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TESTIMONY BEFORE THE  
POLICY COMMITTEE HEARING  
AUGUST 26, 2010

I would like to address with you some limited and specific issues involving the PICS system. My focus is in the area of appeal from a PICS decision and my expertise in regard to handling these matters.

Let me begin with the proposition that the Right to Bear Arms is a constitutional right we have as citizens. It is not to be abridged and reduced to a privilege. There must be a specific identifiable cause to suspend or deny a citizen a recognized constitutional right.

Most certainly a convicted felon may be denied the right to own a firearm. The effective term is "convicted".

The current state of the PICS system relies upon the NCIS data, what we in criminal law call the RAP sheet. Should an arrest without disposition be found, the arrest charges will cause a denial. This event requires our aggrieved party to file a PICS appeal. Often, the data furnished upon an appeal is incomplete.

I run into instances where the arrest data is in error and at times inaccessible. It is purely that, evidence of ARREST. Denials rest upon the arrest, whereas, no conviction might have ever taken place. It places the burden upon the aggrieved party to prove that a conviction did not occur.

It is contrary to due process to require the appellant, the aggrieved party, to prove lack of conviction when in fact the Commonwealth does not have evidence of conviction. To deny a citizen a right without strict evidence that the citizen has suffered a disenfranchisement of that right, is a denial of due process. The Commonwealth must be bound to a standard that the burden to be established is proof of conviction. Moreover, the Commonwealth must have that evidence in its file and should be required under a duty of discovery, to provide such evidence to an appellant. It is basic due process, fundamental fairness and constitutional law. A citizen's right shall not be infringed.

The legislative branch must ensure that a citizen is not arbitrarily denied the rights protected under the Second Amendment of the United States Constitution upon a claim of prior arrest or incomplete information. The denying entity must be bound with the burden of establishing the disability to a standard of proof that requires the Commonwealth to provide discovery of the evidence relied upon.

I have some issue with the fact that a citizen wrongly denied the right to purchase a firearm is not compensated for the expense of establishing his own eligibility. Wrongly disenfranchised and doubly burdened with the expense.

Should I have a recommendation, it would be that when a citizen is denied his right to purchase a firearm and the Commonwealth on appeal relies upon incomplete or inaccurate information in making that decision, some remedy is crafted to deter the Commonwealth from such improvident denials. Compensation to the aggrieved citizen would be justifiable.