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ALVIN DOE and PAUL A. GLADDEN
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO
10

11 ALVIN DOE and PAUL A. GLADDEN,
12
13 Plaintiffs,

14 v.

15 KAMALA D. HARRIS, in her official capacity
as Attorney General of California; and
16 STEPHEN J. LINDLEY, in his official capacity
as Chief of the California Department of Justice
Bureau of Firearms,
17

18 Defendants.
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Case No.: 34-2014-00163821

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Date: July 8, 2014
Time: 2:00 p.m.
Dept: 53

1 Pursuant to Evidence Code section 450 et seq., Plaintiffs Alvin Doe and Paul A. Gladden
2 request that the Court take judicial notice of the following in support of their Motion for
3 Preliminary Injunction:

4 1. Assem. Comm. on Public Safety, Analysis of Assem. Bill 202 (1999-2000 Reg.
5 Sess.) as amended March 10, 1999.

6 2. Sen. Comm. on Public Safety, Analysis of Assem. Bill 202 (1999-2000 Reg. Sess.)
7 as amended April 6, 1999.

8 3. Assem. Comm. on Appropriations, Analysis of Assem. Bill 202 (1999-2000 Reg.
9 Sess.) as amended March 10, 1999.

10 4. Office of Criminal Justice Planning, Enrolled Bill Report, Assem. Bill. 202 (1999-
11 2000 Reg. Sess.) as amended April 6, 1999.

12 5. Assem. Comm. on Public Safety, Analysis of Assem. Bill 532 for April 8, 1997
13 hearing (1997-1998 Reg. Sess.).

14 6. Author's file, Assem. Bill 532 (1997-1998 Reg. Sess.), Notes re: April 8, 1997
15 Hearing of Assem. Comm. on Public Safety.

16 7. Author's file, Assem. Bill 532 (1997-1998 Reg. Sess.), Notes re: June 5, 1997
17 Assembly Floor Debate.

18 The Court may take judicial notice of these documents pursuant to Evidence Code section
19 452(c) because they are records of the official acts of the California Legislature. The relevance of
20 these documents is set forth in Plaintiffs' Memorandum of Points and Authorities in support of
21 their motion.

22
23 Dated: June 5, 2014

BENBROOK LAW GROUP, PC

24
25 By 

26 BRADLEY A. BENBROOK
27 Attorneys for Plaintiffs
28 ALVIN DOE and PAUL A. GLADDEN

EXHIBIT 1

Date of Hearing: March 16, 1999
Chief Counsel: Harry M. Dorfman

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Mike Honda, Chairman

AB 202 (Knox) – As Amended: March 10, 1999

G.O.P.S.
Do Not Remove

SUMMARY: Prohibits any person from applying for more than one concealable firearm within a 30-day period, and no delivery shall be made to any person who has made an application to purchase more than one concealable firearm within 30 days. Specifically, this bill:

- 1) Prohibits making an application to purchase more than one pistol, revolver, or other firearm capable of being concealed on the person within any 30-day period.
- 2) Prohibits delivery to any person who has made an application to purchase more than one pistol, revolver, or other firearm capable of being concealed on the person within any 30-day period.
- 3) Provides that no person can make an application to purchase a pistol, revolver or other firearm capable of being concealed on the person within any 30-day period. Exempts law enforcement, entertainment/theatrical companies, licensed collectors, and the exchange, replacement or return of a concealable firearm under specified conditions.
- 4) Provides penalties for making an application for more than one concealable firearm in any 30-day period:
 - a) A first violation is an infraction punishable by a fine of \$50;
 - b) A second violation is an infraction punishable by a fine of \$100; and,
 - c) A third or subsequent violation is a misdemeanor (punishable in the county jail up to six months, or by a fine not greater than \$1,000, or both, pursuant to Penal Code Section 19).
- 5) Provides that each application to purchase a concealable firearm shall be deemed a separate offense.

EXISTING LAW:

- 1) Prohibits the sale, lease, or transfer of firearms without a state firearms dealer's license. (Penal Code Section 12070(a).) Violation is a misdemeanor, punishable by six months in the county jail; a \$1,000 fine; or both. (Penal Code Section 12070(a) and Penal Code Section 19.)
- 2) Provides that the duly constituted licensing authority of a city, county, or city and county shall accept applications for, and may grant, licenses permitting, licensees to sell firearms at retail. The authority shall inform applicants who are denied licenses the reasons for the denial in writing. (Penal Code Section 12071(a)(2).)

- 3) Prohibits the supply, delivery, sale, giving possession or control of a firearm to any person within the classes of prohibition described in Penal Code Sections 12021 or 12021.1 (Penal Code Section 12072(a)(1).) Violation is a felony, punishable by two, three, or four years in state prison. (Penal Code Section 12072(g)(2)(A).)
- 4) Prohibits the sale, loan, or transfer of a firearm to a minor. (Penal Code Section 12072(a)(3)(A).) Violation is an alternate misdemeanor/felony, punishable as a misdemeanor by imprisonment up to one year in county jail; a fine of \$1,000; or both; or as a felony, by imprisonment for 16 months, 2 or 3 years in state prison; a fine of \$1,000; or both. (Penal Code Section 12072(g)(3)(B).)
- 5) Prohibits the sale, loan, or transfer of a firearm to any person who is not the actual purchaser or transferee if the intent is to avoid the statutory requirements for lawful transfer. (Penal Code Section 12072(a)(4).) Violation is an alternate misdemeanor/felony, punishable the same as #4 above. (Penal Code Section 12072(g)(3)(A).)
- 6) Prohibits the supplying, selling, delivering, or giving possession or control of a pistol, revolver, or firearm capable of being concealed to any person under 21 years of age, or any other firearm to any person under 18 years of age. (Penal Code Section 12072(b)) Violation is a felony, punishable by two, three, or four years in state prison. (Penal Code Section 12072(g)(2)(D).)
- 7) Prohibits the delivery of a firearm to a person within 10 days of the application to purchase. (Penal Code Section 12072(c)(1).) Violation is an alternate misdemeanor/felony, punishable the same as #4 above. (Penal Code Section 12072(g)(3)(D).)
- 8) Exempts certain persons and entities from the prohibitions of Penal Code Section 12072 such as peace officers, lawful importers, inter-family sales or bequests, auctions, etc. (Penal Code Section 12078)
- 9) Provides Penal Code Section 12072 violations are misdemeanors (Penal Code Section 12072(g)(1), except for specified felonies such as transferring a firearm to a person previously convicted of a felony (Penal Code Section 12072(g)(2)(A)), or except for specified "wobblers" (which may be charged either as a misdemeanor or a felony at the prosecutor's discretion) such as selling, loaning or transferring a firearm to a minor (Penal Code Section 12072(g)(3)(B)).

