation on firearms policy. Automatic, select-fire, and semi-automatic firearms are all autoloading, meaning that once a round is fired, the internal mechanics of the gun will automatically load the next round into the chamber without additional manual action by the shooter. A “machine gun” is an automatic firearm, meaning that it is designed to fire bullets continuously for as long as the trigger is depressed. A semi-automatic firearm, on the other hand, requires the shooter

to manually pull the trigger to fire each individual round. A select-fire rifle—categorized as an “assault rifle” under federal law—is capable of quickly switching back and forth between automatic fire, semi-automatic fire, or a “burst” mode in which one trigger pull will automatically fire a predetermined number of bullets (usually two or three). Automatic and select-fire guns both therefore typically have a much faster rate of fire than do semi-automatic firearms. The civilian possession of both machine guns and select-fire guns is heavily regulated under the National Firearms Act of 1936 and the Firearm Owners’ Protection Act of 1986, and civilians without a special dealer’s license may not purchase or possess any such weapon manufactured after 1986. While gun control advocates will refer to certain semi-automatic firearms as “assault-style” rifles or “assault weapons” simply because they have similar external appearances to assault rifles, they are functionally distinct. Meanwhile, adding a pistol grip or barrel shroud to a semi-automatic rifle does not suddenly change its rate of fire or alter the internal mechanics to make it a machine gun or assault rifle, just as removing those features from an actual machine gun or assault rifle do not turn the firearm into a semi-automatic one.

40. 554 U.S. 570 (2008).
41. 597 U.S. \_\_\_\_ (2022).
42. See generally HALBROOK, *supra* note 38.
43. According to the most comprehensive survey of gun owners ever undertaken, as of 2021, 30 percent of gun owners—almost 25 million Americans—reported owning or having owned an AR-15 or similar type of rifle. English, Expanded Report, *supra* note 29 at 33. As many as 44 million such rifles are currently in civilian hands. *Id.*
44. *Bruen*, *supra* note 41.
45. FBI Crime Data Explorer, Murder Victims by Weapon (last accessed Jan. 20, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/shr>. Importantly, FBI crime data for 2021 and 2022 is incredibly unreliable due to large reporting gaps and changes in how that data was collected. See Weihua Li, What Can FBI Data Say About Crime in 2021? It’s Too Unreliable to Tell, *The Marshall Project* (June 14, 2022), <https://www.themarshallproject.org/2022/06/14/what-did-fbi-data-say-about-crime-in-2021-it-s-too-unreliable-to-tell>.
46. FBI Crime Data Explorer, *supra* note 45.
47. FBI Crime Data Explorer, Type of Weapon Involved by Offense (last accessed Jan. 20, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.
48. Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994–2003* (June 2004), <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>. For a general summary of logical problems presented by claims that more restrictive bans decreased mass shootings, suicides, or homicides in Australia during this same time, see Gary Kleck, *Did Australia’s Ban on Semiauto Firearms Really Reduce Violence? A Critique of the Chapman et al. (2016) Study* (Jan. 12, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3086324](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3086324).
49. Compare annual mass public shooting deaths in Mark Follman et al., *US Mass Shootings, 1982–2022: Data From Mother Jones’ Investigation*, MOTHER JONES (Updated Nov. 23, 2022), <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/> with annual homicide and gun homicide deaths in Homicide Offense Characteristics, FBI Crime Data Explorer (last accessed Jan. 18, 2023), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.
50. Follman, *supra* note 49. Additionally, as of the time of publication of this *Legal Memorandum*, both of the mass public shootings that have taken place in 2023 involved the use of handguns alone. *Id.*
51. The remaining mass public shootings involved either shotguns alone, or a combination of handguns and shotguns.
52. The shooter used a .22 caliber Walther P22 and a 9mm Glock 10. VA. TECH. REVIEW PANEL, MASS SHOOTINGS AT VIRGINIA TECH: ADDENDUM TO THE REPORT OF THE REVIEW PANEL 30–A (Nov. 2009), <https://scholar.lib.vt.edu/prevail/docs/April16ReportRev20091204.pdf>.
