

by C.D. MICHEL

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City's Gun Control Idea Misses Target

Portland, Ore., Mayor Sam Adams has proposed a number of ill-conceived gun control ordinances, most straight out of the gun-ban lobby's playbook.

Among these is an ordinance requiring gun owners to report the loss or theft of a firearm within 48 hours of when the owner knew or "should have known" the gun was missing.

Gun control advocacy groups have learned from costly PR professionals how to spin their anti-gun-owner proposals as benign. They disingenuously claim this law would prevent unlawful sales of firearms by purchasers who buy a gun legally, intending to resell it illegally on the black market. These "straw" purchasers often falsely claim that a crime gun traced back to them was stolen or lost.

This proposal was the darling of the gun-ban lobby in California several elections ago. Several California cities passed it. But none use it. In 2006, the Sacramento Police Department discovered these types of ordinances are unused in Oakland, San Francisco, Berkeley and Alameda, and reported that no investigations, arrests or convictions related to the ordinances had taken place.

An experienced inspector in the weapons unit of the San Francisco Police Department, who reads 3,000 reports each month, stated that he had not handled nor had he heard of any cases in which the ordinance was invoked.

In recognition of these problems, several years ago Gov. Arnold Schwarzenegger vetoed a similar proposed state law. This situation has not changed.

The truth is, gun owners typically report stolen firearms anyway. This law only further victimizes theft victims and impedes criminal prosecutions in California.

Ironically, the proposed ordinance cannot be used against the real bad guys. No law can compel lawbreakers to report themselves. So straw purchasers who legally buy a gun cannot be compelled to report that they resold it illegally. And since it wasn't actually lost or stolen, they haven't actually violated the ordinance.

Similarly, if a felon prohibited from possessing a gun illegally possesses one anyway, and it is lost or stolen, he can be prosecuted for having the gun in the first place, but cannot be prosecuted for failing to incriminate himself by reporting the loss.

Enforcement of 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 we nonetheless prosecute him for something he did not do (failing to report the "stolen" gun—which wasn't actually stolen) but to which he "confessed?" Ethics and legality aside, securing a misdemeanor conviction for failing to report a theft (that never occurred) likely prohibits prosecuting the straw purchaser for the more serious felony black market sale, or for making a false statement to police.

Learn From Mistakes

Perhaps worse, California gun owners who truly are burglary victims now refuse to speak with police if their stolen guns are recovered at crime scenes. If the gun owner failed to report the loss at all, or on time, he or she faces possible criminal prosecution if he or she cooperates with police investigating the recovered gun. So he or she remains silent, gets a lawyer and seeks immunity first.

Legal representation is also appropriate when a gun is first discovered missing. The owner can be prosecuted if the theft is not reported within 48 hours of when she "should have known" the gun was missing. Proponents believe "responsible" gun owners "should know" a gun is gone instantaneously. That's just not reality. And the fear of prosecution has encouraged those who miss the 48-hour window not to report the loss at all.

Effectively, the proposed ordinance places legitimate gun owners in jeopardy of prosecution for being a victim of crime. In light of these liabilities, gun rights groups and the criminal defense bar 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.

Portland should learn from these mistakes. ☐

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