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Statement. According to the author, "There is no limit on the number of handguns that may be purchased from a dealer. This makes it easy for straw purchasers to acquire guns for another person or for street dealers to acquire guns legitimately. Handguns make up an overwhelming share of crime guns and a significant number are traceable to dealer transactions. AB 202 will curtail the illegal gun market, disarm criminals, and save lives by preventing multiple purchases of handguns through legitimate channels. Preventing multiple purchases takes the profit out of black market sales and puts gun traffickers and straw purchasers out of business."

- 2) Limiting Bulk Purchases to Cut Down on Straw Transactions. The goal of this bill is to stop one gun purchaser from buying several firearms and transferring a firearm to another person who does not have the legal ability to buy a gun him/herself. Such a transfer is referred to as a "straw transaction." Typically, straw transactions involve a third party who is under 21 years of age, has a disqualifying prior conviction, has a mental disorder, or is not a resident.
- 3) Straw Transactions Violate Federal Law. The Federal Gun Control Act forbids straw transactions. Federal law prevents a person from purchasing guns in a state with lax laws and then returning to his or her state of residency. If a gun has been transported across state lines, a licensed federal firearms dealer must process the transaction. Additionally, a person who is not a federal firearms licensee cannot deliver a firearm to a resident of another state who is not federally licensed. The only way that such a transaction can occur is if the transaction is brokered through a federal firearms licensee in the recipient's state of residence. Federal law criminalizes acquisition of firearms in one state, the return to a different state and sale of those firearms.
- 4) South Carolina and Virginia. In 1975, South Carolina banned gun dealers from selling more than one handgun in a 30-day period to the same person. In 1993, Virginia passed a "one gun a month" law with some exemptions. Neither state has a waiting period; both use a "quick check" system. Nor do those states regulate private transactions, as does California.
- 5) Do the Proposed Exemptions to Penal Code Section 12072(a)(9)(A) Effectively Gut the Bill? No. This bill amends Penal Code Section 12072 to prohibit more than one application for a concealable firearm in a 30-day period. The bill also provides numerous exemptions which are salutary because they encourage a person who may be involved lawfully in multi-gun exchanges to go to a licensed dealer, or to the local sheriff, in order to facilitate the exchange. Those exempt institutions, persons and situations include:
 - a) Any law enforcement agency;
 - b) Any agency authorized to perform law enforcement duties;
 - c) Any state or local correctional facility;
 - d) Any private security business licensed to conduct business in state;
 - e) Any peace officer;
 - f) Any motion picture, television, or video production company whose production involves a firearm;
 - g) Any person who may claim a waiting-period exemption pursuant to Penal Code Section 12078;
 - h) Any transaction conducted through a dealer pursuant to Penal Code Section 12082;
 - i) Any transaction conducted through a law enforcement agency pursuant to Penal Code Section 12084;
 - j) Any licensed collector;

- k) The exchange of a concealable firearm where the purchase occurred within 30 days of the exchange;
- l) The replacement of a concealable firearm where the gun was reported lost or stolen before the completion of the new application; and,
- m) The return of any concealable firearm to its owner.

Despite the exemptions, the bill still hinders bulk purchase straw transactions by limiting applications for concealable firearms to one application per 30-day period.

6) Limiting Applications Will Not Stop Straw Transactions Entirely. This bill will not stop bulk purchases to facilitate straw transactions. Those persons determined to violate the law are still able to do so. For example, assume six friends all want concealable guns. Assume further that three of those friends own guns currently and the other three friends are legally disqualified due to prior felony convictions. The three friends who can legally buy guns can go to a store and fill out individual applications to purchase one new handgun each. They receive the guns and turn them over to their friends. Or, assume one person wants to obtain a gun for each of his or her four friends who cannot legally purchase themselves. With a little patience, he or she makes a new application every 31st day and then turns over a gun to each friend in a few months.

7) Prior Legislation. AB 532 (Knox), of the 1997-98 Legislative Session, was substantially similar to this bill and would have made it a misdemeanor to take title to more than one concealable firearm in a 30-day period. In addition, AB 532 would have made it an alternate felony/misdemeanor for a dealer to deliver a handgun after being notified that a person was attempting to take title to more than one handgun in a 30-day period. AB 532 failed passage on the Assembly floor, was granted reconsideration, and died on the Assembly Inactive File.

SB 513 (Hayden), of the 1997-98 Legislative Session, was substantially similar to this bill and would have made it a misdemeanor to purchase more than one concealable firearm in a 30-day period. In addition, SB 513 would have made it a misdemeanor for a dealer to deliver a handgun after being notified that a purchaser had applied to purchase a gun within the last 30 days. SB 513 was gutted on the Assembly floor and became a bill relating to California Habeas Resource Center.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union
California Nurses Association
California Peace Officers' Association
California Police Chiefs' Association
City of Los Angeles
Handgun Control, Inc.
Legal Community Against Violence
Los Angeles County District Attorney's Office
Los Angeles Police Department

Trauma Foundation
Women Against Gun Violence

Opposition

California Rifle and Pistol Association
Peace Officers Research Association of California
One Private Citizen

Analysis Prepared by: Harry Dorfman / PUB. S. / (916) 319-3744

EXHIBIT 2

SENATE COMMITTEE ON PUBLIC SAFETY

Senator John Vasconcellos, Chair
1999-2000 Regular Session

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AB 202 (Knox)
As Amended April 6, 1999
Hearing date: June 8, 1999
Penal Code
SH:br

