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January 8, 2013

The Honorable Andrew M. Cuomo
New York State Capitol Building
Albany, NY 12224

Re: Prevention of Firearms Violence

Dear Governor Cuomo:

On behalf of the District Attorneys Association of the State of New York (DAASNY), a voluntary organization comprised of the 62 elected District Attorneys in our State and the Special Narcotics Prosecutor of the City of New York, I write to express our deep concern about the proliferation of gun crimes that continue to impact our communities, and to offer constructive suggestions as you and the Legislature consider addressing the issue through legislation. Although policymakers in upstate, downstate, and Western New York have always been deeply concerned about gun violence, we have a rare opportunity to do even better. The senseless mass murders in Arizona, Connecticut, and Rochester that have recently shocked our collective conscience, along with the almost daily gun violence on our streets, cry out for our leaders to come together to enact common-sense solutions to safeguard our villages, towns, and cities.

I appreciate your willingness to consider the issues outlined below – issues that DAASNY believes would continue New York's prime role as a leader in sound gun control policy. Because New York is also involved in the national debate, I have included our views on important proposals regarding federal law.

Statewide Proposals:

Mandatory Consecutive Sentences for Crimes That Include Firearms. When preventive efforts fail, there must be appropriate penalties for people who commit violent crimes or traffic in narcotics while armed with a firearm. Criminal activity becomes exponentially more volatile when firearms are present. Amending the existing Criminal Use of a Firearm law (PL §265.09) to provide for a mandatory consecutive five-year sentence when a person commits a violent felony or drug trafficking offense while in possession of a firearm would go a long way toward eliminating gun violence on our streets. A written proposal to amend this law is part of DAASNY's proposed anti-gang package, a copy of which is enclosed.

High-Capacity Magazine Ban - State. A ban on high-capacity magazines, which allow those bent on mass murder to fire countless rounds without pausing for a moment to reload, would be likely to lessen the devastation involved in tragedies like the recent Sandy Hook massacre. In New York, possessing a large capacity ammunition-feeding device is a class D felony (PL §265.02(8)), but only if such devices were manufactured after September 13, 1994. New York should eliminate this exception.

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

Statewide Periodic Reapplication. Drivers in New York State are required to renew their licenses periodically, in recognition of the serious responsibility that comes with driving a car on our highways. There is no good reason why gun licenses should not also have to be renewed. In New York City, Westchester County, Nassau County, and Suffolk County, gun permit holders are already required to appear in person periodically to renew their licenses. Unfortunately, in New York's other counties, firearm licenses are valid for life, regardless of any change in the fitness of the permit holder. The Legislature should harmonize the statewide reapplication requirements to conform to existing renewal requirements.

Microstamping. Microstamping is an inexpensive and effective tool to solve – and deter – gun trafficking and other crimes by etching a unique code onto the firing pin and breech face of a semi-automatic handgun. This code is then transferred onto the cartridge casing each time the gun is fired, which allows law enforcement to quickly determine the gun's purchaser. Both DAASNY and the New York State Law Enforcement Council have long supported microstamping.

Mental Health – Authorized Firearm Revocation. New York State law does not expressly empower courts to remove firearms or revoke the firearms licenses of people who have been found mentally incapacitated or ordered to mental treatment or commitment. Granting courts the power to revoke the license and order the surrender of firearms owned by one suffering from a mental disorder is a powerful crime prevention tool that would save lives.

Mental Health – Kendra's Law. Kendra's Law, enacted in 1999 in recognition that some people suffer from serious mental health issues that require oversight, is ripe for expansion in several ways. Orders of treatment should be extended from six months to one year. Discharge evaluations should be undertaken to establish treatment plans. And when people relocate to a new county, the treatment order should also move to that new county. Finally, one way to use available mental health services more effectively is to expand the list of those authorized to file a petition with the court to include many stakeholders in the criminal justice system who are in a position to seek appropriate treatment under Kendra's Law for covered individuals. Current law is limited to Probation and Parole officers.

Stockpiling Prevention. To reduce both stockpiling and trafficking of firearms, buyers should be prohibited from buying large caches of weapons at one time. Reasonable limitations should be put on the number of weapons that can be bought or sold in a finite period of time.

Gun Show Loophole - State. New York State has already taken steps to require that background checks be performed at gun shows. To cover all gun sales, the background-check requirement should be extended to private transactions conducted outside the purview of gun shows, such as sales at antique or pawn shops.

Home or Place of Business Exception. Possession of an illegal loaded firearm in New York is currently a class C violent felony, unless such possession was in the person's home or place of business. This minor exception is justified because the threat to public safety is somewhat diminished when the purpose of the possession is for the defense of one's home or place of business. But in cities like New York or Syracuse, where many people live in multiple dwellings, current law does not make clear that the "home" is limited to one's apart-

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

ment and not the common areas of a building. Too often in our cities, criminals roam the hallways and commit violent crimes. Judges and juries should have clear guidance that in single houses, the entire structure is the “home,” while in multiple dwellings, the home ends at the front door to the individual unit.

Ammunition Sales. As anyone who has recently purchased cold medicine knows, buyers are required to provide identification so that sellers can record covered transactions. Large quantities of aggregate purchases are a red flag that the purchaser might be manufacturing dangerous drugs. DAASNY believes that if we can do this for cold medicine, we should do it for bullets.

Federal Proposals:

With respect to federal proposals, District Attorneys across the State are already on record regarding some of the most important. We note these here.

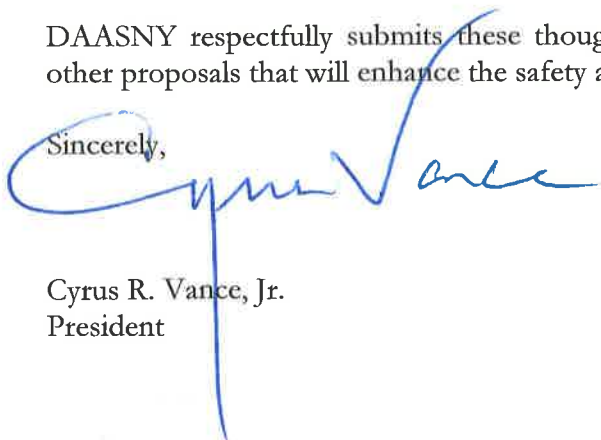
Gun Show Loophole - Federal. H.R.591 (2012) would require Brady criminal background checks on all gun sales at gun shows nationwide. That means that so-called “occasional sellers” would need to abide by the same rules as licensed sellers, including conducting background checks. This would solve the existing problem that is rampant at gun shows – unlicensed private sellers are actually in compliance with the law when they sell firearms to convicted felons, domestic violence abusers, and the dangerously mentally ill, even though those categories of people are themselves not allowed to own weapons. A simple background check would thwart their efforts.

High-Capacity Magazine Ban - Federal. The federal high-capacity magazine ban, enacted in 1994, expired in 2004. A simple and straightforward ban on these militarized weapons should be enacted in this Congressional session.

National Right to Carry Reciprocity Act. H.R. 822 (2012) would require every state to honor a permit to carry a concealed weapon from any other state, overriding the laws of New York and many other states. If this bill were to become law, individuals who are not eligible for a permit in New York would be afforded the right to carry a concealed weapon while they are in New York solely because they hold a permit from their home state. Without any discretion or oversight, New York would be forced to allow an individual to carry a concealed weapon in clear violation of New York State law. DAASNY strongly opposes this bill.

DAASNY respectfully submits these thoughts and welcomes a dialogue about these and other proposals that will enhance the safety and security of New Yorkers.

Sincerely,



Cyrus R. Vance, Jr.
President