



SCI FOLLOW-UP REPORT

**ARMED
AND DANGEROUS –
TEN YEARS LATER**

***State of New Jersey
Commission of Investigation***

November 2016



State of New Jersey

COMMISSION OF INVESTIGATION

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November 2016

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The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M, herewith submits a report following up on the findings and recommendations of an investigation into the subversion of legal firearms ammunition sales in New Jersey.

Respectfully,

Handwritten signature of Joseph F. Scancarella.

Joseph F. Scancarella
Chair

Handwritten signature of Robert J. Burzichelli.

Robert J. Burzichelli
Commissioner

Handwritten signature of Frank M. Leanza.

Frank M. Leanza
Commissioner

Handwritten signature of Rosemary Iannacone.

Rosemary Iannacone
Commissioner

THE SCI FOLLOWS UP

As New Jersey's independent watchdog agency, the State Commission of Investigation routinely devotes considerable time and resources to the important task of examining serious problems that impact government integrity and threaten public peace, safety and justice. The successful completion of this mission carries with it an obligation, not just to identify systemic flaws and deficiencies, but also to recommend reasonable ways to address and fix them.

Over the course of nearly fifty years since the Commission's establishment in 1968, it has conducted more than 120 investigations into all areas of its statutory purview – organized crime; waste, fraud and abuse; and regulatory, ethics and law enforcement oversight – and, based upon findings of fact, has recommended significant statutory, regulatory and other reforms. In numerous instances, these recommendations have been transformed into reality, and New Jersey generally is a better place for it.

But how do we know exactly what works and what doesn't? What happens when the SCI's findings and recommendations generate action? What are the consequences when they do not? What additional steps should be taken based upon changed circumstances? If a particular matter warrants investigation in the first place, it certainly may merit re-evaluation with the passage of time. Given the complex investigative effort invested upfront, it makes little sense to leave the product of that work on some shelf under cover of dust. Accountability in government demands more than that.

Thus, with this document, the Commission launches an effort to follow up on its investigations. The intent is not to replicate what has already been done, i.e. to re-conduct an investigation already long completed. Rather, we aim to summarize and highlight what has occurred in the context of our findings and recommendations and, as warranted, to identify issues and areas still requiring official attention. The ultimate objective, of course, is to provide answers to legitimate questions like those outlined above and to keep New Jersey's legislators, policymakers and citizens well-informed.

ARMED AND DANGEROUS – Ten Years Later

Background

More than a decade ago, the Commission launched an investigation into the sale and availability of firearms ammunition as part of an ongoing statutory mission to monitor organized crime and assist law enforcement. The investigation's 2007 final report, *Armed and Dangerous: Guns, Gangs and Easy Access to Firearms Ammunition*, revealed the ease with which anyone in New Jersey – including convicted felons and those expressly prohibited by law from owning a gun – could legally obtain bullets.

The report followed a 2006 public hearing during which law enforcement officials characterized free-wheeling access to ammunition as a dangerous and prevalent component of rising gun violence and its role in increasing bloodshed among rival street gangs in New Jersey's cities and near-in suburban communities.

Prior to this investigation, New Jersey had among the strongest gun control laws in the nation but no restrictions on the sale of most firearms ammunition. It seemed contradictory that access to guns was severely restricted yet effective limits on obtaining the bullets – the projectiles that make firearms deadly – were completely absent.

In response to the Commission's findings and recommendations, legislation was enacted in 2008 which permitted the legal sale of ammunition only to only individuals with State-issued firearms credentials proving gun ownership or official paperwork demonstrating intent to purchase a firearm.¹ Commission investigators recently tested that law, however, and found that while it does make it more difficult for anyone not a gun owner to legally obtain bullets, the measure does not nearly go far enough to ensure that ammunition sales are free from abuse.

Gun violence is a persistent problem. Reports of mass shootings appear with disturbing regularity on our news feeds and television screens. Deaths by gunfire are common in the U.S., killing nearly as many people as those caused by car crashes.² Statewide, murder by gunfire increased by 12 percent in 2016, according to an analysis of New Jersey State Police data. Those statistics are far higher in areas where gangs and drug distribution activities are prevalent. That disturbing trend was evident in Essex County where recently an unprecedented number of juvenile gang members – more than 30 – were awaiting trial for murder or other shooting-related crimes. No longer simply a problem in our cities, gun violence has intruded deeply into largely suburban areas. Case in point: Burlington County, where more than three dozen shootings occurred during just the first nine months of this year.

