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OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 3

Fifteenth Meeting, March 27, 1970

Minutes

Members Present: Judge James M. Burns, Chairman  
Representative David G. Frost  
Mr. Frank D. Knight

Members Absent: Mr. Donald E. Clark

Staff Present: Mr. Donald L. Paillette, Project Director  
Mr. Roger D. Wallingford, Research Counsel

Others Present: Mr. James A. Sanderson, Justice Department,  
State of Oregon

Agenda: Firearms Control; P.D. No. 1; March 1970

The meeting was called to order by the chairman, Judge Burns, at 1:50 p.m., Room 315, Capitol Building, Salem, Oregon.

FIREARMS CONTROL; P.D. NO. 1; MARCH 1970

Mr. Paillette read an extract from the Commission minutes of March 19, 1970, summarizing the directive given the subcommittee by the Commission with respect to a draft on gun control:

The subcommittee was directed to prepare a draft which would make it necessary for anyone owning or possessing a gun to have a license and necessary to register all handguns and concealed weapons. The licensing should refer to the licensing of the individual and the registration to the registering of the guns. The system should authorize the average individual to have a gun but should prevent certain classes of individuals from obtaining a license. The Article should contain some provision for a review of licensing decisions by the courts.

Mr. Paillette advised that before drafting the Article on Firearms Control, he and Mr. Wallingford had examined the statutes of New Jersey and Massachusetts which are considered to be the states having the most stringent gun control statutes and to have what probably comes closest to being model legislation in this area. The provisions of the Omnibus Crime Control Act of 1968 were also examined as were the provisions of HB 1546 which was introduced in the last session of the legislature. This bill was recommended by the Kennedy Action Corps as an example of model legislation which the state could use to ensure effective gun control.

Mr. Paillette explained that one of the basic questions to be decided is whether the gun licensing and registration law desired is to be a restrictive or permissive type of statute. The permissive type of statute provides that an individual cannot have a permit for a handgun if he falls within a certain classification of persons established in the statute. Otherwise, if the individual complies with the provisions of the statute, he is entitled to be issued a permit. The burden is on the state to issue the permit unless there is good reason not to. The restrictive type of statute, which is most often used with respect to handguns, provides that no permit will be issued unless the individual can show good cause as to why he should have it.

The draft submitted to the subcommittee for consideration takes the permissive approach with respect to the registration of handguns as well as to the licensing of the individual to own or possess any gun. There is no distinction drawn between the requirements for the handgun and the requirements for any other gun except in regard to the information the applicant must provide at the time he applies for either a permit or a license. The individual's fingerprints and a full description and identification of the firearm is required for a permit for a handgun but this information is not required for a license for a long gun.

Representative Frost asked for a brief rundown of the present statutory requirements for the licensing and possession of concealable firearms.

Mr. Paillette replied that presently there are no general restrictions with respect to ownership of handguns or long guns. There are controls on the sale of certain firearms in that the dealer is required to maintain a register and submit certain information to law enforcement officials. There are provisions, also, for a permit necessary to carry a concealable weapon. At present this is handled on a local level and there is no centralized control over the procedure.

Representative Frost added that the statutes presently prohibit certain classes of individuals from owning or possessing a concealable weapon (aliens and convicts) and there is also an educational requirement before a hunting license may be issued to an individual 18 years of age or younger. These restrictions would fall within the area of gun control. He understood, also, that the federal law requires a recording of the sale of ammunition as well as of guns.

Mr. Wallingford replied that the federal law of 1968 did require some restrictions on the sale of ammunition but this section

of the law has recently been repealed by Congress so that the purchase of ammunition presently does not require the giving of this information.

Mr. Paillette reported that a new statute, ORS 166.490, was passed by the last legislature and relates to the purchase of firearms in certain "contiguous states". The statute reads:

"'Contiguous state' means California, Idaho, Nevada or Washington.

"(2) A resident of this state may purchase or otherwise obtain a rifle or shotgun in a contiguous state and receive in this state or transport into this state such rifle or shotgun, unless the purchase or transfer violates the law of this state, the state in which the purchase or transfer is made or the United States.

"(3) This section does not apply to the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

"(4) This section expires and stands repealed upon the date that section 922(b) (3) of the Gun Control Act of 1968 (18 U.S.C. 922(b) (3)) and regulations pursuant thereto are repealed or rescinded."

