

April 1, 2019

The Honorable Sen. Prozanski (Chair) and Sen. Thatcher (Vice-Chair)
Senate Judiciary Committee
900 Court St. NE, S-307
Salem, Oregon 97301

Re: Written Testimony for Senate Bill 978-1

Dear Senators Prozanski and Thatcher,

As a registered Oregon voter, I write to comment on Senate Bill 978-1 ("SB 978-1"). And, although I am a licensed Oregon attorney, I write in my individual capacity. Thus, my comments should not be imputed to my employer nor any clients. Thank you in advance for considering my comments and testimony.

I. Section 6 – Unconstitutional

A. Unconstitutionally vague.

The due process clauses of the 5th and 14th amendments to the United States Constitution require that no one risk criminal prosecution merely because they cannot reasonably understand what conduct is prohibited under a law. SB 978-1, Section 6, is unconstitutionally vague since it does not clearly establish the scope of prohibited conduct. For example, Section 6(1)(b) recites:

"(b) For purposes of paragraph (a) of this subsection, a firearm is not secured if a key, combination **or other means of opening a lock or container is readily available** to a person the owner or possessor has not authorized to carry or control the firearm." (*emphasis added*)

The phrase "**or other means of opening a lock or container is readily available**" is vague and without limits. Are firearms locked in a safe not secured since a neighbor owns a sledge hammer and crowbar? Lock picking tools are readily available on the internet. So is any lock and key container, therefore, unsecured? How will common bolt cutters and hack saws be construed since they can be purchased at any home improvement store and used to open locks? And, since the Oregon State Bar has copies of my fingerprints, is a firearm in a biometric safe not secured since my fingerprints are public record?

Section 6 lacks sufficiently clear limits as to its scope and application. As such, it is unconstitutionally vague.

B. Unconstitutional in view of 2nd Amendment

The United States Supreme Court in District of Columbia vs. Heller (2008) considered a DC statute that required, among other restrictions, all firearms including rifles and shotguns be kept "unloaded and disassembled or bound by a trigger lock." The court found "the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is hence unconstitutional." (*underlining added*)

Section 6 of SB 978 requires:

"a firearm shall, at all times that the firearm is not carried by or under the control of the person or an authorized person, secure the firearm: (A) With an engaged trigger lock or cable lock that meets or exceeds the minimum specifications established by the Oregon Health Authority under section 10 of this 2019 Act; (B) In a locked container, equipped with a tamper-resistant lock, that meets or exceeds the minimum specifications established by the Oregon Health Authority under section 10 of this 2019 Act; or "(C) In a gun room. (b) For purposes of paragraph (a) of this subsection, a firearm is not secured if a key, combination or other means of opening a lock or container is readily available to a person the owner or possessor has not authorized to carry or control the firearm."

As applied to the home for self-defense, this Section 6 parallels the DC law found unconstitutional in Heller. A firearm secured under Section 6 would be unavailable for citizens to use for the core lawful purpose of self-defense and is hence unconstitutional.

II. Section 8 - Punishes victims

Section 8 victimizes gun owners who have suffered a theft of their property by imposing criminal penalties if they fail to follow arbitrary reporting timelines. Oregonians are not so vindictive. Section 8(1)(a) recites:

"(a) A person who owns, possesses or controls a firearm shall report the loss or theft of the firearm to a law enforcement agency in the jurisdiction in which the loss or theft occurred as soon as practicable but not later than **72 hours of the time** the person knew **or reasonably should have known** of the loss or theft."
(*emphasis added*)

However, *if* punishing Oregon residents who are victims of theft is the intent of this measure, then reasonableness should prevail. For example, *72 hours* must be changed to 3 business days to avoid weekend delays; and the "*reasonably should have known*" clause must be deleted. If a reporting law is enacted it must be based on actual knowledge by the victim, not imputed knowledge manufactured from circumstantial evidence. Otherwise, uncertainty will prevail.