53. See Thomas C. Hayes, *Gunman Kills 22 and Himself in Texas Cafeteria*, N.Y. TIMES (Oct. 17, 1991), <https://www.nytimes.com/1991/10/17/us/gunman-kills-22-and-himself-in-texas-cafeteria.html>; Paula Chin, *A Texas Massacre*, PEOPLE MAGAZINE (Nov. 4, 1991), <https://people.com/archive/a-texas-massacre-vol-36-no-17/>.
54. Although many gun control advocates seem to believe—or at least appear to convey to their respective audiences—that banning “assault weapons” would mean banning the use of all semi-automatic rifles or firearms chambered in common rifle calibers, such that would-be mass shooters would be limited to the use of handguns, this is simply a fiction.
55. The Las Vegas shooting is an outlier amongst modern mass public shootings for several reasons, most notably in that the shooter operated from a fixed “sniper’s nest” position. The factor that most obviously impacted the casualty count in this shooting was not the shooter’s use of a pistol-gripped rifle, but his use of a bump stock device, which significantly increased his rate of fire. There is at least a facially plausible argument that the shooter’s use of foregrips and pistol grips enabled him to better hit his targets from a distance of almost 500 yards than if his firearms did not have such features. However, there are several problems with this argument. First, the shooter does not appear to have been pinpointing specific victims, but rather attempting to fire as many rounds as possible at the general mass of concertgoers. Given that his target was comprised of thousands of potential victims packed tightly together in a large, open space, any potential slight decrease in accuracy rendered by the use of a “featureless” rifle would likely have resulted not in fewer casualties, but merely a different set of casualties. Second, while it is still unclear which of the shooter’s dozens of firearms were actually used that night, many of them were attached with bipods—common devices for hunting and marksmanship that allow the shooter to rest the front end of the firearm in a stable and elevated position. The use of these devices—which are not features of “assault weapons”—would have provided far more stability from the shooter’s “sniper’s nest” vantage point than would a foregrip or pistol grip. Moreover, from such a position, there are a variety of methods the shooter could have used with a featureless rifle to stabilize the firearm even without a bipod or foregrip, such as resting the forestock on a bag or chairback.

56. See David B. Kopel, *The History of Firearms Magazines and Magazine Prohibitions*, 78 ALBANY L. REV. 849 (2015).
57. Roughly half of mass public shootings between 2012 and 2022 involved perpetrators who possessed more than one firearm while carrying out their crimes. See Follman *supra* note 49.
58. Gary Kleck, *Do Mass Shooters Prefer Large-Capacity Magazines?* (March 10, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3552203](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552203); Gary Kleck, *Large-Capacity Magazines and the Casualty Counts of Mass Shootings: The Plausibility of Linkages*, 17 JUST. RESEARCH & POL'Y 28 (2016), <https://www.hoplophobia.info/wp-content/uploads/2018/02/2016-Large-Capacity-Magazines-and-Mass-Shootings.pdf>.
59. VA. TECH. REVIEW PANEL, *supra* note 52.
60. Joshua Eaton, *YouTube Videos That Taught Buffalo Suspect to Modify His Gun Are Still Online*, NBC NEWS (Updated May 20, 2022), <https://www.nbcnews.com/tech/internet/buffalo-shooting-shooter-payton-gendron-video-youtube-gun-rcna29709>.
61. Leonard Greene, *Accused Buffalo Shooter Mocked New York Gun Laws, Modified Assault Rifle With Outlawed Magazine*, NY DAILY NEWS (May 16, 2022), <https://www.nydailynews.com/new-york/ny-guns-buffalo-shooting-law-loophole-assault-rifle-bushmaster-20220516-xezetovnxfccdtdjkzoc55kzy-story.html>.