HANDGUN PURCHASES -

LIMIT TO ONE PER INDIVIDUAL PER 30-DAY PERIOD

HISTORY

Source: Author

Prior Legislation: SB 513 (Hayden) - provisions subsequently deleted (1997-98)
AB 532 (Knox) - died on Assembly floor inactive file (1997-98)
SB 1277 (Hart) - died on Senate floor (1993-94)

Support: City of Oakland; Santa Clara County Board of Supervisors; League of California Cities; California Teachers Association; City of West Hollywood; Handgun Control; City of Los Angeles; Los Angeles Police Department; California Nurses Association; California Peace Officers' Association; California Police Chiefs' Association; ACLU; Legal Community Against Violence; Los Angeles County District Attorney's Office; Attorney General's Office; California Church IMPACT; California Child, Youth and Family Coalition; Violence Prevention Coalition of Greater Los Angeles; Trauma Foundation; Orange County Citizens for the Prevention of Gun Violence; California District, American Academy of Pediatrics; Mayor, City of Hayward; Gray Panthers of Northern California; City of Alameda; Women Against Gun Violence; Physicians for a Violence-free Society; individual letters

Opposition: California Shooting Sports Association; California Rifle and Pistol Association; National Rifle Association; Gun Owners of Californian; Peace Officers Research Association of California; individual letters

Assembly Floor Vote: Ayes 42 - Noes 30

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KEY ISSUE

SHOULD HANDGUN PURCHASES FROM LICENSED DEALERS IN CALIFORNIA BE LIMITED TO NO MORE THAN ONE PER PERSON PER MONTH, AS SPECIFIED?

PURPOSE

The purpose of this bill is to generally limit purchases of handguns from licensed firearms dealers in California to no more than one per person per month, as specified.

Existing law governs the sale and purchase of firearms in California. Various restrictions are placed on the purchase of firearms, including a pistol, revolver, or firearm capable of being concealed upon the person, such as a background check, a waiting period, and generally the presentation of a basic firearm safety certificate. Transactions between private parties are subject to those restrictions as well and must be made through a licensed dealer or a law enforcement agency in smaller counties. Persons in prohibited categories may not purchase or possess firearms at all. (Penal Code sections 12070 – 12086)

This bill prohibits any person from applying to purchase more than one concealable firearm from a licensed firearms dealer within a 30-day period and provides that no delivery shall be made to any person who has made an application to purchase more than one concealable firearm within 30 days, as follows:

- 1) Provides that no person shall make an application to purchase more than one pistol, revolver or other firearm capable of being concealed on the person from a licensed firearms dealer within any 30-day period. Exempts private party transactions (which must be made through a licensed firearms dealer or a sheriff's office in smaller counties); law enforcement; entertainment/theatrical companies; licensed collectors; and the exchange, replacement or return of a concealable firearm under specified conditions.
- 2) Provides the following penalties for making an application for more than one concealable firearm in any 30-day period:
 - a) A first violation is an infraction punishable by a fine of \$50;
 - b) A second violation is an infraction punishable by a fine of \$100; and,

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- c) A third or subsequent violation is a misdemeanor (punishable in the county jail up to six months, or by a fine not greater than \$1,000, or both, pursuant to Penal Code section 19).
- 3) Provides that each application to purchase a concealable firearm in violation of these provisions shall be deemed a separate offense.
- 4) Prohibits delivery of such firearms by a licensed dealer to any person who has made an application to purchase more than one pistol, revolver, or other firearm capable of being concealed on the person within any 30-day period when the dealer is notified by the Department of Justice that a person has made more than one application to purchase such firearms within that time period (punishable as a misdemeanor/felony).
- 5) Makes related changes and additions to law, including a requirement that licensed firearms dealers must post a notice about the provisions of this bill.

COMMENTS

1. Need for This Bill

According to the author:

There is no limit on the number of handguns that may be purchased from a dealer. This makes it easy for straw purchasers to acquire guns for another person or for street dealers to acquire guns legitimately. Handguns make up an overwhelming share of crime guns and a significant number are traceable to dealer transactions. AB 202 will curtail the illegal gun market, disarm criminals, and save lives by preventing multiple purchases of handguns through legitimate channels. Preventing multiple purchases takes the profit out of black market sales and puts gun traffickers and straw purchasers out of business.

2. Existing Law Pertaining to Firearms Purchases

The sale, loan or transfer of a firearm must generally be conducted by or through a state licensed firearms dealer or through a local sheriff's department in counties of less than 200,000 persons. As part of this process, the 10-day waiting period/background check/handgun safety certificate are required prior to delivery of the firearm. In addition, handguns are centrally registered with DOJ as part of this process.

A violation of these provisions as to handguns is an alternate felony/misdemeanor punishable by up to one year in the county jail or by imprisonment in the state prison punishable by 16 months, two or three years.

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Bulk purchase limits are aimed at so-called "straw transactions". A straw transaction usually involves "A" buying the gun for "B" because "B" may not legally buy the gun. These types of transactions may occur in various circumstances. Typically, they occur because the true purchaser is under age 21, has a specified prior conviction, has a mental disorder, or is not a resident.

Straw transactions violate state law.

Straw transactions also violate federal law. It is reported that people travel to a state with weaker gun laws, acquire guns in that state, and then transport them back into their state of residency.

The federal Gun Control Act is designed to, among other provisions, require residents of a state to acquire firearms in their own state of residence. It does so by two means. First, a person cannot acquire a firearm in one state and then personally transport it into his/her own state of residency. He or she cannot receive the gun unless the gun is being processed through a federal firearms dealer in that state, who must follow state law on gun deliveries.

In addition, a person who is not a federal firearms licensee cannot deliver a firearm to a resident of another state who is not federally licensed. The only way that such a transaction can occur is if the transaction is brokered through a federal firearms licensee in the recipient's state of residence.

The 1994 federal crime bill made it an enhanced criminal offense for an individual to go into another state to acquire firearms and then return to his or her own state and sell those firearms. (See 18 USC 923(m).)