III. Sections 26 & 27 – Unreasonably limits right of self-protection

A. “Public Building” is poorly defined and must be corrected

Section 26 recites:

“(1) Notwithstanding ORS 166.173, a city, a county, a metropolitan service district organized under ORS chapter 268, or a port operating a commercial service airport with at least 2 million passenger boardings per calendar year may adopt an ordinance regulating or prohibiting the possession of firearms in public buildings as defined in ORS 166.360 by persons licensed to carry a concealed handgun under ORS 166.291 and 166.292.”

“(2) A school district, college or university may adopt a policy regulating or prohibiting the possession of firearms in public buildings as defined in ORS 166.360 by persons licensed to carry a concealed handgun under ORS 166.291 and 166.292.”

Section 27 says that:

“(9) ‘Public building’ means:

“(a)(A) A hospital;

“(B) A capitol building;

“(C) A public or private school, as defined in ORS 339.315;

“(D) A college or university;

“(E) A city hall or the residence of any state official elected by the state at large **[, and the grounds adjacent to each such building.];** or

“(F) That portion of any other building owned, occupied or controlled by an agency of the state or a municipal corporation, as defined in ORS 297.405, other than a court facility;

“(b) **The grounds adjacent to a building described in paragraph (a) of this subsection;** (emphasis added, some deletions omitted)

The terms “grounds adjacent to” must be clearly revised to mean, at most, the ground upon which the building described in paragraph (a) is constructed upon. Otherwise, this Section 27 may be so broad as to encompass private property including businesses, homes and residences that are next to the public buildings. If so, this Section 27 will deprive individuals of their Second Amendment rights. See Heller; see also McDonald vs. City of Chicago (2010) (holding the right of an individual to “keep and bear arms,” as protected under the Second Amendment, is incorporated by the Due Process Clause of the Fourteenth Amendment against the states.).

B. Policy Reasons support expanding concealed carry laws – Not restricting them

Better still, the terms “grounds adjacent to” should be deleted altogether. Indeed, Sections 26 & 27 appear to shrink those areas where concealed handgun licensees are permitted to carry. This cuts against the policies supported lawful concealed carry, including self-protection and defense of others. Recall that these license holders are seriously vetted, undergoing FBI background checks, fingerprint checks, local sheriff checks, and have obtained firearms safety training. See Section 24. The facts show that license holders do not increase violence.¹ And some suggest that CHL holders are a net recourse to reduce crime. For example, research² suggests, in Florida and Texas, that permit holders are convicted of misdemeanors and felonies at one-sixth of the rate at which police officers are convicted. And crime actually decreases with increased concealed carry.³

Further restricting CHL holders unreasonably limits their right of self-protection, and as research suggests, may lead to increased crime. The amendments to Section 26 and 27 should be deleted.

Finally, imagine the confusion that this change will make. A short drive from Eugene through Salem up to Portland will subject a CHL holder to multiple different jurisdictions, each with a potentially unique ordinance regarding CHLs. Laws should encourage clarity, not propagate uncertainty. The changes to Sections 26 and 27 will cause uncertainty among the most vetted Oregonians – CHL holders.

IV. Conclusion

Please revise SB 978-1 in accordance with the above comments. Thank you again for your consideration.

Best regards,

/Steve Stewart/

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Clackamas County, Oregon

¹ See <https://www.factcheck.org/2012/12/gun-rhetoric-vs-gun-facts/> (“In 2008, the Harvard Injury Control Research Center reviewed the reams of scientific research on concealed gun-carrying laws and broadly concluded “the changes have neither been highly beneficial nor highly detrimental.”)

² Report from the Crime Prevention Research Center, “Concealed Carry Permit Holders Across the United States: 2018,” pages 3 and 34-37.

³ See *id.* at pages 37-39 (“Using permit and murder data from 2011 through 2014, we find that states with the sharpest increases in permits had the largest percentage drops in murder rates. A 10 percent increase in the share of the adult population with permits reduces the murder rate by 1.4 percent.”)