



February 21, 2017

The Honorable Floyd Prozanski
Chair, Senate Committee on Judiciary
900 Court St. NE, S-413
Salem, Oregon 97301

RE: Senate Bill 797 (Sen. Judiciary) – Indefinite Delays of Civil Rights
POSITION: Oppose
LOCATION: Senate Judiciary

Dear Senator Prozanski,

On behalf of the members and supporters of Firearms Policy Coalition, **I respectfully submit our opposition to SB 797**, a measure which, seeks to indefinitely delay access to a fundamental and enumerated right. In addition, we have concerns about other proposals in the measure which are well-intentioned but use heavy-handed and short-sighted approaches.

Indefinite Delays Due to Government Incompetence are Blatant Civil Rights Violations.

The fatal flaw in this measure is the de facto ban on firearms purchases if the Department of State Police is unable to determine whether the recipient is qualified to receive a firearm. This allows for the denial of civil rights due to incompetence or lack of infrastructure on the part of the state.

SB 797 would change a fundamental component of our American system of ordered liberty from the presumption of innocence and good, to the presumption of guilt and malice. Should this bill go into effect, failures of the Oregon Department of State Police to adequately manage and locate records will translate into thousands of administrative delays every year. Under the draconian shadow of SB 797, the Department would have carte blanche to delay -- with no accountability or explanation -- the exercise of a fundamental right, indefinitely.

In practice, this failure of the state to track the dispositions of its own proceedings will result in an outright prohibition on the access to a fundamental, individual right as enumerated in the United States and Oregon Constitutions and, in the interest of transparency, should be should addressed as such.

Lack of Due Process and Opportunity to Appeal

Ironically, while the State of Oregon does not have enough faith in its own background check system to release a firearm if they can not locate a record, this measure presumes that a denial is written in stone, which the evidence shows it certainly is not. SB 797 requires that upon denial of an application to purchase a firearm, the Department shall report to Federal and local authorities. SB 797 sets up a

an “all points bulletin” to prosecutors and law enforcement for a denied purchaser -- who may have not been prohibited at all. It will become a race to file and win an appeal or appeals to the state and/or federal governments before the dragnet catches them and upends their lives. At this point, it is our understanding that National Instant Criminal Check denial appeals are backlogged to late 2015.

While we agree that certain persons have lost their right temporarily or permanently to have firearms, this measure is ambitious and robust it’s in attempt to capture them and certainly does not consider all of the various circumstances in which a person may find themselves denied when attempting to lawfully acquire a firearm. This approach may not produce the intended results and could lead to other social and fiscal consequences if not done with deliberate and informed execution.

False Positives and Appeals

For example, some would-be purchasers are delayed or denied based on a common name, similar name or date of birth to a prohibited person. Sometimes, we may never know what caused the false positive. These purchasers are, in fact, not prohibited and never have been. To that point, a 2013 report published by the U.S. Department of Justice¹ reveals that nearly one fifth of all denials are appealed and over one third of all denials that are appealed are actually reversed, as the purchaser should never have been denied in the first place. This is strong evidence that many of those denied are unaware of their prohibition, or worse, weren’t actually prohibited at all when they were denied.

Some prohibitions may be 5 or 10 year disqualifications from other states, or indictments and court orders that have ended or expired. Failure of various state and local agencies to update the system reflecting the end of the prohibition may not be done with the same prudence and care as the initial reporting.

Others may not know they are prohibited and fill out their forms with complete certainty that they are in compliance. For example USC 18 U.S.C. § 922(g) creates a lifetime ban if “*convicted in any court of a crime punishable by imprisonment for a term exceeding one year*”. There are people who were sentenced long ago under an indeterminate sentencing scheme for misdemeanors that could be punished by confinement exceeding one year, and, until the information technology age took hold, have purchased firearms in what they believed was the lawful process. Now that old data is being uploaded, they are shocked to find that a minor crime from decades ago has come back to haunt them, even if they never served one day in jail but *could have been* sentenced to more than one year under an archaic sentencing scheme.

Personal Firearms Eligibility Checks

Without a system in place for a would be purchaser to check to see if they are eligible to purchase a firearm, then all we have is a system where the only way to find out is to try to buy one, which, is a

¹ <https://www.bjs.gov/content/pub/pdf/bcft10st.pdf>

crime unto itself. If SB 797 at once admits that the State's background system is so terribly unreliable that it would indefinitely delay a purchase, then sounding the alarm on a false positive is the inverse and just as much a travesty of justice.

If SB 797 envisions the State of Oregon entering the 21st century with its information technology, then we propose that system should also include a way for the public to determine their own eligibility before exposing themselves to criminal liability. Other states have created a “Personal Firearms Eligibility Check,”² which allows someone who has any doubt or concern to go through a process that would conduct a similar check, but without a gun purchase involved. Should they find anything of concern, they would be able to pursue remedies without the looming investigation by the state police that this measure proposes.

Conclusion

As noted in our concerns above, the implementation of a such a measure needs to be thoughtful and deliberate and respectful of Oregonian’s civil rights and due process. We look forward to working with you on these sensitive issues.

Regrettably, without some sort of framework for residents to challenge a delay and a hard deadline for the state to do its basic core functions and be accountable for their actions, a check their own eligibility prior to taking the risk of criminal liability, we must oppose the measure.

For all of the reasons stated above, we must OPPOSE SB 797 and urge you to indefinitely delay this measure in committee or reject it outright. Please feel free to contact me at (855) 372-7522 if you have any questions or concerns.

Respectfully,

/s/

Philip Watson

Legislative Advocate

Cc: Senate Judiciary Committee

² See: <https://oag.ca.gov/firearms/pfecfaqs>