This legislation, along with a bill prohibiting use of firearms in certain areas of Deschutes County, was the only firearms legislation passed at the last session of the legislature.

Mr. Paillette noted there are a number of assorted statutes, such as pointing a firearm at another, etc., which were picked up and discussed in the basic draft drawn up prior to the discussion and consideration of the area of gun control (Offenses Involving Firearms and Deadly Weapons; P.D. No. 1; January 1970).

Representative Frost observed, also, that the statutes contain a number of enhanced penalties for crimes committed by ex-felons using a gun, some of them extremely strict. There is a statute, for example, dealing with an exconvict-in-possession which prohibits the court from suspending an in-possession sentence or allowing probation. There are also statutes prohibiting possession of certain types of firearms.

Mr. Sanderson explained that it was necessary for him to return to his office and submitted a memorandum explaining the position of his office which he asked to have read into the

minutes when the subcommittee reached the point of discussing concealed weapons and offenses involving weapons. His office recently rendered an opinion as to whether the state law regulates the sale or possession of aerosol tear gas devices. He provided a copy of this opinion for the subcommittee and stated that part of the problem arising in this opinion could be taken care of when the Firearms Article is redrafted by simply excluding the incapacitating type of devices, as opposed to the weapons traditionally thought of as aggressive weapons, from the concealed weapon's statute. (See exhibit ~~placed in Subcommittee No. 3 books following drafts re firearms.~~ A attached hereto.)

Representative Frost announced that he would not support in subcommittee or Commission an increase in the existing penalties for possession or an increase in the restrictions on the type of firearms which may be possessed or owned. He was opposed to either permissive or restrictive registration of any kind of firearm other than those firearms not normally used for either sporting or hunting--such as machine guns, bazookas, sawed-off shotguns, etc. He stated that he felt very strongly about this in that he was not persuaded that registration of firearms of any type would be effective and was convinced that if this type of provision were included in the code, it would mean the destruction of four years of work by the Commission. Oregon, he continued, does not need this type of legislation and the feeling against it runs very strong.

#### Section 1. Definitions.

Mr. Paillette stated that the critical definition contained in this section is that of a "firearm", set out in subsection (3). It is essentially the same as the definition set out in HB 1546 except that the words "handgun, rifle, shotgun" have been inserted in the draft definition. The term "firearm" applies to any kind of gun.

Chairman Burns asked if the definition of "handgun" appearing in subsection (4) and the definition of "long gun" appearing in subsection (6) covered all types of guns--would a sawed-off shotgun, for example, be covered by subsection (6).

Mr. Knight did not think subsection (6) would cover this because a sawed-off shotgun would be illegal per se. It would be in the same classification as a machine gun, an anti-tank gun, etc.

Mr. Paillette stated that under the provisions of subsection (3), if an individual owned a firearm which may be legal in that it is not prohibited elsewhere in the draft, he would still have to comply with the licensing provisions because of the broad definition of "firearms".

Representative Frost noted the language "...expel or hurl a projectile by the action of an explosion or expansion of gas..." appearing in subsection (3) would cover a BB gun. Air, he remarked, is a gas. Mr. Wallingford advised that this definition is used in much of the recent legislation and he did not think it contemplated covering BB guns. There is a gun using a gas cartridge and it is intended that this type of gun be covered. Mr. Paillette said he had not thought of air, itself, as being a gas and, therefore, this should be checked out. It was his intention that the type of gun using a gas cylinder would be covered.

Mr. Wallingford referred to Webster's New Collegiate Dictionary (1961) and read:

"Air. The invisible, odorless, and tasteless mixture of gases which surrounds the earth."

Mr. Paillette questioned that an exception for BB guns should be written into the draft in that some of these guns could be quite powerful if they used a bottled gas and some guns could be lethal weapons if a large shot were used.

Mr. Knight noted the definition of a handgun in subsection (4) referred to a barrel "less than 12 inches in length" and asked if pistols are manufactured with 13 or 14 inch barrels. These would not come under the definition of a rifle.

