



The New Jersey SAFE Task Force
on Gun Protection, Addiction,
Mental Health and Families, and
Education Safety

Report to Governor Chris Christie

April 10, 2013

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April 10, 2013

The Honorable Christopher Christie
Governor
State of New Jersey
State House
125 West State Street
Trenton, New Jersey 08625-0001

Dear Governor Christie,

On behalf of our colleagues on the New Jersey SAFE Task Force on Gun Protection, Addiction, Mental Health and Families, and Education Safety, we are pleased to present you with our Report.

Since you convened us in January, we have worked hard to examine, in a comprehensive way, the root causes of mass violence in our society and arrive at recommendations that can help mitigate those causes. As you directed, and as the Report reflects, we have explored the role that gun control, mental health and addiction, media violence, and school security measures play in protecting the safety of New Jersey residents.

We believe that we have compiled a set of 50 recommendations that are both aspirational in their reach and practical in their implementation. In making our recommendations to you, we remain mindful of the budgetary constraints on our State. We hope that this Report will assist you in prioritizing those initiatives you feel are most appropriate.

Thank you for the opportunity to advise you on these significant matters.

Sincerely,

Peter G. Verniero John J. Degnan
Co-Chair Co-Chair

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**The New Jersey SAFE Task Force
on Gun Protection, Addiction,
Mental Health and Families, and
Education Safety**

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EXECUTIVE SUMMARY OF RECOMMENDATIONS

Guided by the Governor's Executive Order creating the NJ SAFE Task Force, this Report focuses on the following areas: (i) gun control; (ii) urban violence; (iii) mental illness, substance abuse, and gun violence; (iv) violence in the media; and (v) school security. Each chapter contains a detailed discussion that leads to recommendations for action.

The recommendations by subject area are as follows:

Gun Control

- 1.1 *Clarify the Effect of Involuntary Outpatient Civil Commitment on an Applicant's Eligibility to Obtain a Firearm Purchaser Identification Card or Handgun Purchase Permit. See page 23.*
- 1.2 *Clarify an Applicant's Duty to Disclose His or Her History of Mental Health/Addictions Evaluation and Treatment. See page 23.*
- 1.3 *Require that Firearms Purchaser Identification Cards be Renewed Periodically. See page 24.*
- 1.4 *Require Courts to Order the Surrender or Seizure of Firearms Purchaser Identification Cards and Firearms Upon Conviction of a Crime, or Upon Involuntary Commitment. See page 24.*
- 1.5 *Ensure Appropriate Punishment for the Failure to Comply with a Court Order to Surrender Firearms Purchaser Identification Cards or Firearms. See page 24.*
- 1.6 *Ensure Appropriate Criminal and Civil Sanctions for the Failure of Gun Owner to Take Reasonable Precautions in Preventing Access by Minors or Persons Who Are Statutorily Disqualified From Acquiring or Possessing a Firearm. See page 24.*
- 1.7 *Authorize Courts to Order the Seizure of a Person's Firearms Following an Arrest or Initiation of Civil Commitment Proceedings. See page 25.*
- 1.8 *Encourage and Facilitate the Voluntary Surrender of Lawfully-Owned Firearms for Safekeeping During Periods of Crisis. See page 25.*
- 1.9 *Ensure Appropriate Punishment for the Unlawful Possession of, or Attempt to Acquire, Ammunition. See page 25.*
- 1.10 *Enhance Security Procedures for Remote Ammunition Purchases. See page 25.*
- 1.11 *Modernize Firearms Purchaser Identification Cards to Include Cardholder Photographs. See page 26.*

- 1.12 *Require Sellers to Verify Buyers' Identity. See page 26.*
- 1.13 *Ensure Appropriate Punishment for Tampering with Official Firearms Documents or False Personation. See page 26.*
- 1.14 *Require Purchasers to Declare Their Intention to Transfer Purchased Firearms/Ammunition to Another. See page 26.*
- 1.15 *Enact a New Criminal Law to Specifically Prohibit "Straw Purchases." See page 27.*
- 1.16 *Require Sellers to Report Tampering or False Information in the Course of a Firearms/Ammunition Transaction. See page 27.*
- 1.17 *Establish an Interstate Agreement to Share Information. See page 27.*

Urban Violence

- 2.1 *Develop a Comprehensive Law Enforcement and Prosecution Strategy to Address Urban Gun Violence. See page 37.*
- 2.2 *Make the Graves Act Apply to Assault Firearms. See page 37.*
- 2.3 *Permit Greater Flexibility in Reducing a Graves Act Sentence to Account for Aggravating or Mitigating Circumstances, and to Encourage Cooperation Agreements. See page 38.*
- 2.4 *Ensure that Graves Act Sentences Reflect the Dangers Posed by a Defendant's Offense Conduct. See page 38.*
- 2.5 *Require Appropriate Bail for Graves Act Offenders, and Authorize Restraining Orders and Pretrial Release Conditions to Protect Public Safety. See page 38.*
- 2.6 *Ensure Appropriate Punishment for Criminals Who Maintain an Arsenal. See page 38.*

Mental Illness, Substance Abuse, and Gun Violence

- 3.1 *Create an Interagency Working Group on Violence Reduction. See page 49.*
- 3.2 *Place Greater Emphasis on Early Intervention and Crisis Prevention. See page 52.*
- 3.3 *Prioritize Those in Crisis. See page 52.*
- 3.4 *Expand Access to Outpatient Services. See page 52.*

- 3.5 *Provide Increased Access to Substance Abuse Services. See pages 52-53.*
- 3.6 *Launch a Public Outreach Campaign to De-stigmatize Mental Illness. See page 53.*
- 3.7 *Allow for an Exemption so that Designated Out-of-State Authorities Can Confirm NICS Records. See page 53.*
- 3.8 *Identify and Provide Assistance for Individuals in High-Risk Circumstances. See pages 53-54.*
- 3.9 *Train Law Enforcement to Identify Those in Crisis. See page 54.*
- 3.10 *Carry Out Mental Health or Addiction Evaluations in Limited Circumstances as Part of a Background Investigation. See page 54.*

Violence in the Media

- 4.1 *Review if Violent Media is Inappropriately Marketed to Young People in our State. See page 62.*
- 4.2 *Help Educate Parents on How to Make Healthy Media Choices for Their Children. See pages 62-63.*
- 4.3 *Encourage Appropriate Industry Associations to Carry Out a Comprehensive Public Information Campaign to Increase Understanding of Media Rating Systems. See page 63.*
- 4.4 *Regulate Violent Video Games. See page 63.*
 - *Require Minors to be Accompanied by an Adult When Purchasing Video Games with an M (Mature) or AO (Adults Only) Rating. See page 63.*
 - *Require a Request for Identification for the Sale or Rental of a Video Game with an M or AO Rating. See page 63.*
 - *Require Retailers Selling Video Games to Conspicuously Display ESRB Ratings at the Point of Sale. See page 63.*
 - *Require Retailers Selling Video Games to Develop, Maintain and Conspicuously Display Their Policy on Selling Video Games with an M or AO Rating. See page 63.*
- 4.5 *Remove Violent Video Games Made Available on State Property. See page 63.*

School Safety

- 5.1 *Implement a Suspicious Activity Hotline. See pages 79-80.*
- 5.2 *Place Continued Emphasis on Anti-Bullying Efforts. See page 80.*
- 5.3 *Encourage Districts to Consider Using School Resource Officers (SROs). See page 80.*
- 5.4 *Ensure All Factors are Considered Before Deploying an Armed Security Presence in Schools. See pages 80-81.*
- 5.5 *Encourage Implementation of the “S.W.A.P.” Program. See page 81.*
- 5.6 *Increase Observation of Lockdown Drills. See page 81.*
- 5.7 *Assess Security “Best Practices” for New Schools. See page 82.*
- 5.8 *Encourage Use of New Communication Technology. See page 82.*
- 5.9 *Encourage Use of Threat Assessment Audits. See page 82.*
- 5.10 *Provide Training for Local Law Enforcement. See page 82.*
- 5.11 *Provide Training for School Communities. See page 83.*
- 5.12 *Encourage Regional Information/Resource Sharing. See page 83.*

INTRODUCTION

On December 14, 2012, a lone, 20-year-old gunman shot and killed 20 innocent grade school children and 6 heroic educators at Sandy Hook Elementary School in Newtown, Connecticut. That horrific, senseless act of violence – the sixth mass shooting in 2012, and the worst elementary school shooting ever in the United States – broke all our hearts. It also sparked a national debate in this country that has focused on four main areas: gun control, access to behavioral health services, the effect of violent media, and ways to better protect our schools.

Recognizing that we must comprehensively examine those areas to address the causes of such violence in our society, Governor Chris Christie issued Executive Order Number 124 on January 17, 2013. The Executive Order formally created the New Jersey SAFE Task Force on Gun Protection, Addiction, Mental Health and Families, and Education Safety (NJ SAFE Task Force).

Governor Christie charged the NJ SAFE Task Force with reviewing “the root causes of mass violence and developing recommendations aimed at ameliorating those root causes in order to keep New Jersey residents, including students at educational facilities, safe from gun violence.” The Task Force was specifically directed “to consider and explore the role that addiction, mental health, gun control laws, responsible gun ownership, and school safety measures play in ensuring the safety of New Jersey residents.”

In our comprehensive review of the various fields of inquiry, the Task Force held public hearings in Camden, Lincroft and Newark. Each hearing offered members of the public the opportunity to provide testimony to the Task Force and state their opinion about any subject under our purview. At each public hearing, the Task Force accommodated every person’s desire to speak. Indeed, to do so we extended the hours at two of the hearings. Members of the public also submitted comments to us by electronic and regular mail. The Task Force thanks the members of the public who expressed their thoughts and opinions. All the feedback provided to us was taken into consideration by the Task Force in its deliberations and decision making process.

Consistent with the Executive Order, we also received briefings from State agencies involved in law enforcement, mental health and substance abuse, youth and families, education, and school safety. The ideas, proposals, and suggestions we received from these experts played a critical role in educating us about the issues we were asked to investigate and helped inform our thinking on these important matters.

Finally, the Task Force received input from many interested parties and stakeholders, and conducted its own extensive research in formulating this Report. Much of this was accomplished with the diligent and extraordinary assistance provided by the Task Force Staff, for whose efforts we are particularly appreciative.

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CHAPTER 1

KEEPING GUNS OUT OF THE WRONG HANDS: PREVENTING VIOLENCE THROUGH THE REASONABLE REGULATION AND RESPONSIBLE OWNERSHIP OF FIREARMS AND AMMUNITION

I. The Need for a Deliberative, Balanced, and Realistic Approach to New Gun Control Laws

The Newtown tragedy has given a new sense of urgency to a longstanding debate on how best to prevent senseless gun violence. But Newtown is not a lone occurrence. As noted elsewhere in this Report, urban centers and other regions of New Jersey experience unacceptable levels of violence on a regular basis. Public officials and concerned citizens are rightly scrutinizing state and federal gun laws in the hope of finding the optimal balance between the need to restrict access to firearms and the right of individuals to keep and bear arms under the Second Amendment. We need to make certain, however, that new or revised gun laws are carefully vetted, and are not only well-intentioned but are actually likely to reduce the risk of gun violence.

While reasonable minds can – and do – differ on how best to regulate guns, there are important areas of consensus. No one disputes the need to respect the power of firearms, and their capacity to do harm when they are in the wrong hands. Everyone we have listened to agrees on the need, for example, to prevent firearms from being used by gang members, drug traffickers, robbers, and other felons to facilitate the commission of their crimes. Everyone agrees on the need to prevent firearms from being used to commit suicides and other acts of senseless violence resulting from an acute mental health crisis. There is also widespread agreement on the need to prevent lawfully-owned firearms from being inappropriately accessed and mishandled by unsupervised children resulting in accidental injury or death.

Our analysis of gun control issues starts with a recognition that we are by no means writing on a clean slate. New Jersey already has in place an extensive set of gun laws and regulations. Indeed, New Jersey's system for regulating firearms is widely considered to be among the most comprehensive and stringent in the nation. The Brady Campaign to Prevent Violence, for example, recently ranked New Jersey's gun laws as the second strongest in the country.¹ The Law Center to Prevent Violence recently gave New Jersey an "A minus," which tied for the highest grade awarded by that organization.²

It is important to note that our recommendations on gun control matters are not intended to be exhaustive. The fact that we have not commented on a specific subject that might be addressed

¹ Brady Campaign to Prevent Violence, *Brady Campaign 2011 Scorecard*, at http://www.bradiycampaign.org/xshare/stateleg/scorecard/2011/2011_Brady_Campaign_State_Scorecard_Rankings.pdf.

² The Law Center to Prevent Gun Violence, *Gun Laws Matter 2012* (November 14, 2012), at <http://smartgunlaws.org/gun-laws-matter-2012-understanding-the-link-between-weak-laws-and-gun-violence>.

in legislation or by an Executive Branch enforcement initiative should not be construed to mean that the idea is without merit or is too trivial to warrant discussion. Rather, given the scope of our mission as set forth in Executive Order 124, we have not tried to catalog every conceivable legislative initiative or enforcement program. We leave that task to the Governor's Chief Counsel and the Attorney General, who regularly advise the Governor on the substance and constitutionality of legislative matters. Similarly, we leave it to the Office of Legislative Services, Governor's Counsel, the Attorney General, and others to work out the details and to draft actual legislative text to accomplish any of our recommendations that are found to have merit.

Instead of engaging in the details of legislative drafting best left to others, we have focused our efforts on gun control recommendations that correlate to certain specific subjects, which include gun violence associated with mental illness and co-occurring disorders, mass shooting events, straw purchasers who facilitate evasion of state gun laws, and the safe and secure storage of firearms to prevent access to lawfully-owned guns by persons in whose hands those weapons would present a clear and present danger. In so doing, we have been guided by our overarching goal to present the policy justification for why a new law is needed, and to show how the new law is reasonably likely to advance the interests of public safety without creating unreasonable burdens or other unintended but foreseeable consequences.

The State Police Superintendent advised us that many gun crimes are committed by persons who do not submit to background checks and who would not be eligible to lawfully procure a firearm. The State Police Regional Operations Intelligence Center (ROIC) examined 293 "crime guns" that were seized in New Jersey during the three-month period between November 1, 2012 and January 31, 2013. Of those firearms, 81.9% were associated with suspects who had at least one prior arrest, and 43.6% were associated with suspects who had a prior felony conviction. The ROIC also analyzed a representative sample of 50 of the 327 identified shooting suspects in 2012 and found that all of them had a prior arrest, 99.6% had more than one prior arrest, 88% had a prior arrest for an act of violence, and 70% had a prior arrest for a weapons offense.

These statistics underscore the problem that despite impressive and recently enhanced efforts by law enforcement agencies in New Jersey to ferret out and prosecute gun traffickers, it is difficult to prevent guns from falling into the hands of criminals who want them, especially since guns can be so easily obtained in other states with less stringent gun laws. New Jersey is not an island. Not surprisingly, statistics compiled by the State Police show that many of the weapons used in this State to commit crimes can be traced to other jurisdictions whose gun control laws are less rigorous. The State Police explained to us that New Jersey is considered by law enforcement officials to be a "market state" as compared to a "source state" for crime guns. The ROIC identified the top five source states for crime guns that were seized or recovered here. Its analysis showed that 471 of these firearms originally had been purchased in New Jersey, 325 had been originally purchased in Pennsylvania, 221 in Virginia, 216 in North Carolina and 162 in Georgia.

This analysis reveals that even just accounting for those top five source states, two-thirds of the guns used to commit crimes in New Jersey originally had been acquired elsewhere, beyond the reach of our gun control laws. These statistics confirm that, to a significant degree, the ability to keep guns and ammunition out of the wrong hands in this State depends on the laws and enforcement efforts in other jurisdictions. The nation's patchwork quilt of state gun laws, however, allows persons who might not easily be able to obtain firearms in New Jersey an opportunity to exploit weak links elsewhere in the country.

New Jersey has historically been more proactive than most jurisdictions in regulating the acquisition, possession, and use of firearms. Policymakers should not be discouraged from strengthening and supplementing those laws as appropriate simply because the gun laws in other states are less rigorous or comprehensive. It is interesting to note that very recently, the American Medical Association Journal of Internal Medicine published a study that found that states that had a higher number of firearms laws experienced a lower number of firearms-related fatalities.³ Unlike earlier studies that focused on specific laws, this research considered the aggregate effect of all firearms laws. Even though the study was careful to note that it could not determine a cause-and-effect relationship between the number of gun control laws and gun fatality rates, the results suggest that a state's own laws can make a difference notwithstanding that they diverge from the laws in other states. Citing to the study, one media organization has reported, "states with the most laws have a 42% lower gun death rate than states with the least number of laws."⁴

The point is simply that there are many things that states can and should do to keep guns from falling into the wrong hands and to govern the manner in which these weapons are purchased and maintained. New Jersey has led the nation in developing an effective combination of regulatory provisions and criminal laws that are designed to deter and, if need be, detect and punish violations. As we hope to explain in the remainder of this Chapter, while our current statutory framework is among the best in the country, there are additional steps that can be taken to strengthen those laws and further reduce the risk that unauthorized persons will acquire or misuse firearms. New Jersey's current statutory and regulatory framework is among the most comprehensive in the nation. We would not recommend any scaling back of that regime.

II. Setting Goals and Objectives

Our initial task in reviewing New Jersey's current gun regulatory framework was to identify goals and objectives. The overarching goal that we identified may be stated simply: *to protect public safety by keeping firearms from falling into the wrong hands, that is, to keep firearms away from persons*

³ E. Fleeger, L. Lee, M. Monuteaux, D. Hemenway, R. Mannix, *Firearm Legislation and Firearm-Related Fatalities in the United States*, JAMA Intern Med. at 1, 8 (March 6, 2013) (hereinafter, JAMA Report).

⁴ Associated Press, *More Gun Laws = Fewer Deaths, 50-State Study Says*, The Wall Street Journal Online, (March 6, 2013) at <http://online.wsj.com/article/AP79eee542432a474e9631c1167346565e.html>.

who are not qualified to obtain or possess a firearm in accordance with specific statutory criteria, and to ensure that gun ownership is maintained in accordance with a societal need to ensure the safety of our schools and communities. See N.J.S.A. 2C:58-3 (specifying characteristics that disqualify a person from obtaining a firearms purchaser identification card or handgun purchase permit). From this overarching goal, we have identified several narrower gun control objectives, as follows:

1. to prevent persons who are subject to a statutory disqualification factor from acquiring a firearm or ammunition, whether by means of a “straw purchaser” or by some other means to evade or circumvent New Jersey’s gun control laws;
2. to dispossess firearms from persons who may have lawfully acquired the weapons, but, due to changed circumstances, are no longer qualified to possess a firearm (e.g., during a period of mental health crisis);
3. to promote the safe and secure storage of firearms so as to prevent unauthorized persons from accessing lawfully-owned firearms;
4. to prevent, or at least to mitigate, the harm caused in mass shooting events; and
5. to maintain and, when warranted, improve on a system of regulatory controls for the ownership and maintenance of firearms.

Our recommendations for statutory changes relate to at least one, and in some instances two or more, of the foregoing objectives.

III. Overview of New Jersey’s Gun Laws

As noted above, New Jersey already has in place a comprehensive statutory and regulatory system governing the purchase, possession, storage, transport, and carrying of firearms. The statutes concerning firearms are found in chapter 58 of Title 2C, and complementary regulations are codified in chapter 54 of Title 13 of the New Jersey Administrative Code.

New Jersey residents who have never applied for a firearms purchaser identification card or handgun purchase permit may not be aware of the breadth and detail of the current regulatory scheme. It is important in this Report to describe, if only summarily, some of the most important features of New Jersey’s current gun control laws, because these existing laws provide the context for our recommendations.

Under New Jersey law:

- A person cannot purchase a firearm of any type without obtaining and presenting a firearms purchaser identification card. N.J.S.A. 2C:58-3. There is no exception for purchases/transfers made at “gun shows” or for “private sales,” that is, transactions that do not involve a licensed firearms dealer.
- Before issuing a firearms purchaser identification card, the police chief or State Police Superintendent does a thorough background check to make certain that the applicant is a person “of good character and good repute in the community in which he lives,” and is not subject to any of the statutorily-specified disabilities (e.g., has been convicted of a crime, or a disorderly persons offense involving domestic violence; is a drug dependent person; is confined in a mental institution; etc.). An application for an identification card also may be denied, “where the issuance would not be in the interest of the public health, safety or welfare.” See N.J.S.A. 2C:58-3c(5).
- Background investigations in New Jersey are more rigorous than the “instant checks” required under federal law. Under federal law, background checks involve a query to electronic databases. Under New Jersey law, in contrast, background checks are more labor intensive. A police department will not only query electronic databases, but will also interview references and other persons. The applicant must answer questions on a form prescribed by the State Police Superintendent that includes a question whether the applicant has ever been attended, treated, or observed by any doctor or psychiatrist on an inpatient or outpatient basis for any mental or psychiatric condition. The police department conducting the investigation verifies that the application is complete and accurate by conducting a check with the County Adjuster’s Office for any record of mental health confinement, and by checking the Domestic Violence Registry.
- In addition to the general rules governing the purchase/transfer of a firearm, in order to purchase a handgun, a person also must obtain a handgun purchase permit, which entails a new background investigation. See N.J.S.A. 2C:58-3(e). At least seven days must elapse after the date of the application for a permit before the actual sale may be consummated. Prior to receiving a handgun from the seller, the purchaser must deliver all four copies of the permit to the seller, who must complete all of the information on the required form. Within five days of the sale, the seller must send the original to the State Police, a second copy to the local police department, a third copy is returned to the purchaser, and the seller must retain the fourth copy. N.J.A.C. 13:54-1.8.
- A separate permit is required for the purchase/transfer of each handgun. A person may only purchase one handgun within a 30-day period. See N.J.S.A. 2C:58-3i.
- New Jersey law imposes significant restrictions on when a person may obtain a permit to carry a handgun based upon a “justifiable need.” See N.J.S.A. 2C:58-4. Regulations

define justifiable need to mean “urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant’s life that cannot be avoided by means other than by issuance of a permit to carry a handgun.” See N.J.A.C. 13:54-2.4(d). These “carry” permits must be approved by a Superior Court Judge and are issued only when the court finds an urgent necessity for self-protection that entails more than a generalized fear for personal safety or the need to protect property alone. See In re Preis, 118 N.J. 564 (1990).