62. Studies of police-involved shootings routinely show that most officers will never fire their gun at a suspect during the course of their duty, and that of those encounters in which shots are fired, most involved far fewer than 10 rounds fired by an individual officer. DARREL W. STEPHENS, NAT'L POLICE FOUND., OFFICER INVOLVED SHOOTINGS: INCIDENT EXECUTIVE SUMMARY 3 (2019), [https://www.policinginstitute.org/wp-content/uploads/2019/05/1.-OIS\\_incident\\_exec\\_summary\\_8.28.19.pdf](https://www.policinginstitute.org/wp-content/uploads/2019/05/1.-OIS_incident_exec_summary_8.28.19.pdf). Nonetheless, law enforcement officers are universally exempt from magazine capacity limits, including in their off-duty capacity with their personal firearms. While no study has yet captured with any clarity the percentage of civilian defensive gun uses in which more than 10 rounds are fired, such instances clearly do occur.
63. See Ray Rivera, *Police Continuing Investigation Into Gun Battle at Summerville Apartment Complex*, WCSC LIVE 5 NEWS (Updated Feb. 8, 2021), <https://www.live5news.com/2021/02/09/police-continuing-investigation-into-gun-battle-summerville-apartment-complex/>; *Arrested 32 Times Since 2014, Man Allegedly Engaged In A "Firefight" With a Concealed Carry Holder on a CTA Train*, CWB CHICAGO (Jan. 22, 2023), <https://cwbcchicago.com/2023/01/arrested-32-times-since-2014-man-allegedly-engaged-in-a-firefight-with-a-concealed-carry-holder-on-a-cta-train.html>; Krista Johnson & Hayes Gardner, *Jordan Morgan's Death: Suspect Shannon Gilday Arrested in Madison County*, LOUISVILLE COURIER J. (Updated Feb. 22, 2022), <https://www.courier-journal.com/story/news/local/2022/02/28/shannon-gilday-arrested-in-jordan-morgan-richmond-ky-shooting/6941351001/>.
64. J. D. Tuccille, *Don't Be Surprised If Gun Owners Don't Comply With Gun Control Laws*, REASON (Aug. 25, 2021), <https://reason.com/2021/08/25/dont-be-surprised-if-gun-owners-dont-comply-with-gun-control-laws/>; Amy Swearer, *Don't Count on American Compliance With Gun Confiscation*, HERITAGE FOUNDATION COMMENTARY (July 29, 2020), <https://www.heritage.org/firearms/commentary/dont-count-american-compliance-gun-confiscation>.
65. 18 U.S.C. § 922(g).
66. 18 U.S.C. § 922(t).
67. 18 U.S.C. §§ 921(a)(21)–(23); 923(a) *et seq.*
68. 18 U.S.C. § 922(5). For more information on gun sales by unlicensed persons, see *To Whom May an Unlicensed Person Transfer Firearms Under the GCA?*, Bureau of Alcohol, Tobacco, Firearms and Explosives (Jan. 30, 2020), <https://www.atf.gov/firearms/qa/whom-may-unlicensed-person-transfer-firearms-under-gca>.
69. See, e.g., Alvaro Castillo-Carniglia et al., *California's Comprehensive Background Check and Misdemeanor Violence Prohibition Policies and Firearm Mortality*, 30 ANNALS OF EPIDEMIOLOGY 50 (Feb. 2019), <https://www.sciencedirect.com/science/article/abs/pii/S1047279718306161> (concluding that these policies were not associated with changes in firearm homicides in California, that changes in firearm suicides were similar to changes in non-firearm suicides, and that these findings in California are consistent with other recent evaluations of extended background check policies); Rose Kagawa et al., *Repeal of Comprehensive Background Check Policies and Firearm Homicide and Suicide*, 29 EPIDEMIOLOGY 494 (July 2018), <https://pubmed.ncbi.nlm.nih.gov/29613872/> (finding no evidence of an association between the repeal of comprehensive background check policies and firearm homicide and suicide rates in Indiana and Tennessee).
