

Wilmington City Council 800 North French St. Wilmington, DE 19801

October 9, 2017

ACLU Opposes Ineffective and Unconstitutional Gun Offender Registry

Dear City Council Members:

We continue to oppose the City Council's proposed gun offender registry even with the latest amendments. The registry is unlikely to reduce crime while having significant negative effects, and the proposed law's compelled disclosure requirements are unconstitutional.

The gun offender registry would require people who have been convicted of gun crimes to register with the police within five business days and disclose information including a "description of the crime" and "any other information" the Police Chief requires. The registration and disclosure policy is enforced with penalties that are still draconian even after the latest amendments—including up to a year in prison for every week of delinquent registration.

Registries don't reduce crime, but they do lead to costly, unnecessary incarceration

Many people who fail to appear for things like court dates do so because of inadvertence or interfering life events such as transportation or child care problems rather than intentional evasion of authorities. Indeed, the simple act of sending text messages to people to remind them of court dates has been shown to significantly reduce failures to appear. Requiring Wilmington residents to appear within five business days and then periodically re-appear, with even less notice than the typical court process involves, is a recipe for creating noncompliance without accomplishing anything productive.

Notwithstanding mixed anecdotes from other police departments, there is no strong evidence that the expense, individual harm, and social cost of gun offender registries lowers crime. The Maryland statistics, for example, do not reliably report the recidivism rate for the subject population before the implementation of the registry. And while the proposal claims that no resources will be dedicated to enforcement of the registry, that is false. Enforcement uses up police officer time that would be better spent elsewhere as well as the resources of the courts, the Office of the Attorney General, the Office of Defense Services, and the Department of Corrections. City Council may not pay those costs, but your constituents certainly do.

It is a mistake to dedicate these resources to an intervention that is, at best, unproven, when there are proven strategies that reduce gun crime—like the recommendations of the Centers for Disease Control and Prevention—that go unfunded.

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The disclosures compelled at the discretion of the police are unconstitutional

The proposed ordinance requires people to produce and verify information to the satisfaction of the Police Chief or face criminal penalties, including information about the crime that they were charged with. In many cases, such compelled disclosure will violate an individual's Fifth Amendment right to avoid self-incrimination. Moreover, the ordinance empowers the Police Chief to promulgate regulations and rules that will govern the registration and disclosure process without providing any bounds on that discretion, and makes violations of those rules a crime. Effectively giving the police the power to compel the disclosure of any information they wish is a violation of constitutional separation of powers and due process.

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The gun offender registry may increase gun crime

One of the ways policing stops crime is by increasing the certainty of punishment. In recent years, the rate at which murderers in Wilmington are punished has been reported to be as low as 12%. That abysmal clearance rate partly reflects a lack of cooperation on the part of the community in solving crimes. This lack of cooperation, in turn, reflects a lack of faith that witnesses will be protected and that the police can be trusted to investigate fairly. The City will not improve trust and cooperation by instituting draconian laws that will unnecessarily punish people for failing to appear at a police station within five days. The money spent promulgating and enforcing this registry would be much better spent ensuring the safety of witnesses and improving community policing.

Even more effective than good policing at reducing crime is increasing economic opportunity. People who have jobs, especially upon returning from serving a criminal sentence, are far less likely to commit crimes. With no privacy protections built into the registry ordinance and some people contemplating publishing the list, there is a reasonable likelihood that people added to the list will find it even harder to land a job. That's a strategy for increasing crime, not decreasing it.

For these reasons, we encourage the Wilmington City Council to reject this proposed ordinance. If you have any questions, do not hesitate to contact us.

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