- Possession of a machine gun (fully automatic weapon) is prohibited. N.J.S.A. 2C:39-5. It is theoretically possible to obtain a license to carry a machine gun or assault firearm, see N.J.S.A. 2C:58-5, but such licenses are rarely, if ever, issued.
- As required by federal law, persons are permitted to transport firearms into and through New Jersey provided that such weapons are unloaded and contained in a closed and fastened container, or locked in the trunk of an automobile and not directly accessible from the passenger cabin. See N.J.S.A. 2C:39-6(g) and 18 U.S.C. § 926A.
- Except for firearms that are *per se* unlawful to possess, such as a machine gun or assault firearm, a person is allowed to keep a firearm in his or her home and/or place of business, and may transport the weapon between those locations. See N.J.S.A. 2C:39-6(e).
- New Jersey regulates the purchase of handgun ammunition, which can be properly obtained only by presenting a valid firearms purchaser identification card. See N.J.S.A. 2C:58-3.3.
- New Jersey law generally prohibits the use of certain types of ammunition, such as dum-dum, hollow point, armor piercing, and tracer ammunition. See N.J.S.A. 2C:39-3(f). However, dum-dum and hollow point ammunition can lawfully be kept in a person’s home or place of business. See N.J.S.A. 2C:39-6e.
- New Jersey is one of only seven states to prohibit the possession of an assault firearm. The statute provides a comprehensive definition that includes a list of specific weapons, and also includes firearms that are “substantially identical” to those specifically-listed weapons. See N.J.S.A. 2C:39-1(w) and 2C:39-3(j). In 1996, the Attorney General issued precise guidelines for determining whether a firearm meets the definition of an assault firearm, focusing on certain characteristics of the particular weapon, such as its ability to accept a detachable magazine, a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, a bayonet mount, a flash suppressor or threaded barrel to accommodate a flash suppressor, and a grenade launcher.
- New Jersey is one of eight states to prohibit the possession of a large capacity ammunition magazine. Under New Jersey law, a large capacity ammunition magazine

is defined as a magazine capable of holding more than 15 rounds. See N.J.S.A. 2C:39-1(y).

- New Jersey law prohibits the possession of defaced firearms, N.J.S.A. 2C:39-3(d), sawed-off shotguns, N.J.S.A. 2C:39-3(b), and silencers, N.J.S.A. 2C:39-3(c).
- New Jersey law includes provisions designed to encourage gun owners to use trigger locks or to store firearms in gun safes. See N.J.S.A. 2C:58-18 (establishing a Keep-Safe program). New Jersey was the first State to require retail dealers to include, as part of every handgun sale, either a State Police-approved trigger lock or a locked case. See N.J.S.A. 2C:58-2.2. It is a disorderly persons offense to keep a firearm under circumstances in which the owner knows or reasonably should know that a minor is likely to gain access to the firearm unless it is stored in a locked container, is stored in a location that a reasonable person would believe to be secure, or is stored with a trigger lock. See N.J.S.A. 2C:39-10(f) and N.J.S.A. 2C:58-15.
- Firearms owners are required to report the loss or theft of a firearm and are subject to a civil penalty for failing to do so. See N.J.S.A. 2C:58-19.
- It is a third-degree crime to possess a firearm while on school or college grounds without the written authorization of the governing officer of the educational institution, notwithstanding that the person may have a valid permit to carry the weapon. See N.J.S.A. 2C:39-5(e).
- In 2002, New Jersey enacted legislation concerning “personalized handguns,” which can only be fired by the lawful owner. See N.J.S.A. 2C:58-2.3. These weapons have not yet become available for retail sales.

IV. Identifying Problems That Need to be Addressed

To focus our analysis, we have identified a number of problems or gaps in the current system that deserve attention and that should be the subject of remedial legislation. These problems tend to fall into several major categories or subject areas that are set forth below:

A. *Accessing and Using Mental Health Information to Inform the Decision Whether to Approve an Identification Card or Permit Application*

As noted in our discussion of mental health and addictions treatment in Chapter 3, a diagnosis of mental illness does not necessarily mean that a person is likely to become violent at some future time. To the contrary, a person with a mental disorder may be no more likely than anyone else to commit a future act of gun violence. It is important that our gun control laws and regulations recognize this fact, and not unwittingly contribute to the problem of creating a “stigma” to mental illness by suggesting that all persons with unspecified mental health issues are unfit to own

firearms. In most instances, moreover, it would be difficult, if not impossible, for mental health care professionals to predict future violence, and the reliability of any such prediction would vary based on the type and severity of the mental disorder involved.

Having said that, a person's history of mental health problems is a relevant circumstance that should be investigated and considered in deciding whether the person is legally fit to own or have ready access to a firearm. It is therefore important that law enforcement officials charged with the responsibility to approve or deny an application for a firearms purchaser identification card or handgun purchase permit have access to mental health information that is complete, accurate, and up-to-date.

In certain circumstances, a mental health problem automatically may disqualify a person from obtaining a firearm as a matter of statutory law. For example, a firearm purchaser identification card or handgun purchase permit cannot be issued to any drug dependent person or to any person who is presently confined for a mental disorder. See N.J.S.A. 2C:58-3(c)(2). Nor can a card or permit be issued to a person who has ever been "confined" for a mental disorder "unless the applicant produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from the disability in such a manner that would interfere with or handicap him in the handling of firearms." N.J.S.A. 2C:58-3(c)(3).

There are other circumstances relating to an applicant's mental health that are relevant but not dispositive of the person's legal eligibility to purchase a gun. A law enforcement agency reviewing the application may consider, for example, whether the applicant, "has been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition." N.J.S.A. 2C:58-3(e). Applicants for an identification card or permit are required to disclose any such medical history. The fact that the applicant has been treated or observed by a mental health professional, however, is not an automatic disqualification criterion. Rather, this circumstance is a relevant factor that might inform a discretionary determination whether issuance of the card or permit "would not be in the interest of the public health, safety or welfare." See N.J.S.A. 2C:58-3(c)(5).

It is especially important to consider whether a neutral official such as a judge has previously ordered that the applicant be civilly committed, because the basis for any such involuntary commitment would be a judicial finding, made after a hearing with due process protections, that the person posed a danger to him/herself or others. See N.J.S.A. 30:4-27.1 et seq. This would be true both for a civil commitment order "confining" a person to inpatient treatment, and a court order entered under a recently-enacted law that authorizes an involuntary *outpatient* commitment. In either of those circumstances, because there will have been a case-specific judicial finding of potential violence, there should be a presumption against issuing a firearm purchaser identification card or handgun purchase permit unless the applicant can present satisfactory proof that he or she is fit to own a firearm. See Recommendation 1.1.

The more difficult policy question is whether, and in what circumstances, an application for a card or permit should be denied based on prior or ongoing mental health treatment that was not ordered by a court and that might have little, if anything, to do with the risk that the person might someday commit an act of gun violence were he or she allowed to obtain a firearm. As noted above, applicants are required to reveal such treatment.

It has been suggested to us that under the current system, some applicants may be confused as to what types of treatment need to be disclosed. Some applicants who may have been prescribed psychotropic medications by their general practitioner may not even realize that they have been treated for a “mental or psychiatric condition” within the meaning of N.J.S.A. 2C:58-3(e). Furthermore, the current law and application form refers only to physicians and psychiatrists. The statute should also refer expressly to other mental health care professionals such as psychologists and licensed clinical social workers. While those professionals may not be authorized to prescribe medications, the treatment services they provide might shed light on whether a patient is suffering from a mental condition that renders him or her unfit to own a firearm. See Recommendation 1.2. It is important to note, however, that mental health treatment is not a *per se* disqualifying circumstance but rather a matter that should be considered as part of a thorough background investigation. Our recommendation is designed only to ensure that relevant medical history is properly disclosed as part of the firearms purchaser identification card/handgun purchase permit application process.

In an abundance of caution to protect against the risk of future gun violence, some have advocated that *all* applicants for a firearms purchaser identification card or handgun purchase permit should be required to submit to a mental health evaluation. While the “better safe than sorry” approach of requiring routine mental health screenings may at first glance seem appealing, we believe that any such blanket policy would be inappropriate, and actually counterproductive. A universal mental health screening requirement would be unduly burdensome, not just for applicants, but for the State’s mental health screening system. The costs of such a policy would outweigh any benefits, especially because in most instances, it would not be possible to predict with any reliability whether an applicant might someday use a firearm to commit an act of senseless violence. As explained more fully in our discussion of mental health and addiction issues, the science of mental illness diagnosis and treatment simply does not support a policy to require every applicant for a firearms purchaser identification card or handgun purchase permit to undergo a mental health examination by a licensed professional.

There have been problems in this State in terms of incomplete mental health records that are used as part of firearms-related background investigations, although we were pleased to learn that those problems are being addressed. Specifically, there are ongoing efforts to make certain that involuntary commitment records are collected and entered into the FBI’s National Instant Crime Background Check System (NICS). Federal law requires a licensed firearms dealer to query the NICS database prior to selling a firearm to a customer. Currently, states are not required to submit mental health information to NICS, although legislation that was signed into law in early

2008 offered financial assistance to states to provide “NICS information relevant to whether a person is prohibited from possessing firearms, including the names and other relevant identifying information of persons adjudicated as a mental defective or those committed to mental institutions.” 42 U.S.C. § 14601 *et seq.*

We understand that the New Jersey Administrative Office of the Courts (AOC), working in partnership with the New Jersey State Police, is in the latter stages of completing a database that will transfer these records electronically from the AOC to the State Police for uploading to the NICS database. As noted above, involuntary commitment is a particularly important fact to consider in determining a person’s fitness to own a firearm as the court’s case-specific judgment will often reflect a combination of risk factors in addition to mental illness (*e.g.*, propensity for violence, prior acts of violence, or non-compliance with treatment) that are associated with an increased risk of future violent behavior. Currently, because involuntary commitment records are maintained on a county-by-county basis, there is no statewide system that can be accessed to determine whether a person has been involuntarily committed somewhere in the State. Under current practice, these background checks are done only in the applicant’s home county and any other counties in which he has lived, if the applicant has not lived at his current residence for 10 years. There is simply no way to make a single statewide query of the commitment information maintained separately by the 21 county adjusters. This shortcoming will be eliminated when the statewide database is put in place. The Task Force has been advised that the database will be operational in the next few months.

The State Police also has advised the Task Force that in advance of full implementation of the statewide database, more than 193,000 records related to involuntary commitments have already been “batch loaded” to the NICS database. When the statewide AOC/State Police database is fully operational, all involuntary commitment orders, including involuntary outpatient commitment orders, will be uploaded to the system as they are issued by judges. In addition, the database will eventually include all involuntary commitment records dating back to 1975, which will bring the total number of records sent to NICS to anywhere between 500,000 and 800,000.

We note, for completeness, that because the background investigation process for purchasing a firearm in New Jersey is more thorough than in most other states, people who want to buy a gun, rifle or shotgun already are required to pass several layers of security. With regard to mental health checks, law enforcement personnel conducting a background check of an applicant for a firearms purchaser identification card or handgun purchase permit are required to contact the county adjuster in the county where the permit is being requested to determine whether that individual has any history of psychiatric admissions within the county. N.J.S.A. 2C:58-3c, and N.J.A.C. 10:7-7.1(c). Assuming the individual passes that check and is issued an identification card and/or a permit, at the point of sale, the licensed firearms dealer notifies the State Police of the holder’s request to purchase a firearm. The State Police does its own check of criminal databases as well as the NICS database.

B. *Addressing Changed Circumstances after Firearms Credentials are Issued*

As noted above, background investigations conducted under New Jersey law and practice are more thorough than the “instant” background checks required under federal law. Police agencies conducting these investigations do more than merely query electronic databases. Applicants are fingerprinted, and persons who may have relevant information about an applicant’s suitability to own a firearm are interviewed or asked to complete questionnaires.

Police agencies in this State take seriously their responsibility to make certain that a firearms purchaser identification card or handgun purchase permit is not issued to a person who is subject to any specific disability defined by statute, or issued to a person under circumstances “where the issuance would not be in the interest of the public health, safety or welfare.” N.J.S.A. 2C:58-3(c)(5). The thoroughness of these field investigations, coupled with the statutory authority to deny an identification card based on general considerations of public health, safety and welfare, and not just “yes” or “no” answers gleaned from an electronic database, are important safeguards that distinguish New Jersey law and practice from the firearms regulation systems in most other states, which depend exclusively on a NICS lookup. In New Jersey, in other words, the NICS system supplements the more rigorous background investigation required under State law.

In 2007, the State Commission of Investigation (SCI) issued a report recommending that firearms ownership credentials should be subject to renewal every three years.⁵ The SCI proposal was intended to address the problem that might arise if the thorough background investigation required under New Jersey law was conducted years before a firearm transaction is consummated so that the information developed during that earlier background investigation might be out of date. Requiring a cardholder to file a renewal application would provide an opportunity to conduct a new background investigation that could reveal relevant circumstances that have changed since the applicant last applied for a card and was subjected to a full background investigation. (Note that if a cardholder seeks to purchase a handgun, he or she would need to obtain a handgun purchase permit, which would lead to a new background investigation. Handgun purchase permits expire after 90 days and may only be renewed by the issuing authority for good cause for an additional 90 days. See N.J.S.A. 2C:58-3(f).)

We agree that like other government-issued licenses and credentials, firearms purchaser identification cards should have an expiration date after which the cardholder would be required to apply for a renewal. See Recommendation 1.3. The Task Force recognizes that renewal applications and new periodic background checks will impose additional administrative burdens and that many police departments in recent years have experienced serious resource challenges. There was some sentiment among Task Force members that funding for such improvements should be secured by ensuring that the costs of gun ownership are borne by gun owners and not

⁵ State Commission of Investigation, *Armed and Dangerous: Guns, Gangs and Easy Access to Firearms Ammunition in New Jersey*, 24 (2007), at <http://www.state.nj.us/sci/pdf/Armed%20and%20Dangerous.pdf>, (hereinafter, SCI Report).

subsidized by taxpayers. A contrary sentiment is that the rights of gun ownership, like other constitutional rights, impose certain administrative or enforcement costs on government to be absorbed by the municipality or State. We leave it to the Governor and the Legislature to carefully consider these practical resource matters when determining when firearms purchaser identification cards should expire, how to phase-in any such renewal requirement, how renewal background investigations should be conducted, and how to defray the costs of those periodic investigations. See also Recommendation 1.12 (making the recommendation that firearms purchaser identification cards be modernized to include photographs and other modern security features).

There are additional steps that should be taken to address changed circumstances that arise after an initial or renewal card is issued. It is vitally important to ensure that a card becomes void and is surrendered at the time when a cardholder becomes subject to any disability that would disqualify him or her from obtaining a card. This revocation should happen without delay and without waiting until the changed circumstance is detected by a new background investigation that might happen years after the disqualifying circumstance arises.

Under current law, a cardholder already is required to return the card within five days of becoming subject to any such disability. See N.J.S.A. 2C:58-3(f). It is a fourth-degree crime to fail to do so within the five-day grace period. See N.J.S.A. 2C:39-10(a). We recommend that this law be strengthened to make certain that the surrender of the firearms purchaser identification card actually happens. Toward that end, we believe that a court should be required at the time of conviction or civil commitment to determine whether the person has been issued a card and if so, to order its immediate surrender, along with the surrender of any firearms that the person may own, unless the card and firearms had already been surrendered at an earlier stage of the judicial proceedings. See Recommendation 1.4.

In addition, if the defendant lies to the court about his or her ownership of a card or actual or constructive possession of a firearm, or otherwise fails to comply with the court's surrender order, he or she should be subject to prosecution for an offense graded higher than the fourth-degree crime currently defined in N.J.S.A. 2C:39-10(a). Indeed, if the person continues to possess a firearm after having been ordered by a court to surrender all of his or her weapons, the offense should be treated as a "Graves Act" crime (Chapter 2, *infra*) that carries a mandatory minimum sentence, and that sentence should be served consecutively to any sentence imposed on the conviction that had prompted the court's surrender order. See Recommendation 1.5.

C. *Preventing Unauthorized Access to Lawfully-Owned Firearms*

The principal goal that we have identified is to keep firearms from falling into the wrong hands. Not all shooting incidents are committed using firearms that had been purchased unlawfully. Shooting tragedies, including the Newtown mass shooting, may involve weapons that had been lawfully acquired, but that came into the possession of someone other than its lawful owner.

Some of these acts of violence might be prevented by anticipating and managing the risk that a firearm might be used by someone other than the owner.

The problem is by no means limited to firearms that are used in mass shootings. It is important to note in this regard that the study recently published in the *American Medical Association Journal of Internal Medicine* (JAMA Report, cited at page 5, *supra*) noted that guns are the most common method of suicide overall and teen suicide in particular, and that increased accessibility to loaded unlocked guns is associated with an increased risk of suicide. The study cited prior research that showed that safe gun storage practices, which can be required by state law, were associated with a decreased risk of teen suicide and unintentional firearms injuries.⁶

New Jersey has consistently led the nation in its efforts to ensure the safe storage and handling of firearms. New Jersey was the first state, for example, to require retail dealers to include, as part of every handgun sale, either a State Police approved trigger lock, or a locked case or gun box. New Jersey was also the first state to require all firearms dealers to prominently display State-provided firearms information and safety warnings. See N.J.S.A. 2C:58-2.2(a).

State law also provides that unless a gun owner has taken reasonable precautions (such as securing a firearm in locked box or with a trigger lock), the gun owner is guilty of a disorderly persons offense if he or she knows, or reasonably should know, that a minor is likely to gain access to a loaded firearm at a premises under the owner's control. See N.J.S.A. 2C:58-15. We believe that this offense would have a greater deterrent impact if it were to be upgraded to a fourth-degree crime. Furthermore, we believe that the problem of inappropriate access to lawfully-owned firearms is not limited to the risk that a gun might fall into the hands of a minor. We also need to address the risk of unauthorized access by a member of the gun owner's household who is subject to a statutory disability, such as a prior criminal conviction, that would prohibit that household member from possessing a firearm. We believe that the offense set forth in N.J.S.A. 2C:58-15 should therefore be expanded beyond children and apply to situations where a gun owner knows or reasonably should know that the firearm might be accessed by a person who is subject to any of the statutory disqualification circumstances enumerated in N.J.S.A. 2C:58-3. In those circumstances, the owner should be expected to take reasonable precautions similar to those that are now required to prevent unlawful access by a minor. To enhance the incentive to store firearms securely in those situations, we also believe that when a violation of N.J.S.A. 2C:58-15 results in death or injury, the gun owner should be subject to civil liability for damages in a manner determined by the Legislature. In that regard, the Legislature should consider whether a conviction under N.J.S.A. 2C:58-15 should result in strict liability or be treated as negligence *per se* for purposes of civil liability. See Recommendation 1.6.

⁶ JAMA Report at 8, n.34 (citing D.C. Grossman, B.A. Mueller, O. Reidy, et al., *Gun Storage Practices And Risk Of Youth Suicide[,] And Unintentional Firearms Injuries*, JAMA 2005, 295(6): 707-714).

There are other steps that might prevent an act of violence besides imposing a duty under civil or criminal law to store firearms safely and securely. It may become necessary in some circumstances to authorize police to take away firearms that had been lawfully purchased, not as evidence or instrumentalities of a completed crime, but rather to prevent those weapons from being used to commit a crime during a period of extreme emotional distress or when an acute mental health crisis arises. It is hardly a new idea to authorize a police agency to apply for a court order to temporarily remove firearms during a volatile situation. This occurs routinely when police respond to a domestic violence incident.

New Jersey has addressed the problem of domestic violence by adopting a comprehensive statutory framework that requires police, prosecutors, and courts to follow special procedures when a domestic violence offense is alleged. That system, established under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., includes detailed policies and procedures for securing lawfully-owned firearms during a critical “cooling off” period. The idea is to prevent those weapons from being used in the heat of passion against a domestic partner during a period of acute stress and conflict. The weapons-related provisions of the Prevention of Domestic Violence Act might be adapted to address other circumstances in which a person may have become unfit, if only temporarily, to possess firearms that had been lawfully acquired. Specifically, a court should be authorized by statute to order the surrender or dispossession of firearms based on certain judicially-supervised events, such as an arrest for an indictable crime or a referral for a mental health screening as part of the process for initiating an involuntary inpatient or outpatient civil commitment action. See Recommendation 1.7.

Police officers are by no means the only ones who might prevent a tragedy by securing a lawfully-acquired firearm and removing it from a volatile environment. During our public hearings, we heard urgent pleas from parents who recounted frightening episodes when their children were in crisis and had ready access to a firearm. New Jersey law should authorize a program that would encourage a person in crisis – or a legal guardian, close relative, spouse or domestic partner of a person experiencing a mental health crisis – to voluntarily turn over to police firearms that might pose a risk of harm if accessible to the person in crisis. These weapons would not be forfeited permanently or destroyed as in the case of a gun buyback program, but rather would be kept safe during the period of crisis and returned when the risk of harm has passed. Once established, this safe deposit program should be well publicized so that concerned parents and family members are aware of it. See Recommendation 1.8.

D. *Enhancing the Deterrence and Detection of Unlawful Handgun Ammunition Purchases*

As noted above, the State Commission of Investigation issued a report in 2007 that led to significant changes in how New Jersey controls the sale of ammunition. The SCI investigation revealed that while New Jersey had strict laws governing the sale of firearms, there were at that time no laws regulating the purchase of ammunition, other than a regulation that required the buyer to present proof of age. The SCI minced no words when it concluded that, “[i]t is patently

ridiculous, shocking even, to contemplate a system that requires a background check and an official permit to own a handgun but, unaccountably and astonishingly, mandates nothing of the sort as a condition for purchasing the means to transform that gun into a deadly weapon.” To underscore its point, the SCI conducted tests that showed that it was possible to purchase ammunition via the internet or mail without ever having to present proof of identity to the seller.⁷

In response to the SCI’s call for action, the Legislature in 2008 amended State law so as to require that a person purchasing handgun ammunition present a valid firearms purchaser identification card or handgun purchase permit. See N.J.S.A. 2C:58-3.3. The Legislature focused on handgun ammunition precisely because handguns are much more likely than long weapons to be used in the commission of a crime or otherwise unlawfully possessed. That determination continues to be borne out by statistics that show that the overwhelming majority of “crime guns” seized or recovered in this State are handguns. In 2012, there were 1,219 convictions in New Jersey for the unlawful possession of a firearm. 92.6% of those convictions involved a handgun. Only 4.2% involved a rifle or shotgun, 2.2% involved an assault firearm, and 1.0% involved a machine gun.

We believe that while the 2008 remedial legislation directly addressed the concerns raised by the SCI, further action should be taken to deter the unlawful acquisition of handguns or any type of ammunition. Specifically, a person who is disqualified from acquiring or possessing a firearm (*e.g.*, a convicted felon) who knowingly possesses or attempts to acquire ammunition should be guilty of an offense of the same degree and carrying the same punishment as applies to the crime of unlawful possession of a firearm. See Recommendation 1.9.

We also believe that steps should be taken to ensure full compliance with New Jersey law when persons obtain ammunition via the internet or by mail order. The requirement under the 2008 law to “exhibit” an identification card to the seller at the time of the handgun ammunition transaction is designed to address the concerns that had been expressed by the SCI regarding internet and mail-order ammunition sales.⁸ Some have argued that ammunition transactions always should be done “face to face.” Requiring that an ammunition transaction be conducted “in person” should not, however, be thought of as an end unto itself, but rather as a means to an end. The critical objective is to ensure that the seller is provided with satisfactory proof that the purchaser is who he or she claims to be, proof that the buyer is authorized under New Jersey law to purchase the ammunition, and assurances that the ammunition is shipped to the *bona fide* address of the lawful purchaser.

It should be noted in this regard that with respect to firearms transactions, we had considered whether to require that sales involve a licensed dealer to ensure compliance with all regulatory requirements. Information provided to us by the State Police suggests that approximately 90% of handgun sales already involve retail dealers, and there has been no suggestion made to us that

⁷ SCI Report at 3, 4, and 6.