Mr. Paillette reported that the Massachusetts definition reads "less than 16 inches or 18 inches in the case of a shotgun." Mr. Wallingford added that only the Massachusetts statute varies from the 12 inch standard. He thought the 12 inch figure was based on the concealability of the weapon rather than on the type of weapons made.

Mr. Paillette said that he had considered using the language "capable of being concealed upon the person" and not setting out a definite measurement but he thought this would create problems in determining whether or not each weapon was concealable.

Chairman Burns thought the language "less than 12 inches in length" satisfactory in that if the provision is abused by the introduction of longer-barrelled handguns, an adjustment of the definition can be made.

Mr. Paillette explained that he had tried to approach licensing from the standpoint of requiring an ID card. The "permit" required for a handgun would be the registration vehicle, picking up the description and serial number, etc. The rationale of HB 1546 was followed in defining the permit as a purchase permit, even though the permit will be used under the provisions of section 4 to reach people already owning or possessing handguns.

Section 2. Long guns; sale or purchase requirements.

Mr. Paillette explained that unless exempted by the provisions set out in section 14 of the draft, all persons purchasing or otherwise acquiring a long gun or ammunition therefor must have a valid identification card and a long gun or the ammunition cannot be sold or transferred to anyone not possessing a valid identification card.

Chairman Burns asked if there was a reason for using the language "valid identification card" in paragraph (b) while using only the words "identification card" in paragraph (a). This might lead to the use of an invalid card for the purchase of a gun or ammunition.

Representative Frost asked if the provisions of section 2 would prohibit mail order sales originating in Oregon to an out of state resident.

Mr. Paillette replied that it was not the intent to prohibit or interfere with mail order sales going out from Oregon to a resident of some other state. If a gun were mailed into the state, the individual receiving the gun would have to have an identification card. He did not know how it would be possible to get at a seller in another state. Representative Frost noted, then, that the identification card is not a right to purchase, it is a right to possess. Mr. Knight agreed that the card is really a license to possess a long gun.

Mr. Knight referred to the language "otherwise acquire" used in paragraph (a) and "otherwise transfer" used in paragraph (b) and asked if this covered borrowing a gun or loaning a gun. Does an individual need an identification card or permit to "possess" a gun or merely to "own" a gun?

Mr. Wallingford understood the whole premise of the Article to be to prevent certain classes of individuals from having a firearm and if this were the case, it would seem proper to prohibit the loaning of a firearm to a person not having the proper identification card.

Mr. Sanderson again present.

Mr. Knight moved the words "possession of" be inserted after the word "acquire" and the word "valid" be inserted after "an" in paragraph (a) and the words "possession of" inserted after the word "transfer" in paragraph (b). The amended section 2 (1) would read:

"(a) Purchase or otherwise acquire possession of a long gun or ammunition therefor unless he first obtains a valid identification card; or

"(b) Sell or otherwise transfer possession of a long gun...."

The motion carried; Knight and Chairman Burns voting for and Frost opposing.

Section 3. Handguns; sale or purchase requirements.

Mr. Paillette explained that this section is much the same as section 2 except that it covers handguns rather than long guns and requires both an identification card and a permit.

Mr. Knight pointed out that the amendment necessary in section 2 is also necessary in section 3. In addition, the adjective "valid" should be inserted before the word "permit" in paragraph (a). Knight and Chairman Burns supported the change; Frost opposed.

Section 4. Firearms owned or possessed; identification card or permit required.

Mr. Paillette explained that persons owning or possessing a firearm on the effective date of the Article have 180 days thereafter to either get rid of the firearm or to obtain the identification card required for a long gun or the identification card and permit required for a handgun. Those persons excepted are provided for in section 14 of the draft. Subsection (1) of section 4, he said, is very similar to section 4 of HB 1546.

The provisions in subsection (2) did not appear in HB 1546 and are designed to pick up persons moving into the state who own or possess firearms. These persons would have 90 days after becoming domiciled in the state to either obtain the proper papers or sell or otherwise dispose of the firearms.

Replying to a comment by Chairman Burns, Mr. Paillette advised that no penalty section was attached to section 4 in that it was felt that if the individual did not comply with the requirements set out, he would be charged under another section--section 2 or 3.

