PALM SPRINGS GUN THEFT REPORTING PROPOSAL WILL FRUSTRATE PROSECUTIONS

On September 7th, the Palm Springs City Council voted 3-2 to introduce a proposed firearms ordinance originally requested by Councilmember Geoff Kors. Mayor Robert Moon and Councilmembers J.R. Roberts and Geoff Kors voted in the majority. Mayor Pro Tem Chris Mills and Councilmember Ginny Foat opposed.

Although a number of the key provisions of Kors proposal have been removed as a result of several state firearms laws being signed by Governor Brown on July 1rst, the revised proposal still includes a law requiring gun owners to report the loss or theft of their firearms within 48 hours of when the owner knew or "should have known" a firearm was missing.

The City Council is also expected to propose a resolution in support of Proposition 63 which is being promoted by California's Lt. Governor Gavin Newsom. This proposition contains a nearly identical requirement that gun owners report the loss or theft of their firearms.

While it may seem superficially benign, such a proposal is a bad idea, with nothing but negative consequences. It would only serve to further victimize theft victims, and will actually frustrate criminal prosecutions of gun runners in Palm Springs and throughout California. In fact, an identical law was just vetoed by Governor Brown for the very same reason, because the Governor "did not believe that a measure of this type would help identify gun traffickers or enable law enforcement to disarm people prohibited from having guns."

A False Premise

Gun control advocacy groups have learned from sophisticated public relations professionals how to spin their radically anti-firearm-owner proposals as benign. They claim that this law would prevent "straw purchases;" the already unlawful practice of eligible people purchasing a firearm legally, meanwhile intending to resell it illegally on the black market or to give it to someone who is ineligible to legally purchase the firearm. They contend that when a gun used in a crime is traced back to these straw purchasers, the criminal straw purchaser will sometimes falsely claim that the recovered gun was lost or stolen from them. Proponents of this law argue claim that by requiring people to report lost or stolen guns, straw purchasers couldn't use that excuse. Wrong.

A Free Pass for Bad Guys

First of all, ironically, the proposed law cannot be used against these real "straw purchaser" bad guys. The Fifth Amendment forbids any law that compels lawbreakers to report themselves. So straw purchasers who buy a gun cannot be compelled to report that they resold it illegally. And, since the gun wasn't actually lost or stolen (it was sold illegally!), they haven't actually violated any lost or stolen gun reporting law in the first place!

Similarly, if a felon prohibited from possessing firearms nonetheless possesses a firearm illegally, he can be prosecuted for that. But, under the Fifth Amendment, if the gun is actually lost or stolen from the felon, he cannot be prosecuted for failing to incriminate himself by reporting it lost or stolen. So this proposal wouldn't touch him either.

A United Opposition

Proposition 63 is overwhelming opposed by the law enforcement community and civil rights groups because it will burden law abiding citizens without keeping violent criminals and terrorists from accessing firearms. The California State Sheriffs' Association, Los Angeles Association of Deputy District Attorneys, California Correctional Peace Officers Association, California Fish & Game Wardens' Association, California Reserve Peace Officers Association, and numerous other law enforcement and civic groups, representing tens of thousands of public safety professionals throughout California, are united in their opposition to this ineffective, burdensome, and costly proposal. And yet this same proposal is what the proposed Palm Springs ordinance is based on, and what the City Council would vote to support.

A Dilemma for Prosecutors

Trying to enforce this law places prosecutors in a precarious legal and ethical position. Say a straw purchaser's gun is recovered at a crime scene and traced back to him. If he lies to police claiming his gun was "stolen" when he really sold it on the black market, will the state nonetheless prosecute him for a crime he did not commit (fail to report the "stolen" gun – which wasn't actually stolen) but to which he "confessed?" Ethics and legality aside, securing a minor conviction for failing to report a theft (that never occurred) likely prohibits prosecuting straw purchasers for the more serious felony black market sale, or for making a false statement on a gun purchase form or to police.

A Disincentive for Crime Victims and Witnesses

Perhaps worse, the proposal turns otherwise cooperative firearm owners into unwilling witnesses. Fearing prosecution for failing to report a lost or stolen firearm in time, California firearm owners who truly are theft victims will refuse to speak with police if their stolen firearm is recovered at a crime scene. That's because if the firearm owner failed to report the loss at all, or in time, they face possible criminal prosecution for that failure and incriminate themselves if they cooperate with police investigating the recovered firearm. So they should remain silent, get a lawyer, and seek immunity first. In the meantime, the police investigation of the true bad guy stops while the lawyers work it out.

Legal representation is also appropriate when a firearm is first discovered missing. Under the proposed ordinance, the owner can be prosecuted if the theft is not reported within 48 hours of when they "should have known" it was missing. Proponents of gun control laws, including some prosecutors, believe "responsible" firearm owners "should know" a firearm is gone instantaneously. That's just not reality. Firearm owners don't check their gun safes daily. And the fear of prosecution encourages those who miss the reporting "window" to not report the loss at all.

Effectively, Kor's proposal places legitimate gun owners in jeopardy of prosecution for being a victim of crime. In light of these liabilities, gun rights groups and criminal defense lawyers now advise gun owners – who would ordinarily be happy to assist police with their investigation – that they need a lawyer if they are contacted by police about a missing gun.

A Failed Experiment

All of these negative effects come without any corresponding benefits. This proposal has been the darling of the gun ban lobby for several years. Several California cities passed it at their urging. But none of these cities use it. The Sacramento Police Department looked into it, and discovered these types of ordinances are unused in Oakland, San Francisco, Berkeley, and Alameda. No investigations, arrests, or convictions related to the ordinances have taken place to date! An experienced inspector in the Weapons Unit of the San Francisco Police Department, who reads 3,000 reports every month, stated that he had not handled nor had he heard of any cases in which the city's ordinance was invoked. An Assistant District Attorney for the County of San Francisco stated, "I do not believe it will expand my ability to prosecute crime ..."

Recognizing these problems, both Governor Schwarzenegger and Governor Brown vetoed similar proposed state laws on several occasions. As Govern Brown stated in his recent veto message on July 1rst, "responsible people report the loss or theft of a firearm and irresponsible people do not; it is not likely that this [proposed law] would change that."

Indeed.

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