



Lost and Stolen Ordinances:

What Local Governments Need to Know

A Publius Foundation Policy Briefing

**By
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Executive Summary

A prominent aspect of the debate surrounding crime and gun ownership, lost and stolen gun laws represent a particularly heated point of contention in an ideological debate between gun owners and anti-gun interest groups. After the Pennsylvania State House refused to pass a statewide lost and stolen law in 2008, lobbyists presented these ordinances to local governments throughout the state as a commonsense way to reduce crime.

Today, lost and stolen ordinances exist in approximately 45 communities – ranging in size from Philadelphia to Munhall – in Pennsylvania and their existence has prompted court cases that have yet to resolve whether or not such laws are legal. However the courts have ruled, it is clear that lost and stolen gun laws enacted by local governments in Pennsylvania are unenforceable and redundant.

It is also likely that, if these ordinances are ever enforced, their enforcement would engender a costly legal battle that, based on previous cases pertaining to local gun laws, would result in the overturning of lost and stolen gun laws enacted at the local level. In light of this situation, lost and stolen gun laws must be understood as posing more of a liability than a benefit in local governments' struggle to fight crime.

In proving this contention, this briefing examines four distinct aspects of lost and stolen gun laws in Pennsylvania:

- **An Unenforceable, Unnecessary Law:** To our knowledge, no lost and stolen ordinance has ever been enforced in Pennsylvania and, because of its dubious legality, prosecutors and district attorneys are unlikely to attempt enforcement. Furthermore, these local ordinances are made redundant by harsher federal and state laws that criminalize straw purchasing.
- **Pennsylvania Firearms Law:** The Pennsylvania Uniform Firearms Act and current judicial precedent are both clear that local governments have no legal right to enact legislation impacting gun ownership. Lawsuits challenging local lost and stolen ordinances have been dismissed only because, due to lost and stolen laws not being enforced, no plaintiff has had standing to challenge these ordinances.
- **An Invitation to Costly Lawsuits:** Understanding Pennsylvania firearms law as it stands today, local governments that enact lost and stolen ordinances are in violation of judicial precedent and the Uniform Firearms Act. This makes local governments vulnerable to costly lawsuits by gun owners and pro-gun lobbying organizations.
- **Criminalizing Victims:** Lost and stolen ordinances not only constitute poor fiscal and anti-crime policy, they also threaten to criminalize individual gun owners who have already been the victims of a crime. In this way, lost and stolen ordinances violate our understanding of fairness in the law.

An Unenforceable, Unnecessary Law

Lost and stolen gun laws have existed in various parts of the country for more than a decade but their prominence in Pennsylvania today is the result of three years of lobbying by Mayors Against Illegal Guns (MAIG). A national coalition organized by New York City Mayor Michael Bloomberg and Boston Mayor Thomas Menino, MAIG's goal is "preventing criminals from illegally obtaining guns and using them."¹

Although a laudable and uncontroversial goal, MAIG's methods of reaching this goal brought it into conflict with gun-owners and Second Amendment organizations in Pennsylvania and across the country. Indeed, much of the conflict is a result of MAIG's support for lost and stolen gun laws – laws that require gun owners to report their lost or stolen firearms to the police within between 24 and 72 hours after discovery of the loss or theft or face fines and jail time.²

MAIG and its supporters argue that these laws give law enforcement a necessary tool in prosecuting so-called "straw buyers" – individuals who purchase a firearm legally and then sell or give the weapon to someone like a convicted felon for whom purchasing or possessing a firearm is illegal.³ But because lost and stolen ordinances only punish people who are aware of the loss or theft of a firearm and don't report it, straw purchasers can claim that they simply weren't aware of the loss or theft.

Because prosecutors find it almost impossible to establish whether or not a suspected straw purchaser was aware of the loss or theft of a firearm, the law is essentially unenforceable and straw purchasers – the target of lost and stolen ordinances – find themselves with a new, easy alibi: "I didn't know the gun was missing."⁴ Indeed, between 1996 and 2008 (a period of 12 years for which data is available), Cleveland only prosecuted two people for violating its lost and stolen ordinance. Pittsburgh and Philadelphia have prosecuted no one since they enacted their lost and stolen ordinances in 2008.⁵

Not only are lost and stolen ordinances unenforceable, they are also redundant. State and federal laws already address straw purchasing and make it illegal to transfer a firearm to a prohibited person, deceive a firearm dealer about the purpose of purchasing a firearm or engage in a conspiracy to perpetrate a straw purchase.⁶ These laws provide law enforcement officials the tools with which to prosecute straw purchasers on multiple felonies that could put them behind bars for decades and cost them hundreds of thousands of dollars in fines.