70. See John G. Malcolm & Amy Swearer, *Part I: Mental Illness, Firearms, and Violence*, HERITAGE FOUNDATION LEGAL MEMORANDUM No. 239 (Jan. 31, 2019), <https://www.heritage.org/civil-society/report/part-i-mental-illness-firearms-and-violence>; *Database of Mass Shootings in the United States, 1966–February 2020* [Interactive Tool], THE VIOLENCE PROJECT (updated March 2021), <https://www.theviolenceproject.org/mass-shooter-database/> (showing that 80 percent of 172 mass shooters studied between 1966 and 2020 showed “signs of crisis” prior to their crimes, but that only 18 percent were known to have illegally purchased at least one of their firearms).
71. VIOLENCE PROJECT, *supra* note 70 (showing that only 7 of 172 mass shooters studied over a 44-year period obtained their firearms through lawful private transfers). Notably, in one of those cases, the individual who sold the firearms via intrastate private sale pled guilty to being an unlicensed gun dealer and should have obtained a Federal Firearms License, which would have required him to conduct a background check on the prohibited buyer. Press Release, Office of the United States Attorney for the Northern District of Texas, *Man Who Sold Midland/Odessa Shooter AR-15 Used In Massacre Sentenced for Unlicensed Firearms Dealing* (Jan. 7, 2021), <https://www.justice.gov/usao-ndtx/pr/man-who-sold-midlandodessa-shooter-ar-15-used-massacre-sentenced-unlicensed-firearms>.
72. See generally, Amy Swearer & Abby Kassal, *8 Problems With San Jose's Gun Insurance Mandate and Gun Ownership Tax*, HERITAGE FOUNDATION COMMENTARY (Feb. 2, 2022), <https://www.heritage.org/firearms/commentary/8-problems-san-joses-gun-insurance-mandate-and-gun-ownership-tax>.

73. See *Effects of Waiting Periods on Suicide*, RAND CORP. (updated Jan. 10, 2023), <https://www.rand.org/research/gun-policy/analysis/waiting-periods/suicide.html>; *Effects of Waiting Periods on Violent Crime*, RAND CORP. (Updated Jan. 10, 2023), <https://www.rand.org/research/gun-policy/analysis/waiting-periods/violent-crime.html>. It is unclear why evidence would suggest that waiting periods decrease total homicides but not firearm homicides, and logic suggests an alternative explanation is necessary. In one study, the decrease in total homicides was based only on a slight reduction in intimate partner deaths and was only associated with waiting periods between two to seven days. There is no rational explanation for why longer waiting periods would not also have the same effect. The more reasonable explanation is, once again, that the decline was attributable to other factors.
74. See *Time-to-Crime—Firearms Recovered and Traced in the United States and Territories*, Firearms Trace Data—2020 (last accessed Sept. 8, 2022), <https://www.atf.gov/resource-center/firearms-trace-data-2020>.
75. *Id.*
76. NEB. REV. STAT. § 69–2304–05, <https://www.lancaster.ne.gov/375/Firearm-Purchase-Permit>.
77. NEB. REV. STAT. § 69–2304.
78. FEDERAL BUREAU OF INVESTIGATION, *A STUDY OF THE PRE-ATTACK BEHAVIORS OF ACTIVE SHOOTERS IN THE UNITED STATES BETWEEN 2000 AND 2013* 12–13 (June 2018), <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view> (finding that most active shooters plan their attacks for at least one week in advance of the shooting); James Silver & Jason R. Silva, *A Sequence Analysis of Behaviors and Experiences of the Deadliest Public Mass Shooters*, 37 J. INTERPERSONAL VIOLENCE (Apr. 18, 2022), <https://journals.sagepub.com/doi/10.1177/08862605221078818> (finding that firearms acquisition is often one of the earliest planning behaviors and precedes other decisions such as when and where to attack, suggesting that there is not yet at that point a concrete plan from which the would-be shooter may conceivably “cool off” or “rethink”); Jason R. Silva & Emily A. Greene-Colozzi, *What We Know About Foiled and Failed Mass School Shootings*, ROCKEFELLER INST. POL’Y BRIEF (Aug. 2022), <https://rockinst.org/wp-content/uploads/2022/08/Failed-Foiled-School-Shootings.pdf>.
