

February 05, 2014

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Senate Judiciary Committee

Senator Floyd Prozanski (Chairman, Senate Committee On Judiciary)
Senator Betsy Close (Vice Chair, Senate Committee On Judiciary)
Senator Jeff Kruse (Senate Committee On Judiciary)
Senator Michael Dembrow (Senate Committee On Judiciary)
Senator Arnie Roblan, (constituent, residence in district, Senate Committee On Judiciary)

CC: Senator Brian Boquist, (family farm and ranch in district, Ballston – Perrydale area)
Mike Riley (Judiciary Office Coordinator)

Thank you for the opportunity to submit the following comments in absolute **opposition** to Senate Bill 1551.

- How many people in Oregon who legitimately failed the Oregon State Police FICS background check, in the last 12 months, have been prosecuted under existing state law?
- In the last 24 or 36 months?
- Since the NICS was initially put in place by the Brady Law and then Oregon's own FICS laws?
- Why, under the current version of SB 1551, can I give a firearm to my niece and nephew, however my niece or nephew cannot give it back to me, without conducting a check on me.

So, please explain why I, or anyone else, should be encumbered and further restricted because authorities have not performed their jobs and have an abysmal record of prosecution for:

166.425 Unlawfully purchasing a firearm.

(1) A person commits the crime of unlawfully purchasing a firearm if the person, knowing that the person is prohibited by state law from owning or possessing the firearm or having the firearm under the person's custody or control, purchases or attempts to purchase the firearm.

(2) Unlawfully purchasing a firearm is a Class A misdemeanor. [1989 c.839 §15; 2011 c.662 §5]

I feel the case can be made that most everyone knows if they can or cannot legally purchase or be in possession of a firearm. Anyone ever convicted of a felony certainly does.

If lack of knowledge of ineligibility is really a major concern for lack of prosecution (as some have inadequately argued) then ORS 166.425 would have been amended to read: "....if the person is prohibited by state or federal law from owning or possessing....." and "knowing" would have been dropped long, long ago. I note with interest however, that no one has tried to put this simple fix in place. Instead, certain people seem to want to make everyone's lives much more complicated, especially if it has anything to do with firearms.

For all intents and purposes, you are very close to forcing all firearms sales to be conducted through an FFL dealer. (Something that the anti-gun sponsor of a recently touted biased poll, conducted by a firm that has been discredited for and admitted to hiding poll results and only works for liberal or democratic affiliated organizations, has been lobbying for in Washington State.^{i ii}) Those who would argue that the private citizen is not going to have to go to an FFL dealer to legally sell a firearm would be correct, but only to a very limited extent. Please consider the following:

- You are expecting that the average private person is going to have a fingerprint kit? (If no proceed to FFL Dealer)
- Are you going to seriously believe that, should OSP request it, the private person is going to be able to get that fingerprint to the OSP FICS in a timely manner? (Again, proceed to FFL dealer)

- The private person is going to know what all of the rules are, and where to find the 25 page instruction book OSP has published? (Again, proceed to FFL Dealer) (http://www.oregon.gov/osp/ID/docs/Instruction_and_Information_Guide_for_Firearms_Dealers.pdf)
- The private person is going to accurately keep the records of the transaction for five years? (They only have to keep their tax records for 3 years....do you know where your 2010 tax return is? – Think 21-24 year old single male or female, in or out of college, traveling or moving every few months or years.) (In this case too late to proceed to FFL Dealer, instead raid savings account and proceed straight to jail.

The list can go on and on. It just does not seem feasible for a private citizen to go through all of this, when even if, a person who can't buy a firearm tries to buy a firearm, that he will not be prosecuted. An insurmountable problem just has not been demonstrated. If a bad guy wants a firearm, he will get one and there is nothing you or I can do to stop him.

One reason why I didn't like the gun show amendment to the law was because I knew that additional checks or registration would be coming. We were told that it would close the big giant "loop hole" and we would be done with it, yet here we are. Amending a law that a lot of us thought was not going to be amended in this fashion. One that was discarded just a year ago. So, if just a year later we are at this point again, what is to prevent the following in 2015:

"(6)(a) The department may retain a record of the information obtained during a request for a criminal background check under this section for the period of time provided in ORS 166.412 (7).

ORS 166.412 (7)(a) "The department may retain a record of the information obtained during a request for a criminal records check ~~for no more than 5 years indefinitely.~~"

Do not try to fool me about registration, the Oregon FICS is a "short term" 5 year registration data base. Several newspapers are currently calling this a gun registration bill and I have seen where it was used just exactly as that. Just one example:

*April 08, 2010
By **Anita Burke**
Mail Tribune*

The background check division reported that Pyles bought a Heckler & Koch .45-caliber pistol and a Remington 12-gauge shotgun March 5 at Sportsman's Warehouse in Medford, a second H&K pistol at Sportsman's Warehouse on March 6 and a Walther .380-caliber handgun and an AK-47 rifle at Black Bird Shopping Center on March 7.