3. Assumptions about Limits on Purchases of Handguns

The State of Virginia enacted a "one-handgun-a-month" law in 1993 (before the Federal Brady Bill, which required at least a five day waiting period plus a background check for states without such requirements). That state had weak restrictions on handgun sales and it has been stated that gun traffickers from New York City routinely traveled to Virginia to purchase quantities of weapons to take back for illegal sale in other states. Purchases of more than one handgun per 30-day period in Virginia is allowed upon completion of an "enhanced" background check when the purchase is for lawful business or personal use, for purposes of collectors, bulk sales and purchases from estates, to replace a lost or stolen weapon, and similar situations.

Supporters of limits on purchases of handguns assume that the Virginia limits and the limits in this bill would only affect a very small proportion of legitimate handgun purchasers. A family of two adults could still purchase 24 handguns a year under the provisions of both this bill and the Virginia law.

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4. Multiple Handgun Purchases in California

Information provided by the Department of Justice indicates that in 1998, there were 141,823 lawful handgun purchases in California which involved one transferee and one handgun in a single calendar month. There were 12,989 transactions involving one transferee who obtained two handguns in single calendar month; 2,282 involved three handguns in a single month transferred to the same individual; and 91 transfers which involved one transferee and more than 10 handguns in a single calendar month. Other multiple handgun transactions include one person in July of 1998 who obtained 41 to 80 handguns.

Those figures include persons who would be exempted by this bill, such as a licensed collector, and transactions between private parties which were lawfully made through a licensed dealer or a sheriff's office.

Previous information for the Department of Justice provided to this Committee indicated that in 1992 there were 2,784 persons who purchased five or more handguns and in 1993 there were 2,877 persons who purchased five or more handguns.

Since this bill would allow twelve handgun purchases a year, it would appear that this bill would have affected a relatively small number of purchasers in any given year. It could, of course, inconvenience some of those purchasers if their desire is to purchase all twelve handguns at one time.

The DOJ figures also indicate that in 1993, 245 individuals purchased 12 or more handguns. The number of persons who purchased 20 or more handguns dwindles rapidly with only 83 purchasing more than 20 handguns in 1993. However, one person did purchase 84 handguns that year.

5. Local Ordinances Limiting Handgun Purchases

Some local ordinances limiting handgun purchases in local areas have been enacted in California. For example, background provided by the author includes a copy of Los Angeles Municipal Code Section 55.14 on which is handwritten "1/27/99 LA Council approved." That ordinance is very similar to AB 202 as currently amended, although the LA ordinance does contain an exemption for "collector's series or a bulk purchase from an estate" and the penalty dealer violations is assumed to be a misdemeanor. AB 202 does not contain that exemption and the penalty for dealer violations in the bill is an alternate misdemeanor/felony.

Government Code section 53071 declares the "... intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such

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provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms . . ." which would indicate that AB 202 would preempt such local ordinances. The City of Los Angeles is in support of AB 202, presumably because a local ordinance would not stop city residents from purchasing handguns outside of the city or any other city which individually has adopted such a restriction.

6. Additional Issues Raised by This Bill

As noted above, this bill does not contain an exemption for collector's series or bulk purchases from an estate. Individuals would be allowed to make those kinds of purchases from other individuals under this bill – through a dealer, as required – and those handguns could be sold either to a dealer, possibly an auction house, or to a dealer or other entity out of state. However, individuals would not be allowed to make such purchases from licensed firearms dealers. Both the Los Angeles ordinance cited above and SB 513 from last year provided an exception, as follows:

The purchase of firearms in a collector's series or a bulk purchase from an estate sale.

WOULD IT BE APPROPRIATE TO ADD SUCH AN EXCEPTION TO THIS BILL?

[NOTE: AB 295 (Corbett) is going to be heard in this Committee at a future hearing; as passed by the Assembly, it would appear to generally require any bulk sales to be made only by a licensed dealer, which, if enacted, would change the impact of AB 202 on such transactions.]

This bill makes an alternate misdemeanor/felony penalty applicable to a licensed firearms dealer who delivers a handgun to a purchaser after the Department of Justice has notified the dealer that the purchaser has made another application to purchase a handgun in violation of the 30-day period limit. Since a licensed firearms dealer may not be granted a license if the dealer has any prior felony conviction – as well as specified misdemeanor penalties – there is no common "three-strikes" issue raised by this bill. SB 513 from last session contained a misdemeanor penalty for such violations.

[NOTE: The Legislative Counsel's Digest for AB 202 indicates the dealer penalty is a misdemeanor; that is partially correct since the actual penalty would be an alternate misdemeanor/felony.]

7. How Would This Bill Work if Enacted?

The prohibition on handgun purchases in this bill is triggered by the "application" to purchase which presumably is manifest by the transmission of the background request to the Department of Justice by the licensed dealer. This bill does not limit transactions in a

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30-day period by the actual delivery of a handgun to a purchaser. SB 29 (Peace), as amended on April 27, 1999, added language which would allow the Department of Justice to require licensed dealers to report to the department when a handgun is actually delivered to a purchaser. Current law -SB 63 (Peace)/Chapter 908, Statutes of 1998 – does require that dealers notify customers that federal law requires a subsequent background check if actual possession of a firearm is not taken within 30 days of the completion of the background check and does require a dealer to notify the department if a firearm is not delivered within that 30-day period.

It is foreseeable that some purchasers change their minds and do not actually take possession of a handgun which they have initially agreed to purchase and which has resulted in an "application" being forwarded to the department. Whether or not the "application" alone, and not the actual transfer of the handgun, would preclude such a purchaser from "applying" to purchase another handgun with the 30-day limit is possibly unclear. It may be that the department would administratively devise a method to "void" an "application" and it may also be that such occurrences would be relatively rare.

Whether or not a limit on purchases in a 30-day period would be "fairer" if it applied to "delivery" or taking possession is debatable.

8. Opposition to This Bill

The National Rifle Association opposition to this bill includes:

- [AB 32] proposes that no person could "take title" to more than one handgun during a 30-day period. However, [AB 32] would also exempt a daunting list of people, agencies, firearms and specific types of transactions from that restriction. The underlying notions that drive AB 32 are:
- The existing background check, registration and waiting period for handguns is ineffective and/or
 - Law enforcement makes little or no effort to investigate "straw" sales.

Once again the rationale for a new gun control bill is the "failure of the old".

The NRA goes on to ask why so many peace officers, including for example "a county water district security officer (830.34 Penal Code)" who collects guns should be able to purchase unlimited handguns while a concealed weapons permit holder or a retired peace officer could not.