79. Perhaps the most commonly cited piece of evidence is a 2017 report concluding that 20 percent of crime guns recovered in Chicago between 2013 and 2016 originated with a first point of sale in neighboring Indiana. CITY OF CHI. OFF. OF THE MAYOR, *supra* note 23.
80. Samuel Stebbins, *Chicago, IL, Reported One of the Highest Murder Rates in the US*, 24/7 WALL STREET (last accessed Jan. 30, 2023), <https://247wallst.com/city/chicago-il-reported-one-of-the-highest-murder-rates-in-the-us/>; Steve Hendershot, *All Big Cities Have A Violence Problem. Chicago’s Is Different*, CHICAGO BUSINESS (Oct. 24, 2022), <https://www.chicagobusiness.com/crains-forum-safer-chicago/chicago-violence-problem-debate-safety-inequality>.
81. See 18 U.S.C. §§ 922(a)(5), (b)(2)–(3), (t).
82. 18 U.S.C. § 922(b)(3).
83. *Springfield Armory: The Best Battle Implement Ever Devised*, NAT’L PARK SERV. (last updated Aug. 4, 2017), <https://www.nps.gov/articles/springfieldarmoryww2.htm#:~:text=The%20M1%2C%20used%20throughout%20Europe,thanks%20to%20the%20Springfield%20Armory>.
84. CTRS. FOR DISEASE CONTROL AND PREVENTION, *PRIORITIES FOR RESEARCH TO REDUCE THE THREAT OF FIREARM-RELATED VIOLENCE* 15 (2013), <https://www.nap.edu/read/18319/chapter/3#15>.
85. English, *supra* note 29.
86. *Id.* at 35.
87. James D. Wright & Peter H. Rossi, *The Armed Criminal in America: A Survey of Incarcerated Felons*, NAT’L INST. OF JUSTICE 26 (July 1985), <https://www.ojp.gov/pdffiles1/Photocopy/97099NCJRS.pdf>.
88. *Id.* at 27.
89. *Id.*
90. Alessandro Acquisti & Catherine Tucker, *Guns, Privacy, and Crime*, NAT’L BUREAU OF ECON. RESEARCH WORKING PAPER No. 29940 (April 2022), <https://www.nber.org/papers/w29940>.
91. *Id.*
92. David B. Kopel, *Lawyers, Guns, and Burglars*, 43 ARIZ. L. REV. 345 (2001), <https://davekopel.org/2A/LawRev/LawyersGunsBurglars.htm#FN:F107>.
93. *Id.* Importantly, these dollar amounts likely increase significantly when accounting for inflation.
94. John R. Lott, *Massive Errors in FBI’s Active Shooting Reports Regarding Cases Where Civilians Stop Attacks*, CRIME RESEARCH PREVENTION CENTER (Oct. 3, 2022), <https://crimeresearch.org/2022/10/massive-errors-in-fbis-active-shooting-reports-regarding-cases-where-civilians-stop-attacks-instead-of-4-4-the-correct-number-is-at-least-34-4-in-2021-it-is-at-least-49-1-excluding-gun-free-zon/>.
