

TESTIMONY IN SUPPORT OF GUN SAFETY LEGISLATION

TO: THE HOUSE OF DELEGATES PUBLIC SAFETY FIREARMS SUBCOMMITTEE

SUBMITTED BY: MOLLY VOIGT; STATE LEGISLATIVE MANAGER, GIFFORDS

DATE: JANUARY 19, 2021

Chair Bourne and Members of the Public Safety Firearms Subcommittee: thank you for the opportunity to provide this testimony on behalf of Giffords and the Giffords Law Center to Prevent Gun Violence, the organization founded by former Congresswoman and gun violence survivor Gabby Giffords. I am writing in support of **HB 1992, HB 2128, HB 2295, and HB 2776**. These are bills that will make Virginians safer by working to prevent gun violence in the Commonwealth.

H.B. 1992 (Murphy): This bill would make a misdemeanor domestic violence conviction a gun prohibitor and would prohibit adjudicated juveniles who were convicted of domestic violence.

Currently, 32 states, the District of Columbia, and federal law prohibit gun possession by people convicted of domestic violence misdemeanors yet Virginia is not one of them. HB 1992 would enact this sensible, evidence-based restriction, allowing Virginia law enforcement to prosecute people convicted of domestic violence misdemeanors who possess guns.

The data is overwhelming - firearm access helps to fuel domestic violence. Every year, more than 600 American women are shot to death by intimate partners—roughly one every 14 hours--¹ making **American women 21 times more likely to be killed with a gun than women in other high-income countries.**² An abusive partner's access to a firearm is a serious threat to victims of domestic violence, making it five times more likely that a woman will be killed.³ Domestic violence assaults involving a gun are 12

¹ Federal Bureau of Investigation, Uniform Crime Reporting Program: Supplementary Homicide Reports (SHR), 2014-2018.

² Erin Grinshteyn and David Hemenway, "Violent Death Rates in the US Compared to Those of the Other High-income Countries, 2015," Preventive Medicine 123, (2019): 20–26.

³ J.C. Campbell, et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study," American Journal of Public Health 93, no.7 (2003): 1089–1097.

times more likely to result in death than those involving other weapons or bodily force.⁴ In fact, firearms are used to commit more than half of all intimate partner homicides in the United States.⁵ The death toll extends to mass shootings. In more than half of mass shootings where four or more people were killed, the shooter killed an intimate partner, and one analysis found that nearly a third of mass shooters had a history of domestic violence.⁶

The data from Virginia is equally stark - Over 57% of Virginia’s intimate partner homicides involve a gun.⁷ From 2014 - 2018, 134 people were shot and killed by an abusive partner.⁸ 82% of those killed were female.⁹

While federal law prohibits people convicted of domestic violence misdemeanors from possessing firearms, in the absence of a state law, state and local law enforcement who respond to domestic violence calls are limited in their ability to prevent violence. Only federal prosecutors may charge for a federal crime. Allowing state and local law enforcement to enforce prohibitions on the possession of guns by people convicted of domestic violence misdemeanors will undoubtedly save lives.

For these reasons, I strongly urge you to vote aye on HB 1992.

H.B. 2128 (Lopez): This bill would extend the time the State Police has to conduct a background check before a dealer can deliver a gun to a purchaser from three to five business days.

Under current Virginia and federal law, if the Department of State Police is unable to determine in 3 business days whether a purchaser is prohibited, the dealer is authorized to immediately turn over the gun to the unvetted purchaser.¹⁰ HB 2128 would extend this “default proceed” period to five business days.

It is not difficult to understand the danger of allowing a gun dealer to transfer a firearm to someone who has not cleared a background check. A similar provision under federal

⁴ Linda E. Saltzman, et al., “Weapon Involvement and Injury Outcomes in Family and Intimate Assaults,” JAMA 267, no. 22 (1992): 3043–3047.

⁵ Id.; See also, James Alan Fox and Emma E. Fridel, “Gender Differences in Patterns and Trends in US Homicide, 1976–2015,” Violence and Gender 4, no. 2 (2017): 37–43.

⁶ “Ten Years of Mass Shootings in the United States,” Everytown for Gun Safety, November 21, 2019, <https://everytownresearch.org/reports/mass-shootings-analysis/>; April M. Zeoli and Jennifer K. Paruk, “Potential to Prevent Mass Shootings Through Domestic Violence Firearm Restrictions,” Criminology & Public Policy (2020).

⁷ Federal Bureau of Investigation, Uniform Crime Reporting Program: Supplementary Homicide Reports (SHR), 2014-2018.

⁸ Id.

⁹ Id.