Recognizing that lost and stolen gun laws are unenforceable and redundant, the Pennsylvania State House defeated a statewide lost and stolen law in April of 2008.⁷ This defeat at the state level prompted MAIG, CeaseFirePA and its allies in local government to work to enact these laws in cities, townships and boroughs throughout Pennsylvania in an attempt to put pressure on Harrisburg.⁸

Pennsylvania Firearms Law

In lobbying smaller political subdivisions in Pennsylvania to adopt lost and stolen gun laws, MAIG lobbied cities, townships and boroughs to violate the PA Uniform Firearms Act that expressly prohibits local governments from creating their own gun laws. Indeed, 18 Pa.C.S. § 6120 of the Uniform Firearms Act states, "No county, municipality or township may in any

manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.”⁹

Pennsylvania courts ruled a number of times over the last four decades that 18 Pa.C.S. § 6120 categorically preempts any attempt by local governments to make laws impacting firearms in any way.¹⁰ In 1996, in *Ortiz v. Commonwealth*, the Pennsylvania Supreme Court established that “Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern . . . and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.”¹¹

In 2008, in *Clarke v. House of Representatives*, the Commonwealth Court affirmed the precedent set by *Ortiz* and the State’s right to preempt the local regulation of firearms when it struck down seven Philadelphia gun control ordinances.¹² The Court wrote, “Section 6120 and binding precedent make clear that the regulation of firearms is preempted.”¹³

Pennsylvania Attorney General Tom Corbett also affirmed this interpretation of 18 Pa.C.S. § 6120 in 2009 when he wrote to the Adams County District Attorney that “it is, and continues to be, my understanding that any effort by a municipality to legislate in a way that affects the ownership, use, possession, transfer or transportation of a firearm is not legitimate.”¹⁴ The legal opinion of the Attorney General and legal precedent going back to *Schneck v. City of Philadelphia* in 1978 clearly establishes preemption not as having a narrow impact on the regulation of firearms at the local level but as expressly forbidding the regulation of firearms in anyway by local governments.

Even the most recent rulings on local lost and stolen ordinances that supporters of the ordinances have construed as victories have not changed preemption in anyway and have not even ruled on the merits of local lost and stolen legislation. In *NRA v. Pittsburgh* (June 2010) and *NRA v. Philadelphia* (June 2009) – two recent cases that organizations like CeaseFirePA construe as victories --, Commonwealth Court ruled that plaintiffs challenging lost and stolen ordinances in each city did not have standing to challenge the laws.¹⁵ Specifically, Commonwealth Court “concluded that the plaintiffs lacked standing to challenge the reporting ordinance because they had not demonstrated direct and immediate harm.”¹⁶

An Invitation to Costly Lawsuits

Because the courts only addressed the standing of the plaintiffs, the rulings by Commonwealth Court in *NRA v. Philadelphia* and *NRA v. Pittsburgh* cannot be construed as a victory affirming lost and stolen ordinances. Instead, these two most recent decisions leave local governments vulnerable to further lawsuits if they ever do choose to enforce their lost and stolen ordinance and prosecute a gun owner under the ordinance. A gun owner prosecuted under one of these ordinances would have standing to sue as would a gun owner who, though not prosecuted, could show “direct and immediate harm” for another reason.

The National Rifle Association’s vigorous pursuit of lawsuits testing local lost and stolen ordinances should especially be considered a warning to local governments who could find themselves the target of a test case pushed by the NRA. Suing smaller political subdivisions

could be especially attractive to the NRA because they would have fewer legal resources than larger cities like Pittsburgh and Philadelphia.

Of course, even a lawsuit filed by a private citizen who cannot show concrete standing and who does not have the resources of the NRA or a similar gun lobby could cost a small, local government a great deal of money. After all, many local governments rely on a part-time solicitor who bills hourly and an additional 50 hours of legal work spent on a lost and stolen lawsuit could cost a local government \$7,500 or more.

The Borough of Ben Avon – a community of about 2,000 people located in Allegheny County – recently repealed its year-old lost and stolen ordinance partially because the ordinance “raised numerous concerns regarding possible legal challenges.”¹⁷ In repealing its ordinance, Ben Avon acted to protect its residents from the cost of a lawsuit and, in doing so, made a fiscally responsible choice to repeal an ideologically motivated ordinance.