95. *Id.*
96. The 19-year-old gunman who opened fire in a St. Louis, Missouri, high school on October 24, 2022, attempted to purchase a rifle from a Federal Firearms Licensee, but the FBI denied the sale during the NICS background check portion. Andrea Salcedo, *FBI Blocked St. Louis Shooter From Obtaining Gun, Police Say*, WASH. POST (Oct. 28, 2022), <https://www.washingtonpost.com/nation/2022/10/28/st-louis-school-shooting-orlando-harris-gun/>. He later obtained his rifle through a private intrastate sale. *Id.* It is not entirely clear why the FBI denied the original sale or why the

- teen was flagged as a prohibited person, but it is likely due to his history of in-patient mental health treatment—though whether that treatment was “involuntary” within the meaning of federal law, such that it would disqualify him from gun ownership, is also unclear. Nouran Salahieh et al., *St. Louis Shooter's Family Had Gun Taken Away, Concerned For Mental Health Before Shooting: Police*, ABC 7 CHICAGO (Oct. 27, 2022), <https://abc7chicago.com/st-louis-school-shooting-shooter-orlando-harris/12382739/>. The other possible exception is the individual who fatally shot seven people and wounded two dozen others during a shooting spree in Odessa, Texas, in August of 2019. That individual had, in fact, previously failed a background check and utilized an intrastate private sale to acquire his weapon. Dan Frosch & Sadie Gurman, *Texas Shooter Had Been Banned From Buying Firearms Because He Was Mentally Unfit*, WALL ST. J. (Sept. 4, 2019). Importantly, the private seller from which he purchased the gun later pled guilty to violating federal law, and should have been required under the circumstances to obtain a Federal Firearms License and conduct a background check on prospective purchasers. Associated Press, *Seller of Gun Used in 2019 Texas Mass Shooting Gets 2 Years* (Jan. 7, 2021), <https://apnews.com/article/seth-aaron-ator-shootings-lubbock-texas-odessa-c18dce36fe8a5df583bdf5505ee8509b>.
97. Recent unprecedented spikes in firearm homicide lowered this proportion to just over 50 percent for 2020, the last year for which reliable data is available from the Centers for Disease Control and Prevention.
  98. 18 U.S.C. § 922(g).
  99. See generally Amy Swearer, *Long-Standing and Presumptively Lawful? Heller's Dicta vs. History and Dicta*, HERITAGE FOUNDATION LEGAL MEMORANDUM No. 238 (Nov. 5, 2018), <https://www.heritage.org/sites/default/files/2018-11/LM-238.pdf>.
  100. See generally John G. Malcolm & Amy Swearer, *Part II: The Consequences of Deinstitutionalizing the Severely Mentally Ill*, HERITAGE FOUNDATION LEGAL MEMORANDUM No. 240 (Feb. 5, 2019), [https://www.heritage.org/sites/default/files/2019-02/LM-240\\_0.pdf](https://www.heritage.org/sites/default/files/2019-02/LM-240_0.pdf).
  101. See Leslie C. Hedman et al., *State Laws on Emergency Holds for Mental Health Stabilization*, 67 PSYCHIATRIC SERVS. 529, Table 1 (May 1, 2016), <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201500205>; John P. Petrila et al., *Short-Term Emergency Commitment Laws*, THE POLICY SURVEILLANCE PROGRAM (Updated Feb. 1, 2016), <https://www.lawatlas.org/datasets/short-term-civil-commitment>.
  102. CONN. GEN. STAT. § 29–38c(a) (2020); D.C. CODE § 7–2510.04(e); FLA. STAT. § 790.401(4)(c); HAW. REV. STAT. § 134–64(f); 430 ILCS 67/35(f); IC 35–47–14–3(d); MD CODE ANN., PUB. SAFETY §§ 5–603(a)(1), 604(a)(1); MASS. GEN. LAWS ch. 140, § 131T(a); N.J. REV. STAT. § 2C:58–23(e); N.M. STAT. ANN. § 40-17-6(A); R.I. GEN. LAWS § 8–8.3–4(a); VA. CODE ANN. § 19.2–152.13(A); WASH. REV. CODE § 7.105.330(2).
  103. CONN. GEN. STAT. § 29–38c(a) (2020); HAW. REV. STAT. § 134–64(f); IC 35–47–14–3(d), 35–47–14–1(a); MASS. GEN. LAWS ch. 140, § 131T(a); NEV. REV. STAT. § 33.560(a); N.Y. C.P.L.R. § 6342; and OR. REV. STAT. § 166.527(6). Four more states require a finding of “immediate and present danger,” but do not define the term or clarify its meaning. DEL. CODE ANN. tit. 10, § 7703(d); 430 ILCS 67/35(f); MD CODE ANN., PUB. SAFETY §§ 5–603(a)(1), 604(a)(1); N.J. REV. STAT. § 2C:58–23(e).