¹⁰ Va. Code Ann. § 18.2-308.2:2(B)(2).

law¹¹ resulted in 4,864 prohibited purchasers to buy guns in 2017 before a background check cleared.¹² Though 91% of federal background checks provide an answer within minutes, about 9% of cases require further investigation and review by FBI and ATF agents.¹³ Many default proceed cases require extra time and attention precisely because the firearm purchaser has a long record of dangerous red flags. According to data compiled by Mayors Against Illegal Guns, default proceed sales are eight times more likely to involve a prohibited purchaser than other background checks.¹⁴ In cases where a sale went through under the default proceed procedure and the ATF was ultimately able to complete a background check, the FBI has reported that nearly 25% of the individuals investigated were determined to be legally prohibited from purchasing or possessing a firearm.¹⁵

Tragically, in 2015, the federal 3-day default proceed law resulted in a disturbed young man being able to purchase a firearm which he used to shoot and kill nine African-American worshipers at the Emanuel AME Church in Charleston, South Carolina. Although he should have failed a background check because of his history of unlawful controlled substance use, his background check was not processed within three days and he was allowed to take custody of the weapon he used in the attack.¹⁶

HB 2128 would extend Virginia's default proceed period by two days, allowing the State Police critical extra time to process a background check and prevent individuals who are legally prohibited from possessing guns from acquiring them. For these reasons, I urge you to vote yes on HB 2128.

¹¹ 18 U.S.C. § 922(t)(1)..

¹² Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, National Instant Criminal Background Check System (NICS) Operations 2017, at <https://www.fbi.gov/file-repository/2017-nics-operations-report.pdf/view>.

¹³ Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, National Instant Criminal Background Check System (NICS) Operations 2014, at <https://www.fbi.gov/about-us/cjis/nics/reports/2014-operations-report>.

¹⁴ Mayors Against Illegal Guns, A Blueprint for Federal Action on Illegal Guns: Regulation, Enforcement, and Best Practices to Combat Illegal Gun Trafficking, Section I. Improving Gun Background Checks (Aug. 2009), at http://www.joycefdn.org/assets/images/blueprint_federal_action.pdf (citing Letter from Thomas E. Bush, III, Assistant Director, CJIS Division, The Federal Bureau of Investigations, to The Honorable Michael R. Bloomberg, Mayor of New York City (October 21, 2008), available at http://everytown.org/documents/2016/10/2008_10_21-fbi-letter.pdf).

¹⁵ Letter from Thomas E. Bush, III, Assistant Director, CJIS Division, The Federal Bureau of Investigations, to The Honorable Michael R. Bloomberg, Mayor of New York City (October 21, 2008) available at http://everytown.org/documents/2016/10/2008_10_21-fbi-letter.pdf.

¹⁶ <https://giffords.org/press-release/2016/06/charleston/>.

H.B. 2295 (Levine): This bill would prohibit the open carry of a firearm within Capitol Square and the surrounding area.

While the scale and tactics we witnessed in 2020 were unprecedented, the use of guns to chill free speech and other constitutional activities, and intimidate voters is nothing new.¹⁷ Richmond is all too familiar with armed intimidation and this bill would remove that threat from the Commonwealth's Capitol Square.

As bad as the violence was on 1.6.21, Washington DC's strong gun laws reduced the prevalence of firearms among the insurrectionists and helped prevent the violence in the US Capitol from being even more deadly. Codifying the rule passed in the 2020 legislative session into state law and prohibiting open carry of firearms in the Capitol Square will protect legislators and the public alike from intimidation and potential violence.

In 2021 and beyond, after Americans have witnessed an attack of insurrection on the United States Capitol Building, threatening the lives of federal elected officials, the presence of guns in and around areas where legislative activities are taking place will likely be seen as an even greater threat of violence. Guns have no place in state capitols and can only serve to harm, not help, the cause of democracy.

H.B. 2776 (Simon): This bill provides a comprehensive intervention against the threat of untraceable firearms, often referred to as "ghost guns".

Traditionally, when a firearm is manufactured or imported into the United States it must be marked with a serial number and additional information about the manufacturer and/or importer. Then, when it is sold by a retailer to a consumer, a background check is conducted on the consumer and the retailer retains records of the transaction. This process, which is imposed by federal law, is critically important for gun safety. When it works correctly, it prevents individuals who are prohibited from possessing firearms from buying one from a firearms retailer; it discourages trafficking; and it enables a critical law enforcement process known as "tracing." Law enforcement use tracing as a tool when a firearm is recovered from a crime scene: using the serial number, the firearm can be traced through a chain of custody to the point of its first retail sale. Tracing is a key tool for law enforcement investigations that involve firearms.

Currently, ghost guns disrupt this traditional process. Ghost gun purveyors avoid the range of federal laws pertaining to firearms by selling a set of parts that falls just short of the federal definition of "firearm." Federal law defines a "firearm" as, among other things, "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive" or "the frame or receiver

¹⁷ Giffords Law Center, Preventing Armed Voter Intimidation: A State by State Analysis, October, 2020; <https://giffords.org/lawcenter/report/preventing-armed-voter-intimidation-a-state-by-state-analysis/>.

of any such weapon.”¹⁸ The frame or receiver—a “frame” on a handgun, or a “receiver” on a long gun—is the key component of the firearm that houses the firing mechanism.

Because a frame or receiver is characterized as a “firearm” under federal law, it is this component, and this component alone, that must carry a serial number, and that requires a background check before sale. Once an individual has acquired a frame or receiver, he or she can obtain the rest of the parts needed to assemble a firearm without having to pass a background check.