Yes, I know that Chris Brown, then Superintendent of OSP, implemented a change to OAR's and Department Policy to prevent the above from happening again. But the OAR will not stop a subpoena or a search warrant!

Right now, as of this very day, there is nothing preventing any Law Enforcement Officer from getting a subpoena or search warrant to access the FICS and find out what firearms a person of interest in a case may have purchased in the last five years. There is really nothing in the ORS or OAR to prevent OSP from supplying this information to any Law Enforcement Officer who simply asks for it. ⁱⁱⁱ The only thing to stop it is a "Department Rule" and the "honor system".

I have been personally involved in shooting incidents where, in all cases, background checks would have done nothing to stop them. The suspects had either stolen the guns, "acquired" them from relatives or legally purchased them including background checks and (in some older cases) waiting periods.

I have lost a brother to firearms (background check would have not stopped it) and I lost a very close best friend (surrogate brother) to gun violence, with a firearm "appropriated" from his parents so a background check would not have stopped that.

So, you can see, *I have every right and motive to be staunchly opposed to firearms and / or demanding background checks beyond the current system, **but I am not, in fact, quite the opposite.*** I chose to go the other way and spend a career enforcing the existing laws, to the extent I was allowed, and teaching people how to safely handle and shoot firearms. I was sent to the hospital three times in the line of duty, but I am not

and **will not advocate** for bans, registration or the mandatory requirement for private party background checks on guns, or of the variety of the women's high heels that penetrated 3 layers of my ballistic vest.

I absolutely will not support this bill as it will not fill any "loop hole". There are so many other laws, both state and federal, that if just enforced, would completely put an end to this argument.

- It is against the law to purchase modern firearms by mail (**including** over the internet) without an FFL dealer and background checks.
- It is against the law for a felon to purchase a firearm.
- It is against the law for a felon to be in possession of a firearm.
- It is against the law to use a firearm in the commission of a crime.
- It is against the law to transfer a firearm via internet / mail without an FFL and background check, and, that includes EBay, Craig's List (neither of which does allows firearms anyway) and any other online or through the mail transfer.
- It is against the law.....

Just spend a day reading ORS Chapter 166 and then USC 18.....

There are books full of Federal and State laws that ARE NOT being enforced, or very randomly and loosely enforced, but we are going to fix that by adding yet one more law.

The "final denials" per year average around 1% of sales, I believe. I can't seem to find a list of Oregon stats outside of what Senator Prozanski has given to the newspapers and in the Committee hearing in January (which don't seem to match up), and I don't have time on short notice to get the information from OSP. If Oregon follows national trends, per the DOJ/FBI, "In 2012, approximately 1.01 percent of the firearm background checks processed by the NICS Section received a **final** transaction status of deny. " However, that still does not tell clearly tell us how many of those denials were appealed and won.

In closing,

Again, I oppose this bill.

You just can't make every single person in the state of Oregon who sells a firearm a gun dealer, which is the effect of the bill. Paperwork is going to have to be made readily available to all persons in multiple, easily accessible locations. The private citizen is going to have to understand all of the nuances just as well as a dealer. How many private citizens have a finger print kit readily available? The average untrained private citizen does not have the required forms or training. The logistics of making those forms available are a nightmare. People selling a firearm will be forced to go to a licensed dealer and pay a commission just to sell their gun to a neighbor they have known for many years.

The private citizens are going to have to keep the paperwork and records for 5 years. The IRS only requires individuals to keep tax records for 3 years. Private parties can and (some) will lose the paperwork over that period of time. What happens if the transferor passes away in 1 year. Are the family members or executor of the estate now responsible for those records? (If they can find them.)

This bill, quite frankly is "A solution in search of a problem". Perhaps it would be better called, "A Custom made Problem looking for a place to happen." The background check system can't keep up with the demand now. Delays and system failures are common place. Doctors are hesitant or just flat refuse to supply the system with the records/information to make it reliable for weeding out the mentally ill. At most glaring recent example of this is Aurora Colorado. And who is defining which mental illness and where are these mental illnesses codified that disqualifies a person?

Buying a firearm from a gun dealer or at a gun show is one thing, buying a firearm from your next door neighbor, is entirely another. Internet adds are nothing new. Newspaper ads under "Sporting Goods" have been around since the "Classified" became a part of newspapers.

You are not going to stop the illegal transfer of firearms with this bill, I'd dare say you would increase it. And the crying shame of it is, is that most of it will be accidental.