  104. D.C. CODE § 7–2510.04(e); IC 35–47–14–3(d), 35–47–14–1(a) (clarifying that in some cases, “dangerousness” involves in imminent risk, while in other cases it only requires an unspecified “future” risk); MASS. GEN. LAWS ch. 140, § 131T(a); N.Y. C.P.L.R. § 6342.
  105. Two states (Alabama and New Mexico) allow emergency mental health holds to last up to seven days, while an additional two states (New Hampshire and Rhode Island) allow them to last up to 10 days. With respect to red flag laws, New York’s final order hearing must be held between three and six business days after service of the temporary order, or within 10 days if no temporary order was issued. In Nevada and Maryland, *ex parte* or temporary orders generally expire after seven days, while in Massachusetts, New Jersey, and New Mexico, respondents are entitled to a hearing within 10 days.
  106. One potential exception to this is New York, which allows a person taken for emergency mental health observation to continue being involuntarily held for up to 60 days based on the evaluation of two medical professionals. After 60 days, the hospital must apply for a court order of retention. However, the person being involuntarily held may request a court hearing “at any time prior to the expiration of sixty days from the date of involuntary admission” in this manner, and the court “shall fix the date of such hearing at a time not later than five days” from when the court received that request. N.Y. MENTAL HYG. § 9.31(a), (b). Hearings with respect to the state’s extreme risk protection orders must be held “between three and six business days after service of the temporary order.” N.Y. C.P.L.R. § 6343.
  107. CAL. PENAL CODE § 18155(c); OR. REV. STAT. § 166.527(9)(c).
  108. OR. REV. STAT. § 166.527 (10).
  109. See *Addington v. Texas*, 441 US 418 (1979).
  110. In Indiana, a person is deemed sufficiently “dangerous” where he or she merely has a mental illness and has not yet demonstrated a pattern of voluntarily and consistently taking his or her medication while unsupervised—in essence meaning that any person who is recently diagnosed with a mental illness qualifies as “dangerous” because such a pattern of consistency cannot be demonstrated. IC 35–47–14–1. Moreover, a person qualifies as sufficiently dangerous if he or she “is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or suicidal conduct,” but does not otherwise specify what this standard means or what would constitute such evidence. *Id.*
  111. Neither state’s statutory framework includes a provision specifying when orders must expire, and in fact imply that orders do not ever automatically expire. In Indiana, the respondent bears the burden of proof until one year has passed since the issuance of the order, at which point the burden passes to the prosecuting attorney, who “shall” represent the state at the termination hearing. IC 35–47–14–8. In New Jersey, the respondent always bears the burden of proof when he or she is the one who petitions for termination of the order, regardless of how much time has passed since the order was issued. N.J. STAT. ANN. § 2C:58–25.
  112. CAL. PENAL CODE § 18170(a)(1).

113. A fair number of states include information telling respondents that they should seek the advice of an attorney, but do not otherwise guarantee that the attorney may be present (or provided, in the case of indigency) or that respondents have certain rights within the hearing itself. Worse, Indiana's statute in particular only guarantees the right to an attorney at hearings at which a respondent petitions to have his or her firearms returned, but not at the initial hearing to determine whether the respondent is dangerous and may have his or her firearms seized. Delaware specifies a right "to be heard," to present evidence, and to cross-examine witnesses, but state statutes say nothing about the right to an attorney. While it is certainly possible that, in practice, these states permit individuals to be represented by legal counsel or afford rights to cross-examination, etc., this should be explicitly drafted into the law. Anecdotal evidence suggests that Florida does not consider respondents in civil proceedings to have the right to an attorney. See Sheryl Gay Stolberg, *A Florida School Received a Threat. Did a Red Flag Law Prevent A Shooting?*, N.Y. TIMES (Jan. 16, 2023), <https://www.nytimes.com/2023/01/16/us/politics/red-flag-laws-mass-shootings.html> (examining one case of a Florida teenager against whom a red flag petition was filed and noting that the respondent teen was not entitled to a public defender under state law because the proceedings were civil and not criminal in nature).