To avoid federal firearm laws, ghost gun purveyors claim they are not selling frames or receivers; instead, they say they are selling “unfinished” frames or receivers, components that have been machined so that they are almost fully functional frames or receivers, but are not considered “frames” or “receivers”—and therefore are not considered “firearms”—for the purposes of federal law. As a result, ghost gun purveyors can sell unfinished frames and receivers, often packaged with all of the other components needed to assemble a firearm, without serializing the product and without conducting a background check. Their customers can then take the package, drill out the few holes needed to convert the “unfinished” piece into a fully functional frame or receiver, and use it to assemble an unserialized, untraceable firearm.

Ghost guns present a grave and growing danger to the public. Law enforcement are increasingly encountering trafficking rings that are mass-manufacturing and selling untraceable firearms.¹⁹ Ghost guns are increasingly being used in shootings across the country, particularly by individuals who would be unable to pass a background check.

To list just a few examples:

- A man who failed a background check and could not legally purchase a gun built an assault rifle from a ghost gun kit, then used it on a rampage at a college campus, firing 100 rounds and killing five people.²⁰
- A man who was prohibited from owning a gun and under prosecution for multiple crimes assembled two assault-style ghost guns from parts he ordered online and went on a rampage with them, killing six people and injure 10 more.²¹

¹⁸ 18 U.S.C. § 921(a)(3).

¹⁹ E.g., Brendan J. Lyons, ‘Ghost Guns’ Becoming More Common Across New York, TIMES UNION (Sept. 11, 2019; updated Feb. 5, 2020), <https://www.timesunion.com/news/article/Ghost-guns-becoming-more-common-across-New-York-14432598.php>; see also Emily Masters, *State Police: Downstate Cop Sold ‘Ghost’ Guns to Motorcycle Gang*, TIMES UNION (Mar. 1, 2019), <https://www.timesunion.com/news/article/State-Police-Downstate-cop-sold-ghost-guns-to-13656862.php>.

²⁰ Robert Cavnar, *Santa Monica Shooter Built His Gun from Parts He Bought Online*, HUFFINGTON POST (June 15, 2013), https://www.huffingtonpost.com/robert-l-cavnar/santa-monica-shooter-buil_b_3447220.html.

²¹ Ray Sanchez, Jason Hanna & Phil Gast, *Gunman in Northern California Rampage Was Not Supposed to Have Guns*, CNN (Nov. 15, 2017), <http://www.cnn.com/2017/11/15/us/california-tehama-county->

- A sixteen-year-old boy used a self-assembled untraceable firearm in a school shooting in Santa Clarita, CA, killing two students and injuring three others.²²
- Last December, in Washington, D.C., two reserve police officers were fired on by an untraceable assault-style weapon.²³ Since 2018, four people have been killed with untraceable guns in the District.²⁴

If enacted, this bill would make the possession, sale, or transfer of ghost gun kits and precursor products unlawful to anyone who is not a federal firearms importer or manufacturer, and prohibit the manufacture, sale, and possession of an unserialized ghost gun. Home assembly of firearms would still be permitted using serialized frames and receivers.

This bill would therefore accommodate hobbyists and home-gun makers making traceable firearms, while also closing the dangerous loopholes that have allowed our streets to be flooded with untraceable firearms. For these reasons, I urge you to vote yes on HB 2778.

ABOUT GIFFORDS

Giffords is a nonprofit organization dedicated to saving lives from gun violence.

Founded and led by former Congresswoman Gabrielle Giffords, Giffords inspires the courage of people from all walks of life to make America safer.

shootings/index.html; Damon Arthur, *Sheriff: Tehama Shooter Built His Own Illegal Guns*, RECORD SEARCHLIGHT, (Nov. 15, 2017), <http://www.redding.com/story/news/2017/11/15/tehama-shooter-built-his-own-illegal-guns/868737001/>.

²² Dakin Andone, *The Gunman in the Saugus High School Shooting Used A 'Ghost Gun,' Sheriff Says*, CNN (Nov. 21, 2019), <https://www.cnn.com/2019/11/21/us/saugus-shooting-ghost-gun/index.html>.

²³ Peter Hermann, *Officers Who Were Fired On 'Could See the Muzzle Flashes, Police Say*, Washington Post (Dec. 13, 2019), https://www.washingtonpost.com/local/public-safety/officers-who-were-fired-on-could-see-the-muzzle-flashes-police-say/2019/12/13/72d645e2-1dcb-11ea-b4c1-fd0d91b60d9e_story.html.

²⁴ Peter Hermann, *D.C. Mayor, Police Chief Want to Keep Untraceable 'Ghost Guns' Out of District*, Washington Post (Feb. 28, 2020), https://www.washingtonpost.com/local/public-safety/dc-mayor-police-chief-want-to-keep-untraceable-ghost-guns-out-of-district/2020/02/28/5bc8f1d6-5a5e-11ea-9000-f3cfee23036_story.html.