

will encourage those who miss the 48-hour window not to report the loss at all.

Effectively, these ordinances place the legitimate gun owner in jeopardy of prosecution for becoming a victim of a crime. In light of these liabilities, gun-rights groups and the criminal-defense bar have begun advising gun owners -- who would ordinarily be happy to assist police with their investigation -- that they need a lawyer if they are contacted by police.

In 2006, the Sacramento Police Department discovered these ordinances are unused in the cities that have them. Police and district attorneys in Oakland, San Francisco, Berkeley and Alameda were completely unaware the ordinances existed, 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 every month, stated that he had not handled nor had he heard of any cases in which the 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."

Even Sacramento Councilwoman Lauren Hammond, while acknowledging that Sacramento is at the forefront of gun-violence prevention, conceded that: "On top of an ordinance that sounds really good, it hasn't done anything. Although I do support the concept, we've had an opportunity to see what it's done in other jurisdictions and it hasn't done a darned thing ... why ask the city attorney to bother to write an ordinance that no one uses and has had no effect in the jurisdictions that have it?"

Why indeed?

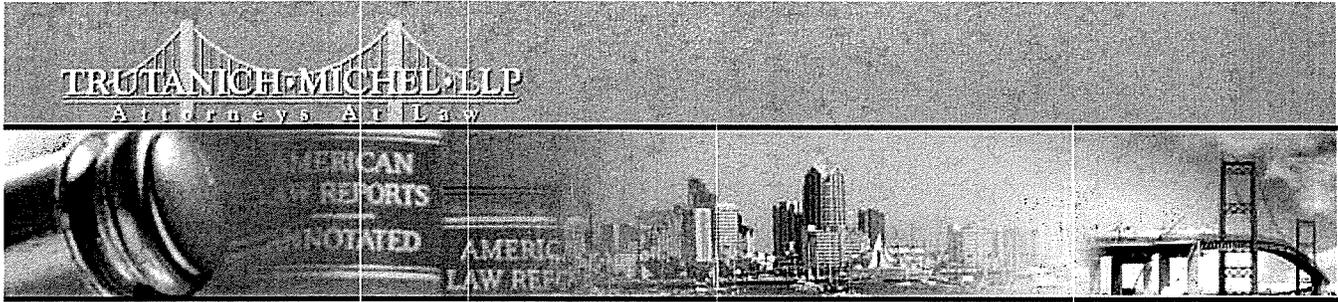
** C.D. Michel is a civil-rights attorney in Long Beach and former prosecutor. His clients include the National Rifle Association, California Rifle & Pistol Association and individual gun owners.*

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C.D. MICHEL: Why pass an ineffective law on guns?

August 10, 2007

Ventura County Star (CA)
 Byline: C.D. Michel
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C.D. Michel

A few Ventura County cities have recently passed, or are considering passing, ordinances requiring gun owners to report the loss or theft of their firearms, typically within 48 hours of when the owner knew or "should have known" the gun was missing. Gun-control advocacy groups, having learned from professionals how to spin their anti-gun-owner proposals as benign, disingenuously claim the law will 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.

Gun owners typically report stolen firearms anyway. These laws will only further victimize theft victims and impede criminal prosecutions.

Ironically, the ordinance cannot be used against the real bad guys. No law can compel lawbreakers to report themselves. So a straw purchaser who legally buys a gun cannot be compelled to report that he resold it illegally. And since it wasn't actually lost or stolen, he hasn't 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 these ordinances 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 (fail 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.

Perhaps worse, gun owners who truly are burglary victims must now hesitate to speak with police if their stolen gun is recovered at a crime scene. If the gun owner failed to report the loss at all, or on time, she faces possible criminal prosecution if she cooperates with police investigating the recovered gun. She should remain silent, get a lawyer and seek immunity first.

Legal representation may also be appropriate when a gun is first discovered missing. The owner can be prosecuted if the theft is not reported within 48 hours of when the owner "should have known" the gun was missing. Proponents have made clear they believe "responsible" gun owners should know where their gun is at every single moment and "should know" a gun is gone immediately. And the fear of prosecution