The NRA has also suggested that if "straw" sales are of concern, multiple purchases of handguns could involve a 20-day waiting period, a set time and date for transfer, and notification to local law enforcement about when the transfer is scheduled to take place.

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The presumption is that a purchaser buying more than one relatively expensive handgun is not as likely to be engaged in straw sales as a purchaser of relatively inexpensive handguns.

The California Rifle and Pistol Association asserts that existing penalties are already sufficient to deter illegal sales in general.

9. Other Legislation which Amends Penal Code Section 12071

This bill amends Penal Code section 12071 by adding another notice which dealers must post.

Other bills which also amend Penal Code section 12071 – and have moved to the second house during 1999, include AB 32 (Scott); AB 295 (Corbett); AB 988 (Lowenthal), AB 1142 (Soto); and SB 29 (Peace). SB 666 is the annual maintenance of the codes bill and it too amends Penal Code section 12071, however that bill contains a general "repealer" for any code section it amends and which is also amended by any other bill during the session year.

Given the number of bills, which amend section 12071, there will need to be some creative work accomplished if several of those bills are sent to the Governor and if conflict issues are to be resolved.

EXHIBIT 3

Date of Hearing: March 24, 1999

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 202 (Knox) – As Amended: 3/10/99

Policy Committee: Public Safety

Vote: 5 - 2

Urgency: No State Mandated Local Program: Yes

Reimbursable: No

SUMMARY

This bill makes it an infraction or a misdemeanor, punishable by fines and/or county jail, for any person to apply for more than one concealable gun within a 30-day period, and for a dealer to deliver a concealable gun to any person who has made an application to purchase more than one concealable gun within 30 days. The bill triggers felony punishment based on specified prior offenses. The bill also provides specified exemptions for law enforcement, licensed collectors, etc.

FISCAL EFFECT

Minor annual costs – likely less than \$150,000 - for new state prison commitments.

Since there were no state prison admissions for similar prohibited gun transfers in 1997-98, it is unlikely this bill would have a significant impact on state prison admissions.

COMMENTS

- 1) Purpose. The goal of this bill is to stop one gun purchaser from buying several guns and transferring weapons to another person who does not have the legal ability to buy a gun. These transfers are called straw purchases, which often involve a third party under 21 years of age, a person with a disqualifying prior conviction or a mental disorder, or a person who is not a California resident. According to the author, preventing multiple purchases takes the profit out of black market sales and will help put gun traffickers and straw purchasers out of business.
- 2) Prior Legislation. AB 532 (Knox, 1998) would have made it a misdemeanor to take title to more than one concealable gun in a 30-day period, and would have made it an alternate felony/misdemeanor for a dealer to deliver a handgun after being notified that a person was attempting to take title to more than one gun in a 30-day period. AB 532 failed passage on the Assembly floor.

SB 513 (Hayden, 1998), would have made it a misdemeanor to purchase more than one concealable gun in a 30-day period and would have made it a misdemeanor for a dealer to deliver a gun after being notified that a purchaser had applied to purchase a gun within the last 30 days. SB 513 was amended on the Assembly floor into a bill relating to the California Habeas Resource Center.

Analysis Prepared by: Geoff Long / APPR. / (916)319-2081

EXHIBIT 4



OFFICE OF CRIMINAL JUSTICE PLANNING

Enrolled Bill Report
OCJP 835 (12/96)

BILL NUMBER: AB 202
AUTHOR: Knox
AS AMENDED: 04/06/99
SUBJECT: Firearms

Bill Summary

This bill will make it a misdemeanor for any dealer to deliver a pistol, revolver, or other concealable firearm, following notice from the Department of Justice that, within the preceding 30-day period, the purchaser made another application to purchase that concealable firearm. This bill will also provide that, except as specified, any person who makes an application to purchase more than one concealable firearm within any 30-day period is guilty of either an infraction or misdemeanor depending upon the number of violations committed by that person.

Summary of Recommendation

The Office of Criminal Justice Planning recommends that the Governor **SIGN** AB 202. OCJP recognizes that the author is intending to limit gun purchases to one handgun a month in order to

Position

SIGN		
Legislative Analyst	Date	Chief
Donna Ures <i>Donna Ures</i>	7/15/99	Paul Waters
Deputy Director, Administration	Chief Deputy	Executive Director
Virginia I. Papan <i>V. Papan</i>	N. Allen Sawyer <i>N. Allen Sawyer</i>	Frank Grimes <i>Frank Grimes</i>

Executive Director: Frank Grimes
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reduce the impact of "straw purchasers." OCJP agrees that this bill should have an impact on the number of handguns sold on a monthly basis, thus reducing the likelihood that these legally purchased weapons will be transferred into the hands of criminals. This bill will place no restrictions on the number of rifles that a person may purchase.

Specific Findings

Under current law, it is a misdemeanor punishable by six months in the county jail and/or a fine of \$1,000, to sell, lease, or transfer firearms without a state firearms dealer's license. (Penal Code section 12070 (a) and Penal Code section 19)

Under current law, the duly constituted licensing authority of a city, county, or city and county shall accept applications for, and may grant, licenses permitting, licensees to sell firearms at retail. The authority shall inform applicants who are denied licenses the reasons for the denial in writing. (Penal Code section 12071 (a)(2))

Under current law, it is a felony, punishable by two, three, or four years in state prison to supply, deliver, sell, or give possession or control of a firearm to any person within the classes of prohibition described in Penal Code section 12021 or 12021.1. (Penal Code section 12072 (a)(1))

Under current law, the sale, loan, or transfer of a firearm to a minor is a misdemeanor/felony, punishable by up to one year in county jail and/or a fine of \$1,000 or by imprisonment in state prison for 16 months, 2, or 3 years and/or a fine of \$1,000. (Penal Code section 12072 (g)(3)(B))

Under current law, the sale, loan, or transfer of a firearm to any person who is not the actual purchaser or transferee if the intent is to avoid the statutory requirements for lawful transfer is a misdemeanor/felony, punishable by up to one year in county jail and/or a fine of \$1,000 or by imprisonment in state prison for 16 months, 2, or 3 years and/or a fine of \$1,000. (Penal Code section 12072 (g)(3)(A))