Chairman Burns observed that the adjective "valid" should be inserted before the terms "identification card" and "permit" in section 4 as was done in sections 2 and 3. He suggested going back and looking at the definition of "identification card" and "permit" in that if the terms could be modified sufficiently in the definition section, the need for inserting the modifier "valid" in each section might be eliminated. Mr. Paillette said he would look at these two definitions again with this point in mind.

Mr. Sanderson asked if the subcommittee intended to except the visiting hunter, bringing in his firearms from another state, from the provisions of the Article.

Mr. Paillette thought this was implied by the language "a person moving into the state shall, within 90 days after becoming domiciled in the state..." contained in section 4 (2). If a person was not moving into the state, if he did not become domiciled, he would not have to comply with the provisions.

Mr. Knight asked the effect of the provisions on the student who comes in to the state to attend school for nine months of the year.

Mr. Paillette agreed that the student would be a resident but would not be domiciled in the state and noted these were difficult questions that he was not sure he could answer. If the draft provisions were extended to cover all residents, he said, it perhaps would make them too broad in that a person could have a residence in the state but not actually live here. Chairman Burns asked how other states handled this problem and Mr. Paillette replied that they use language such as "no person shall..." which seems to include anyone. New Jersey uses this approach except in the statute dealing with the carrying of concealed weapons and there they do try to draw some distinctions. New Jersey and Massachusetts, while not excluding nonresidents in so many words, give the impression their statutes are intended to cover those persons living within their state.

Mr. Wallingford stated that unless New Jersey and Massachusetts have passed companion legislation, as Oregon did last session by ORS 166.490, firearms cannot be sold to nonresidents of these states under the federal law. Mr. Paillette agreed but added that it still



did not solve the problem of the student or nonresident hunter bringing in a gun from out of state. He stated that if the subcommittee desired, the draft could be amended to state that the provisions cover a resident, a person domiciled in the state or both; however, it seemed to him that from the standpoint of the state of Oregon, these are not the people we are primarily concerned with; moreover, he was not sure their actions could be controlled. These persons would be identified only by mere chance.

Chairman Burns posed a situation, assuming the adoption of section 4, where an individual owned a rifle on the effective date of the Article but failed to obtain an identification card within the 180 day period. He asked if this person would be committing a crime. Mr. Paillette said he would--he would be in possession of a firearm without an identification card.

Mr. Wallingford observed that the Fifth Amendment problem here is that after the 180 days have passed the individual cannot be required to apply for the identification card--he would be incriminating himself. Mr. Paillette agreed that the very people it is desired to reach by this type of statute may have an out by way of the Fifth Amendment. In fact, he continued, the city of Chicago has an ordinance on gun control which specifically provides that any person who possesses a firearm in violation of any law is not required to register.

Mr. Sanderson asked what social benefit would be gained by gun registration if the people it is most desired to restrict cannot be covered by the registration procedure.

Chairman Burns commented that if Mr. Wallingford were correct on the Fifth Amendment point, all an individual would have to do would be to let the 180 day period go by as there is no penalty provision attached to the section. Mr. Sanderson understood that failure to obtain a permit and an identification card are material parts of sections 2 and 3, so that failure to obtain an identification card under the provisions of section 4 would subject the individual to prosecution under section 2 or 3. It is not the possession of the firearm which is illegal under the draft provisions, he continued, it is possession without registration. Chairman Burns was not certain that the draft stated this in that nothing in section 4 states that violation of the section will be deemed a crime.

Mr. Paillette related that his original, rough draft of the section had contained a penalty provision. Thinking that the purpose of the section was to provide guidelines for the individual

already possessing a firearm and that failure to comply would be picked up by sections 2 and 3, the penalty provision was dropped. He doubted, however, that the insertion of a penalty provision in the section would solve the problems raised.

Mr. Knight observed that what is needed is a provision whereby an individual voluntarily registering a firearm after the 180th day has passed, but before a prosecution for the offense is commenced, is deemed not guilty of a crime. Mr. Wallingford thought this practice would result in many unregistered guns. An individual would not have to register a gun as long as he did not get caught with a firearm without possessing an identification card. Mr. Paillette commented that as a practical matter, there will be no way of knowing about an unregistered gun unless a police officer catches someone in the act of using a gun and the individual does not have proper identification. There is no other way of knowing whether or not an individual is complying with the gun control provisions and Mr. Paillette did not know of any way to solve this problem.