⁸ SCI Report at 24.

private sellers are not complying with current documentation requirements. Even so, we believe that clear procedures should be established to ensure that firearms credentials are properly exhibited to internet sellers. We would leave it to the expertise of the New Jersey State Police to approve and regulate any such system that might be used to remotely verify the identity of the purchaser, to fully document the transaction, and to ensure that any ammunition that is shipped to New Jersey is delivered to the actual registered address of the authorized purchaser. See Recommendation 1.10.

E. *Enhancing the Deterrence and Detection of “Straw Purchasers”*

The Legislature should provide additional tools to help law enforcement detect and deter illegal gun trafficking, especially with respect to so-called “straw purchases” of firearms and ammunition. That term refers to purchases of firearms and ammunition by persons who intend to transfer the weapons or ammunition to others who would not lawfully be able to obtain those items on their own because of a criminal record or other disqualifying circumstance. In testimony before the SCI in 2007, Governor Christie, then serving as United States Attorney for the District of New Jersey, acknowledged the enormity of the straw purchaser problem and expressed concern about the apparent ease with which ammunition could be obtained by seemingly legitimate individuals.⁹

At present, a New Jersey firearms purchaser identification card does not contain a photograph of the cardholder or other modern security features. It is important to note that under federal law, a person seeking to purchase a firearm must present an identification document that was made or issued by the United States Government, a State, or other governmental authority and that contains the name, residence address, date of birth, and photograph of the holder. See 27 C.F.R. 478.11 and 478.124(c)(3)(i). Accordingly, a buyer in this State will exhibit two documents: a firearms purchaser identification card or handgun purchase permit as required by State law, and an additional identification document that is required by federal law.

In its 2007 report, the State Commission of Investigation recommended that firearms purchaser identification cards include a photograph of the cardholder.¹⁰ We agree that New Jersey’s firearms purchaser identification card should be upgraded to include modern security features, and that these cards can serve as the federally-required personal identification document. See Recommendation 1.11. Under our current system, a New Jersey resident buying a gun would typically present a New Jersey driver’s license along with the paper firearms purchaser identification card and/or handgun purchase permit that is currently issued. Were the firearms purchaser identification card modernized to satisfy the federal definition of an identification document, the buyer would need only present that card, and the seller would not need to compare the two documents but rather need only verify that the buyer is the person whose photograph appears on the firearm purchaser identification card.

⁹ SCI Report at 17.

¹⁰ SCI Report at 24.

As part of the process of modernizing the form of a firearms purchaser identification card, consideration should be given to the feasibility of incorporating features designed not only to prevent tampering and impersonation, but also to take advantage of modern information-sharing technology that can be built into swipe cards. If, for example, a firearms purchaser identification card were upgraded to include a bar code, magnetic strip, or other means of recording digital information, such a card might facilitate real-time electronic communications between the seller and the State Police. Such a tool, in other words, would not just serve to verify the purchaser's identity, but could also be used to facilitate electronic transmission of information about the transaction to and from the State Police in the same way that a credit card is used to transmit transactional information between a credit card company and a retail merchant. That might eliminate the need for the seller to mail completed hard copy forms to the State Police. It might also be possible to develop a single "smart" card that could serve the distinct functions that are now served by a firearms purchaser identification card and a handgun purchase permit. Were such a unitary card able to facilitate the communication of information electronically to and from the State Police, it could be used to receive electronic confirmation from the State Police that the contemplated transaction (*e.g.*, purchase of a handgun, purchase of a rifle or shotgun, or purchase of handgun ammunition) is authorized under State law.

Until such time as photo-bearing firearms purchaser identification cards can be issued, State law should be clarified to complement federal law by expressly requiring a buyer to present a government-issued photo-bearing identification document to the seller at the time of all transactions involving firearms and ammunition. The law should further require the seller to examine the buyer's identification document(s) and report any anomalies (*e.g.*, a document appears to have been altered, the photograph does not appear to depict the prospective buyer, the address on the person's personal identification credentials does not match the information on the current firearms purchaser identification card or handgun purchase permit, etc.) See Recommendation 1.12.

There can be only one reason why a person might try to forge or tamper with any firearms credentials, that is, to obtain a firearm or ammunition unlawfully. Accordingly, any person who knowingly alters or tampers with a firearms purchaser identification card or handgun purchase permit should be punished to the same degree as if he or she had unlawfully possessed a firearm. See Recommendation 1.13.

There are other steps that might be taken to deter and detect straw purchases besides enhancing the punishment for altering or forging identification cards and permits. A purchaser should be required, for example, to declare in writing and "under penalty" whether the firearm or ammunition being sought is intended for his or her own use, or whether instead the firearm or ammunition that is being purchased will be provided to another person, in which event the identity of that person should be specified in writing. See Recommendation 1.14. While straw purchasers might be expected to lie about their true intentions, such a declaration, later shown to

be false, would facilitate a prosecution for illegal gun trafficking. Furthermore, a person who purchases a firearm or ammunition with the intent to transfer the firearm or ammunition to another but who conceals or misrepresents that intention should be guilty of an offense of the same degree and carrying the same punishment as the crime of unlawful possession of the firearm.

Aside from regulatory provisions, we have also considered whether our current criminal laws are adequate to deter straw purchases and other methods used by criminals to obtain firearms and ammunition. While New Jersey law defines an especially serious crime of being a “leader of a firearms trafficking network,” see N.J.S.A. 2C:39-16, we do not at present have a separate, more basic offense for firearms trafficking. It would be appropriate to enact a new criminal statute patterned after New Jersey’s money laundering statute, N.J.S.A. 2C:21-23 et seq., that would be violated when a person obtains or attempts to obtain a firearm or ammunition under circumstances in which the actor knows *or reasonably should know* that such other person is prohibited from purchasing or possessing the firearm or ammunition. This formulation of the mental culpability state required for the offense would effectively preclude the defense of “willful blindness.” The crime might also be proved when the actor purchases or attempts to purchase a firearm or ammunition with the intent to transfer the firearm or ammunition to another but conceals or misrepresents that intention. Any such deception would corroborate that the actor is indeed a straw purchaser. The new straw purchase offense should be graded as a crime of the same degree and carry the same mandatory minimum sentence as the crime of unlawful possession of the firearm. See Recommendation 1.15.

To enhance the likelihood that a straw purchaser might be detected, sellers should be required to report suspicious activities, such as when a prospective buyer seems to have tampered with an identification card or appears to have provided any false information. It is not enough in those circumstances that the seller refuses to consummate the transaction. Rather, it is important to apprehend the deceptive prospective purchaser on the assumption that he or she is likely to try again with another seller who might not detect the suspicious activity. See Recommendation 1.16.

F. *Calibrating the Maximum Capacity of Ammunition Magazines*

The Newtown mass shooting has prompted a national debate on whether Congress should reinstate a long-expired prohibition against “large capacity ammunition feeding devices” – the term that had once been used in federal law. New Jersey is one of the few jurisdictions in the country to ban large-capacity ammunition magazines. Current New Jersey law contains a 15-round limit, *i.e.*, it prohibits the acquisition or possession of an ammunition magazine that holds 16 or more rounds. See N.J.S.A. 2C:39-1(y) (defining the term “large capacity ammunition magazine”) and N.J.S.A. 2C:39-3(j) (making it a fourth-degree crime to possess a large capacity ammunition magazine). Some have proposed to adopt a lower capacity threshold, prohibiting magazines that hold 11 or more rounds. That was the threshold that had previously been used under federal law, and the one that is currently being urged by President Obama.

Because we are not writing on a blank slate in New Jersey, the arguments that are relevant to the debate in our State are different from the arguments that are presented at the national level. The question before us is not whether there should be a limit on the maximum capacity of ammunition magazines, because that issue is settled. Rather, the issue is whether to change the statutory definition set forth in N.J.S.A. 2C:39-1(y) to reduce the current maximum capacity. Putting the issue in a larger context, only seven other states prohibit high capacity magazines with differing limits. Maryland's capacity limit is currently set at 20 rounds, but pending legislation would change that number to 10. Colorado just enacted a law that sets the limit at 15 rounds, which is the same as New Jersey's limit. Four states – California, Hawaii, Massachusetts and most recently Connecticut – have set the limit at 10 rounds. Finally, New York, a month after the Newtown shooting, reduced its limit from 10 to 7 rounds (although the law may be amended to allow for a 10-round magazine, yet limit the number of bullets in that magazine to 7). Whatever a jurisdiction's limit might be, we have heard no convincing reason for why large-quantity magazines should not be capped at some level as a matter of public safety.

Because large-capacity magazines are lawful in most jurisdictions across the country, it is not certain whether and to what extent any one state's ban can be effective at preventing a mass shooter from gaining access to prohibited ammunition magazines. Most mass shootings appear to have been planned events. Regrettably, a person who is preparing for a mass shooting attack is likely to be able to acquire high-capacity magazines despite a state-law prohibition, because he or she need only travel to one of the vast majority of states where such devices are lawful. For this reason, we believe that the arguments in favor of reducing our current capacity threshold would be stronger if the federal government were to re-enact a prohibition, because in that event, statutorily-prohibited magazines would become less readily available.

Reasonable people can disagree on how to interpret and apply the nation's mass shooting experience to the question as to where exactly to draw the line on ammunition magazine capacity. Thankfully, mass shooting events in America are relatively rare. (The FBI defines a mass shooting incident as an episode resulting in four or more deaths.) As a result, there is little empirical data that might inform the decision as to where to draw the line in a definition of large-capacity magazines. Recently, the Citizen's Crime Commission of New York City looked at 30 mass shooting incidents that occurred in the United States between 1984 and 2012, finding that 19 of the incidents involved a magazine capacity of 30 or more rounds. Three incidents involved a magazine capacity of 15 rounds, and one incident involved a magazine capacity of 14 rounds.¹¹ Moreover, a New Jersey State Police analysis of 29 mass shooting incidents in the United States since 1999 showed that semi-automatic handguns are the "weapon of choice for mass shootings." As we have observed repeatedly, New Jersey already has very strict laws concerning the acquisition of handguns and handgun ammunition.

¹¹ Citizens Crime Commission of New York City, *Mass Shooting Incidents In America*, (2012), at <http://www.nycrimecommission.org/initiative1-shootings.php>.

Although there is no mathematical formula with which to derive an optimal threshold, there is a school of thought that the smaller the ammunition capacity the better. For some, it is a simple matter of common sense: requiring a shooter to re-load will interrupt a rampage and provide law enforcement officers and others the opportunity to intervene. This was demonstrated in the shooting spree involving Congresswoman Gabrielle Giffords when the shooter's pause to clear his weapon's magazine enabled passersby to prevent further mayhem. It could be argued then that we would have potentially saved lives in New Jersey, irrespective of the laws in other jurisdictions.

For others, it is believed that insufficient evidence exists to conclude that lowering New Jersey's current capacity limit from 15 to a smaller number will have any measurable impact on gun violence. Under this school of thought, given the fact that we already are included in the small number of states with capacity limits, New Jersey's law enforcement energies and priorities are better directed to other areas in which reform is needed. *See* Stray, Jonathan, "Gun Violence in America: The 13 Key Questions (With 13 Concise Answers)," *The Atlantic*, Feb. 4, 2013 (observing that, "We don't really have good enough evidence to evaluate [certain gun control] strategies[,] but other policies "do actually seem to reduce gun violence, at least somewhat or in some cases").

Although the Task Force has been unanimous in all other questions, on this one issue of magazine size, we reached no consensus and therefore withhold any recommendation on whether to retain or reduce the current magazine limit, other than to recommend that policymakers further consider this question. There is, however, unanimity in the recognition that the balance of competing arguments would be different if the federal government were to re-instate a ban on large capacity ammunition feeding devices, because a national law might prove to be more effective in making large-capacity magazines less available. Furthermore, we believe that the State Police should collect and report detailed information about both the ammunition capacity and actual number of rounds loaded in all recovered crime guns. That data would provide more insight on how many cases might be affected by a change in the magazine capacity limit.

G. *Interstate Agreement to Share Information*

In the aftermath of the Newtown, Connecticut tragedy, the President called for changes in federal law and enforcement policy that would allow federal law enforcement officials to share more information with state and local authorities. Unless and until those changes actually occur, state and local officials across the nation should work cooperatively among themselves to share information about prospective gun purchasers and recovered crime guns.

In New Jersey, Attorney General Law Enforcement Directive 2008-1 requires local police to collect and provide information about recovered crime guns to determine whether they were reported stolen, their original purchase history, and based on ballistics testing, whether they were involved in other shooting incidents or crimes. This information is compiled and analyzed at the

State Police Regional Operations Intelligence Center (ROIC). The State Police Superintendent advised us that they are developing an intelligence sharing strategy to strengthen those procedures. He emphasized to us the importance that law enforcement authorities in other jurisdictions undertake similar efforts and share information that can help to identify crime trends, disrupt gun trafficking operations, and solve violent crimes. We therefore believe that our Attorney General should work with attorneys general and law enforcement officials in other jurisdictions to develop an agreement among participating states to share information and work collaboratively. See Recommendation 1.17.

V. Recommendations

1.1 *Clarify the Effect of Involuntary Outpatient Civil Commitment on an Applicant's Eligibility to Obtain a Firearm Purchaser Identification Card or Handgun Purchase Permit*

Under current law, a person who has been “confined” for a mental disorder may not be issued a firearms purchaser identification card or handgun purchase permit “unless the applicant produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from the disability in such a manner that would interfere with or handicap him in the handling of firearms.” N.J.S.A. 2C:58-3(c)(3). The term “confine” refers to an involuntary civil commitment ordered by a judge. This disqualification criterion was drafted well before the State enacted a law authorizing a court to order an involuntary outpatient commitment. See N.J.S.A. 30:4-27.1 et seq. The Title 2C statute should be amended to provide that a person who has been involuntarily committed to outpatient mental health treatment should not be eligible to obtain a firearms purchaser identification card or handgun purchase permit unless the court that ordered the commitment orders otherwise, or unless the applicant produces a certificate of a medical doctor or psychiatrist as would be required after a period of involuntary inpatient commitment.

1.2 *Clarify an Applicant's Duty to Disclose His or Her History of Mental Health/Addictions Evaluation and Treatment*

N.J.S.A. 2C:58-3(e) should be amended to provide that an applicant for a firearms purchaser identification card and/or handgun purchase permit must disclose whether he or she has ever been attended, treated, or observed for a mental or psychiatric condition by a psychologist, licensed clinical social worker, or any other licensed mental health care professional, and not only by a physician or psychiatrist. The statute should also be revised to make clear that an applicant must disclose whether he or she has ever been prescribed medication for a mental health or substance abuse condition.

1.3 *Require that Firearms Purchaser Identification Cards be Renewed Periodically*

Firearms purchaser identification cards should expire after a period of time after which the cardholder should be required to renew the card. The Governor and the Legislature should determine when firearms purchaser identification cards should expire, how to phase-in any such renewal requirement, how renewal background investigations should be conducted, and how to defray the costs of those periodic investigations.

1.4 *Require Courts to Order the Surrender or Seizure of Firearms Purchaser Identification Cards and Firearms Upon Conviction of a Crime, or Upon Involuntary Commitment*

When a person is convicted of a crime or is involuntarily committed under N.J.S.A. 30:4-27.1 et seq., the court overseeing the proceeding should be required to determine whether the person has been issued a firearms purchaser identification card and whether the person owns any firearms. The court should be required to order the person to surrender the card and any firearm(s), or direct police to conduct a search for and to seize the card and firearm(s), unless the card or firearm(s) had already been returned or seized at an earlier stage of the judicial proceedings. See Recommendation 1.7 (seizure following an arrest or initiation of civil commitment proceeding).

1.5 *Ensure Appropriate Punishment for the Failure to Comply with a Court Order to Surrender Firearms Purchaser Identification Cards or Firearms*

If a person provides false or misleading information to a court concerning possession of a firearms purchaser identification card or firearm, or if a person continues to possess a card or firearm after having been ordered by a court to surrender it, the person should be guilty of a crime that is subject to a mandatory minimum term of imprisonment and parole ineligibility under the Graves Act. In addition, in cases in which the court surrender/seizure order was based on a criminal conviction, the sentence imposed on the proposed new crime of failing to comply with the court order should be served consecutively to the sentence imposed on the conviction that constituted the disqualifying circumstance that had prompted the surrender/seizure order.

1.6 *Ensure Appropriate Criminal and Civil Sanctions for the Failure of a Gun Owner to Take Reasonable Precautions in Preventing Access by Minors or Persons Who Are Statutorily Disqualified From Acquiring or Possessing a Firearm*

The disorderly persons offense set forth in N.J.S.A. 2C:58-15 (concerning access to firearms by minors) should be upgraded to a fourth-degree crime and should be expanded to apply not only to access by minors but also access by any person who is subject to a disqualification criterion in N.J.S.A. 2C:58-3. When a violation of N.J.S.A. 2C:58-15 results in death or injury, the gun owner should be subject to civil liability for damages in a manner determined by the Legislature.

1.7 *Authorize Courts to Order the Seizure of a Person's Firearms Following an Arrest or Initiation of Civil Commitment Proceedings*

A system and procedures modeled after New Jersey's Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., should be established to authorize a court in its discretion to order the surrender or seizure and safekeeping of any firearms, firearms purchaser identification card, and/or handgun purchase permit in the actual or constructive possession of a person who has been arrested for an indictable crime, or against whom a proceeding for involuntary civil commitment has been initiated, or a mental health screening has been ordered. The law should also authorize a court to order the seizure of firearms kept in the residence of any such person, notwithstanding that the weapons are lawfully owned by another member of the household, unless the court is satisfied that adequate safeguards are in place to ensure that the person who has been arrested or is undergoing a civil commitment proceeding will not have access to the weapons.

1.8 *Encourage and Facilitate the Voluntary Surrender of Lawfully-Owned Firearms for Safekeeping During Periods of Crisis*

A program should be established that would allow a person to voluntarily turn over firearms to law enforcement authorities for safekeeping when the owner of the firearms or any other person (e.g., other members of the household, parents, etc.) is concerned that the weapons might pose a danger of harm as a result of a mental health condition or crisis. Voluntarily surrendered firearms should be returned upon request unless the law enforcement agency entrusted with safeguarding the weapons convinces a court that immediate return of the firearms would pose a danger of harm to any person within the reasonably foreseeable future. This safe deposit program should be well publicized so that concerned parents and family members become aware of it.

1.9 *Ensure Appropriate Punishment for the Unlawful Possession of, or Attempt to Acquire, Ammunition*

A person who is disqualified from acquiring or possessing a firearm (e.g., a convicted felon) who knowingly possesses or attempts to acquire any ammunition should be guilty of an offense of the same degree and carrying the same punishment as applies to the crime of unlawful possession of a firearm.

1.10 *Enhance Security Procedures for Remote Ammunition Purchases*

The State Police should develop regulations and guidelines to be followed by all persons who sell handgun ammunition by means of the internet or mail order to ensure that the seller verifies the identity of the purchaser, fully documents the transaction, and makes certain that the ammunition is delivered only to the registered address of the authorized purchaser.

1.11 *Modernize Firearms Purchaser Identification Cards to Include Cardholder Photographs*

Firearms purchaser identification cards should be modernized to include a photograph of the cardholder so that these cards would satisfy the definition of an identification document under federal firearms law and regulation. Consideration should also be given to upgrading these cards to include features that would facilitate secure electronic communication of information between the seller and the State Police.

1.12 *Require Sellers to Verify Buyers' Identity*

Until such time as firearms purchaser identification cards are upgraded to include a photograph of the cardholder, see Recommendation 1.11, State law should require a buyer to present to the seller a government-issued identification document that includes a photograph of the cardholder, along with his or her address and date of birth. Such photo-bearing identification should be required for all firearm-related transactions. State law should also expressly require the seller to examine and cross-check the buyer's firearms-related documents to detect any anomalies such as when the address on the person's personal identification credentials does not match the information on the firearms purchaser identification card or handgun purchase permit. In the event of any such discrepancies, the transaction should be prohibited and the seller should be required to promptly notify the State Police or other appropriate law enforcement authorities.

1.13 *Ensure Appropriate Punishment for Tampering with Official Firearms Documents or False Personation*

A person who knowingly alters or tampers with a firearms purchaser identification card or handgun purchase permit, or who knowingly provides false information on an application for an identification card or permit, should be guilty of an offense of the same degree and carrying the same mandatory minimum punishment as the crime of unlawful possession of a firearm.

1.14 *Require Purchasers to Declare Their Intention to Transfer Purchased Firearms/Ammunition to Another*

To help prevent and detect "straw purchases" of firearms and ammunition, a person other than a licensed retailer dealer who purchases a firearm or handgun ammunition should be required to execute a document made "under penalty" and declaring whether the firearm/ammunition is intended for ultimate use by the person, or is instead intended to be transferred to another person, in which event the identity of such other person(s) must be disclosed and recorded as part of the transaction. A person who purchases a firearm or handgun ammunition with the intent to transfer the firearm or ammunition to another but who conceals or misrepresents that intention should be guilty of an offense of the same degree and carrying the same mandatory minimum punishment as the crime of unlawful possession of a firearm.

1.15 *Enact a New Criminal Law to Specifically Prohibit “Straw Purchases”*

A new criminal law should be enacted making it an offense for a person to obtain or attempt to obtain a firearm or ammunition for another where the actor knows or reasonably should know that such other person is prohibited from purchasing or possessing a firearm. It should also be a crime when the actor purchases or attempts to purchase a firearm or ammunition with the intent to transfer the firearm or ammunition to another but conceals or misrepresents that intention. Any such straw purchase offense should be graded as a crime of the same degree, and carry the same mandatory minimum sentence, as the crime of unlawful possession of a firearm.

1.16 *Require Sellers to Report Tampering or False Information in the Course of a Firearms/Ammunition Transaction*

Any person who in the process of selling or transferring a firearm or ammunition has reason to believe that the buyer has altered or tampered with a firearms purchaser identification card or handgun purchase permit, has misrepresented his or her identity, or has provided false information as to the intended ultimate user of the firearm or ammunition, should be required to promptly disclose the suspected tampering, impersonation, or false representation to law enforcement authorities.

1.17 *Establish an Interstate Agreement to Share Information*

The Governor should call on the Attorney General to work with other state attorneys general and law enforcement officials to develop systems, practices, and procedures among states to share firearms-related information, including, but not limited to, information concerning recovered crime guns and spent ammunition shells.

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CHAPTER 2

URBAN VIOLENCE: THE NEED TO DEVELOP A SEPARATE, COMPREHENSIVE STRATEGY TO ADDRESS THE DISTINCTIVE ROOT CAUSES OF NEW JERSEY'S URBAN GUN VIOLENCE

I. The Toll That Persistent Gun Violence Takes Upon Urban Residents

No discussion of the root causes and effects of violence in New Jersey would be complete without attention to the gun violence that occurs with alarming frequency in some of our urban communities. For far too many New Jerseyans, the sound of nearby gunshots is a constant reminder of the risk that at any moment, and without warning, an innocent victim of any age might be caught in the crossfire of rival gangs or other perpetrators.

The cumulative effect of these repeated episodes of gun violence in our urban neighborhoods erodes the quality of life in ways and to a degree that most New Jerseyans will never experience, or fully understand. At our public hearings, we heard from victims whose loved ones were struck down or endangered by stray bullets that had been fired recklessly and with complete indifference to the value of human life. We listened to pleas for help from parents who are afraid to let their children play outdoors, even in daylight, for fear that they will become unintended victims of “drive by” shootings, and other senseless and seemingly random acts of violence. We learned that in too many neighborhoods children are growing up in an environment where gunfire is considered to be normal, and where adolescents are misled into believing that joining a street gang somehow affords protection from violence, when in reality, it has the opposite effect.