Under current law, the supplying, selling, delivering, or giving possession or control of a pistol, revolver, or concealable firearm to any person under 21 years of age, or any other firearm to any person under 18 years of age is a felony, punishable by two, three, or four years in state prison. (Penal Code section 12072 (b))

Under current law, the delivery of a firearm to a person within 10 days of the application to purchase is a misdemeanor or felony, punishable by up to one year in county jail and/or a fine of \$1,000 or by imprisonment in state prison for 16 months, 2, or 3 years and/or a fine of \$1,000. (Penal Code section 12072 (g)(3)(D))

Under current law, certain persons and entities are exempt from the prohibitions of Penal Code section 12072 such as peace officers, lawful importers, inter-family sales or bequests, auctions, etc. (Penal Code section 12078)

This bill will prohibit making an application to purchase more than one pistol, revolver, or other concealable firearm within any 30-day period.

This bill will prohibit delivery to any person who has made an application to purchase more than one pistol, revolver, or other concealable firearm within any 30-day period.

This bill will exempt law enforcement agencies, state or local correctional facilities, private security companies, peace officers, entertainment/theatrical companies, licensed collectors, private party transactions conducted through either a law enforcement agency or licensed dealer, and the exchange, replacement or return of a concealable firearm under specified conditions from the 30-day period.

This bill will provide the following penalties for making an application for more than one concealable firearm in any 30-day period:

- a) A first violation is an infraction punishable by a fine of \$50;
- b) A second violation is an infraction punishable by a fine of \$100; and
- c) A third or subsequent violation is a misdemeanor (punishable in the county jail up to six months, or by a fine not greater than \$1,000, or both, pursuant to Penal Code section 19).

This bill will provide that each application to purchase a concealable firearm shall be deemed a separate offense.

Analysis

This is a good gun bill. However, the question is how many gun bills does the Governor want to sign? Currently, OCJP is recommending, and all indications are that, the Governor will sign both SB 15 (Polanco) and SB 23 (Perata). AB 202's "one gun a month" is a moderate approach that will improve public safety.

According to the author, "There is no limit on the number of handguns that may be purchased from a dealer. This makes it easy for straw purchasers to acquire guns for another person or for street dealers to acquire guns legitimately. Handguns make up an overwhelming share of crime guns and a significant number are traceable to dealer transactions. AB 202 will curtail the illegal gun market, disarm criminals, and save lives by preventing multiple purchases of handguns through legitimate channels. Preventing multiple purchases takes the profit out of black market sales and puts gun traffickers and straw purchasers out of business."

OCJP recognizes that the author is intending to limit gun purchases to one handgun a month in order to reduce the impact of "straw purchases." A "straw purchase" occurs when one gun purchaser buys several firearms and transfers a firearm to another person who does not have the legal ability to buy a gun him/herself. OCJP agrees that this bill should have an impact on the number of handguns sold on a monthly basis.

Currently, the state of Virginia has enacted a similar statute. According to statistics available from the author's office, after enactment of the Virginia law, interstate gun trafficking was reduced by 66%.

In February 1999, the City of Los Angeles became the first municipality in California to impose a restriction on multiple purchases. Since this ordinance does not go into effect until May 1999, there are no statistics available.

Fiscal Analysis

No appropriation. The Office of Criminal Justice Planning defers to the Department of Finance for a fiscal analysis of this bill.

Sponsor

Assembly Member Wally Knox

Support

City of Oakland
Santa Clara County Board of Supervisors
League of California Cities
California Teachers Association
City of West Hollywood
Handgun Control
City of Los Angeles
Los Angeles Police Department
California Nurses Association
California Peace Officers' Association
California Police Chiefs' Association
ACLU
Legal Community Against Violence
Los Angeles County District Attorney's Office
Attorney General's Office
California Church IMPACT
California Child, Youth and Family Coalition
Violence Prevention Coalition of Greater Los Angeles
Trauma Foundation
Orange County Citizens for the Prevention of Gun Violence
California District, American Academy of Pediatrics
Mayor, City of Hayward
Gray Panthers of Northern California
City of Alameda
Women Against Gun Violence
Physicians for a Violence-free Society

Opposition

California Shooting Sports Association
California Rifle and Pistol Association
National Rifle Association
Gun Owners of California
Gun/Truth Association
Peace Officers Research Association of California

Status

- Passed Assembly Public Safety Committee (5-2) on 03/16/99.
- Passed Assembly Appropriations Committee (13-5) on 03/24/99.
- Passed Assembly Floor (42-30) on 04/22/99.
- Passed Senate Public Safety Committee (5-1) on 6/8/99.
- Passed Senate Appropriations Committee (9-4) on 6/29/99.
- Passed Senate Floor (21-14) on 7/1/99.
- To enrollment.

Recommendation

The Office of Criminal Justice Planning recommends that the Governor SIGN AB 202.

EXHIBIT 5

Date of Hearing: April 8, 1997
Counsel: Michael A. Katz

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Robert M. Hertzberg, Chair

AB 532 (Knox) - As Proposed to be Amended

SUMMARY : Prohibits firearms dealers from delivering more than one handgun to a person during a 30-day period. Specifically, this bill :

- 1) Makes it a misdemeanor (punishable by up to one year in county jail) to take title to more than one handgun in a 30-day period subject to specified exceptions.
- 2) Requires the Department of Justice (DOJ) to ascertain whether a person is attempting to take title to more than one handgun in a 30-day period.
- 3) Makes it an alternative felony/misdemeanor for a dealer to deliver a handgun upon being notified by DOJ that a person is attempting to take title to more than one handgun in a 30-day period.
- 4) Makes the following offenses alternate felonies/misdemeanors (punishable by 16 months, two or three years in state prison, or up to one year in county jail):
 - a) Selling, loaning or transferring firearms without a state firearms dealers license.
 - b) Knowingly making false and fictitious statements on firearms transfer forms.
 - c) Violation by gun dealers of consumer protections in processing private firearms transactions.