¹ N.J.S.A. 2C:58-3.3

² National Vital Statistics Reports, *Deaths: Final Data for 2014*, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

Given anecdotal and other evidence that the level of such violence has, in fact, escalated since the SCI completed its investigation ten years ago, it is only prudent that issues surrounding the availability of ammunition be revisited and that a number of sensible reform recommendations submitted as part of the Commission's *Armed and Dangerous* report be reconsidered. During the course of this follow-up review, it will be noted that the Commission made new findings that underscore the need for reforms that will constitute not only effective impediments against the ability of criminal elements and other unsavory consumers to obtain this lethal product to but also will give law enforcement authorities additional necessary tools and resources to crack down on this societal scourge.

The Commission fully recognizes that further limiting legal access to ammunition in New Jersey will not unilaterally solve what is a complex interstate problem. New Jersey now is just one of four states, along with Connecticut, Illinois and Massachusetts, which require a firearms license for ammunition purchases. That said, anyone seeking ammunition without the proper credentials required for purchases here need only travel next door, to neighboring Pennsylvania or Delaware, where sales restrictions are more lax. Clearly, no one state can solve the problem. Ammunition is also widely available via the internet where an amalgam of legitimate and questionable retailers operate mostly beyond the reach of state authorities.

At the same time, the Commission is cognizant that law enforcement personnel face a multitude of emergent challenges associated with adequate and effective law enforcement, and they have told Commission investigators they would like to do more to track and investigate improper ammunition sales. Indeed, in some ways, they regard the current laws and regulations as obstacles to their ability to do so.

Unresolved Issues

Lack of Photograph on Firearms Identification

The statute enacted in 2008 in response to the Commission's recommendation to place tighter restrictions on ammunition purchases allows the legal sale of handgun ammunition only to buyers who produce a valid firearms purchaser identification card, a valid copy of a permit to purchase a handgun or a valid permit to carry a handgun. Prior to this, the only prerequisite for an ammunition transaction was the display of some form of identification that established the buyer's proof-of-age.³

To determine whether the law is effective and if retailers are properly following it, the Commission agents recently conducted undercover test buys at gun shops licensed by the New Jersey to sell firearms. These stores included large and small retail establishments and covered a wide geographic distribution across the State. Unlike the test purchases conducted by Commission agents during the initial investigation ten years ago, this sampling did not include

³ The minimum age to purchase/possess handgun ammunition in New Jersey is 21; N.J.S.A. 2C:58-3.3(c). Typically buyers provide a driver's license to establish proof-of-age.

any major sporting goods stores. That is because, since the passage of the law restricting ammunition sales, many of those type of establishments no longer sell bullets at their New Jersey locations.

In all of the test buys, the sellers asked purchasers to produce the legally required firearms identification credentials before the transaction could go forward. However, while this signaled that the retailers generally followed the provisions of the law, the Commission found that a primary intent of the statute – to bar purchases by “straw” individuals – was easily circumvented because the firearms ID card is not required to display a photograph of the cardholder. On more than one occasion, Commission investigators successfully purchased ammunition using another individual’s firearms credentials because the seller neglected to ask the investigators to provide a second form of identification with a photograph, such as a driver’s license, to verify the buyer’s identity. Sellers are not legally bound to request a buyer to present photo identification.

In the *Armed and Dangerous* report, the Commission recommended that New Jersey’s firearms ownership credentials be updated and modernized to include a photograph. Mandating this would ensure that purchasers are who they purport to be and would impede the type of improper transactions such as those found by the Commission during the test buys.

Legislation was recently introduced in the Assembly and Senate which would require a firearms purchaser identification card, a permit to purchase a handgun and a permit to carry a handgun to contain a color photograph of the card holder.⁴ In the current form, those documents are issued as cards or papers without any photos. Another piece of legislation is pending in both houses to revise various statutes involving the regulation of firearms, including one to eliminate the current paper firearms purchaser identification card and to upgrade it to one that includes a photograph.⁵ This measure also would require the Attorney General of the State of New Jersey and the Superintendent of the New Jersey State Police to determine if the information should be embedded in a New Jersey driver’s license or if it should be a separate, standalone card.

Outdated Methods of Capturing and Tracking Ammunition Sales Information

New Jersey’s system for logging and tracking ammunition sales is antiquated and ineffective. Under current law, licensed ammunition vendors in New Jersey are required to collect basic information from buyers – name, address, date of transaction, and the amount, type and caliber of ammunition sold. The information is then entered by the sellers into handwritten sales log books which are subject to periodic inspection by law enforcement personnel.