Drugs, stolen items, alcoholic beverages – they all have prohibitions against trafficking and yet the trafficking is profuse. Unlawful Purchase of a Firearm, Use of a Firearm in the Commission of a Crime, Unlawful Use of a Firearm.....these laws have been on the books for years.

In all seriousness, have you really read this bill from the perspective of a less accomplished / experienced person and tried to understand it? Grab any 5 people off of the street and have them read it. Have you put yourselves in the shoes of an older / elderly person who is liquidating their estate? How about the emotionally distraught widow(erg) (elderly or not) who is just wanting to have a garage sale to clean out some of her / his spouses possessions. What have we come to that we have to pay consultation, consignment or legal fees just to handle a simple transaction.

Again, this bill is not a good bill. Not to sound redundant, but If a person really wants a gun and he is denied at NW Armory, Sportsman's Warehouse, Cabela's or his next door neighbors, he will get one and you nor I will know anything about it or where he got it from.

If you believe and you absolutely feel you must modify the Oregon Background Check Law, well, I have a proposal and please note it does not include private party background checks:

To be amended as follows:

1. Any person who is ineligible to purchase a firearm and attempts to do so shall be guilty of a Class A Misdemeanor, unless their ineligibility is due to any conviction of a felony in which case they shall be guilty of a Class C Felony.
2. **Any employee of the Oregon State Police FICS who fails to notify the OSP or City Police Office in the Jurisdiction of residence for any person illegally attempting to purchase a firearm within 10 minutes of said "stop of sale" or "final denial" shall be guilty of a Class C Misdemeanor.**
3. **Any person who is charged with the responsibility of enforcing the laws of the state of Oregon and any person who is responsible for prosecuting violations of the laws of the State of Oregon, who fails to enforce or prosecute any attempt at the illegal purchase of the firearm is guilty of a Class A Misdemeanor.**

Sincerely,
/s/Jim Mischel

ⁱ Polling done by: Public Policy Polling. A firm that specializes in conducting polling for Democratic Party candidates and liberal progressive causes. They were also caught last year messing with and hiding poll results, in one case that occurred in Colorado, they just couldn't believe the results. When the recall elections were over, the poll seemed to be very accurate.

ⁱⁱ The poll was hosted/commissioned by the Center for American Progress Action Fund. The Center for American Progress is a left wing public policy research and advocacy organization. Its President and chief executive officer is Neera Tanden, who worked for the Obama and Clinton administrations and for Hillary Clinton's campaigns. They were one of the major lobby's for Washington States push to restrict all firearms sales to FFL dealers only."

ⁱⁱⁱ 257-010-0055

Firearm Instant Check System

(1) The Oregon Firearm Instant Check System is a computerization of firearm and firearm purchaser information, and is maintained by the OSP under provisions of Oregon Law. The purpose of the Firearm Instant Check System is to receive information from Oregon Gun Dealers and private citizens at gun shows or voluntarily from the public and determine if the person purchasing the firearm is disqualified under Oregon (ORS 166.470) and Federal Law from completing the purchase of a firearm and if the firearm being transferred is stolen.

(2) The OSP may retain a record of the information obtained during a request for a criminal records check for no more than five years.

(3) The record of the information obtained by the OSP during a request for a criminal records check by a gun dealer is exempt from disclosure under public records law.

(4) Identification required of the purchaser shall include one piece of current identification bearing a photograph and date of birth of the purchaser that is issued under the authority of the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization; and is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(5) If the identification presented by the purchaser under (4) of this rule does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser and corroborates the name on the first piece of identification. Examples of a second piece of identification that will be accepted are: current vehicle registration, current rent receipt and current utility bill.

(6) The OSP may require that the gun dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the OSP, Identification Services Section. The OSP shall publish the firearms transaction thumbprint form and shall furnish the form to gun dealers on application at cost.

(7) The OSP may adopt a fee schedule for criminal history record checks and collect a fee for each criminal history record check requested. The fee schedule shall be calculated to recover the cost of performing criminal history record checks, but may not exceed \$10 per record check.

(8) The OSP may respond to a telephone request from any person requesting that the OSP determine if the firearm is stolen.

(9) The Department of State Police shall develop a state form to be completed by a person seeking to obtain a firearm at a gun show from a transferor other than a gun dealer. The department shall consider including in the form all of the requirements for disclosure of information that are required by federal law for over-the-counter firearms transactions.

(10) The department shall make the form available to the public at no cost.

Stat. Auth.: ORS 166.291, 166.412, 192.440 & 194.164

Stats. Implemented: ORS 166.291, 166.412 & 181.880

Hist.: OSP 3-1996, f. 5-24-96, cert. ef. 7-1-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 1-2010(Temp), f. 5-17-10 cert. ef. 5-28-10 thru 11-23-10; Administrative correction 12-28-10; OSP 2-2011, f. 2-3-11, cert. ef. 2-28-11