EXISTING LAW :

- 1) Makes its a misdemeanor (punishable by up to one year in county jail) to sell, lease, or transfer firearms without a state firearms dealer's license. (Penal Code Section 12071.)
- 2) Exempts from the licensure requirements includes persons acting pursuant to operation of law, a court order, pursuant to the Enforcement of Judgment Law, by a person who liquidates a personal firearm collection to satisfy a court judgment, and various commercial transactions among and between licensed wholesalers, importers, and manufacturers. (Penal Code Section 12070.)
- 3) The sale, loan or transfer of a firearm must generally be conducted by or through a state licensed firearms dealer or

through a local sheriff's department in counties of less than 200,000 persons. As part of this process, the 10-day waiting period/background check/handgun safety certificate are required prior to delivery of the firearm. In addition, handguns are centrally registered with DOJ as part of this process.

A violation of these provisions as to handguns is an alternate felony/misdemeanor punishable by up to one year in the county jail or by imprisonment in the state prison punishable by 16 months, two or three years.

4) DOJ may charge the dealer a fee sufficient to reimburse for a number of costs such as a dealer's record of sale. Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms. (Penal Code Section 12076.)

5) Exempts from the requirement (stated in "existing law" Number 3) transactions with authorized peace officers, certain operation of law transactions, and intra-familial firearms transactions. However, all these exempt transactions are subject to handgun registration as a condition of the exemption. (Penal Code Section 12078.)

6) Makes it an alternate felony/misdemeanor (punishable by 16 months, two or three years in state prison, or up to one year in county jail) to engage in straw and other transactions designed to evade the registration and background check system. (Penal Code Section 12072(a)(4) and (5)). Section 12072(a)(4) and (5) violations treated as felonies are presumptive state prison offenses. (Penal Code Section 1203(e)(12).)

7) On request, DOJ will register transactions relating to handguns in the Automated Firearm System Unit for persons who are exempt from dealer processing or are otherwise exempt by statute from reporting processes. (Penal Code Section 12078(1).)

COMMENTS :

1) Author's Statement . According to the author, "AB 532 proposes cracking down on the illegal gun market and disarming criminals by increasing penalties for illegal trafficking and lying on the dealer's record of sale and preventing mass purchases of handguns through legitimate channels. Data from the Bureau of Alcohol, Tobacco and Firearms and local law enforcement indicate that multiple purchases are a significant source of guns used in crime.

It also indicates that most of the crime guns recovered in Southern California are originally purchased from a licensed dealer in California and are handguns. Studies also support the theory that 'straw purchases,' those who buy guns on behalf of others, and unlicensed street dealers, who may buy firearms legitimately but sell them on the 'black market' at a considerable markup, are key conduits for guns used in crimes. Most persons will not need the twelve handguns a year they may acquire under this bill -- the limitation in which was endorsed by 81% of

persons in a national gun policy survey by the John [sic] Hopkins Center for Gun Policy and Research last fall."

2) One Gun a Month and Straw Transactions . The controversy on this bill relates to the so-called "one gun a month" part of the bill.

- a) Concept . Bulk purchases limits are aimed at so-called "straw transactions". A straw transaction usually involves "A" buying the gun for "B" because "B" may not legally buy the gun. These types of transactions may occur in various circumstances. Typically, they occur because the true purchaser is under age 21, has a specified prior conviction, has a mental disorder, or is not a resident.
- b) Federal Law . Straw transactions violate federal law. Often, people travel to a state with weaker gun laws, acquire guns in that state, and then transport them back into their state of residency.

The federal Gun Control Act is designed to, among other provisions, require residents of a state to acquire firearms in their own state of residence. It does so by two means. First, a person cannot acquire a firearm in one state and then personally transport it into his/her own state of residency. (S)he cannot receive the gun unless the gun is being processed through a federal firearms dealer in that state, who must follow state law on gun deliveries.

Second, a person who is not a federal firearms licensee cannot deliver a firearm to a resident of another state who is not federally licensed. The only way that such a transaction can occur is if the transaction is brokered through a federal firearms licensee in the recipient's state of residence.

The 1994 federal crime bill made it an enhanced criminal offense for an individual to go into another state to acquire firearms and then return to his own state and sell those firearms. (See 18 USC 923(m).)

- c) South Carolina and Virginia . In 1975, South Carolina banned gun dealers from selling more than one handgun in a 30-day period to the same person. In 1993, Virginia enacted a broader "one gun a month" proposal with a number of exemptions. Neither South Carolina nor Virginia have waiting periods; they both use a "quick check system." They do not regulate private transactions as California does.
- 3) California .
- a) Overview. California has very stringent firearms processing requirements and gun dealer licensing due to a number of laws enacted since 1987.

The only handgun transactions not subject to California's registration requirement are transactions which occurred before the law was enacted. New residents who move into this state with handguns acquired outside of California are not required to register their handguns either. The new resident issue is before the Legislature and will be addressed in some manner in either AB 1201 (Shelley) or SB 63 (Peace), or both. However, there is no question that straw purchases do occur in California.

- b) SB 36x1 (Presley), Chapter 53, Statutes of 1994 . SB 36x1 made a number of regulatory changes and penalty increases. Specifically, SB 36x1 did the following:

i. Closed the intra-familial exemption which required no paperwork and no safety certificate on handgun transfers between family members. The bill mandated that a re-registration form be filed with DOJ and a safety certificate on handgun transfers between family members be used. All exempt transactions must have paperwork on them. Otherwise, the transaction is an illegal private transfer.

ii. Made it an alternate felony/misdemeanor (opposed to a misdemeanor) for not going through a dealer on a handgun transaction or not complying with an exemption.

iii. Made almost all dealer delivery violations an alternate felony/misdemeanor.

iv. Made it an alternate felony/misdemeanor for a person or dealer to sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm (or to any person who is not the person actually being loaned the firearm) if the person, corporation, or dealer has knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the processing provisions of relative to dealer or private transactions.

v. Made it an alternate felony/misdemeanor for a person or dealer to acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person or dealer has either of the following:

- a. In the case of a dealer, intent to violate rules relating to dealer delivery requirements.
- b. In the case of a private person, the intent to avoid the rules governing the processing of private transactions.

vi. Required dealers to re-register in their own names guns they acquire from private parties.

vii. Made a misdemeanor violation of the foregoing requirements to the 10-year prohibition on gun

possession.

viii. Mandated that DOJ in fact create a centralized, computerized handgun registry using all the various transfer forms being centrally compiled within the DOJ.

