

March 25, 2020

Dear Sheriff:

Our members who live and work in Pennsylvania have told us that some sheriffs across the Commonwealth have recently announced that they will not process applications or issue licenses to carry firearms (LTCF) to county residents, allegedly due to concerns over the spread of the COVID-19 virus.¹ While it is certainly understandable that Sheriff Offices may wish to limit their employees' interactions with, and risk of infection by, the public, it is also certainly the case that the right to "bear arms" is expressly protected by both the federal and state constitutions. *See* U.S. Const., Amend. II; Pa. Const. Art. I, Sec. 21.

Although GOA supports pending state legislation (such as House Bill 1412) that would enable a person to bear arms without a permit (often called "constitutional carry"), at present Pennsylvania law mandates that a person may not carry a **concealed** firearm "without a valid and lawfully issued license" and, if he does, he is at risk of felony prosecution. 18 Pa. C.S. §6106. Moreover, 18 Pa. C.S. § 6107 prohibits **any** form of carry of firearms "during an emergency² proclaimed by a State or municipal governmental executive unless that person is ... [l]icensed to carry firearms...." Thus, the permitting system is indisputably a "critical function" of government during this time, since it is the only way Pennsylvania residents can exercise their constitutional right to bear arms in public.

By denying constituents the ability to seek and obtain a Pennsylvania LTCF, a sheriff denies them not only the ability to protect themselves and their families during this time of uncertainty, but also denies them their constitutionally protected rights.³

¹ For example, please see <https://www.facebook.com/wcpasd/posts/2776597612436373>

² On March 16, 2020, Governor Wolf declared a statewide state of emergency. *See* L. Hullinger, "[Wolf declares state of emergency, shuttering all 'nonessential' businesses across state](#)," *York Dispatch* (Mar. 16, 2020).

³ To be sure, there is a limited defense to prosecution offered by 18 Pa. C.S. §6106(a)(12) for persons whose permits expire but would have been eligible to renew. However, that exception applies only to persons who currently hold an expiring Pennsylvania license to carry. Yet as the COVID-19 wreaks havoc on both the nation's health and its economy, more and more new firearm owners have realized the need to arm and protect themselves, meaning many Pennsylvanians will be seeking permits who have never had them before. Moreover, this exemption applies only for a period of six months,

Moreover, there is good reason for people to arm themselves, as many localities (including some in Pennsylvania) have announced their intention to cease making arrests for certain non-violent crimes, including serious felonies such as burglary.⁴ Thus, Pennsylvanians understandably may wish to be able to protect themselves if the police cannot.

Not only is your participation in the licensing process indisputably necessary to enable the exercise of the right to bear arms by your constituents, but also your office's participation in this process is mandated by state law. 18 Pa. C.S. §6109(d)(1-5) states unequivocally that, upon receipt of a license to carry application, "The sheriff to whom the application is made **shall** ... investigate [the applicant] and conduct a criminal background ... check...." Thereafter, if the qualifications are met, the license to carry "**shall** be issued if, after an investigation not to exceed 45 days...." 18 Pa. C.S. §6109(e). If the sheriff denies the application, he "**shall** notify the applicant in writing of the refusal and the specific reasons." 18 Pa. C.S. §6109(g).

None of these statutory provisions provide any discretion to a sheriff to delay, deny, alter, or refuse to participate in this process. What's more, as constitutional officers, sheriffs swear an oath to "support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and [to] discharge the duties of my office with fidelity." Pa. Const. Article VI, Section 3. First and foremost, sheriffs owe a duty to their constituents to protect their constitutional rights, and to enable them to obtain the necessary commonwealth licenses to bear arms in public. Second, sheriffs have a **duty** to uphold the Constitution, and by extension, this **requires them** to enforce statutory mandates that further the right to carry arms. But this duty breaks down if sheriffs refuse to process and issue licenses to carry. *See Commonwealth v. Leet*, 537 Pa. 89, 96 (Pa. 1994) ("sheriffs have had the power **and duty** to enforce the laws since before the Magna Carta....") (emphasis added).⁵ *See also* 42 Pa.C.S. § 2921 ("The sheriff, either personally or by deputy, shall serve process and execute orders directed to him pursuant to law.")

All sheriffs' offices within the Commonwealth of Pennsylvania face the same challenges as does your office, related to the spread of the COVID-19 virus. Importantly, some offices have not taken the drastic steps of ceasing to process LTCF applications. Rather, many have taken other precautions designed to limit contagion, while still performing their essential task of assisting Pennsylvanians with obtaining licenses to carry. For example, some offices have shortened hours, limited locations for permit applications,

while many experts have speculated that disruptions due to COVID-19 could last far longer than that.

⁴ V. Fiorillo, "[Philly Coronavirus News: Confusion Over Arrests, Confusion Over 'Essential' Businesses](#)," *Philadelphia* (Mar. 18, 2020).

⁵ Certainly, if these dual duties — to the Constitution and to the law — conflict, then your duty is to uphold the requirements of the federal and state constitutions. But in this case, these dual duties mandate the same outcome — that you fulfill your role to assist your constituents in the ability to obtain licenses to carry firearms.

or developed ways to process applications through the mail or by appointment. If you are one of those sheriffs who are continuing to process LTCF applications, we thank you. However, if you have suspended such operations, we urge you to consider such alternatives, rather than the drastic, unlawful, and unconstitutional decision to cease processing LTCFs, which denies your constituents the ability to exercise an enumerated constitutional right.

Sincerely yours,



Erich Pratt
Senior Vice President



Dr. Val W. Finnell
Pennsylvania State Director

cc: James Clymer, Esquire
Lancaster, Pennsylvania