Criminalizing Victims

Straw purchasing is a serious crime and crime reduction is one of the primary functions of local governments. Recognizing this, it is important for local governments to understand that not only do lost and stolen ordinances not do anything to reduce crime, they also constitute an unfair attack on law-abiding gun owners.

A firearm is a costly tool and, like any other tool, most gun owners will report the loss or theft of a firearm as soon as possible. But it makes little sense to pass laws that criminalize a gun owner who is perhaps unable to report the loss or theft of a firearm within the period mandated by law or is unaware of the law as it pertains to lost and stolen firearms. Furthermore, fear of violating the law could deter gun owners from reporting the loss or theft of a firearm after the 24 or 72 hour stipulated by the ordinance had elapsed.

In providing for the prosecution of law-abiding individuals who simply fail to report the loss or theft of a firearm, lost and stolen gun laws fundamentally violate our sense of fairness in the law.

Conclusion

Passing lost and stolen gun laws does nothing to reduce crime largely because such laws are unenforceable and redundant. Furthermore, they are useless in holding criminal straw purchasers accountable for their actions and have, to our knowledge, never been enforced in Pennsylvania.

Lawmakers and interest groups concerned about straw purchasing should be aware that straw purchasing is already a criminal offence under Federal and Pennsylvania law. The penalties for violating laws applicable to straw purchasing include years in jail time and hundreds of thousands of dollars in fines.

Clearly, enacting lost and stolen gun laws is about ideology rather than utility and the politicians and organizations that lobby for these laws are doing more to score political points than they are to stop crime. Indeed, rather than help local governments in their struggle against violent crime, lost and stolen gun laws make local governments vulnerable to costly lawsuits that, win or lose, drain resources that could otherwise be devoted to crime prevention programs.

Simply put, it is irresponsible for local governments to expose themselves to such risks by enacting lost and stolen gun laws the enactment of which do nothing to prevent crime and instead only further the narrow political interests of MAIG, CeaseFirePA and their allied politicians. Any local government that devotes scarce resources to establishing and defending such an unenforceable and redundant law is doing its taxpayers an immense disservice.

¹ Mayors Against Illegal Guns, “About the Coalition,” Mayors Against Illegal Guns, <http://www.mayorsagainstillegalguns.org/html/about/about.shtml>.

² Mayors Against Illegal Guns, “Pennsylvania Mayors Advance Effort to Require Reporting of Lost and Stolen Guns,” Mayors Against Illegal Guns, <http://www.mayorsagainstillegalguns.org/html/local/pa-lost-stolen.shtml>.

³ CeaseFirePA, “Lost or Stolen Handgun Reporting: At a Glance,” <http://www.ceasefirepa.org/images/at%20a%20glance%20june%2028%202010.pdf>.

⁴ C. D. Michel, “Why pass an ineffective law on guns?” *Ventura County Star*, August 10, 2007.

⁵ Rich Lord, “Lost-gun ordinances usually fire blanks,” *Pittsburgh Post-Gazette*, October 30, 2008.

⁶ See 18 Pa.C.S. § 6111(g)(1): Sale or Transfer of Firearms; 18 Pa.C.S. § 6111(g)(2): Sale or Transfer of Firearms; 18 U.S.C. § 922(d): Unlawful Acts.

⁷ National Rifle Association Institute for Legislative Action, “Pa. House defeats lost-and-stolen gun bill,” National Rifle Association Institute for Legislative Action, April 2, 2008

⁸ Christopher Baxter and Tom De Martini, “Wilson takes shot at gun violence,” *The Morning Call*, May 12, 2010.

⁹ 18 Pa.C.S. § 6120: Limitation on the regulation of firearms and ammunition

¹⁰ *Schneck v. City of Philadelphia*, 383 A.2d 227 (Pa. Cmwlth. 1978); *Ortiz v. Commonwealth*, 545 Pa. 279, 681 A.2d 152 (1996); *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Cmwlth. 2008).

¹¹ *Ortiz v. Commonwealth*, 545 Pa. 279, 681 A.2d 152 (1996).

¹² *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Cmwlth. 2008).

¹³ *ibid.*

¹⁴ Attorney General Tom Corbett, Letter to Adams County District Attorney Shawn Wagner Re: Local Ordinances Concerning Firearms, August 24, 2009.

¹⁵ *NRA v. City of Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009); *NRA v. City of Pittsburgh*, 2010 WL 2541108 (Pa. Cmwlth. 2010).

¹⁶ *NRA v. City of Pittsburgh*, 2010 WL 2541108 (Pa. Cmwlth. 2010).

¹⁷ Borough of Ben Avon, Ordinance No. 748, July 20, 2010.

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