The root causes of urban gun violence are in many ways distinct from the underlying causes of other types of violence that we have addressed in this Report. The violence endemic to street gangs and criminal enterprises that traffic drugs or commit armed robberies as a principal source of income, for example, tends not to result from mental illness or a co-occurring disorder. Rather, most episodes of urban gun violence are committed in accordance with what is essentially a perverted business model devised by profit-minded criminal organizations that rely on gunplay to exert power over others, scare off (or kill) rivals, and terrorize communities so as to intimidate potential witnesses into impotent silence.

A comprehensive examination of the actions needed to address this form of organized, profit-based violence generally falls outside the scope of our mission, and we therefore defer to law enforcement authorities to consider the best ways, for example, to dismantle gangs and other criminal enterprises that resort to violence as a business practice. That is not to suggest that the answer to our State's evolving gang and drug trafficking problem rests solely on traditional law enforcement efforts that rely on arrests, prosecutions, and lengthy terms of incarceration. To the contrary, it is vitally important that we as a society provide constructive alternatives to gang membership, filling the emotional, social, educational, and vocational deficits in the lives of young

people that gangs now fill. The point, rather, is that the violence that is directly related to our State's evolving gang and drug trafficking problem deserves a separate, in-depth discussion well beyond the scope of our Report. We nonetheless offer a few comments on the nature and scope of the urban gun problem to underscore the urgent need for action, and to explain our recommendations to amend some of New Jersey's criminal gun laws to provide police and prosecutors with the best possible tools to respond to the evolving *modus operandi* of criminal street gangs and other profit-minded criminal organizations.

II. Building on the Foundation of Existing Urban Violence Reduction Initiatives

Much has been accomplished recently to address urban violence. Of special note for purposes of this Report, the Attorney General, working with local law enforcement officials and faith-based partners, recently conducted gun "buyback" programs in Camden, Trenton, Newark, Monmouth County, and Atlantic County to take dangerous firearms out of circulation. Firearms that are turned over are then destroyed, thus assuring that these deadly weapons cannot be used in the commission of any future crimes.

Some law enforcement professionals and academicians have in the past questioned the effectiveness of gun buyback programs because historically, very few if any of the firearms that were turned in for a cash payment were the type of guns likely to be used to commit crimes. The recent programs, however, bore unprecedented results, not only in the record-setting volume of guns collected, but in the comparatively high proportion of collected firearms that are unlawful *per se* (assault weapons and sawed-off shotguns) or that are handguns of the type commonly used by gang members and drug traffickers. Specifically, of the 9,153 firearms that have been turned in, 1,169 were determined to be unlawful weapons. Moreover, 3,700 of the firearms were handguns, which are the type of weapon most likely to be used in committing a crime.

One of the important lessons to be learned from the unprecedented success of these recent gun buyback initiatives is that the public appears to be more committed than ever to addressing the problem of senseless gun violence. We know that the recent tragedy in Newtown struck a nerve, touching every corner of America. But as some witnesses at the public hearings correctly observed, gun violence had been a prevalent occurrence in certain urban communities long before the Newtown shooting. The recent gun buyback programs in our urban centers suggest that we may finally have reached a tipping point with respect to public intolerance for gun violence. Working collaboratively, law enforcement officials, community leaders, and clergy can help to empower law abiding residents to live in safety without retreating into their homes in fear.

In the last two years, the Governor and Attorney General have also responded to urgent requests for help by local officials by deploying state troopers to assist local police departments to conduct patrols at places and times when violence is most likely to erupt. While these "force multiplier" operations may afford only a temporary, localized respite from chronic violence, they show that

intelligence-led policing strategies can be effective at maintaining order and keeping the peace. The State Police ROIC has pioneered information-sharing programs and the use of predictive analytics – powerful software applications, such as geospatial predictive crime mapping – that use information gathered by local law enforcement authorities to aid investigations, solve crimes, and predict the time and location of the next shooting.

Based on an analysis of data that showed that many gun violence crimes are committed along a narrow corridor of the State, the Attorney General created the Passaic River Corridor initiative, which combines resources from the State Police, Division of Criminal Justice, several county prosecutors offices, the State Parole Board, the Port Authority of New York and New Jersey, and federal law enforcement partners, including the FBI and DEA. The participating agencies share intelligence information and use that information to seize guns and arrest offenders who operate across municipal and county borders within the corridor.

The State Police and Division of Criminal Justice, working closely with county prosecutors and local police departments, have formed a Weapons Trafficking Bureau to strategically target and successfully prosecute significant gun trafficking operations that bring unlawful firearms into this State and into the hands of those who would use these weapons to commit violent crimes.

Aside from recent innovations in pursuing traditional law enforcement objectives (e.g., enhanced patrol, targeted arrests, and expedited prosecutions), progress also has been made in recent years with respect to community and faith-based programs that directly address some of the root causes of urban street crime and violence. These programs, which are designed to *prevent* violent crime, not just respond to violent episodes after the fact, may prove ultimately to be more important than traditional law enforcement efforts to incarcerate offenders only after they have committed acts of violence.

The State Police ROIC works with a Gun Violence Advisory Panel to share information with non-law enforcement partners, including academicians, social service providers, and trauma surgeons. Over the past two years, the ROIC has been providing information about gun violence to the Attorney General's Office of Community Justice and to Municipal Planning Boards. These boards are comprised of a diverse group of stakeholders from government, community and faith-based organizations, and law enforcement agencies to coordinate services for at-risk youth. The boards use the data provided by the ROIC to rigorously evaluate local core needs and risk factors that are then used to design strategic plans geared toward improving outcomes for juveniles, lowering the incidence of crime in the community, and strengthening families.

There are a number of community and faith-based programs that help to prevent the occurrence and recurrence of crime in urban communities. With respect to juvenile delinquency, several state agencies (including the Juvenile Justice Commission in the Department of Law and Public Safety, the Department of Children and Families, and the Administrative Office of the Courts), working with local partners, fund and lead efforts to work with at-risk and justice-involved youth.

In addition, organizations in the community are beginning to partner with governmental entities to create strategic plans directed at assisting at-risk youth.

For example, the Juvenile Justice Commission's nationally-recognized Juvenile Detention Alternatives Initiative relies on community-based services, rather than incarceration, to help low-level offenders keep from progressing to more serious crimes. YouthBuild is another program that targets young people ages 16 to 24 who have dropped out of school and who are at risk of criminal and/or gang activity.

With respect to adult offenders, the Department of Corrections, the State Parole Board, and the Attorney General have partnered on a wide range of programs designed to facilitate an offender's re-entry into the community by providing educational, vocational, and other transitional and support services. Re-entry task forces cover all 21 counties and bring together stakeholders from within and outside government to address the needs of ex-offenders in their community. Other new programs are designed to make substance abuse, discharge planning, and mental health screening and services available to persons coming out of county jails – a population that too often is ignored until they progress to commit more serious crimes that result in a State Prison term.

The foregoing is only a partial list of current programs and activities across the State that are designed to prevent the next act of violence from occurring.

III. The Distinctive Characteristics of Urban Gun Violence

While the nature and root causes of organizational, profit-motivated violence in our urban communities appear to be different from the root causes of the other types of violence that we have examined, there are important intersections. No meaningful discussion of school safety and security, for example, can ignore the corrosive influence of organizational violence in urban communities. Schools, after all, are not islands, but rather are integral parts of the neighborhoods they serve. The most stringent school security plans cannot keep stray bullets from flying across schoolyards or prevent street gangs from recruiting school-aged children. Once indoctrinated to gang culture and values, adolescent gang members can be used as Trojan horses to bring gang activities and influence inside the walls of even the most secure schoolhouse.

Educators and parents in our urban communities understand from firsthand experience how an educational environment is adversely impacted by the crime and violence that occurs in the neighborhood surrounding the school. This negative impact on the "climate" of the school results not just from the constant fear that guns and violence might find their way into the classroom, but also from the comparatively intrusive steps that are deemed necessary to protect schoolchildren from the threat of violence while school is in session. Many New Jerseyans who live in suburban communities may not be aware that metal detectors and point-of-entry book-bag searches are an everyday fact of life in many of our urban schools.

Despite important intersections between urban organized crime-related violence and other types of violence, the fact remains that the specific strategies and tactics that are needed to address persistent urban gun violence are different from the steps needed, for example, to prevent and plan responses for mass shootings. As noted above, law enforcement authorities believe that many if not most urban shooting events are in some way related either to criminal street gangs – a term that defies a simple or precise definition – or to less-formally structured criminal enterprises or individuals that distribute drugs and commit robberies as a source of income. We have been told that many gang-involved shootings arise spontaneously when an unplanned street encounter leads to a personal dispute (e.g., when a gang member perceives that he has been treated with disrespect) that escalates suddenly to fatal violence.

While it might be fair to characterize such confrontations as an extreme example of an anger management issue, these overreactions to minor provocations are not necessarily products of an emotional disorder that can be addressed through the enhanced mental health services we recommend. Rather, these episodes of violence, while committed in “hot blood,” are largely a product of the institutionalized arrogance that results from a gang member’s belief that precisely because he is a member of the gang, he must uphold its prestige and is free to act out without fear of consequences (at least with respect to the risk of arrest and successful prosecution).

State Police intelligence analysts coincidentally report a recent shift in the way that gang members handle firearms. Not long ago, gangs often used “community guns” that were secreted at designated locations for use by multiple members. See N.J.S.A. 2C:39-4a(2) (enacted in 2007 in response to the common practice of gang members sharing guns). While these community guns continue to be used by some groups, we are told by State Police crime analysts that gang members are now more likely than before to be carrying firearms on their persons, making those deadly weapons much more accessible for use during an impromptu street encounter. This weapons-carrying practice can fuel a vicious cycle – essentially an “arms race” – where gang members and unaffiliated drug dealers perceive the need to carry firearms at all times while out in public so as not to be caught unarmed in the event of a spontaneous confrontation with an armed rival.

It should be noted at this point that we have in this Report generally focused on the goal of keeping guns entirely out of the hands of those who are most likely to use firearms unlawfully. To address the urban gun violence problem, we also need to consider the narrower goal of modifying the behavior of those who have already acquired guns unlawfully by deterring them from carrying their weapons in crowded places. If a gang member who suddenly becomes motivated to commit an act of violence first had to leave the scene of the unplanned confrontation to retrieve a firearm, an actual shooting would at least be delayed, and might never occur, either because tempers will have had a chance to cool, or because the intended target will have left the scene before the shooter could return with a weapon. Reducing the incidence of spontaneous gun violence, moreover, can have cascading positive effects to the extent that acts of *planned* violence are often committed in retaliation for earlier unplanned shootings.

The Attorney General has asked us to consider revisions to our criminal gun laws that would support and facilitate an enforcement and prosecution strategy that focuses on apprehending gang members who are in immediate possession of a firearm while in a public place. Those targeted prosecutions would rely on the courtroom testimony of the law enforcement officers who seize unlawfully-carried firearms, rather than on the testimony of civilian witnesses, thus avoiding the vexing problem of witness intimidation. While such law enforcement and prosecution initiatives are generally beyond the scope of our mission, we agree with the Attorney General that this strategic approach to the urban gun violence problem would be more effective if our criminal gun laws were to be strengthened, as described below.

IV. Refining and Updating New Jersey's Criminal Gun Laws

New Jersey's current criminal gun laws are comprehensive, and generally are very strong. Various sentencing provisions that apply to gun crimes are often collectively referred to as the "Graves Act," named after the late Senator Frank Graves from Passaic County. These statutory provisions prescribe a mandatory minimum term of imprisonment and parole ineligibility when a defendant is convicted of certain gun-related crimes. See N.J.S.A. 2C:43-6c. In 2008, the reach of the Graves Act was significantly expanded by the Legislature when the mandatory minimum sentencing feature was for the first time applied to convictions for the "simple" unlawful possession of a handgun, rifle, or shotgun in violation of N.J.S.A. 2C:39-5. See L. 2007, c. 341. Prosecutors seeking to invoke the mandatory minimum sentence no longer had to prove that the defendant possessed the firearm while committing another crime, or with the purpose to actually use the firearm for some independent unlawful purpose.

When the Graves Act was expanded in 2008 to apply to the unlawful possession of a handgun, shotgun, or rifle, the Legislature omitted (perhaps unintentionally) the unlawful possession of an assault firearm from the list of gun possession crimes that were made subject to the mandatory minimum sentence. We agree with the Attorney General that the statutory anomaly should be fixed, and this might be accomplished simply by amending the Graves Act, codified in N.J.S.A. 2C:43-6c, to include a violation of N.J.S.A. 2C:39-5f (assault firearms) in the list of firearms possession offenses that are subject to a mandatory minimum sentence.

The Graves Act generally prescribes a minimum three-year term of parole ineligibility. However, this mandatory minimum sentence may be waived or reduced by the court on application of the prosecutor pursuant to N.J.S.A. 2C:43-6.2. This feature was enacted in 1982, shortly after the Graves Act took effect. Unlike more recently-enacted statutes that authorize a waiver or reduction of an otherwise mandatory minimum sentence, the Graves Act waiver statute provides prosecutors and sentencing judges with very little flexibility to account for the relevant circumstances. Under N.J.S.A. 2C:43-6.2 as it is currently written, there are only two sentencing options: the three-year period of parole ineligibility can be reduced to one year, or the defendant

can be sentenced to probation. A judge has no authority to impose, for example, a two-year or 18-month term.

The Attorney General has issued a Directive to ensure that the Graves Act is enforced appropriately by prosecutors. See Attorney General Directive to Ensure Uniform Enforcement of the “Graves Act” (November 25, 2008). This Directive recognizes the practical need to provide some incentive for guilty defendants to make a timely acceptance of responsibility by pleading guilty, which would conserve judicial and prosecutorial resources, and help to safeguard the right to a speedy trial for all defendants. The Attorney General Directive also recognizes, however, that it would be inappropriate in most gun cases for prosecutors to agree to a non-custodial, probationary sentence. The inflexibility of the Graves Act waiver statute thus leaves only one remaining option. Accordingly, the Attorney General Directive generally provides that the Graves Act mandatory minimum sentence will be reduced from three years to one year.

We believe that the Graves Act waiver statute codified at N.J.S.A. 2C:43-6.2 should be updated to provide more flexibility to tailor the reduction in the mandatory minimum sentence to account for aggravating or mitigating circumstances applicable to the offense and to the offender, and to provide incentives for guilty defendants to make a timely acceptance of responsibility. More flexibility in determining an appropriate reduction in the minimum sentence would also provide prosecutors with more opportunity to encourage defendants to cooperate with law enforcement authorities so as to apprehend and successfully prosecute more culpable gun law and violent offenders. The Attorney General plea negotiation Directive might be revised, for example, to provide that the extent of any negotiated reduction in the mandatory minimum term of parole ineligibility be informed by the defendant’s willingness to provide information about the source of the firearm that the defendant unlawfully possessed. In this way, the plea negotiation guidelines might ensure that defendants who refuse to disclose where and from whom they obtained their weapons are dealt with more sternly than those who cooperate in the identification and apprehension of their firearms suppliers.

Although the Graves Act generally provides for a three-year mandatory minimum term, current law provides for a five-year term of parole ineligibility if the sentencing court finds that there is a substantial likelihood that the defendant is involved in organized criminal activity (e.g., a street gang). See N.J.S.A. 2C:39-5i. Putting aside other statutes that require a five-year minimum term for certain repeat Graves Act offenders, see N.J.S.A. 2C:39-7 and 2C:43-7(c), at present, involvement in organized crime is the only statutory aggravating circumstance that increases the Graves Act minimum term. We agree with the Attorney General that there are other objective circumstances pertaining to the public safety dangers posed by the gun offender’s relevant conduct that should be taken into account in determining whether to increase the minimum sentence. Such additional aggravating circumstances might include:

- whether the firearm was an assault weapon;

- whether the unlawfully-possessed firearm was loaded with prohibited ammunition (*e.g.*, hollow point, dum-dum, or armor penetrating rounds);
- whether the unlawfully-possessed firearm was defaced (serial number erased), or was stolen;
- whether the unlawfully-possessed firearm was being carried in a public place or on or near school property, a public park, or public housing facility;
- whether the offender has previously been convicted of a crime or adjudicated delinquent for an offense that, if committed by an adult, would have constituted an indictable crime; or
- whether at the time of the present offense, the offender was on bail while awaiting trial for another charge.

With respect to the issue of bail, we note that the Governor recently proposed a constitutional amendment that would authorize courts in certain circumstances to confine dangerous offenders while awaiting trial in order to prevent further acts of violence. See Senate Concurrent Resolution 107 and Assembly Concurrent Resolution 153. Even without a constitutional amendment to authorize preventive detention in appropriate cases, there are steps that might be taken to enhance public safety by ensuring appropriate terms and conditions of pretrial release for persons charged with serious gun-related crimes. For example, the list of crimes with bail restrictions set forth in N.J.S.A. 2A:162-12 might be expanded to include all gun crimes that are subject to a Graves Act mandatory minimum sentence. Furthermore, the Legislature should consider whether to adopt a statute modeled after the Drug Offender Restraining Order Act of 1999, N.J.S.A. 2C:35-5.4 et seq., to authorize a law enforcement officer or prosecutor to apply for a court order that would prevent a person charged with certain gun or gang-related offenses from returning to the location at which he or she had been arrested.

Finally, strong steps need to be taken to discourage criminals from amassing large arsenals of firearms. Under our criminal drug laws, the seriousness of a drug trafficking offense is usually determined by the aggregate quantity of illicit narcotics involved. See N.J.S.A. 2C:35-5(c). More prolific drug dealers are dealt with more sternly than less prolific offenders. With our gun laws, in contrast, there is at present no upgraded crime or sentencing enhancement where the defendant is found in illegal possession of multiple guns. Rather, possession or use of each weapon is considered to be a separate offense.

That approach may at first glance appear to ensure appropriate punishment based on the defendant's offense conduct. However, as a practical matter, those convictions for each separate weapon will either be "merged" for sentencing purposes, or else the sentences imposed on those offenses will be served "concurrently." In practical effect, therefore, a person convicted of unlawfully possessing, for example, five firearms is likely to receive the same sentence as if he or she had been convicted of unlawfully possessing a single weapon.

In order to deter criminals from assembling arsenals, and recognizing that the unlawful possession of multiple guns is inherently more dangerous than the unlawful possession of a single gun, New Jersey's penal code should be amended to create a distinct and especially serious crime for unlawfully possessing or distributing multiple firearms, including so-called "community guns" that are in the joint and constructive possession of the members of an organization or participants in a conspiracy. This new offense or upgrade feature would not make criminal any conduct that is not already an offense, but would help to ensure that the seriousness of the crime reflects the dangers posed by the defendant's offense conduct. Different number thresholds might be used in determining the appropriate gradation or punishment (e.g., unlawful possession of at least five but less than 10 guns, possessing more than 10 guns, etc.). Alternatively, the law might be amended to provide guidance on when a court should impose consecutive sentences on convictions involving the simultaneous unlawful possession of multiple firearms. Either of these approaches would help to calibrate punishment to reflect the actual danger posed by persons who are disqualified from possessing even a single gun but who nonetheless maintain an arsenal of illegal weapons.

V. Recommendations

2.1 *Develop a Comprehensive Law Enforcement and Prosecution Strategy to Address Urban Gun Violence*

The Governor should call on the Attorney General to establish and oversee a standing Working Group comprised of all appropriate stakeholders, including county prosecutors, police chief executives, and community leaders in urban jurisdictions, to develop, implement, and periodically refine a comprehensive strategy to address urban gun violence. The strategy should not be limited to traditional law enforcement activities, but should also include community and faith-based programs. As part of the strategic planning process, the Attorney General should develop a toolkit of model programs and best practices, and should provide guidance and assistance on the appropriate and constitutional use of state-of-the-art crime-fighting technologies (e.g., information-sharing and predictive analytics systems, video surveillance systems, gunshot detection technology, and forensics analysis (including ballistics, DNA, etc.)). The strategy should also include a strong prosecution component, including guidance on plea bargaining, to take full advantage of New Jersey's tough gun and violent crime laws.

2.2 *Make the Graves Act Apply to Assault Firearms*

The Legislature should correct an oversight in N.J.S.A. 2C:43-6c so that the "Graves Act" mandatory minimum sentence applies to the unlawful possession of an assault firearm, and not just to the unlawful possession of a handgun, rifle, or shotgun.

2.3 *Permit Greater Flexibility in Reducing a Graves Act Sentence to Account for Aggravating or Mitigating Circumstances, and to Encourage Cooperation Agreements*

The statute that authorizes a waiver or reduction of the Graves Act mandatory minimum sentence, N.J.S.A. 2C:43-6.2, should be modernized to permit more flexibility in determining an appropriate reduction in the otherwise mandatory term of parole ineligibility so as to allow prosecutors to account for aggravating or mitigating circumstances, and to provide an incentive for gun offenders to make a timely acceptance of responsibility by pleading guilty.

2.4 *Ensure that Graves Act Sentences Reflect the Dangers Posed by a Defendant's Offense Conduct*

N.J.S.A. 2C:39-5i, which enhances a Graves Act sentence if the offender is involved in organized criminal activity, should be amended to account for other objective aggravating circumstances, such as when the unlawfully possessed firearm is an assault weapon, is loaded with prohibited ammunition (e.g., hollow nose or body armor penetrating bullets), is defaced or stolen, or is being carried by the defendant in a public place or on or near school property or a public park; or when the offender has previously been convicted or adjudicated delinquent for an indictable crime, or the unlawful possession of a firearm occurred while the defendant was on bail for another charge.

2.5 *Require Appropriate Bail for Graves Act Offenders, and Authorize Restraining Orders and Pretrial Release Conditions to Protect Public Safety*

The Legislature should add all gun crimes that are subject to a mandatory minimum sentence to the list of crimes with bail restrictions set forth in N.J.S.A. 2A:162-12, and should enact a statute modeled after the Drug Offender Restraining Order Act, N.J.S.A. 2C:35-5.4 et seq., to authorize restraining orders against persons charged with or convicted of gun or gang-related offenses, and not just drug offenses.

2.6 *Ensure Appropriate Punishment for Criminals Who Maintain an Arsenal*

The Legislature should create a new offense or upgrade feature to deal with offenders who unlawfully possess, use, or distribute multiple firearms. The degree of the crime should depend on the number of firearms that were unlawfully possessed, used, or distributed (e.g., unlawful possession of at least five but less than 10 guns, unlawfully possessing more than 10 guns, etc.). Alternatively, the law might be amended to provide guidance on when a court should impose consecutive sentences on convictions involving the simultaneous unlawful possession of multiple firearms.

CHAPTER 3

MENTAL HEALTH: THE INTERPLAY OF MENTAL HEALTH, SUBSTANCE ABUSE, AND GUN VIOLENCE

Mental illness does not, in and of itself, increase the chances a person will commit an act of violence with a gun or otherwise. In fact, those with a mental illness constitute a very small minority of violent criminal offenders and are more likely to be victims of crime than perpetrators. Rather, it is when mental illness co-occurs with other risk factors – including substance abuse, non-compliance with treatment or medication, a pattern or history of prior violent acts, or social isolation – that the potential for violence is elevated. The Task Force was impressed by the efforts of State agencies utilizing existing resources to provide care and treatment to individuals with a mental illness and/or a co-occurring substance use disorder. That said, and as this Chapter will discuss, we recommend that agencies improve collaboration to enhance service delivery and lower barriers to treatment.