Other industries have abandoned this outdated method of tracking sales and upgraded to electronic sales logs that plug into a central database accessible to law enforcement. A good model for this type of database is the one used in New Jersey to collect prescription drug data,

⁴ S-2496 (Ruiz, Cunningham) and A-4071 (Singleton, Egan Jones, Conaway)

⁵ A-1738 (Greenwald, Johnson, Eustace) and S-890 (Sweeney, Weinberg, Stack, Cunningham).

known as the Prescription Monitoring Program (PMP), part of a nationwide effort to track and control the volume of prescription-dispensed painkillers and other drugs subject to abuse. The PMP database gathers information on a daily basis from pharmacies about the prescriptions they fill, prescribing physicians, patients and the names, strengths and quantities of the medication dispensed. Pharmacies that fail to report are subject to fines and other disciplinary actions by the New Jersey Board of Pharmacy. The monitoring program also serves as an effective tool for identifying those who fraudulently obtain prescription drugs or are otherwise involved in the criminal diversion of prescription medication.

The creation of this type of central database in the realm of ammunition sales would allow law enforcement agencies to coordinate and share criminal intelligence data related to suspicious sales or firearms-related investigations. By plugging into a searchable database, police could determine if there were links between criminal activity and recent ammunition purchases. Further, the database could be used to “red flag” excessive ammunition purchases.

Pending legislation, which would change various statutes regulating firearms as referenced earlier, also contains a provision that to establish an electronic reporting program for seller to record sales and transfers of ammunition on a real-time basis.⁶

Barriers to Law Enforcement

In New Jersey, state and local law enforcement authorities acknowledge they lack the resources and tools to actively and routinely monitor and investigate ammunition sales. If police launch an inquiry into a questionable ammunition purchase, it is usually on the off chance when a retailer notifies authorities about a suspicious customer.

Handwritten ammunition sales logs maintained by retailers are frequently illegible and contain inconsistent data. Law enforcement sources told the Commission that traveling to gun shops to visually inspect these logs can be time consuming and often is a non-productive use of police resources. This underscores the fact that new technology, such as an electronic database to track sales, could greatly aid law enforcement in these investigations.

Other jurisdictions have effectively used data captured by this type of tracking system to thwart improper ammunition sales. In Sacramento, California, police were able to identify and prosecute criminals who were improperly in possession of ammunition by comparing records of ammunition sales against the State of California’s database identifying convicted felons and others prohibited from owning guns. Between 2008 and 2010, Sacramento police made more than 300 arrests and seized more than 200 illegal firearms based on leads that came from the information.

⁶ A-1738 (Greenwald, Johnson, Eustace) and S-890 (Sweeney, Weinberg, Stack, Cunningham).

Recommendations

The following recommendations stem from the Commission's *Armed and Dangerous* investigation. Pursuant to the goal of ensuring the integrity of ammunition sales transactions in New Jersey, these recommendations remain relevant and warrant further consideration.

Upgrade and Modernize Firearms/Ammunition Ownership Credentials

- Legislation should be enacted to require that firearms purchaser identification cards be modernized and updated to include a digital photograph of the cardholder.
- The inclusion of a photograph of the cardholder would safeguard ammunition sales from “straw” purchases in which a surrogate purchases ammunition on behalf of someone seeking to conceal his/her own identity and involvement in the sale.
- At a minimum, if the Legislature decides not to upgrade and digitize the firearms purchaser identification card, any person seeking to purchase ammunition should be required to produce not only valid firearms purchaser credentials but also display a form of digital photographic identification, such as a driver's license, as a legal condition of purchase.

Enhance and Modernize Receipt and Maintenance of Information by Ammunition Sellers

- Efforts should be made to equip vendors with state-of-the-art computer technology that would enable them to forgo handwritten logs and enter all sales information into a central database accessible to law enforcement.
- In order to defray the taxpayer costs associated with upgrading to this new technology, the Commission recommends increasing the fees for a firearms purchaser identification card. The cards currently cost only \$5 and have no expiration date.⁷ If that fee was increased by at least \$25, more than \$500,000 in additional revenue could be generated each year.⁸ Further revenue could be realized if a renewal fee was required for the cards.

⁷ In addition to the \$5 fee, applicants for a firearms purchaser identification card must also pay \$57.50 for a fingerprint background check.

⁸ There are approximately 20,000 firearms purchaser identification cards issued each year, according to the New Jersey State Police.

Require Ready Access by Law Enforcement Agencies to Ammunition Sales Information

- Legislation should be enacted to ensure that all information logged by vendors pertaining to the sale of firearms ammunition be made available at any time to all local, state and county law enforcement authorities. In the event a licensed vendor ceases business operations, such records should immediately be surrendered to the local chief of police, county prosecutor or the New Jersey State Police.