Mr. Wallingford reported that a 1968 Supreme Court case (the Haynes case) held that a proper claim of the constitutional privilege against self-incrimination provides a full defense to prosecutions either for failure to register a firearm or for possession of an unregistered firearm. In this case the Court was construing the federal gun control statute in regard to persons in prohibited classes--the exconvict, alcoholic, minor, etc. It would not apply, he said, to a person not in a prohibited category but who simply does not register his firearm. The individuals in the prohibited categories could not register without incriminating themselves.

Mr. Knight observed that the alcoholic, for example, would have no Fifth Amendment defense because he would not have incriminated himself by registering his firearm--it would be only the ex-felon with a concealable weapon who would incriminate himself because when he requested an application for registration, he would be admitting violation of the "ex-felon in possession" statute.

Chairman Burns asked the reason for retaining the "ex-felon in possession" statute if the draft provisions were approved. Mr. Paillette thought there was a whole different consideration involved with respect to the "ex-felon in possession" statute. He contemplated the penalties for the draft sections would be misdemeanors whereas a felony penalty for an "ex-felon in possession" is not.

Chairman Burns pointed out that the Fifth Amendment problem with the exconvict would be eliminated if there was no separate "ex-felon in possession" statute because he would not then incriminate himself.

Mr. Wallingford thought there might be a problem, also, in determining how long an individual had possessed a firearm; his word would have to be taken that it was less than 180 days.

Mr. Knight pointed out that this 180 day provision would apply for only 180 days after the effective date of the Article and would be taken out by a subsequent legislature. It is not a matter of how long the individual has owned a gun, it is a matter of registering the firearm within 180 days of the effective date of the Act.

Mr. Paillette commented that the draft provisions adequately cover the registering of gun purchases but since the Commission desired everyone having a gun to have a license, it is necessary to register the guns presently in circulation in some manner. Chairman Burns asked how this was accomplished in New Jersey and Massachusetts.

Mr. Knight suggested delaying the effective date of the Article long enough to enable people to register their firearms before the Act went into effect. Chairman Burns noted this still would not take care of the Fifth Amendment problem if an individual came in later to register a firearm. Mr. Knight added that the individual coming in late to register a firearm is not the type of person the gun control legislation is directed at, anyway.

Mr. Paillette reported that the Massachusetts act, which is a very strict gun control law, does not have a grace period in it. Mr. Wallingford added that Massachusetts gives the police authority to stop anyone off their own premises and ask for an identification card. If the individual does not have one, the police have the right to seize all firearms. If the individual brings in a valid identification card within 30 days of the seizure, the weapons will be returned to him.

Mr. Sanderson suggested that if the desire is to encourage people to step forward and announce themselves, that the 180 day provision be retained and anyone coming forward and voluntarily registering a firearm after this period be given a complete defense unless prosecution has been commenced prior to the registration.

The subcommittee recessed at 3:25 p.m., reconvening at 3:35 p.m.

Section 5. Permits or identification cards.

Mr. Paillette advised that the Department of State Police had been notified of the meeting and expressed regret about the lack of representation from them because some of the draft provisions place a rather heavy burden on the Department.

Mr. Paillette referred to subsection (3) noting that a permit "shall be valid for a period of 90 days...and may be renewed...." The reason for this provision, he said, is that the concern is with the registration of the firearm and therefore there seemed no good reason to have a permit outstanding for a longer period of time. Since the permit is a permit to purchase, the possessor would have 90 days from issuance in which to buy a gun. If the individual already owns a handgun, the only reason for obtaining a permit is for purposes of registration of the gun itself.

Mr. Knight asked if a person borrowing a handgun would be required to obtain both an identification card and a permit. Mr. Paillette said that he would be required to have both. Mr. Wallingford added that the provision would about eliminate the borrowing of handguns since it would take at least 10 days before the borrower would have the permit necessary to borrow a handgun or to be given a handgun.

Mr. Paillette stated the draft provision in section 5 is an expansion of the provisions in HB 1546. HB 1546 used the term "firearms purchase permit". He explained that he was reluctant to impose the same type of burden on the individual having a shotgun or rifle as is imposed on the individual having a handgun. For the purposes of paperwork, section 7 of the draft sets out what information is required in order to obtain an identification card. In addition to this information, the applicant's fingerprints and a description of the handgun are required to obtain a permit. The procedure is intended to be less onerous for the person having a long gun.