I. Examining the Possible Link Between Mental Illness and Gun Violence

A. *Myths and Misconceptions*

As noted, the Newtown shootings highlighted the issue of mental illness and the role it may play in acts of wanton violence, particularly among young men. The Task Force was briefed by State officials, received testimony from experts in the field, and reviewed literature on this subject in formulating this discussion and attendant recommendations. While the Task Force thinks it appropriate that an examination of what role and to what extent mental illness is a contributing factor in gun violence, as the Report's discussion on other sources of gun violence indicates, that conversation must be grounded in an understanding of the many causes of violence in our society.

Further to that point, reporting conducted after Newtown may have contributed to certain myths and misconceptions. For example, there was widespread reporting suggesting that autism or Asperger's Syndrome caused the shooter's attack.¹² In doing so, these reports erroneously conflated autism and Asperger's with "mental illness," even though these afflictions are developmental disabilities and not "mental illnesses" as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th TR. While it is true that parents and clinicians working with low functioning autistic individuals can observe frustration-related physical aggression (as is the case with many forms of disability), in neither low- nor high-functioning autism is premeditated murder an illness-related occurrence.¹³ A recent large-scale review of studies found that "[o]verall, there

¹² C. Brainard, *Lanza, Autism, and Violence*, Columbia Journalism Review, (December 17, 2012).

¹³ A. Zarembo, *Speculation Over Autism, But Shooter's 'Why' Has No Easy Answer*, Los Angeles Times, (December 16, 2012).

is no indication in the current literature of an increased risk of violent criminal activity among individuals with high functioning autism spectrum disorder.”¹⁴ Similarly, it was reported that the shooter used weapons legally acquired by his mother; however, less reported was the fact that the shooter attempted to purchase a weapon on his own in the weeks before the attack, but opted against doing so because he did not want to wait for a background check and the state-required waiting period.¹⁵

The Task Force mentions these examples to underscore the need for any discussion of mental illness and gun violence to be rooted in fact and not conjecture. This is not to say that people who engage in mass shootings are mentally healthy; however, it is important to note that the overwhelming majority of individuals diagnosed with a mental illness lead lawful and productive lives in their communities. Millions of people are appropriately treated by doctors, psychologists, psychiatrists, licensed clinical social workers, and others each year and never engage in criminal activity. Moreover, and as discussed in this Report, New Jersey is recognized as having one of the most stringent processes for the purchase of a firearm and has already implemented many of the gun safety proposals being debated at the federal level.

B. *Stigma*

The Task Force is particularly mindful of the risk attendant to stigmatizing those who have mental health challenges and the fear that such stigmatization could act as a disincentive for people who need treatment to obtain it. Stigmatization of mental illness is pernicious in two ways. First, people who believe they will be unfairly singled out because of their decision to seek treatment may opt not to go forward with counseling or treatment, exacerbating their existing condition and posing a threat to their long term well-being. This acute risk was noted in The President’s New Freedom Commission on Mental Health Report, which observed: “[Stigma] deters the public from seeking and wanting to pay for care. Responding to stigma, people with mental health problems internalize public attitudes and become so embarrassed or ashamed that they often conceal symptoms and fail to seek treatment.”¹⁶ On the other hand, stigma may also be felt through the actions of others who attempt to avoid working with, socializing, or interacting with those with a diagnosed mental illness and who are being treated for it. A study cited by the Substance Abuse and Mental Health Services Administration found that “38% of Americans are unwilling to be friends with someone diagnosed with schizophrenia, 64% do not want someone

¹⁴ Lerner, et al., *Emerging Perspectives on Adolescents and Young Adults with High-Functioning Autism Spectrum Disorders, Violence and Criminal Law*, Journal of the American Academy of Psychiatry and the Law, Volume 40, Number 2, pg. 179 (2012).

¹⁵ R. Serrano, and A. Semuels, *Suspect in Massacre Tried to Buy Rifle Days Before, Sources Say*, Los Angeles Times, (December 15, 2012).

¹⁶ New Freedom Commission on Mental Health, *Achieving the Promise: Transforming Mental Health Care in America. Final Report*. Department of Health and Human Services Pub. No. SMA-03-3832, Rockville, MD (2003).

diagnosed with schizophrenia as a close co-worker, and more than 68% of those surveyed would not want someone diagnosed with depression to marry into their family.”¹⁷

Recent mass shootings may also contribute to the belief that those with a mental illness are more prone to violence than the general public. This largely inaccurate view of mental illness also serves to stigmatize individuals and reinforces a false stereotype. For example, people suffering from mental disabilities are more likely to be victims of crime than perpetrators.¹⁸ One study found that people suffering from severe mental illness (e.g., schizophrenia or bipolar disorder) were “two-and-a-half times more likely to be attacked, raped or mugged than the general population.”¹⁹ A second study found that people with severe mental illness were four times more likely to be victims of violent crime than members of the general public.²⁰ In short, whether stigma is internalized by a person who might otherwise seek treatment but for the risk that he will be looked at differently, or is externalized by people who voice negative attitudes toward those with mental illness, the end result is the same – an increase in a person’s sense of isolation and the reinforcement of negative stereotypes.

C. *Research on Mental Illness, Substance Abuse, and Violence*

Not only does research confirm that the overwhelming majority of those with a mental health disorder never commit a crime, one of the largest studies of the issue, the National Institute of Mental Health’s Epidemiologic Catchment Area (NIMH-ECA), found that people without a mental disorder but who abused drugs or alcohol were seven times as likely as those who did not have a substance abuse problem to commit a violent act. In comparison, people with anxiety disorders showed no greater propensity for violence than the overall population.²¹ While the NIMH-ECA did find that those diagnosed with schizophrenia and bipolar disorder did have a greater likelihood of committing a violent act as compared to the general public (16% vs. 7%), these results must be put into context. Schizophrenia is a comparatively rare illness, affecting roughly 1% of all Americans.²² Further, when compared to individuals with a substance abuse problem but without a co-occurring mental illness, the risk of violence among schizophrenics was lower, unless the schizophrenic was also a substance abuser.²³

¹⁷ B. Pescosolido, J. Martin, B. Link, et al., *Americans’ Views of Mental Health and Illness at Century’s End: Continuity and Change. Public Report on the MacArthur Mental Health Module, 1996 General Social Survey*, Indiana Consortium for Mental Health Services Research and Joseph P. Mailman School of Public Health, Columbia University (2000).

¹⁸ L. Appleby, et al., *Death By Homicide, Suicide, and Other Natural Causes in People with Mental Illness: A Population-Based Study*, *The Lancet*, 358, 2110-2112 (2001). See also, S. Fazel, M. Grann, *The Population Impact of Severe Mental Illness on Violent Crime*, *The American Journal of Psychiatry* (August 1, 2006).

¹⁹ V. Hiday, et al., *Criminal Victimization of Persons with Severe Mental Illness*, *Psychiatric Services*, 50, 62-68 (1999).

²⁰ J. Choe, et al., *Perpetration of Violence, Violent Victimization, and Severe Mental Illness: Balancing Public Health Concerns*, *Psychiatric Services* (February 1, 2008).

²¹ R. Friedman, *In Gun Debate, A Misguided Focus on Mental Illness*, *New York Times* (December 17, 2012).

²² National Institute of Mental Health, *The Numbers Count, Mental Disorders in America*, at <http://www.nimh.nih.gov/health/publications/the-numbers-count-mental-disorders-in-america/index.shtml>.

²³ S. Fazel, et al., *Schizophrenia and Violence: Systemic Review and Meta-Analysis*, *PLOS Medicine* (August 11, 2009).

Other studies confirm this conclusion. For example, a 2009 study in the Archives of General Psychiatry identified such factors as unemployment, divorce in the past 12 months, and a history of physical abuse as greater indicators of a person's likelihood of being violent in the next three years than mental illness.²⁴ The study noted that “[i]f a person has severe mental illness without substance abuse and a history of violence, he or she has the same chances of being violent during the next three years as any other person in the general population.”²⁵ Violence is correlated with substance abuse. One study found that 75% of those in addiction treatment reported a past incident of violent behavior such as mugging or assault with a weapon.²⁶ Treatment can be of great assistance to those with a substance use disorder in addressing their addiction and receiving guidance to avoid engaging in violent behavior. For those suffering with addiction and who get involved in the criminal justice system, diversion from prison and completion of a substance abuse program such as “drug court” has been shown to significantly lower recidivism rates.²⁷ Studies also find a strong connection between violence, substance abuse, and suicidal tendencies.²⁸ These links are important to consider, as those who are at risk of harming themselves may injure others instead.

D. Mental Illness as a Means of Predicting Future Violence

A failure to understand the respective risk that those with a mental illness may resort to violence as compared to a member of the general public may also influence our view on whether mental health professionals can accurately predict whether a person with a mental illness will commit an act of violence. Professor John Monahan, a researcher at the University of Virginia, notes that mental health professionals' accuracy in predicting future violent behavior by their patients is only “slightly better than chance” and that predicting something as rare as a mass shooting “is like trying to find a very small needle in a very large haystack.”²⁹ Professor Monahan's observations are echoed by Dr. Jeffrey Swanson, a professor of psychiatry at Duke University who compiled the NIMH-ECA figures. Dr. Swanson said: “Can we reliably predict violence? ‘No’ is the short answer. Psychiatrists, using clinical judgment, are not much better than chance at predicting

²⁴ E. Elbogen and S. Johnson, *The Intricate Link Between Violence and Mental Disorder: Results From the National Epidemiologic Survey on Alcohol and Related Conditions*, Archives of General Psychiatry (February 2009).

²⁵ *Ibid.* See also, A. Khan, *Are The Mentally Ill More Violent?*, Los Angeles Times (January 20, 2011).

²⁶ M. Burnett, et al., *Violence Perpetration and Childhood Abuse Among Men and Women in Substance Abuse Treatment*, Journal of Substance Abuse Treatment, 35:217-222 (2008); S.T. Chermack, et al., *Partner Aggression Among Men and Women in Substance Use Disorder Treatment: Correlates of Psychological and Physical Aggression and Injury*, Drug Alcohol Dependency, 98:35-44(2008). See also, M. Ilgen and F. Kleinberg, *The Link Between Substance Abuse, Violence and Suicide*, Psychiatric Times (January 20, 2011).

²⁷ New Jersey Adult Drug Court Program, New Jersey Statistical Highlights (February 4, 2013) at <http://www.judiciary.state.nj.us/drugcourt/njstats.pdf>

²⁸ Ilgen and Kleinberg, *supra*.

²⁹ M. Sanger-Katz, *Why Improving Mental Health Would Do Little to End Gun Violence*, National Journal (January 30, 2013).

which individual patients will do something violent and which will not.”³⁰ Finally, because a far greater segment of the population uses or abuses alcohol and/or drugs than are diagnosed with a severe mental illness, focusing attention solely on those with mental health disabilities, who themselves, in many instances, have no greater likelihood of committing a violent act than a member of the general public, will make a very small impact on lowering overall rates of violent crime.

In considering the nexus between mental illness and gun violence, these studies also factor into the role background checks and screening play in New Jersey. As discussed earlier, our State already prohibits access to firearms for those confined due to a mental disorder. Prior treatment or observation at a hospital or mental institution in either an inpatient or outpatient capacity are factors law enforcement can consider in approving or rejecting an application for a firearms identification card or handgun purchase permit. Moreover, because trained professionals acknowledge the difficulty in successfully predicting whether an individual with mental illness will become violent, requiring an individualized mental health screening for every applicant seeking a firearms identification card or handgun purchase permit is unwarranted.

E. *Mental Illness, Gun Violence, and Schools*

Mass shootings like the one in Newtown are not typically spontaneous occurrences, but rather the end result of a steady erosion of mental capacity that is often connected to broader experiences of shame, humiliation, and isolation, particularly among young men ranging in age from their teens to late twenties.³¹ In this way, while it might be true that mental illness is one of several factors that may play a role in a shooter’s ultimate act, a diagnosis of mental illness does not inevitably lead a person to commit an act of violence. In fact, because an attempt at mass violence is often the culmination of long-term struggles that include identifiable and treatable experiences such as shaming, humiliation, and ostracizing, opportunities exist to intervene in the lives of people who are at risk of becoming violent. A joint study conducted by the U.S. Secret Service (USSS) and the U.S. Department of Education (DOE) that examined mass shootings in schools in America found that 71% of attackers “felt persecuted, bullied, threatened, attacked, or injured by others” before they engaged in their acts of violence. Only 34% had received a mental health evaluation prior to their attacks, even though 78% had attempted suicide or had suicidal thoughts. The strong connection between prior attempts at suicide or suicidal tendencies among school shooters is notable. The USSS/DOE report did not find mental disorders (17%), alcohol or substance abuse (24%), or non-compliance with prescription medication (10%) prevalent within this population.³²

³⁰ Friedman, *supra*.

³¹ *Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States*, U.S. Secret Service and U.S. Department of Education, 11-12, 21 (2004) at <http://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf>.

³² *Id.* at 21-22.

The connection between suicidal ideation and mass violence is important to consider in the context of gun safety. The use of a firearm is one of the most common methods of suicide; yet New Jersey, with its strict gun control laws, has one of the lowest rates of suicide in the nation. This fact alone does not eliminate the chance that a young person will use a firearm to kill themselves or others; however, reducing access to guns gives an individual time to seek and obtain help in a time of need. This is particularly true for young people, who are more likely to act impulsively when prompted by rage or despair.³³ While experiencing trauma or suicidal thoughts does not mean a person will become violent toward others, a recent report issued by Mayors Against Illegal Guns reported that nearly half (46%) of recent mass shootings ended with the attacker committing suicide.³⁴

In addition, not only are attacks often pre-meditated, they are known to others, offering another opportunity for intervention. The joint USSS/DOE study found that in more than 80% of school attacks, at least one person known to the assailant had information about the attack before it happened. In nearly 60% of the cases, at least two people had such information.³⁵ Oftentimes, it is the assailant's peers who hear these comments but, as Katherine Newman, author of "Rampage: The Social Roots of School Shootings" notes, these statements are sometimes ill-defined and teen peers may struggle to separate serious threats of violence from mere bluster.³⁶ In today's world, where social media plays an ever more important role in the lives of adolescents, the opportunity for friends, family, and loved ones to be made aware of these threats and to report them is even more acute.

Intervention is not only important among teens and high schoolers but also for college students. For many students, the transition to college can be difficult and, when combined with environmental stressors, exacerbate the need for counseling and treatment on campus. Surveys show that nearly half of those students who visit a college counseling center do so for serious mental illness³⁷ and at least one report showed the emotional health of college freshmen at an all-time low.³⁸ Finally, many colleges do not offer after hours or weekend options for students coping with mental illness, leaving young people with limited options for treatment in lieu of emergency room care if they live away from home.

³³ S. Tavernise, *To Reduce Suicide Rates, New Focus Turns To Guns*, New York Times (February 13, 2013).

³⁴ Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings*, at http://libcloud.s3.amazonaws.com/9/5e/3/1252/mass_shootings__2009-13_-_feb_18.pdf.

³⁵ *Id.* at 24.

³⁶ K. Newman, *In School Shootings, Patterns and Warning Signs*, (December 17, 2012) at <http://www.cnn.com/2012/12/17/opinion/newman-school-shooters>.

³⁷ T. Gabriel, *Mental Health Needs Seen Growing At Colleges*, New York Times (December 19, 2010).

³⁸ J. Lloyd, *Mental Health Hits A Low For College Freshmen*, USA TODAY (January 30, 2011).

II. An Overview of State Mental Health and Addiction Services

A variety of State agencies coordinate, fund, and oversee aspects of mental health, substance abuse, and other social services relevant to the Task Force's mission. Accordingly, the Task Force received briefings from these agencies about the major programs for which they are responsible to get a better understanding of the scope of their activities, and sought their input about key needs and ways to improve collaboration.

A. *The Department of Children and Families*

The Department of Children and Families (DCF) is the lead state agency focused on children and families, providing a wide range of programs and services for children, adolescents, young adults, and families. Among DCF's areas of focus are child protection, child behavioral health services, crisis intervention and support, and specialized programs aimed at domestic violence prevention, traumatic loss support, and assistance for youth aging out of the foster care system.

DCF's behavioral health care is coordinated through a single point of contact, PerformCare New Jersey. Depending on the needs of the child and family, these services include a case management strategy focused on supporting children with complex behavioral challenges, mobile response within an hour to provide immediate crisis intervention for up to 72 hours, and continued stabilization services for up to 8 weeks; and family support organizations that provide peer-to-peer advice, education, and information to support parents in caring for their child with special needs. PerformCare also manages out-of-home services for children and families, and a wide range of residential treatment options for children and young adults up to age 21. PerformCare has also implemented a web-based system where all treatment plans and progress reports are electronically filed so that care is properly documented and providers can access information at any time.

DCF provides general assistance to youth and adolescents, including a 24-hour youth helpline certified by the American Association of Suicidology that answers thousands of calls each month from youth and young adults; county trauma response teams that help schools and communities provide therapeutic response following disasters, homicides, suicides, and other traumatic losses; and school-based youth services in roughly 100 schools that provide a resource for youth who may not be able to access therapeutic support outside the school setting. DCF also has at least one Certified Alcohol Drug Counselor in each of its 21 county Division of Youth and Families (DYFS) offices. These CADCs can accompany DYFS staff during field visits where necessary and provide assistance in treating at-risk youth.

DCF supports programs related to domestic and dating violence, and supports intervention programs aimed at mitigating root causes of violence against women. DCF has also expanded its intervention work with domestic violence batterers as a way to address this serious act of violence and recognizing its additional, negative impact on children who witness this horrific crime.

B. *The Department of Human Services*

The Department of Human Services, Division of Mental Health and Addiction Services (DMHAS) is the State mental health authority and single State authority on substance abuse that plans, evaluates, and regulates New Jersey's mental health and substance abuse prevention, early intervention, treatment, and recovery efforts. DMHAS is responsible for the operation of three regional adult psychiatric hospitals and one specialized forensic hospital providing maximum security. In addition, the Division oversees New Jersey's system of community mental health and addictions services, which are currently provided through the administration of third-party and fee-for-service contracts with private, non-profit agencies and governmental entities. These agencies provide a full array of services, including early intervention, emergency screening, outpatient and intensive outpatient mental health and addictions services, partial care and partial hospitalization, case management, and long- and short-term residential treatment. DMHAS has instituted strict guidelines requiring its contractors to implement evidence-based violence and trauma prevention programs that meet best practice standards in the industry.

DMHAS's mental health network includes approximately 120 not-for-profit contracted community provider agencies, the State psychiatric hospitals, five county-operated psychiatric facilities, and 24 short-term care facilities that operate as part of the continuum of mental health services provided in New Jersey. The community mental health system of services provides for three levels of care in each county: (1) acute care programs and crisis stabilization; (2) intermediate care and rehabilitation; and (3) extended/ongoing support programs. Persons with serious mental illness are the primary target population for funded services; however, priority is also given to persons with special access needs, including older adults, ethnic and linguistic minorities, and individuals with co-occurring mental health and substance abuse problems, hearing impairment, developmental disabilities, and criminal justice involvement.

In 2012, more than 303,000 people were served by a DMHAS-funded mental health provider, including more than 123,000 people who received outpatient services, 94,000 who were provided an initial screening for services and more than 3,100 who were placed in residential treatment. DMHAS's reach spans the entire State, including 23 Designated Screening Service Programs serving all 21 counties that provide screening, assessment, crisis intervention, referral, links to other community providers, and crisis stabilization services 24 hours a day, 7 days a week, 365 days a year. DMHAS also supports strategies such as Early Intervention Support Services (EISS), which emphasizes short-term, recovery-oriented crisis intervention and stabilization services. In this way, treatment professionals can assess the person in need of care and/or advise family members of options if the situation deteriorates, while also putting law enforcement on notice of this potential danger.

DMHAS coordinates the treatment and care for the almost 3,600 individuals committed to the four regional adult psychiatric hospitals and one forensic hospital. In addition, DMHAS is responsible for the implementation of programming and services for those individuals court-

ordered into Involuntary Outpatient Commitment (IOC). This recently enacted law permits judges to require treatment in the community for individuals who are not willing to do so voluntarily, but are found to be dangerous enough because of a mental illness to require supervision. IOC programs provide comprehensive outpatient services, and a coordination and referral system that addresses the needs of individuals ordered to outpatient treatment. To date, IOC programs are funded by DMHAS in six counties and have served 69 individuals, with 46 people still actively enrolled.

DMHAS's substance abuse services include a full continuum of care of residential and outpatient treatment for indigent consumers throughout the State. Through partnerships with other State entities, DMHAS also provides services for multiple special populations, including those involved with the criminal justice system. In 2012, more than 53,000 unduplicated admissions to a treatment facility or outpatient care were reported, with nearly half (44%) of those admitted for an addiction to heroin and 31% referencing alcohol. For residential care, this includes everything from basic detoxification to short- and long-term treatment. For those receiving outpatient care, DMHAS services include early intervention, intensive outpatient, ambulatory detoxification, and medication assisted therapy.

DMHAS receives funding from the Administrative Office of the Courts to provide the continuum of care for defendants diverted into community-based substance abuse treatment programs (*i.e.*, Drug Court) or into intensive probation supervision, and from the Department of Corrections and State Parole Board to provide short- and long-term residential substance abuse treatment to inmates and parolees. At the county level, DMHAS funds Justice Involved Service programs in 15 county jails where those transitioning back into the community who may suffer from mental illness or co-occurring mental health and substance disorders are linked to services upon their release. Finally, DMHAS provides substance abuse treatment services to adolescents under the custody of the Juvenile Justice Commission; however, that service will be transferred to the Department of Children and Families beginning in fiscal year 2014.

The Department of Human Services is also home to the Governor's Council on Mental Health Stigma, whose mission is to combat mental health stigma through outreach and education, raising mental health awareness and reinforcing the message that mental health stigma should not be tolerated. Members of the Council include professionals from the fields of health, mental health, media, government, business, law enforcement, and education.

C. *Criminal Justice and Law Enforcement*

The Department of Corrections (DOC) conducts an initial screening of all inmates as they are processed through the Central Reception and Assignment Facility and before transfer to the receiving correctional facility where the inmate will be housed. The DOC maintains a list of inmates identified as having a mental health need. Those inmates are placed on a roster and can access health care through the correctional staff. The DOC advised the Task Force that overall,

those on the mental health roster who are incarcerated on a weapons or firearms charge make up slightly less than 3% of the overall state prison population. DOC also has the ability to move inmates nearing release into specialized halfway house programs that offer mental health or substance abuse programming. DOC also provides discharge planning to all inmates, which includes, if appropriate, referrals to health care providers in the community. At this time, DOC does not maintain records of whether inmates follow-up on these appointments.

The State Parole Board, which oversees all those released on parole, and the Administrative Office of the Courts, which oversees those adjudicated to a term of probation, provide some mental health-specific supervision. Parole officers are encouraged to work with parolees to ensure they are going to appointments and taking any medication prescribed to them. The Parole Board also provides a contracted, specialized mental health program in Camden offering wrap-around mental health treatment services for parolees with a diagnosed mental illness. Similarly, the Administrative Office of the Courts has placed a greater emphasis on the mental health needs of probationers by hiring and training probation officers who work specifically with individuals diagnosed with a mental health disability. While these efforts do not cover every parolee or probationer, they do illustrate the greater emphasis being placed on this subject by these agencies.