114. CAL. PENAL CODE § 18200; COLO. REV. STAT. § 13-14.5-113(2); FLA. STAT. § 790.401(11)(a); HAW. REV. STAT. § 1234-70; MASS. GEN. LAWS ch. 140, § 131V(a); 13 Vt. STAT. ANN. § 4058 (2); VA. CODE ANN. § 19.2-152.16; WASH. REV. CODE § 7.105.460(1).
115. Colorado requires courts to consider whether the respondent meets the standard for a court-ordered mental health evaluation or emergency commitment, and also requires clerks of the court to create community resource lists that are made available to respondents. COLO. REV. STAT. §§ 13-14.5-105(8), 13-14.5-114(2). Florida similarly requires courts to consider whether mental health or chemical dependency evaluations are appropriate. FLA. STAT. § 790.401(f). Maryland allows (but does not require) courts to refer respondents for emergency mental health evaluations if probable cause exists to believe they meet the statutory requirements. MD CODE ANN., PUB. SAFETY § 5-605(c)(4). Connecticut requires courts to notify the Department of Mental Health and Addiction Services to take appropriate action once a person has been found to pose a risk of imminent personal injury. CONN. GEN. STAT. § 29-38c(d). Massachusetts requires clerks of the court to provide respondents and their family members with informational resource guides that must be annually updated in consultation with the department of mental health. MASS. GEN. LAWS ch. 140, §§ 131R(f), 131S(e).
116. 430 ILCS 67/80; MD CODE ANN., PUB. SAFETY § 5-602(c); N.Y. C.P.L.R. § 6346; WASH. REV. CODE § 7.105.355.
117. N.Y. C.P.L.R. § 6346(d).
118. See *Delana v. CED Sales, Inc.*, 486 SW3d 316 (Mo. 2016).
119. For example, Section 230 generally gives Internet service providers immunity from defamation and copyright infringement claims regarding content (such as comments, articles, or videos) created and posted by third-party users. After 9/11, Congress passed several laws protecting the airline industry and its employees from civil liability for reporting suspicious behavior to law enforcement officials, and protecting passengers and crew members from lawsuits about actions taken during in-flight emergencies. And the National Childhood Vaccine Injury Act of 1986 and the Public Readiness and Emergency Preparedness Act of 2005 provide vaccine manufacturers and distributors with incredibly broad immunity from liability for any and all harms caused by their products.
120. David L. Weisbud et al., *What Works in Crime Prevention and Rehabilitation: An Assessment of Systematic Reviews*, 16 CRIM. & PUB. SAFETY 415 (2017), [https://www.researchgate.net/publication/317744304\\_What\\_Works\\_in\\_Crime\\_Prevention\\_and\\_Rehabilitation\\_An\\_Assessment\\_of\\_Systematic\\_Reviews](https://www.researchgate.net/publication/317744304_What_Works_in_Crime_Prevention_and_Rehabilitation_An_Assessment_of_Systematic_Reviews).
121. See, e.g., Will Jones, Ross Weidner & Jonathan Fagg, *Some CPS High Schools Report Nearly Half of Students Absent During Remote Learning*, ABC 7 Chicago (March 5, 2021), <https://abc7chicago.com/chicago-public-schools-cps-high-school-remote-learning/10391713/>; Tawnell D. Hobbs & Lee Hawkins, *The Results Are In For Remote Learning: It Didn't Work*, WALL ST. J. (June 5, 2020), <https://www.wsj.com/articles/schools-coronavirus-remote-learning-lockdown-tech-11591375078>.
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