Mr. Sanderson referred to the "10 day" and "15 day" waiting periods set out in subsection (2) and observed that as a practical matter it sometimes takes longer than this to obtain an FBI check on fingerprints.

Mr. Paillette thought it necessary to have some sort of reasonable standard as to time written into the section and said this was the standard used in the statutes of other states.

Chairman Burns expressed concern about the language contained in subsection (3) of section 5. It was hard for him to get the concept, he said, that a permit must be obtained and that it expires in 90 days. Mr. Paillette suggested the insertion of the words "shall be valid for the purposes of purchasing" might help clarify the intent.

Commenting on a statement made by Mr. Knight, Mr. Paillette stated that the permit to purchase would have the effect of registering a handgun. The permit, he said, is not a permit in blank; it is a permit to purchase a specific gun. It would be necessary for the individual to shop for the gun first, then obtain a permit and go back and purchase the gun.

Replying to a question by Chairman Burns, Mr. Paillette explained that a purchaser is required to have a permit to buy a handgun; the seller does not have to have a permit to sell the gun but he can sell it only to a person having a valid permit.

Mr. Knight asked if there was some notice required of the person possessing the firearm when he sells or otherwise disposes of it. Mr. Paillette replied that the provisions in sections 12 and 13 of the draft would take care of this. The firearms transfer register, described in section 13, simply expands existing law.

Mr. Knight understood the provisions of section 3 would require a permit be obtained for the purchase of ammunition for a handgun. Therefore, every 90 days the individual would have to purchase a new permit in order to purchase ammunition for his handgun. He suggested this be amended so that an individual could buy ammunition if he owned or possessed a registered handgun.

Mr. Paillette acknowledged that this was what had been intended. "Permit" as it is defined means a handgun purchase permit; it is not an ammunition permit. The intent was to prevent the purchase of ammunition for a handgun unless the person had a handgun purchase permit which, in effect, registered the handgun.

Mr. Sanderson asked how, when an individual purchases a box of 22 long rifle shells it can be determined whether they are for a pistol or for a rifle. Mr. Wallingford acknowledged there was no way to tell but he knew of no other long gun ammunition usable in a handgun.

Mr. Knight thought that in regard to purchases of ammunition all that should be necessary should be an identification card.

Mr. Paillette disagreed. Requiring a permit to purchase handgun ammunition provides a way in which to know of individuals

who fail to register a handgun. He thought the 90-day permit problem in respect to purchasing ammunition was not insurmountable but he did not think the permit to purchase a handgun should be good indefinitely.

Mr. Sanderson thought the problem would take care of itself in that in order to obtain a permit the applicant has to have the serial number and description of a specific gun. If he does not go back and purchase the specific gun within 90 days or less, the merchant will sell it to someone else since he will want to move his merchandise. The permit is not good for the purchase of any other gun.

Mr. Knight pointed out that since the permit is the method of registration, the gun will be registered to the applicant whether he buys it or not. There would be the possibility of a number of people all having the same gun registered to them.

Chairman Burns asked how the problem of repossessing would be handled--citing, as an example, a case where an individual obtains a permit and purchases a gun but fails to make the payments and the dealer repossesses.

Mr. Knight thought some of the problems could be taken care of by having the permit contain a perforated section to be removed and returned by the seller of the handgun noting that the permit holder now possessed the handgun described on the permit.

Chairman Burns asked about the procedure required under existing law when a handgun is purchased.

Mr. Paillette advised that when an individual purchases a new handgun from a dealer a record is kept. A record of the sale is sent to the city or county law enforcement officials. The dealer cannot deliver the gun to the purchaser for a period of three days to enable the police to make a quick check on the purchaser. The purpose of the record is not to register the gun, however, it is to alert the local law enforcement people so they may run a check. Only the dealer is presently involved in this record-keeping procedure.

Chairman Burns was of the opinion that the record could be used as a registration if there was a central registry and a requirement that whenever the gun is resold or transferred, the seller must repeat the procedure.