The Task Force was also briefed on State efforts to train law enforcement officers in improving their understanding, detection, and response to people experiencing psychological trauma. Crisis Intervention Team (CIT) training is an innovative national model that provides an intensive, 40-hour training curriculum to police officers, mental health professionals, and advocates on how to appropriately respond to people experiencing a behavioral crisis who pose a risk to themselves or others. In New Jersey, nearly 700 police officers from more than 60 law enforcement agencies have become certified CIT officers through the completion of the 40-hour CIT training. In addition to this evidence-based program, the Task Force was made aware of at least one other, less formal program offered by mental health practitioners to police departments. In Monmouth County, law enforcement is provided with annual in-service training from mental health professionals geared toward providing general knowledge and information about engaging with people in the community who may have mental illness, and resources that are available to them.

The Task Force was also briefed on a program that does not touch directly on the issue of mental illness and gun violence, but is worth mentioning as a potential best practice for prosecutors interested in offering treatment alternatives to defendants with a diagnosed mental illness. Union County Prosecutor Theodore J. Romankow leads an initiative focused on diverting defendants accused of low level offenses (primarily people accused of third- and fourth-degree non-violent offenses) with an identified mental health diagnosis out of prison and into treatment. A study conducted by the University of Medicine and Dentistry–New Jersey showed that among those defendants who completed the diversion program, two-thirds had yet to be re-incarcerated after five years, while two-thirds of those who did not complete the program had been re-incarcerated.

III. Recommendations

As a general matter, people with mental illness pose no greater threat of committing a violent act than members of the general public. Indeed, as the Task Force found, those suffering from mental illness are more likely to be victims of crime than perpetrators. It is typically when other risk factors, such as substance abuse, non-compliance with treatment, or trauma present along with mental illness that the chances of violence may increase. For teens and adolescents, social isolation, shaming, and ostracizing are also experienced by those who commit acts of mass violence. Accordingly, an emphasis on early intervention and prevention, and case management and services for those who have a mental illness along with one or more of these co-occurring indicators, should be emphasized. While investing additional dollars or resources into these areas may be necessary, savings may be realized through less reliance on hospital-based care in emergency rooms and inpatient programs.

3.1 *Create an Interagency Working Group on Violence Reduction*

New Jersey experiences approximately 700 suicides and 400 homicides each year. Many State agencies, including ones responsible for law enforcement, criminal justice, mental health and substance abuse treatment, housing, economic development, and education are impacted by these deaths, creating a need for a cross-discipline and coordinated approach to violence prevention. This is particularly true for teens and young adults. Violence is the second leading cause of death for people age 15 to 24, with homicide being the leading cause of death among African-American males and the second leading cause of death among Hispanic-American males. There is also a need to understand and address how violence impacts those who suffer from mental illness and/or substance use disorder and the families and loved ones who support them.

The Task Force encourages the creation of an interagency working group comprised of representatives from the Departments of Law and Public Safety, Corrections, Health, Human Services, Children and Families, and Education, the Juvenile Justice Commission, the State Parole Board, and university research partners to produce a multi-disciplinary approach aimed at decreasing violence, particularly among youth, through prevention efforts that will promote safer and healthier communities and highlight the importance of de-stigmatizing mental illness and encouraging early intervention. In drafting its strategy, the working group should take into account not just existing resources at the State level, but consider ways that local partners, grassroots organizations and groups outside of government could be mobilized to advance this effort. Among the working group's objectives should be:

- Prevention and Intervention: The fact that mass shooters often telegraph their behavior affords public health professionals, school administrators, and family and friends opportunities to intervene and reduce the chances that someone who is showing signs of diminished mental capacity will commit an act of violence. This would include: (1)

ensuring that teens and young adults can speak not just with counselors, but with other trusted adult support figures such as teachers and clergy, about their problems; (2) continuing efforts to root out school bullying; (3) encouraging family members, neighbors and friends to speak out when they believe a loved one is at risk of harming himself or others; (4) providing treatment targeted at identifying and stemming aggressive tendencies (e.g., anger management); (5) educating youth and parents about the warning signs of violence and the negative consequences felt by teens and young people who are ostracized, isolated, and experience despair; (6) reviewing policies and procedures at colleges and universities so that students who experience crisis after hours or over the weekend can access care; (7) offering training to school personnel in ways to recognize and address students who appear to be exhibiting signs of mental illness; and (8) highlighting the need for friends and family to be aware of what teens and adolescents say on social media and to report comments that suggest a young person is at risk of doing harm to themselves or others.

- Training Curriculum: Another way to advance prevention efforts, share information and elevate awareness of the risks attendant to social isolation, shaming, and humiliation among teens, adolescents, and college students is through training modules for those who are in close and frequent contact with them. The Task Force recommends the interagency working group develop an evidence-based training curriculum that encourages collaboration and partnership among those who interact with students in high school and college, with an emphasis on early warning signs of mental health problems, de-escalation skills, and seamless referral for screening and evaluation where needed.
- Mental Health Parity: New Jersey experienced a major step forward in its ability to offer health care by opting into the Medicaid expansion under the Patient Protection and Affordable Care Act. It is estimated that roughly 300,000 additional people will be able to access treatment through this provision. The Task Force applauds this decision and, as a further step toward increasing access, recommends that the interagency working group review whether full mental health benefit parity should be provided through State health insurance plans. Currently, health plans that cover a large segment of public employees have opted out of the federal parity requirement, meaning items such as co-pays, annual and lifetime caps, and office visits for mental health do not have to be offered at the same level, number or amount as general health care services. Mental health parity is limited to coverage of “biologically” based ailments, including schizophrenia, depression, paranoia, and autism³⁹; however, an ailment such as Post Traumatic Stress Disorder, which would likely be experienced by individuals who survive a mass shooting, is not. In conducting its examination, the working group should give consideration to the impact opting into mental health parity requirements would have, whether reversing the opt out would have

³⁹ A. Kitchenman, *Bill Seeks to Close Gap in Coverage for State Employees*, New Jersey Spotlight (January 23, 2013).

a meaningful impact on insurance rates and whether full mental health parity would improve access to care and treatment by those covered by these health plans.

- Workforce development: The Task Force found that improving access to mental illness and substance abuse treatment could also be aided if viewed as a workforce issue, specifically, by addressing the need for more nurses, licensed alcohol and drug counselors, licensed clinical social workers, psychologists, and psychiatrists. As with many forms of higher education, these fields require a significant commitment of time and money on behalf of students interested in obtaining the academic and professional qualifications required for certification. One pilot program, launched by the Rutgers School of Social Work in partnership with DMHAS, offers students the opportunity to obtain the credit hours necessary to take the exam required to become a Licensed Clinical Alcohol and Drug Counselor while obtaining a Master of Social Work degree. DMHAS pays for the clinical alcohol and drug counselor courses, allowing students to mitigate tuition costs while attaining appropriate accreditation in both fields. The Task Force recommends that the working group focus on strategies that will ensure workforce expansion in fields like licensed clinical social work, nursing, and psychiatry over the next decade while encouraging students in those disciplines to work in the public or community health systems by offering loan forgiveness or modification to do so.
- Involuntary Outpatient Commitment: IOC can be achieved in one of two ways: via commitment based on a finding that the individual is a danger to himself or others due to a mental illness in the foreseeable future, or converted to IOC from an involuntary commitment status during a civil hearing where the continued need for commitment is reviewed. Since IOC's inception, all but a few of the IOC decisions have been through the latter-described conversion process, even though either option is permissible. The Task Force recommends that the working group evaluate the language and overall commitment standard to ensure that both options for IOC are utilized when appropriate.
- Civil Commitment: The Task Force was advised that current statutes and case law governing involuntary civil commitment may result in inadvertently taxing the acute care system by placing some individuals in State hospitals that may not provide the proper type or level of care appropriate to their condition. In addition, and unlike the adult system where screening processes have been codified, civil commitment for minors is not statutory but is a function of case law and court rule. Accordingly, the Task Force recommends that the working group examine current commitment laws and regulations that govern involuntary inpatient commitment to determine whether amendments are needed to emphasize psychiatric criteria as the primary basis for inpatient admission, in addition to existing behavioral criteria and whether a juvenile-specific screening law should be proposed to create uniformity in these determinations.

- **Public Information Campaign:** The Task Force was briefed on a broad range of programs and services in the community; however, a common theme mentioned by those with whom we spoke was the lack of awareness among people in our State about the availability of those services. Therefore, the Task Force recommends that the working group develop a comprehensive public information campaign utilizing all forms of media, communications and technology to better inform New Jerseyans about these critical programs.

3.2 *Place Greater Emphasis on Early Intervention and Crisis Prevention*

Individuals who are experiencing emotional difficulties that do not rise to the level of emergency room care or police response offer an opportunity for early intervention by clinicians. Preventative care may de-escalate crisis situations before they get out of hand, reducing the need for more meaningful intervention. The Task Force recommends greater emphasis on this model of short-term, recovery-oriented crisis intervention through programs like EISS that meet the needs of those experiencing acute mental health needs.

3.3 *Prioritize Those in Crisis*

Early intervention is also appropriate in responding to young people in crisis. Emergency rooms are often utilized for assessment when a child makes a statement or does something that is perceived as potentially dangerous; however, emergency rooms generally do not yield the best information or evaluation of systemic issues being experienced by a teen or adolescent. While some communities have outpatient crisis clinics or mobile outreach clinicians who can diagnose and assess at-risk children, the Task Force recommends expansion of outpatient crisis clinics and mobile outreach programs that offer supportive services for at-risk teens and adolescents, with a particular emphasis on young people presenting with suicidal ideation.

3.4 *Expand Access to Outpatient Services*

The Task Force supports efforts to improve capacity for mental health and substance abuse treatment by expanding access to outpatient licensed clinical treatment services so that triaging of these individuals reduces strain on emergency services. This would include counseling services, therapy, and psychiatry, or advanced nurse practitioner care for medication management. Further, and based on research discussed in this Report, an emphasis on co-occurring mental illness and substance abuse should be prioritized.

3.5 *Provide Increased Access to Substance Abuse Services*

For consumers who present at screening centers or other community-based points of entry with substance use disorders or co-occurring substance use disorders and mental illness, greater

resources to support triaging and integrated treatment options such as detoxification, outpatient treatment, and/or managed residential treatment are recommended. This would allow for leveraging of existing resources such as the 211 helpline, which provides information on assistance services, and qualified agencies that are already approved to provide care.

3.6 *Launch a Public Outreach Campaign to De-stigmatize Mental Illness*

The Task Force recommends funding be made available for the Governor’s Council on Mental Health Stigma to conduct outreach at the local level through media and public service announcement campaigns, meetings and seminars, and other forms of communication to highlight the importance of combating the stigma associated with mental illness.

3.7 *Allow for an Exemption so that Designated Out-of-State Authorities Can Confirm NICS Records*

Under N.J.S.A. 30:4-24.3, the release of records related to individuals “presently or currently receiving services in a non-correctional institution” or “for whom services in a non-correctional institution shall be sought” are kept confidential except in a few circumstances. One of those exemptions is when “disclosure is needed to comply with the data reporting provisions of the NICS Improvement Amendments Act of 2007.” This allows for the uploading of involuntary commitment records to NICS. The Task Force has been advised that, on occasion, an out-of-state authority inquires about records of New Jersey residents seeking to purchase a weapon in that state. Current law does not allow the Administrative Office of the Courts to release information under one of the existing confidentiality exemptions. Accordingly, the Task Force recommends the Legislature consider amending this statute to permit the confirmation, by the Administrative Office of the Courts to out-of-state agencies, of court orders submitted to the NICS database.

3.8 *Identify and Provide Assistance for Individuals in High-Risk Circumstances*

Ex-offenders being released from State prison or a county correctional facility who have been diagnosed with a mental illness often have limited capacity or access to needed treatment. In some instances, these individuals are simply uninterested in the referrals or assistance offered to them. However, for those who are attempting to access care in the community, agencies should identify ways to expand access to case management and treatment, and prioritize those with transitional and permanent housing needs.

- State Corrections: The Task Force recommends DOC implement a process for monitoring whether inmates referred to health or mental health providers follow-up on those appointments, and to collaborate with Parole District Offices in ensuring those referred to treatment are compliant.

- County Corrections: The Task Force recommends funding be provided to DMHAS so its Justice Involved Service initiative can be expanded to the six county jails that are not currently covered by the program.

3.9 *Train Law Enforcement to Identify Those in Crisis*

Training that educates law enforcement about mental illness and the appropriate response to people experiencing crisis decreases the chances that an incident will end in harm to the person in crisis, innocent bystanders, or law enforcement.

- Enhanced CIT Training: The Task Force recommends increasing funding so that CIT training can be made more broadly available to interested law enforcement agencies and police departments. Additional funding may also provide greater flexibility in the delivery of the 40-hour training curriculum.
- In-Service Training: The Task Force recommends that the Attorney General issue guidance to county prosecutors and law enforcement, encouraging them to work with mental health treatment providers in creating in-service training curricula modeled on the Monmouth County partnership discussed previously.

3.10 *Carry Out Mental Health or Addiction Evaluations in Limited Circumstances as Part of a Background Investigation*

Many persons who have been treated by a mental health care or substance use disorder professional are no more likely than others to commit an act of gun violence. The Task Force does not think an applicant for a firearms purchaser identification card or handgun purchase permit should be required to submit to a mental health or substance abuse evaluation conducted by a mental health or addiction professional unless the law enforcement agency reviewing the individual's application has an articulable reason to believe that, if not properly treated, the person might pose a risk to public safety if permitted to own a firearm. Further, no application for an identification card or permit should be denied for mental health reasons without providing the applicant an opportunity to provide information reflecting his or her fitness to own a firearm. The Task Force leaves it to those agencies responsible for these applications to determine what information they might consider in making such determinations.

CHAPTER 4

VIOLENCE IN THE MEDIA: UNDERSTANDING THE POTENTIAL IMPACT OF VIOLENT MEDIA, AND ENSURING WE MAKE APPROPRIATE MEDIA CHOICES FOR OUR CHILDREN

Anders Breivik, who murdered 69 teenagers in Norway in 2011, claimed that he used the video game “Call of Duty: Modern Warfare 2” as a military simulator to help him practice shooting people. Eric Harris and Dylan Klebold, who murdered 12 students and one teacher in the Columbine High School massacre in 1999, were allegedly obsessed with the video game “Doom.”⁴⁰ Indeed, in the immediate aftermath of many mass shootings, it is difficult to find a discussion of those events that does not raise the issue of violence in the media, particularly violent video games.

Governor Christie recognized that a comprehensive look at violence in today’s society necessarily includes a discussion about violent movies, music, and games. In a town hall meeting in Belmar, NJ, less than a week after the Newtown tragedy, the Governor said that focusing only on gun control would miss the bigger picture, which should include a discussion on issues of mental health, substance abuse, and violence in the media. Specifically, the Governor stated that

We have to deal with the idea of violence in our society through the media, and through the video games that are played by many of our children. [In reference to reports that the Newtown shooter spent many hours playing the video game titled “Call of Duty”], I can’t imagine that a young man sitting and playing that kind of realistically violent game for hours and hours, day after day, does not become desensitized to the real life effects of violence.⁴¹

One of the first pieces of proposed federal legislation related to the Newtown tragedy was a bill to study the effect of violent video games on children.⁴² Also, in response to the recent task force on gun violence led by Vice President Joe Biden, President Obama urged Congress to provide \$10 million for the Centers for Disease Control and Prevention to conduct further gun violence research, including investigating the relationship between video games, media images, and violence.⁴³

⁴⁰ *Youth Violence: What We Need to Know, Report of the Subcommittee on Youth Violence of the Advisory Committee to the Social, Behavioral and Economic Sciences Directorate*, National Science Foundation, at 2 (Feb. 1-2, 2013), at http://wolf.house.gov/uploads/Violence_Report_Long_v3.pdf, (hereinafter, NSF Report).

⁴¹ Full town hall remarks from on Sandy Hook Elementary shootings in Newtown, CT, Governor Chris Christie (Dec. 20, 2012), at http://videos.nj.com/star-ledger/2012/12/full_town_hall_remarks_from_ch.html.

⁴² S. 134, 113th Cong. (Jan. 24, 2013).

⁴³ *Now Is The Time: The President’s Plan To Protect Our Children And Our Communities By Reducing Gun Violence*, at 8, (Jan. 16, 2013), at http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf.

While public debate on the link between violent media and aggressive violent behavior can be contentious, especially in the wake of a shooting rampage, the Task Force believes it is necessary to address the issue here. Studies show at least some correlation between violent media and violent behavior. Of course, violent behavior is very complex and caused by multiple risk factors. Yet, one possible risk factor is exposure to violent television programs, movies, music lyrics, and video games.⁴⁴ Accordingly, the Task Force has conducted an inquiry into the body of research regarding media violence, with a specific focus on violent video games, and its effect on human behavior.

I. Studies in Conflict

Any review of the relevant literature in the field of violent media reveals two clearly opposing views. Generally, the public health community finds clear and convincing evidence that media violence is one of the *causal* factors of real-life violence and aggression. Opponents of that view, which include both research psychologists and groups such as the Entertainment Merchants Association and Entertainment Software Association, find no scientific link between virtual violence and actual violence. Both points of view are discussed here.

The medical community has been concerned with the issue of violent media since the 1950s. Indeed, based on a growing body of evidence, the U.S. Surgeon General issued a special report in 1972 on the public health effects of media violence. Ten years later, the National Institute of Mental Health issued a comprehensive review regarding the research on media violence and its effects, outlining concerns about children's psychological health.⁴⁵

In July 2000, the American Academy of Pediatrics (AAP) was joined by the American Academy of Child & Adolescent Psychiatry, the American Psychological Association, the American Medical Association, the American Academy of Family Physicians, and the American Psychiatric Association to issue an unprecedented Joint Statement on the impact of entertainment violence on children. That Joint Statement concluded as follows:

[W]ell over 1000 studies . . . point overwhelmingly to a causal connection between media violence and aggressive behavior in some children. The conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children.

⁴⁴ E.g., Bushman, *et al.*, *Media Violence and Youth Violence*, NSF Report, 12 (February 2013).

⁴⁵ *Media Violence*, 124 PEDIATRICS 1495 (Nov. 2009) (published by the American Academy of Pediatrics), <http://pediatrics.aappublications.org/content/124/5/1495.full.pdf+html>.

While noting that the effect of media violence on children is complex and variable, the Joint Statement discussed several measurable negative effects of children's exposure to violent entertainment:

- children are more likely to view violence as an effective way of settling conflicts, and that acts of violence are acceptable behavior;
- it can lead to emotional desensitization towards violence in real life, and can decrease the likelihood that one will take action on behalf of a victim when violence occurs;
- it feeds a perception that the world is a violent and mean place, and increases one's fear of becoming a victim of violence, thereby increasing self-protective behaviors and mistrust of others; and
- it may lead to real life violence, given that children exposed to violent programming at a young age have a higher tendency for violent and aggressive behavior later in life than those not so exposed.

Although the Statement does not imply that entertainment violence is the sole, or even most important, factor contributing to youth violence (family breakdown, peer influences, access to weapons, and many other factors all contribute to such violence), the Statement provided the consensus of the public health community in order to encourage greater public and parental awareness of the harms from violent media.⁴⁶

Also, in 2000, the Federal Bureau of Investigation released a report regarding school shootings, stating that media violence is a risk factor. In 2003, at the request of the U.S. Surgeon General, a panel of media-violence experts convened by the National Institute of Mental Health published its comprehensive report on the effects of media violence on youth, revealing that media violence is a significant causal factor in aggression and violence.⁴⁷

In 2005, the American Psychological Association adopted a resolution on interactive media and video game violence, stating that "comprehensive analysis of violent interactive video game research suggests such exposure a) increases aggressive behavior, b) increases aggressive thoughts, c) increases angry feelings, d) decreases helpful behavior, and e) increases physiological arousal."

The resolution also found that the most popular video games depict women and minorities in exaggerated stereotypical ways, and "reward, glamorize and depict as humorous sexualized aggression against women, including assault, rape and murder." The Association added that the "practice, repetition, and rewards for acts of violence may be more conducive to increasing

⁴⁶ Joint Statement on the Impact of Entertainment Violence on Children, (July 26, 2000), at <http://www2.aap.org/advocacy/releases/jstmtevc.htm>.

⁴⁷ Media Violence, *supra*, 124 PEDIATRICS at 1495.

aggressive behavior among children and youth than passively watching violence on TV and in films.”⁴⁸

In 2007, the Federal Communications Commission released its report on violent television programming, agreeing with the Surgeon General that there is “strong evidence” that exposure to media violence can increase aggressive behavior in children. Also, in 2009, the AAP published a policy study concluding that “[e]xposure to violence in media, including television, movies, music, and video games represents a significant risk to the health of children and adolescents.”⁴⁹

At the time of the AAP policy study, statistics showed that American children between 8 and 18 years of age spend an average of 6 hours and 21 minutes each day using entertainment media (television, commercial or self-recorded video, movies, video games, print, radio, music, computers and the internet). By 18 years of age, the average young person will have viewed an estimated 200,000 acts of violence on television alone. Also, an estimated 12% of 22 million 10- to 14-year olds saw 40 of the most violent movies in 2003.⁵⁰

Given those statistics and myriad studies, the 2009 AAP policy study stated that the strength of the association between media violence and aggressive behavior is “greater than the association between calcium intake and bone mass . . . and is nearly as strong as the association between cigarette smoking and lung cancer – associations that clinicians accept and on which preventative medicine is based without question.”⁵¹ In that vein, one researcher queried that we as a society have decided to control cigarette sales to minors because cigarettes are one of many risk factors for cancer, why is it not appropriate to do the same for violent video games?⁵²

Moreover, the AAP study dismissed the validity of any defense of media violence as a safe outlet for aggression. According to the AAP, “research that has tested this ‘catharsis hypothesis’ revealed that after experiencing media violence, children and young adults behave more aggressively, not less.”⁵³

Finally, a 2010 comprehensive “meta-analysis” (*i.e.*, studies of all the studies) concluded that exposure to violent video games “was positively associated with aggressive behavior, aggressive

⁴⁸ Resolution on Violence in Video Games and Interactive Media (2005), at <http://www.apa.org/about/governance/council/policy/ineractive-media.pdf>.

⁴⁹ Media Violence, *supra*, 124 PEDIATRICS at 1495.

⁵⁰ *Ibid.* at 1496.

⁵¹ *Ibid.* at 1496-97.

⁵² Azar, *Virtual Violence*, American Psychological Association, Vol. 41, No. 11 (Dec. 2010).

⁵³ Media Violence, *supra*, 124 PEDIATRICS at 1497-98.

cognition, and aggressive affect,” and that “playing violent video games is a causal risk factor for long-term harmful outcomes.”⁵⁴

By contrast, opponents of that view point to studies that show “no causal or correlational link between violent games and aggression” and “no relationship between violent media and violent crime.”⁵⁵ In addition to those studies, opponents have three main challenges to those studies that find a causal link.