5) AB 532 .

- a) Author's Intent . While the author recognizes the efforts reflected in SB 1308, he believes that additional measures are required to stop straw transactions by clamping down on bulk sales of dealer inventory. Therefore is proposing a "one gun a month" proposal.
- b) One Handgun a Month . In essence, AB 532 would prohibit persons from acquiring more than one handgun from dealer inventory during a thirty day period.

As drafted and as proposed to be amended, the bill does not affect the following:

- i. Private transactions run through law enforcement agencies or dealers.
 - ii. Private transactions exempt from dealer processing.
 - iii. Antique guns, security companies.
 - iv. Commercial transactions with other persons in the firearms businesses.
 - v. The 400 some odd California federally licensed collectors as to any firearm acquisition.
 - vii. Persons who can claim a waiting period exemption, the entertainment industry.
 - viii. The entertainment industry.
 - ix. The security industry.
 - x. Peace officers authorized to carry guns.
- c) Cost . Staff has been provided by the author's staff with communication that indicates that the computer changes to implement the "one gun a month" portion of the bill is \$6,000.

5) Penalty Increases for Illegal Gun Activities .

- a) AB 532 . It is an alternate felony/misdemeanor under this bill if one fails to comply with dealer requirements with respect to the sale of handguns. In addition, to bring symmetry to the law as revised by SB 36x1, the bill makes the following offenses alternate felonies/misdemeanors:

- i. Selling, loaning or transferring firearms without a state firearms dealers license.
 - ii. Knowingly making false and fictitious statements on firearms transfer forms.
 - iii. Violation by gun dealers of consumer protections in processing private firearms transactions.
- 6) Chaptering Issues . The author is aware that this bill, SB 63 (Peace), and several other measures could create a chapter problem. Therefore, chaptering matters should be carefully reviewed.

REGISTERED SUPPORT/OPPOSITION :

Support

Women Against Gun Violence
City of Los Angeles
City of West Hollywood
Handgun Control Inc.
Legal Community against Violence
Stop Gun Violence
University YWCA
Trauma Foundation
Orange County Citizens for Prevention for Gun Violence
One private citizen

Opposition

National Rifle Association
California Attorneys for Criminal Justice
California Rifle and Pistol Association
Gunowners of California
Outdoor Sportsman Coalition of California
Safari Club International
Sports and Armshow Producers of California
California Sportsman's Lobby, Inc.
Bradley Products Co.
7 private citizens

Analysis prepared by : Michael A. Katz / apubs / (916) 445-3268

EXHIBIT 6

Offer author's amendments:

- (1) Add Assemblywoman Martinez as a coauthor.**
- (2) Amend the bill as indicated in the analysis and as on RN 9710218 which does three things: clarifies that a person who may claim an exemption from the waiting period for handgun purchase is exempt from the limit on purchases in a 30-day period; exempts transactions between dealers; and exempts licensed collectors from the limit.**

**WITNESSES: MICHAEL FEUER, L.A. CITY COUNCILMAN
 DETECTIVE MARK WARSHAW, L.A.P.D.
 SUSAN SHAW, WOMEN AGAINST GUN VIOLENCE
 AND OTHERS**

This bill:

- limits handgun purchases to one in a 30-day period
- exempts various parties, such as peace officers, dealers, private parties conducting sale through a dealer, so that basically the limitation applies only to purchases from dealer inventory
- increases from a misdemeanor to a wobbler the penalties for (1) unlicensed dealer sales, (2) lying on the dealer's record of sale submitted to the Department of Justice for a background check, and (3) dealer failure to comply with existing requirements relative to transfers of firearms through dealers

Why:

- large share of weapons recovered in crimes are handguns and traced are traced to California dealers
- handguns purchased by females and persons over 50 have been recovered disproportionately from males and underage persons, which indicates guns were purchased by "straw purchasers" for transfer to others
- most persons do not need more than one handgun a month

Issues that will probably arise:

Why should law-abiding people be restricted in purchases?

For the public purpose of restricting the legal flow of handguns to criminals.

Why should hunters who use handguns be limited?

Maybe they shouldn't; could exempt licensed hunters (who have to take a hunter's safety course to get a license).

What effect does exempting collectors of curios and relics licensed under federal have?

It permits serious collectors of new handguns go through the federal licensing process -- including undergoing scrutiny of a background check and payment of a \$30 fee -- to qualify as an exempt party under AB 532.

EXHIBIT 7

This bill does three things:

1. Increases the penalties for lying on a gun dealer's record of sale and selling guns without a license;
2. Creates penalties for a person to buy more than one handgun in a 30-day period and for a dealer to deliver a handgun to a person when Department of Justice has informed the dealer that the person has already purchased one in this period.
3. Exempts peace officers, gun collectors, occasional transfers between family members, and private party transactions from the limit.

Purpose:

1. To prevent mass purchases of guns by straw purchasers and black marketers.
2. Prevent the state from facilitating crimes committed with handguns by restricting purchases from dealers.

The bill is based on:

Reports from the State Department of Justice showing:

24% of handguns purchased in April were part of a multiple purchase.

11.2% of all purchasers of handguns purchased more than one handgun in this period.

Studies by the federal Bureau of Alcohol, Tobacco and Firearms indicating:

- * guns purchased from California gun dealers make up a large percentage (more than 80% in the sample studies) of guns recovered in crimes.
- * an overwhelming share of guns recovered in crimes are handguns (87.5% in one study)
- * that a significant share of handguns recovered in crimes are recovered from minors, despite the fact that they can't even legally purchase them.

THERE IS SIMPLY NO REASON FOR LEGITIMATE PERSONS TO BE ABLE TO BUY AN UNLIMITED NUMBER OF HANDGUNS. THIS BILL LETS THEM HAVE A TOTAL OF 12 A YEAR. THIS IS TOO MANY FOR MOST PEOPLE. BUT FOR PERSONS WHO HAVE TO HAVE A "GUN FIX", IT SHOULD BE MORE THAN ADEQUATE.