Mr. Paillette agreed that this could be done; he did not think the sale of a new or used gun presented a problem. This would not, however, get at the problem of registration of guns already in people's possession.

Mr. Sanderson asked if the present statute setting out the procedure required for the sale of revolvers or pistols would be repealed if the proposed draft were adopted. Mr. Paillette said that the statute would not be repealed in that the procedure is included in the proposed draft. Mr. Sanderson asked what information would be obtained from the retention of this present procedure that is not obtained by the identification card and permit to purchase procedure set up in the draft. It appeared to him that one process simply duplicated the other and would be an added inconvenience for no gain.

Replying to a question by Mr. Knight, Mr. Paillette stated that the identification card would not contain the serial number or description of long or handguns owned or possessed by the individual having the card. It is simply a card allowing the holder to own or possess a firearm just as a driver's license allows the individual having it a right to drive a car, not a specific car. The handgun permit would be for a specific gun, however.

Chairman Burns understood by the provisions in section 11 that each time an individual acquired a handgun it would be necessary to obtain a separate permit which would be good for that handgun only except that he would need only one permit for all handguns acquired before the effective date of the Article. Each handgun, however, would be described on this one permit. Mr. Paillette agreed with this statement.

Mr. Paillette explained that under the draft when a dealer sells a firearm, he must at the time of the sale obtain and place on his firearms transfer register the purchaser's identification card number or permit number. This record would eventually go to the State Police and provide an added check on the purchase of new handguns.

Mr. Sanderson thought this could be accomplished more easily by use of a multi-copy permit form so that the dealer would simply complete and mail in one copy of the original permit at the time he delivers the gun to the purchaser. By matching up the copies of the permit, the State Police could quickly determine whether a gun had actually been purchased on a permit issued. Even though a number of permits were issued for the purchase of one gun, the State Police would know who actually purchased the weapon when a copy of the permit used to buy the gun was returned to them.

Mr. Knight noted that under the draft in order to borrow a handgun the borrower must obtain a permit to purchase and the gun is then actually registered to the borrower. Since he cannot

transfer "a handgun to any person unless the other person possesses a valid permit," the owner would apparently have to apply for a permit in order to have the handgun returned to him and again be registered to him.

Mr. Sanderson suggested taking care of this type of temporary situation by providing that "no one shall loan to a person on a temporary basis unless the individual possesses a firearms identification card."

Mr. Paillette thought Mr. Sanderson's suggestion regarding the multi-copy and multi-colored permit form was good; however, it would necessitate describing the form and its distribution in detail in the statute rather than leaving it up to the State Police to provide a form which accomplishes what is required under the Article. Chairman Burns added that assuming there are between one and two million guns in Oregon, it would be only logical that some type of computer would be used to maintain the register and the form used would have to be determined on this basis.

Chairman Burns stated that it appeared to him that the only reasonable thing the Subcommittee could report to the Commission at the meeting of April 3rd is that there are a host of practical problems involved in gun control legislation and that time has not permitted the solving of these problems.

Mr. Paillette related that the draft considered by the Subcommittee was his approach and that Mr. Wallingford had also drawn up a draft having more restrictive provisions. Some of the provisions in Mr. Wallingford's draft, he continued, may solve some of the objections the committee raised to the proposed draft. He noted that the New Jersey law involving gun control covers 28 pages and is extremely complicated. The Massachusetts statutes are even worse. While these are said to be states with model gun control legislation, Mr. Paillette said he would defy any law enforcement officer to determine what his duties and obligations are under them. The attempt in the proposed draft was to simplify the provisions as much as possible but still have them accomplish what is desired by the Commission. There is, however, no simple way of achieving gun control and registration.

Mr. Wallingford advised that his proposed draft is considerably longer than that being considered and requires everyone owning a firearm to have a license; every handgun owned would be registered and every handgun transfer would be reregistered.

Chairman Burns again stated that he could see no solution but to report back to the Commission that the Subcommittee had



found a host of problems and that time did not permit getting a draft ready for Commission consideration on April 3rd. He thought making the Subcommittee minutes available for the Commission members would quickly bring home to them the number of mechanical and practical problems not previously discussed. Up until this time most of the discussions held have been on a philosophical basis. Chairman Burns noted that some of the mechanical problems in themselves raise real policy questions which may ultimately have to be referred back to the Commission, particularly a problem such as that involving the Fifth Amendment in section 4.