First, opponents find fault with the methodology of the studies.⁵⁶ For example, one particular study uses an “argument with a teacher” as evidence of “aggressive behavior,” to which opponents state that such a measure – without further information on the nature of the event with the teacher – is unreliable.⁵⁷ Also, with regard to the “meta-analysis” discussed above, critics find that a meta-analysis that merges many studies together keeps, and possibly compounds, the flaws contained in the underlying studies.

Second, opponents state that the studies in favor of a causal link fail to control for variables other than violent media (such as family violence, anti-social personality traits, and association with delinquent peers), which may have a far greater impact on a child’s aggressive behavior than the media.⁵⁸ Relatedly, opponents add that even well-known studies in favor of a causal link find that the “effect size” of violent media on a person’s behavior is minimal, *i.e.*, that the effect, if any, on behavior due to a violent video game is small relative to other possible risk factors.⁵⁹

Third, opponents observe that even though video game sales have soared in the last decade, violent crime rates have decreased.⁶⁰ The counter to such an argument, however, is that all researchers agree that violent media is only one of many factors in violent behavior. Not even researchers who find a causal link believe that it is a *primary* predictor of crime.⁶¹

In sum, many members of the public health community, supported by reports adopted by certain government agencies, believe that the evidence is clear and convincing that people who are exposed to violent media have more aggressive thoughts, beliefs, and behaviors than people who are not so exposed. Yet, a sizable group of research psychologists disagree, finding no causal or

⁵⁴ Anderson, et al., *Violent Video Game Effects on Aggression, Empathy, and Pro-social Behavior in Eastern and Western Countries: A Meta-Analytic Review*, 136 *Psychological Bulletin* 151, 167, 169 (2010), at <http://www.apa.org/pubs/journals/releases/bul-136-2-151.pdf>.

⁵⁵ Ferguson, *The School Shooting/Violent Video Game Link: Causal Relationship or Moral Panic?*, 5 *J. Investigative Psychology & Offender Profiling* 25, 27 (2008), at <http://www.snjv.org/data/document/school-and-violence.pdf>.

⁵⁶ Azar, *Virtual Violence*, American Psychological Association, Vol. 41, No. 11 (Dec. 2010).

⁵⁷ Kutner & Olson, *Grand Theft Childhood* 69, 71-74 (Simon & Schuster 2008).

⁵⁸ Ferguson, *supra*, at 26-27.

⁵⁹ Anderson, et al., *supra*, at 170.

⁶⁰ Ferguson, *supra*, at 33.

⁶¹ Azar, *supra*.

even correlational link between the two. That group finds fault with the methodologies used in the studies finding causation, and notes that other factors, such as family violence or access to guns, when compared to media violence have a far greater impact on one's aggressive behavior.

II. Opinion of the Courts Through the Lens of the First Amendment

Given the lack of consensus discussed above, our nation's courts have yet to be convinced that there is a causal link between virtual violence and real-world violence. Typically, courts are asked to deal with the issue of media violence in the context of the First Amendment, and courts have historically found violent content, even for minors' consumption, to be protected by the First Amendment.

In the 1800s, dime novels depicting crime, and so-called "penny dreadfuls" (named for their price and content), were said to be responsible for juvenile delinquency. Motion pictures later became the object of what was said to negatively influence young people, followed by radio dramas, comic books, television, and music lyrics. Courts have ruled, however, that all of those forms of media enjoy First Amendment protection.

Recently, the U.S. Supreme Court determined that violent video games are also protected by the First Amendment. Like books, plays, and movies, video games communicate ideas through familiar literary devices, and freedom of speech principles do not vary with a new and different communication medium.

With regard to the research studies finding a causal link between virtual violence and actual violence, the Supreme Court found that those studies were not compelling. Indeed, the Court expressed that the studies "do not prove that violent video games *cause* minors to *act* aggressively," but merely suggest some correlation and suffer from significant flaws in methodology. Thus, absent stronger proof of causation, the Court would not take video games outside of the protection of the First Amendment.⁶²

Thus, the current state of the law regarding violent media further informs this Task Force's conclusion that there is currently no consensus with regard to the causal effect of violent media on real-world behavior. That said, it still appears that exposure to violent media can be a risk factor. To that end, it is worthwhile to explore what is currently being done to minimize any harmful effects of violent media.

⁶² *Brown v. Entm't Merchs. Ass'n et al.*, 131 S. Ct. 2729, 180 L. Ed. 2d 708 (2011).

III. Review of the Media Industries, and the Industries' Voluntary Rating Systems

In 2000, in response to the Columbine massacre, the Federal Trade Commission (FTC) issued a report titled “Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording and Electronic Game Industries.” Among the many findings of the report, the FTC determined that the industries practiced pervasive and aggressive marketing of violent movies, music, and electronic games to children.⁶³ The FTC has since updated the report six times to see if there has been improvement in designated areas.

In the most recent update in December 2009, the FTC found that the video game industry “outpaced” the movie and music industries with regard to (i) restricting target-marketing of mature-rated products to children, (ii) clearly and prominently disclosing rating information, and (iii) restricting children’s access to mature-rated products at retail. The FTC also found that the video game industry made “great strides in restricting the marketing of violent M-rated games to children,” and “continues to enforce its rules and assess fines and sanctions for violations.”

Yet, overall, the FTC stated that while all industries generally comply with their own voluntary standards, “the industry standards against targeting teens and younger children in the marketing of violent entertainment products have not sufficiently curbed marketing that reaches a large youth audience, particularly in online media.” Accordingly, the FTC recommended that those standards need to be tightened and more strictly enforced.⁶⁴

With regard to the various industries’ rating systems, each type of medium uses its own rating system. Music with explicit content carries a “Parental Advisory” sticker; movies follow the well-known G, PG, PG-13, R, and NC-17 ratings; television programs use ratings such as TV-PG, TV-14, and TV-MA (Mature audiences only); and video games follow the system developed by the Entertainment Software Rating Board (ESRB), with ratings such as T for Teen, and M for Mature (17 and older). Importantly, the common characteristic among all of the media rating systems is that they are voluntary. While most companies comply with their respective rating systems, they are not mandatory.

Studies have shown that parents utilize the different rating systems to varying degrees. The movie ratings are used by approximately 75% of parents, but only about 50% of parents say they have ever used the video game, television, or music ratings to guide their choices. Many parents find the ratings unreliably low. An objective parental evaluation revealed as many as 50% of television shows rated TV-14 to be inappropriate for their teenagers. At the same time, most parents do not

⁶³ Media Violence, *supra*, 124 PEDIATRICS at 1496.

⁶⁴ U.S. Federal Trade Commission, *Marketing Violent Entertainment to Children, A Sixth Follow Up Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording and Electronic Game Industries*, (Dec. 2009), at <http://www.ftc.gov/os/2009/12/P994511violententertainment.pdf>.

even know that their television is equipped with a “V chip” (to help block certain programming), and only 20% of parents actually use the V chip.⁶⁵

Relatedly, the V chip is just one item on the ever-changing technological landscape, and the Task Force recognizes that individuals go online to obtain media with greater and greater frequency. Accordingly, we recognize that policymakers, in evaluating our recommendations below, should consider the online implications of any reform in this area.

IV. Recommendations

Our recommendations are provided cognizant of the fact that violent media has received a great deal of blame for youth violence in the recent past, but most people agree that exposure to media violence alone does not cause a child to commit a violent act. While several major public health organizations have voiced their shared conviction that exposure to violent media leads to more aggressive attitudes, values and behavior, they have also acknowledged that it is not the sole, or even the most important, factor contributing to youth aggression, anti-social attitudes, and violence.

The Task Force also makes its recommendations aware that by including violence as a component in developing parental advisory rating systems, the entertainment industry has recognized that violence is an issue of societal concern. Finally, these recommendations are provided in light of the fact that the State of New Jersey is limited in its ability to influence initiatives that are necessarily national in scope, such as changes to industry rating systems.

4.1. *Review if Violent Media is Inappropriately Marketed to Young People in our State*

Given the FTC’s findings in its report on marketing violent entertainment to children, the State should explore whether an agency, such as the Division of Consumer Affairs or other appropriate agency, can conduct a New Jersey-focused review, and report on whether violent media is being improperly marketed to inappropriate age groups in New Jersey. Specifically with regard to violent video games, the Task Force encourages the appropriate agency to explore the question of whether retailers should be required to label video games with stickers, in addition to the ESRB rating symbol, to make clear the appropriate age range for a particular video game.

4.2. *Help Educate Parents on How to Make Healthy Media Choices for Their Children*

Through the Department of Education, or other appropriate agency, the State could make information available about (i) how to use the various media rating standards; (ii) the potential harmful effects of violent media; and (iii) helpful household tips for parents such as removing

⁶⁵ Media Violence, *supra*, 124 PEDIATRICS at 1496.

televisions, internet connections and video games from children's bedrooms, co-viewing media choices with children, and limiting screen time for children.

4.3. *Encourage Appropriate Industry Associations to Carry Out a Comprehensive Public Information Campaign to Increase Understanding of Media Rating Systems*

Given the statistics showing that many parents do not understand or use certain rating systems, the entertainment industry should be asked to do a better job in making those ratings understandable and accessible to parents.

4.4. *Regulate Violent Video Games*

The interactive nature of video games, as opposed to other forms of media, may dictate particular regulation of such games. The recommendations below pertain specifically to what the State could do in regulating the sale of video games, subject to the appropriate regulatory authority's consideration of the practicality and feasibility of each approach:

- *Require Minors to be Accompanied by an Adult When Purchasing Video Games with an M (Mature) or AO (Adults Only) Rating*
- *Require a Request for Identification for the Sale or Rental of a Video Game with an M or AO Rating*
- *Require Retailers Selling Video Games to Conspicuously Display ESRB Ratings at the Point of Sale*
- *Require Retailers Selling Video Games to Develop, Maintain and Conspicuously Display Their Policy on Selling Video Games with an M or AO Rating*

4.5. *Remove Violent Video Games Made Available on State Property*

The appropriate authority with jurisdiction over certain State property where video games have been made available to the general public, such as highway rest areas, should consider the practicality and feasibility of regulating those video games to ensure that violent games are not made available to children.

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CHAPTER 5

KEEPING OUR SCHOOLS SAFE: SCHOOL SECURITY AND OUR EMERGENCY RESPONSE PROTOCOLS

School violence can happen anywhere, anytime, for any reason, and for that we must be prepared. Executive Order No. 124 states that “we can – and indeed – must do more to ensure the safety of all New Jerseyans, specifically our most innocent school children who all too often are victimized by such grave violence.” The Task Force can report that the State of New Jersey has already begun to take on that all-important obligation. The Task Force recognizes the substantial work that our Governor and this State have done to safeguard our schools and protect our students. Indeed, we recognize that New Jersey has been working to prevent a tragedy like the Newtown shooting, long before Newtown occurred. Looking forward, we see room to capitalize on that work to make further improvements in securing our schools.

The shooting in Newtown was the second-deadliest school shooting of any type in the United States, second only to the shooting at Virginia Tech in 2007. In terms of total casualties – dead and wounded – the Newtown tragedy ranks as the fourth worst school shooting in the United States, following the shootings at Virginia Tech (32 dead and 17 wounded, for a total of 49), the University of Texas in 1966 (16 dead, 31 wounded, 47 total), and at Columbine High School in Colorado in 1999 (13 dead, 26 wounded, 39 total).

The school shootings noted above – as well as other mass shootings such as the 2012 massacre at a crowded movie theater in Aurora, Colorado – also demonstrate the lethality of attacks with firearms, particularly semi-automatic weapons. Notably, the same day as the school shooting in Newtown, 22 elementary school students in China were wounded by a man with a knife. The Newtown attack resulted in 27 deaths before the killer took his own life. The China attack resulted in no fatalities.

The information in this section, provided primarily by New Jersey’s Department of Education and Office of Homeland Security and Preparedness, shows how this State has taken on the commitment to protect our students from such acts of violence, and recommends next steps so that we all remain vigilant in ensuring the continued safety of our students and our schools.

I. Historical Overview

A. *School Shootings*

Three school shootings occurred in 2012 alone. In February, three students were killed and two others injured when another student opened fire in the school cafeteria at Chardon High School, close to Cleveland, Ohio. The suspect, a 17-year-old who did not attend the school, was waiting

for a bus to a nearby school for students with academic or behavioral problems. In April, a nursing student shot and killed seven people and injured three others when he opened fire at Oikos University, a small Christian College in Oakland, California. The gunman, a 43-year-old former student at the school, was believed to be upset about being expelled from the school and for being teased about his poor English skills. Finally, the shooting in Newtown, Connecticut occurred in December.

There were three other mass school shootings in recent memory. In addition to the shootings at Virginia Tech and Columbine High School noted above, a lone gunman took hostages in a one-room Amish schoolhouse in Pennsylvania in 2006. He shot ten girls, killing five before committing suicide.

One or more plots or shootings have occurred in each of the last 10 years in the U.S., resulting in the deaths of students and school administrators. The attacks have occurred at all types of schools, including elementary, high school, college, and other educational institutions. In every instance of a school shooting attack in the United States during this period, the attacker used small arms or homemade explosives.

With regard to violence in New Jersey schools, during the 2010-11 academic year, New Jersey had 1,246 cases of students bringing weapons to school, and New Jersey schools experienced 11,216 violent incidents. At this time, the Office of Homeland Security and Preparedness considers the threat to our K-12 schools to be moderate.

B. *Publicizing Intentions Prior to an Attack Through the Use of Social Media*

In the past several years, the majority of students who have conducted plots or attacks against their schools have publicized their anger or intentions through the use of social media. Not every expression of anger will necessarily result in violence, but when school shootings have occurred, the perpetrators have often previously expressed a fixation with death or inflicting pain on others.

While students have used social media to express their anger and intentions to attack their schools, such action is neither new nor limited to online activity. Even without the use of online media, students have expressed their frustration and intentions through other outlets by using handwritten journals, notes, and drawings. These documents can indicate pre-operational planning, as illustrated in the 1999 Columbine shooting. Diary entries of the Columbine shooters, released in 2006, not only contained their anger but also reminders to fill ammunition clips and acquire bomb-making materials, including nails, propane, and fuses.

The February 2012 school shooting in Ohio is an example of a student publicizing his intention to attack his school. In that case, authorities found several ominous messages, including “Die, all of you,” on Facebook. In another instance, in January 2012, two students were arrested for planning to bomb their school after one of them shared their plans with another student, who then

informed school officials. That final example demonstrates the importance of reporting suspicious activities.

C. *Weapons Acquisition*

When examining school shootings, the way in which students obtain their weapons depends, as can be expected, on the student's age and type of school. K-12 students are underage and must resort to stealing weapons, normally from a family member or neighbor. College students, by contrast, have legal access to gun stores and shows. The Virginia Tech shooter purchased his weapons legally at two gun stores in Virginia, and bought two gun magazines online on eBay.

D. *Commonalities of Shooters*

In the last 10 years, male students have been responsible for the majority of school shootings nationwide. Students who perpetrated attacks were also more likely to know their intended targets. When students targeted an administrator, they believed that either the school failed to protect them from bullies, or the student felt school officials unfairly reprimanded them. Outside shooters with no relation to the school, however, are more likely to attack their victims randomly.

E. *Role of Bullying in School Violence*

As noted in Chapter 3, section I. E., a joint study conducted by the U.S. Secret Service and the U.S. Department of Education that examined mass shootings in schools in America found that 71% of attackers “felt persecuted, bullied, threatened, attacked, or injured by others” before they engaged in their acts of violence.⁶⁶ Leaders throughout our State have long recognized the negative behavioral, psychological and educational effects bullying has on its victims. Bullying can lead to a range of problems for students, including absenteeism, low self-esteem, physical illness and social isolation. Those who bully others are also affected. Bullies not only cause disruption in schools and inflict emotional and physical harm on others, they are more likely to carry weapons, receive poor grades and commit petty crimes like vandalism.⁶⁷ Indeed, bullying is not just “kids being kids.”

⁶⁶ *Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States*, U.S. Secret Service and U.S. Department of Education, 21 (2004), at <http://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf>.

⁶⁷ Paula T. Dow, Chris D. Cerf, *Cover memorandum for 2011 Revision to Uniform State Memorandum of Agreement between Education and Law Enforcement Officials*, (September 14, 2011), at <http://www.state.nj.us/lps/dcj/pdfs/ed-law-cover.pdf>.

II. New Jersey's School Security Efforts

“If you don’t have a plan, then you plan to fail” was the way in which the Department of Education (DOE) and the Office of Homeland Security and Preparedness (OHSP) began their presentation to this Task Force. And New Jersey “has a plan.” Fully understanding that students who are fearful will be distracted from academic achievement, this State has undertaken a school security plan rooted in the four phases of crisis planning – prevention/mitigation, preparedness, response, and recovery. That plan began taking shape about eight years ago.

In May 2005, the education and law enforcement communities collaborated in conducting an unprecedented statewide school security audit. The audit examined 75 key items in assessing school safety and security, and produced a database containing information about every school in the State. That database was made available to all schools as well as county prosecutors and the DOE.

The DOE, with the assistance of the Office of the Attorney General and OHSP, also prepared and distributed a school security manual to schools. That manual provided administrators and teachers alike with a single source of guidelines and best practices to improve and maintain the security of educational institutions.

In addition, the DOE enacted regulatory requirements that districts create and maintain school safety plans. Perhaps most critically and as required by regulation, the Uniform State Memorandum of Agreement between Law Enforcement and Education (MOA),⁶⁸ provided a framework for the interaction of law enforcement, educators, and community organizations, and proved valuable in mandating regular discussions between school administrators and law enforcement.

A. *K-12 School Security Task Force (SSTF)*

In October 2006, the K-12 School Security Task Force (SSTF) was established, with the Attorney General, the DOE Commissioner, and the OHSP Director designated as co-chairs. To this day, representatives from a cross-section of State, county, and local law enforcement agencies; emergency management personnel; and leaders in the education community participate and collaborate through the SSTF.

One of the first products of the SSTF was a series of recommendations, issued in September 2007, designed to enhance the safety in our K-12 schools. The recommendations were as follows:

⁶⁸ *Uniform State Memorandum of Agreement between Education and Law Enforcement Officials, 2011 Revisions*, at <http://www.state.nj.us/education/schools/security/regs/agree.pdf> (hereinafter, MOA).

- Distribution of model policies concerning active shooter, bomb threats, school lockdown, and evacuations through an Attorney General Directive to all law enforcement agencies in the State.
- Distribution of “companion” model policies by the DOE Commissioner to all school superintendents focusing on the role of faculty and staff during an emergency in or around a school.
- Joint training for county prosecutors and county school superintendents to review school security and response strategies together and in the same room.
- Annual review of the MOA between the education and law enforcement communities to consider the recommendations of the SSTF, and to update the MOA as needed.
- Enhanced training for teachers, school staff, and school resource officers.
- Creation of Local School Security Working Groups consisting of parents, educators, and local law enforcement and emergency management personnel to address school security issues unique to their respective localities.
- Legislative action requiring monthly school security drills.

B. *Office of School Preparedness and Emergency Planning*

In 2009, the Office of School Preparedness and Emergency Planning was officially created in the DOE to provide support to districts and assist schools with the establishment and maintenance of an all-hazards school safety and security plan. The Office develops and provides training and technical assistance in the implementation of DOE’s best practices for school safety and security, evaluation of school preparedness, and development of action plans to address identified school vulnerabilities and safety and security needs. The Office serves as the DOE’s liaison to the School Security Task Force and collaborates with other State agencies, such as the State Police, Office of Emergency Management, Attorney General’s Office, and the Domestic Security Preparedness Task Force.

In early 2012, OHSP and DOE executed an agreement calling for personnel from the DOE’s Office of School Preparedness and Emergency Planning to be assigned to OHSP’s office. Under the agreement, staff from DOE are housed in the same building as, and work closely with, the OHSP staff who are responsible for (i) protecting the State’s critical infrastructure sites (which include K-12 schools), (ii) training and exercising emergency response plans and protocols, (iii) managing federal and State homeland security and emergency management grant programs, and (iv) collecting and analyzing domestic and international intelligence information affecting New Jersey.

C. *School Security Drill Law*

In 2010, a bill known as the “School Security Drill Law,” N.J.S.A. 18A:41-1, was signed into law by Governor Christie, requiring every school to conduct at least one fire drill and one school security drill each month within school hours. The purpose of the law was to ensure that schools practiced procedures responding to emergencies such as active shooter, school lockdown, and non-fire evacuation. Drills on those other emergencies, such as “active shooter,” are required to be conducted twice annually.

Since its enactment, schools throughout the State have conducted school security drills testing their response protocols and procedures to a variety of emergencies. Staff from the DOE’s Office of School Preparedness and Emergency Planning, working with OHSP, have been conducting a combination of announced and unannounced school visits. The visits are used to meet with school administrators and teachers about their school security plans, and to observe security drills being conducted locally.

Notably, the School Security Drill Law works in conjunction with Attorney General Directive No. 2007-1, which mandates all law enforcement agencies have and maintain policies and procedures to enhance school security and safety with regard to bomb threats, active shooter response, school lockdowns, school evacuations, and public information policies.

D. *New Minimum Requirements – Security Plans*

By regulation, each school district is required to have a school safety and security plan that meets a series of minimum requirements set by the DOE and the Domestic Security Preparedness Task Force. Those minimum requirements were developed in February 2010, and distributed to all districts in August 2011.

As of October 2012, all school districts are required to update/revise district safety and security plans annually in accordance with the new minimum requirements. Every school security plan must include procedures for responding to critical incidents, such as bomb threats, lockdowns, natural disasters, and an active shooter in or near a school facility. In addition to identifying the minimum requirements, the DOE has also made available information and resources designed to strengthen existing emergency response plans to go beyond meeting the minimum requirements.

Some of the highlights of the new minimum requirements include the following:

- Maintain a list identifying individuals by title and agency to be notified during an emergency.
- Identify the size and location of all school district facilities and the use of each facility.

- Identify the number of students, faculty and staff normally present in each building as well as scheduled shifts in daily population for each facility.
- Identify stakeholders to be included in the school safety and security planning process; this includes identifying members of the district-wide crisis response team, and includes training with the Incident Command System.
- Identify staff for specialized training or skills, such as cardiopulmonary resuscitation (CPR) or emergency medical technician (EMT), and train appropriate staff on their responsibilities when a crisis occurs.
- Establish policies and procedures for a variety of target-hardening initiatives, such as:
 - Building access;
 - Visitor policy;
 - Delivery procedures;
 - Student transportation security;
 - Master key and Access Code distribution;
 - Vehicular access and parking procedures; and
 - Access to storage and HVAC system areas.
- Assess prevention and intervention programs in the areas of bullying, including cyber-bullying, gang awareness, and peer mediation.
- Identify areas of entry and exit access into each school building, and if possible, designate one entry point for visitors.
- Ensure the main office has communication capability with all classrooms.
- Establish and disseminate a district-wide Continuity of Operations Plan.
- Establish response protocols for a whole host of emergencies, for example:
 - Active shooter situation;
 - Bomb threat/incident;
 - Natural disaster/Extreme weather event;
 - School lockdown;
 - School evacuation;
 - Student or staff death or suicide; and
 - School transportation incidents or accidents.
- Disseminate copies of the school safety and security plan to local law enforcement and emergency responders, along with copies of facility maps and/or blueprints, which identify utility shutoff locations, chemical/hazardous material storage locations, and the location of first aid and emergency supplies.
- Establish protocols and procedures for providing access to mental health services for students and staff post-disaster.

