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September 13, 2013  
(2-Sided copy)

To: Hon. James E. Timilty, Senate Chair  
Hon. Harold P. Naughton, Jr. House Chair  
Members of the Joint Committee on Public Safety and Homeland Security

As organizations advocating for and representing children, adolescents and adults with behavioral health disorders, their families, and service and treatment providers, we appreciate the opportunity to express our views on certain issues, which have arisen as legislative bodies across the nation understandably have re-examined gun registration laws as part of an effort to fashion a response to the shooting tragedies at Newtown, Connecticut and Aurora, Colorado. **Our recommendation is for Massachusetts to come into compliance with the National Instant Criminal Background Check System (NICS), as suggested in House 47 and/or establish a Massachusetts Registry into which Courts transmit all required mental health adjudications, and which is utilized for the purpose of firearm licensing only.**

While we support certain gun restrictions, we want to express our strongest opposition to provisions such as those in House 3253, which unfairly target people with behavioral disorders and compel extensive and unwarranted disclosure of mental health records. Restrictions such as these will discourage treatment and discriminate against those who previously sought and received treatment. Moreover, no matter how one feels about gun

ownership, the United States Supreme Court has concluded it is a constitutional right, not a privilege.

We are grateful for the work which this Committee, the Gun Violence Advisory Committee, established by Speaker DeLeo, and individual legislators have undertaken on these issues, and we hope the process will continue to be deliberative, and one in which divergent views can be voiced and considered. There is, we believe, room for consensus

Massachusetts has very strict gun control laws, including a ban on "Assault" weapons. Nonetheless, following the tragedy at Newtown, the subjects of gun violence, mental illnesses state and national data banks have become frequent topics on media outlets, and in our state legislature.

Ironically, the guns used in the Newtown massacre were registered to the perpetrator's mother (his first victim), who by all accounts did not have a mental illness. Thus, even the most inclusive gun registry or most restrictive application or registration procedure would not have denied her son access to these weapons (even assuming he had an emotional disorder).

We know any discussion of guns or violence which appears to be directed in at individuals with behavioral health disorders is stigmatizing. However, we also know whenever a violent act is committed by any person with a mental illness (which is actually less frequent than the general population) that is even more stigmatizing to the numerous individuals who have been treated, or are getting treatment, and who are part of the fabric of our communities, working, going to school, raising families. Accordingly, we think it is important for the mental health community to be in the forefront of reasonable gun control legislation, and we hope this communication is helpful to the Committee.

We know the stigma surrounding mental illness already presents a huge barrier to treatment. We can and should develop policies that strike a proper balance between public safety, patient confidentiality and not punishing a person because s/he sought help or treatment.

Our recommendation is for Massachusetts to come into compliance with the National Instant Criminal Background Check System (NICS), as suggested in House 47 and/or establish a Massachusetts Registry into which Courts transmit all required mental health adjudications, and which is utilized for the purpose of firearm licensing only.

Here is what we think are essential requirements for a reasonable and rational national and/or state registry:

**THERE SHOULD BE RESTRICTIONS PLACED ON THE USE OF ANY REGISTRY**

- The data base or registry should only be viewed in the context of a person applying for a gun license or the renewal of a gun license. It should not be used or accessed for any other purpose. If a person's name goes into the registry or data base, no one ever knows unless and until that person applies for a gun license, or the renewal of a gun license.

### **THERE SHOULD BE A PROCESS FOR THE REMOVAL OF A NAME**

- There has to be a process or mechanism for a person to have his or her name removed, upon the presentation of medical evidence or evidence of error that his or her name was placed in the registry by clerical error, or that even if legitimately placed, s/he is no longer a danger to himself or to others. Otherwise, how can we promote recovery if the inclusion of any person's name becomes a lifetime ban?

### **THE LAW SHOULD REQUIRE ADJUDICATION RATHER THAN MEDICAL OPINION**

- In the immediate aftermath of Newtown, two states (New York & Maryland) mandated a variety of mental health clinicians and in Maryland teachers and others to send in the name of any patient if s/he believed the patient to be a danger to himself or others. The NY law was passed in two days and drew immediate criticism for its breadth and the violation of patient confidentiality.
- **Defensive Medicine will result in over-identification :** The therapist in the Aurora, Colorado shooting has already been sued. Mental health workers, like other clinicians, are going to become defensive and start sending in names, as a way to guard against further lawsuits.

### **WE NEED TO ENCOURAGE NOT DISCOURAGE TREATMENT**

- Imagine you were one of the police officers responding to the scene at Newtown. Weeks later you find you can't sleep or eat or function as you usually do. Will you go to a psychiatrist or other therapist if you think the office visit could result in your name going to law enforcement so you will not be able to renew your gun license?
- What if you are a law abiding gun enthusiastic or hunter and lose your spouse. Your grief becomes more than you can handle. Will you see someone for help, or does the fear the simple visit could lead to your name in the registry stop you? The requirement of adjudication brings the court into the picture and provides an important measure of protection in these kinds of cases.

### **SUMMARY & CONCLUSION**

In summary, we believe background checks, or registries that would deny a gun to a person who has been "adjudicated" a danger to himself or to others are reasonable and

should be the law in Massachusetts. From a public health and safety perspective, a person adjudged to be a danger to him or herself or to others should neither possess a gun, nor be eligible for a gun license or the renewal of an existing license. Moreover, by requiring that there be adjudication, we eliminate or significantly reduce the risks of over-identification, and discouraging treatment as outlined above. Lastly, people, whose names are in the registry, must have reasonable and realistic opportunities for restoration of their "gun rights."

We appreciate that these issues require careful draftsmanship and examination. We would be pleased to assist the Committee in any appropriate way and would be happy to provide you research papers on this and related topics.

Thank you for the opportunity to offer our opinions.

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**Deborah Delman, Executive Director**  
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**Cc: Members of the Massachusetts Senate and House of Representatives**