Mr. Paillette pointed out that the entire basic Firearms Article drafted by Mr. Wallingford is still to be considered by the Subcommittee. The draft, he said, contains some very important statutes relating to firearms and deadly weapons which should be in the proposed code.

Mr. Paillette advised that the Federal Gun Control Act of 1968 states, in effect, that the sale by a dealer of any firearms to a nonresident is prohibited except when the nonresident is from a bordering state. IRS interprets this as requiring affirmative legislation from each state before a bordering state purchase can be made. This explains the legislation enacted last session in Oregon, ORS 166.490, which was discussed earlier.

Mr. Paillette related that there appeared in the American Law Quarterly a Position Paper giving California's position on the subject of gun control. He quoted from 7 Am LQ 253 (1969), California Committee of Police Chiefs, Sheriffs and District Attorneys, Paper - Recommendations: Approved by Executive Committee of California Peace Officers' Association and District Attorneys' Association of California:

"After careful study, we have concluded that the requirements of mandatory regulation of all firearms or the licensing of individuals to possess firearms would constitute a tremendously burdensome administrative task for the State of California and would impose an onerous burden upon a vast number of legitimate, law-abiding citizens.

"We have been unable to discover any evidence which would indicate that there is any direct relationship between the registering of firearms or the licensing of gun owners and the reduction in crime committed by the use of firearms. No evidence has been called to our attention

which would indicate that either of these two regulatory devices would, in any way, prevent guns from falling into the hands of persons in the prohibited categories or into the hands of persons not in the prohibited categories who are nonetheless bent upon committing crimes."

This, he said, is indicative of the attitude taken by law enforcement officials in a neighboring state.

The meeting was adjourned at 4:35 p.m.

Respectfully submitted,

Maxine Bartruff, Clerk  
Criminal Law Revision Commission

DEPARTMENT OF JUSTICE

Exhibit A  
Subcommittee No. 3  
Minutes 3/27/70

Memorandum

TO: LEE JOHNSON DATE: February 3, 1970

FROM: JAMES A. SANDERSON

SUBJECT: Preliminary Draft No. 1 - Offenses Involving  
Firearms and Deadly Weapons

I propose the following amendments to the above preliminary draft:

Section 1.

(9) "Peace officer" means a sheriff, constable, marshal, municipal policeman [or] a member of the Oregon State Police, or a federal law enforcement officer.

(10) "Public servant" means a public officer or employe of the federal or state government or of any political subdivision thereof or of any governmental instrumentality within the state.

Section 2.

(1) Upon satisfactory proof that the applicant is of good moral character and that good cause exists for its issuance, the Department of State Police has authority to issue a license to carry [a] concealed [firearm] firearms for a period not to exceed one year from date of issue. Payment of a \$3 fee must accompany the application and any subsequent renewal, to be turned over to the State Treasurer to be credited to the General Fund.

(3) Any license issued shall include all the information required by subsection (2) of this section, and a description of the [weapon] weapons authorized to be carried, giving name of manufacturer, serial number and caliber.

Section 14.

(1) (c) A public servant entrusted with maintaining the order and security of detention facilities [.] , or otherwise engaged in law enforcement related work such as a district attorney's or attorney general's investigator, a district attorney or his deputies or the attorney general or his assistants.

The reason for change in Section 1 (9) is to bring FBI agents, federal marshals, etc. within the exception to the statute specified in Section 14 (1) (a)

The reason for the change in Sections 1 (10) and (14) (c) is to include people who regularly work in the law enforcement area and thus who may have occasion to carry concealed weapons either for self-protection or in ordinary handling or transportation of evidence.

The reason for changes in Sections 2(1) and 2(3) is to facilitate licensing several weapons on a single form. The object is to license people not weapons. It would be silly to have several applications, all containing the exact same information except for the description of the gun. This procedure would be every bit as effective at controlling "who" was allowed to carry concealed weapons, while serving the practical goal of cutting down the amount of duplicative paper work.

For those who would object that revenue would be reduced, it would be a simple matter to make the \$3 fee vary according to number of weapons on the license.

JAS:cj