E. *Making Our Schools Safe (M.O.S.S.) Districts*

DOE Commissioner Chris Cerf has designated more than one hundred school districts, chosen based on factors such as propensity for violence, to receive direct technical assistance in the areas of school safety and preparedness. This initiative, called “Making Our Schools Safe Districts,” is designed to provide guidance and resources to help designated districts improve their safety and security plans.

Under the M.O.S.S. project, personnel from the DOE work directly with pre-identified districts to provide essential resources, basic information and subject matter expertise to help these districts train, exercise, and drill their emergency response plans. As a component of the M.O.S.S. project, active shooter and lockdown drill assessments have taken place this 2012-13 academic year in many districts, including: Camden, Lakewood, New Brunswick, Bridgeton, Paterson, West New York, Teaneck, and Ewing.

F. *Anti-Bullying Measures*

The State of New Jersey has been at the forefront in addressing school bullying, including passage and enactment of one of the nation’s first anti-bullying laws in 2002. In 2011, Governor Christie signed into law an extension of the anti-bullying law. The extension was passed in part due to advances in academic research into bullying that had taken place since the law was first enacted. Among other things, the Anti-Bullying Bill of Rights strengthened policies and procedures related to reporting incidents of harassment, intimidation and bullying.⁶⁹

In addition, the Attorney General’s Office and the DOE revised their Uniform Memorandum of Agreement to reflect changes in reporting requirements, information sharing, and the coordination of investigations under the new law.⁷⁰ Governor Christie and the Legislature also created the Anti-Bullying Task Force and a \$1 million Bullying Prevention Fund to support school districts in implanting this law.⁷¹

G. *Safer Schools for a Better Tomorrow*

In April 2012, the SSTF announced the “Safer Schools for a Better Tomorrow” initiative, led by OHSP and DOE. The initiative consists of direct technical assistance to schools with a special emphasis on county-specific coordination among law enforcement, emergency responders, and school administrators.

⁶⁹ *Guidance for Schools on Implementing the Anti-Bullying Bill of Rights Act*, New Jersey Department of Education, (December 2011), at <http://www.nj.gov/education/students/safety/behavior/hib/guidance.pdf>.

⁷⁰ See fn 67, *supra*.

⁷¹ *Governor Chris Christie Names Members to Anti-Bullying Task Force*, (April 24, 2012), at <http://nj.gov/governor/news/news/552012/approved/20120424a.html>.

Regional symposiums held at the local school district level were conducted throughout the State to ensure compliance with current laws and regulations, assistance on implementing the new minimum requirements, as well as a discussion of current topics and trends with respect to school security. In less than one year, regional symposiums, training sessions, and workshops have been conducted in school districts throughout the State.

Specifically, the DOE has created a workshop called “Surfs Up” for adults and students. The workshop helps to ensure a safe learning environment by keeping people informed on a student’s use of the internet, and focusing on issues such as internet safety awareness, and online predators. Also, the State is poised to sponsor two State-wide School Security Symposiums for schools that are not public. The symposiums will bring together non-public school administrators and local emergency responders to discuss the specific needs of non-public schools and how they connect with the community and school districts around them.

The symposiums will include a School Security “State-of-the-State,” a School Security Task Force update, an overview of New Jersey statutes including the School Security Drill Law, and information on school safety and security plan requirements. The symposiums will be offered in the spring of 2013 and will focus on enhancing communication, collaboration, and coordination between local emergency responders and schools. Further, the DOE is sponsoring a Secure Our Schools Emergency Responder Symposium to ensure that educators, law enforcement personnel, and first responders coordinate to facilitate communication when responding to a crisis.

Moving forward, the Safer Schools for a Better Tomorrow initiative hopes to implement a number of school security programs planned into 2014, resources permitting. They are as follows:

- Benchmark Visits – through September 2013
 - Office of School Preparedness and Emergency Planning staff have begun to conduct benchmark visits with other states to assess school security protocols, messaging, database development and recommendations.
 - Teams visited the States of Georgia, Texas, and Colorado.
- M.O.S.S. Regional Specialists – currently underway
 - There will be five specialists per region in the northern, central, and southern parts of the State.
 - The specialists will provide direct technical assistance to local law enforcement agencies.
- Safety Ambassadors – April 2013
 - These ambassadors will conduct unannounced drill assessments and internet safety training.

- NJ Safety Cloud – April 2013
 - This initiative is focused on creating a database communication platform that enables State-wide communication of information such as emergency alerts, school safety plans, emergency numbers, and access to safety shelters.
- Model Template – July 2013
 - This will include model procedures for districts to follow during an emergency.
- School Security Directors Forums – September 2013
- School Security Mini-Conferences (one per county) – Fall 2013
- Surf's Up training – Fall 2013
- Mental Health training for each county – Fall 2013
- School Security Expo – October 2013
- See Something, Say Something Training – January 2014
 - Modeled after the federal initiative of the same name, this program would train security guards and front office staff on what to look for regarding suspicious activity.
- Public Service Safety Campaign – January 2014
- Learning Exchange – April 2014
 - This program has both a national and local focus. Nationally, the Learning Exchange will provide training to other states that wish to learn about how NJ implements the School Security Drill Law. Locally, the program will allow local school employees to spend a number of months at the Office of School Preparedness and Emergency Planning, learning school security on the State level.
- Safety Hotline – Fall 2014
 - This project contemplates the creation of a hotline specifically for students, teachers, administrators, parents and the public to report suspicious and/or dangerous activity to local officials and law enforcement.
- Parent Information – Fall 2014
 - This program is meant to be a public service campaign to help parents understand the basics, and importance, of lockdown drills – specifically the 3 Ls of “Locks, Lights, and Listen.”

As the above list indicates, the programs under the SSTF's Safer Schools for a Better Tomorrow initiative demonstrate the State's ongoing commitment to school safety.

III. Using School Resource Officers or Others to Protect Schools

Part of the recent nationwide debate on school security has focused on the question of whether, and in what circumstances, armed personnel should be stationed in schoolhouses. We urge policymakers to proceed carefully before embracing school security strategies and tactics that might produce unintended, but foreseeable, consequences. On matters that could affect the educational climate of the school environment, such as the decision to deploy uniformed, weapons-carrying staff to stand guard in schoolhouses, local officials need to balance all of the benefits and costs, including not only financial costs, but also the intangible costs of maintaining a visible armed presence in schools.

Local officials should consider, for example, that introducing armed guards to a school environment might unwittingly raise, rather than alleviate, the level of anxiety about gun violence. High-visibility tactics that are intended to chill potential mass shooters may also have a chilling effect on the children we seek to protect. The extent to which such disruption might occur depends on factors unique to each district and school building. Fortunately, we are not writing on a blank slate. There are proven models in this State – such as the use of school resource officers – for having armed officers become part of the school community in a way that supports, rather than undermines, the nurturing environment that is conducive to education while still enhancing safety.

For many years, education and law enforcement professionals throughout New Jersey have enjoyed an excellent working relationship. As an expression of the commitment to work collaboratively, a series of “memoranda of agreement” have been signed by local education and law enforcement officials. These agreements, the latest of which was issued in 2011, were drafted by the Attorney General’s Education and Law Enforcement Working Group, which is comprised of representatives from a wide range of associations and interests in both the law enforcement and education professional communities.

The product of 25 years of ongoing discussion, deliberation and experience, the MOA (cited at 68, *supra*), which is expressly referenced in rules and regulations promulgated by the State Board of Education, see N.J.A.C. 6A:16-6.2(b)13 through 15, addresses a wide range of issues of mutual concern to education and law enforcement officials. The MOA provides precise guidance on how these two professions will work together as a team, each respecting the other’s roles, responsibilities and professional judgments. For example, the MOA explains that police officers entering a school will, except in an emergency, comply with the procedures established by the school for the reporting of visitors. See MOA § 3.4.3. The MOA also provides that a police department “working in conjunction with appropriate school officials, should, whenever possible, provide for the presence of uniformed police officer(s) at any event at which the chief school administrator believes it would be in the interest of public safety. In the absence of compelling reasons, it is understood and agreed that uniformed police officers shall not be assigned to school

functions, and especially those functions occurring within school buildings, except with the approval of the building principal, or local chief school administrator.” MOA § 3.5.

It is especially important to note that the MOA explains in detail how law enforcement interactions with schoolchildren can be done in a way that minimizes unnecessary conflict, distraction or intimidation. For example, the MOA specifies the procedures to be followed when police come onto school grounds to make an arrest or to take a juvenile into custody. Section 7.2.1 provides that, “[s]o as to minimize any disruption of the educational environment, every reasonable effort should be made to affect the arrest in the building principal’s office, or in some other designated area away from the general student population.” Section 7.2.2 further explains that, “[w]here feasible, the responding law enforcement officer(s) should be in plainclothes, use unmarked police vehicle(s) and refrain from using a siren or flashing overhead lights. In addition, the number of responding officers should be kept to a minimum, consistent with the requirements of public safety.” See also § 4.15 (expressly noting that the arrest protocols in Article 7 “are designed to minimize the disruption of the school environment”).

These provisions of the MOA are important to the current debate on whether and how to maintain an armed presence in schools because they reflect a well-established policy in this State to carefully control student interaction with, and observation of, armed officers. While the MOA imposes limitations on police activities in schoolhouses, it nonetheless expressly recognizes the positive contributions that school resource officers (SROs) can make to the well-being of the school community and encourages local officials to consider deploying these specially trained officers. The MOA provides that:

The Attorney General’s Education-Law Enforcement Working Group has developed resource material for a Safe Schools Resource Officer Program, recognizing that the presence of a police officer can be a deterrent in fighting drug use and sales and other forms of criminal behavior in schools. Besides enhancing school safety and security and facilitating the handling of delinquency complaints, the assignment of a safe schools resource officer on a full or part-time basis can help to enhance the working relationship between education and law enforcement officials. *Most importantly, a Safe Schools Resource Officer Program provides these specially trained officers an opportunity to interact with children in positive and constructive ways.* It is understood and agreed that the parties to this Agreement shall, during the course of the annual conference convened pursuant to Article 16 of this Agreement, discuss the feasibility and desirability of implementing this form of community policing. MOA § 13.5 (emphasis added).

The decision whether to station armed personnel to guard schools should be left to local education and law enforcement officials. There should be no State policy requiring or recommending an armed presence beyond the discretionary use of SROs. In designing and implementing school security policies, officials should understand that the presence of an officer

equipped with a sidearm does not, of course, preclude the possibility of an active shooter, as was shown in the Columbine tragedy. Depending on the circumstances, an armed officer embedded in the school might not even be the first responder to an incident requiring law enforcement intervention. If, for example, a 9-1-1 call is made, an officer assigned to motorized patrol dispatched through the agency's communication center may be the first officer to come on the scene with the information that had been relayed in the 9-1-1 call or via a "tip" line. Local education officials should confer with law enforcement officials to consider typical response times when deciding whether, and to what extent, an embedded officer would expedite and enhance a police response to an active-shooter emergency.

If a local decision is made to use armed personnel to protect a school against the risk of a mass shooting, the question turns to the best way to achieve the desired security benefits while minimizing disruption and avoiding the appearance that the school is an armed camp or a correctional facility. One way to achieve a visible police presence would be to arrange for local police officers to periodically visit the school as part of their assigned patrol duties. That is hardly a new idea. In fact, this approach is expressly recognized in the Memorandum of Agreement. Section 3.4.2 of the MOA states,

Where a patrol plan requires an officer periodically to enter onto school grounds, including school buildings and school buses, the [police department] shall advise the appropriate [school building principal and local chief school administrator]. It is understood and agreed that any portion of the patrol plan disclosed to school officials in accordance with this subsection shall be kept strictly confidential.

The DOE and the Attorney General's Office have proposed a voluntary "S.W.A.P." (Stop, Walk, and Protect) program whereby state troopers would periodically visit schools and walk the halls as part of their patrol duties, talking to school officials and students. Similar "park, walk and talk" initiatives have been undertaken by local police departments across the State.

In the event that local officials decide it is necessary and appropriate to establish a more constant armed presence in schools, that is, to station armed personnel in school buildings, care should be taken in choosing from various options, which include assigning police personnel to serve as school resource officers, hiring part-time "special law enforcement officers," and employing retired law enforcement officers who are allowed to carry firearms but who are civilians and have no law enforcement powers.

SROs receive special training as required by statute. See N.J.S.A. 52:17B-71.8. The Safe School Resource Officer Program is essentially a type of "community policing" where the officer's "beat" happens to be a school. These officers become an integral part of the school community. The emphasis is on positive interactions with students and staff. Importantly, the New Jersey Legislature has recognized that "most safe school resource officers perform many roles, including law enforcement officer, law-related counselor and law-related teacher." L. 2005, c. 276. The

SROs tend to be the local juvenile officer and D.A.R.E. officer. They may wear uniforms or serve in “plainclothes” (with service weapons concealed) as the circumstances warrant.

Because these officers perform many functions, students understand that they are much more than armed security guards. Consequently, their presence does not serve as a constant reminder of the risk that the school might be invaded by a crazed gunman. Furthermore, experience shows that SROs earn trust among the student population so that students who would otherwise be reluctant to call police or a “tip line” feel comfortable sharing information that might help to nip a problem – such as bullying, threats of violence, or aberrant behavior – before it escalates to senseless violence. The point is simply that far from disrupting a school environment, these officers contribute to that environment as full-fledged and well-respected members of the school community.

“Special Law Enforcement Officers,” (SLEO IIs) are part-time police officers often employed by resort towns during the summer months to augment the town’s complement of regular year-round officers. SLEOs have police powers and answer through the law enforcement chain-of-command. See N.J.S.A. 40A:14-146.10 et seq. Because they are not full-time employees, they can be hired at lower salary and fringe benefit/pension costs than regular police officers. While SLEOs must complete a Police Training Commission-approved curriculum at a police academy, these officers are not required to complete the specialized training required of SROs.

A law enforcement officer who has retired in good standing is authorized by state and federal law to obtain a special “carry permit,” which allows him or her to possess a firearm in most public places. See N.J.S.A. 2C:39-6(l). Those permits do not authorize retired officers to possess a weapon “in or upon any part of the buildings or grounds of any school, college, university or other educational institution.” See N.J.S.A. 2C:39-5(e). However, the governing officer of the educational institution (*i.e.*, the local school superintendent) may give written authorization that would allow a retired law enforcement officer to carry a gun on school property. As a condition of keeping the carry permit, a retiree is required to qualify twice annually in the use of the handgun that he or she is authorized to carry.

It is critical to note, however, that retired officers are civilians. They have no law enforcement powers or immunities, are not allowed access to restricted law enforcement information, and do not report through a law enforcement chain of command to a police chief or county prosecutor. For this reason, should a school district employ a retired law enforcement officer to serve as an armed security guard, the school district, rather than a police department, would be legally responsible for the person’s actions and would bear all liability and indemnification expenses. We agree with the position advocated by the New Jersey State Association of Chiefs of Police that any person carrying a weapon and assigned to protect a school should be employed by and operate under the direct authority of a law enforcement agency.

We note, finally, that armed personnel should perform functions beyond providing security against

the possibility of a mass shooter. If the nature of a particular school's crime and violence problem would not warrant an armed security presence, it must be assumed that any such deployment would be intended principally to guard against the possibility of an invasion by a mass shooter. While it is essential that all communities plan for that kind of emergency, thankfully, such catastrophic events are exceedingly rare. For this reason, the reduced costs of retaining a SLEO or retired law enforcement officer may be a false economy when compared to the multi-faceted services performed by SROs.

IV. Recommendations

We recognize the extended efforts of the Department of Education and the Office of Homeland Security and Preparedness. From the creation of the School Security Task Force, to the creation of the Office of School Preparedness and Emergency Planning and the launch of the Safer Schools for a Better Tomorrow initiative, New Jersey has been aggressive in working to protect our schools. The following recommendations recognize that school security should be “timely and timeless,” such that we confront issues of school security today and never allow our commitment to diminish.

5.1. ***Implement a Suspicious Activity Hotline***

Research shows that in 81% of violent incidents in U.S. schools, someone other than the attacker knew it was going to happen but failed to report it.⁷² Typically, the information goes unreported because of the fear of being a “snitch,” or because adolescents sometimes struggle to differentiate mere words from statements telegraphing a plan of attack.

Accordingly, New Jersey should have a toll-free reporting system that allows students to *anonymously* call or text message tips to law enforcement about incidents of bullying, violence, assaults, suicide threats and other issues that may pose a risk to the health, safety or security of students, families or their communities. The State of Colorado, for example, launched a tip line, titled Safe2Tell®,⁷³ in the wake of the Columbine High School shootings. Since 2004, that tip line has received nearly 10,000 calls and messages, opened 415 formal investigations, provided 359 counseling referrals, had 324 potential suicide interventions, resulted in 74 arrests, and prevented 28 school attacks.⁷⁴

⁷² *Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States*, U.S. Secret Service and U.S. Department of Education, 25 (2004), at <http://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf>.

⁷³ See www.safe2tell.org.

⁷⁴ P. Caughey, *School Violence Can Be Prevented, CU Expert Says*, Colorado Arts & Sciences Magazine (February 29, 2012).

As noted above, a Safety Hotline is already contemplated for 2014 as part of the NJ's Safer Schools for a Better Tomorrow initiative. Given the incredible potential a tip line has to prevent an attack before it even starts, we recommend that completion of the proposed Safety Hotline be made a high priority and implemented as soon as possible.

5.2. *Place Continued Emphasis on Anti-Bullying Efforts*

The fact that bullying played a role in the majority of recent school shooting incidents demonstrates the need to continue – and expand – efforts to prevent bullying in schools, particularly cyber-bullying.

5.3 *Encourage Districts to Consider Using School Resource Officers (SROs)*

SROs perform many functions and are much more than armed security guards. Experience shows that SROs earn trust among the student population so that students who would otherwise be reluctant to call the police feel comfortable sharing information of suspicious activity, before it escalates to violence. To the extent that school districts can hire SROs, the State should encourage them to do so.

5.4 *Ensure All Factors are Considered Before Deploying an Armed Security Presence in Schools*

Before deciding whether to introduce armed security personnel to a school building, local officials should consider the following:

1. The decision should be thoroughly vetted by all stakeholders. School officials should solicit input from parents, teachers and staff, students, local police officials and the county prosecutor.
2. Any person(s) who will be carrying firearms on school grounds should be carefully screened and selected. Not all law enforcement officers, for example, are well-suited to interact with schoolchildren or otherwise perform “community policing” functions. Proficiency with a firearm is required, of course, but is by no means the only criterion that should be considered.
3. Armed personnel should be qualified and assigned to perform functions beyond providing security against the possibility of a mass shooter.
4. Armed personnel stationed at, or assigned to patrol, schools should be sworn law enforcement officers who have the authority to make arrests and to use force in law enforcement pursuant to N.J.S.A. 2C:3-7. All armed persons assigned to protect schools should operate under the authority and direct supervision of a law enforcement agency, answering through a chain of command to a police chief

executive and the county prosecutor.

5. All armed personnel stationed at a school should complete the training program established pursuant to N.J.S.A. 52:17B-71.8.

5.5 *Encourage Implementation of the “S.W.A.P.” Program*

The DOE and the Attorney General’s Office have proposed to the Task Force the implementation of the S.W.A.P. program. This program would be administered by the NJ State Police in districts located in “State Police” municipalities, which are those that have no local/municipal police force and are therefore patrolled by the NJ State Police. This area includes 78 municipalities policed full-time, and nine part-time, by the NJ State Police, located mostly in southern and northwestern New Jersey and comprising more than 100 school facilities.

The program would be an ongoing, budget-neutral, *voluntary* initiative. Districts that opt-in, with approval from the NJ State Police Superintendent, would have the NJ State Police conduct occasional unannounced visits to the schools and walk the halls for a short time. Troopers would also talk to school officials and students, and ask if there is any suspicious activity or reason for concern that requires further investigation. In recent weeks, many local school districts and police forces have undertaken similar initiatives at the local level to increase the visibility of police officers in schools.

The S.W.A.P. proposal is modeled after “S.W.A.T.” (Stop, Walk, and Talk), an initiative that falls under the Special Operations Section, Office of Homeland Security, in which uniformed NJ State Police personnel visit rail and bus facilities, walk through those facilities and interact with the public in an effort to mitigate potential criminal and terrorist activity. The S.W.A.T. program was initiated in November 2009, and as of January 2013, nearly 29,000 S.W.A.T. checks have been completed.

5.6 *Increase Observation of Lockdown Drills*

In order to ensure compliance with existing policies and protocols, the State should increase announced and unannounced lockdown drills. This State has done an excellent job in creating school security policies and protocols, and ensuring that each of the more than 590 school districts has a security plan in place. The next step must be to ensure that schools are able to put their plans into action. Based on the information provided to the Task Force, state agencies have been proactive in conducting school security audits and observing lockdown drills, particularly since the tragedy in Newtown. Additional agency resources should be committed to allow for more visits and assessments of school compliance. Each school’s security plan can only be effective if schools are able to properly carry them out.

5.7 *Assess Security “Best Practices” for New Schools*

The State should encourage newly constructed schools to have the best security features available. There are many options available to enhance security at school facilities. Measures such as security cameras, locks for doors, metal detectors, and panic buttons, often called “target hardening” measures, make it more difficult for an intruder to enter a school without notice or permission, or protect against students bringing weapons to school.

5.8 *Encourage Use of New Communication Technology*

The State should encourage the use of new technologies to allow communication among all essential personnel during emergencies. The viability of certain technologies to enhance safety should be reviewed, including (i) camera feeds of school facilities directly to police patrol cars, (ii) panic buttons in schools that are a direct line to the local police department, and (iii) dedicated school emergency frequencies for walkie-talkies. The SSTF’s “NJ Safety Cloud” proposal, mentioned above, would be an important part of such any initiative geared towards improved emergency communications.

5.9 *Encourage Use of Threat Assessment Audits*

Given that the DOE and OHSP cannot audit each of more than 590 school districts in the State, school districts can, and should, conduct vulnerability audits to identify flaws in existing security and communication systems to ensure that every school district is in compliance with the policies and protocols of this State.

5.10 *Provide Training for Local Law Enforcement*

There must be consistency in how law enforcement handles a school incident. While a number of programs are proposed under the Safer Schools for a Better Tomorrow initiative, training for law enforcement should be made a priority. As of January 2012, the Police Training Commission has developed a course for School Resource Officers. In addition, training should be developed for officers who are first responders on the scene of a school emergency. Local law enforcement can also be trained, in accordance with State-recommended policies and protocols, to conduct lockdown drill observations thereby allowing better coverage for the monitoring of school compliance.

5.11 *Provide Training for School Communities*

The Office of School Preparedness and Emergency Planning has proposed a number of training opportunities for students, educators, and parents including Surf's Up, Mental Health Training, Parent Information, and the Public Service Safety Campaign. The Surf's Up program is poised to begin. We encourage the other proposed trainings to be carried out as soon as practicable, and on an ongoing basis.

5.12 *Encourage Regional Information/Resource Sharing*

There are many instances when a school district requires a less-frequently used service, such as a trauma counselor, and that service is available in some districts but not others. The Task Force encourages school districts to work together, regionally, in order to share certain resources and training. In addition, certain emergency services from the region can be diverted to a particular school district in a crisis.