Crime – '00 Legislation

CRIME -
'00 LEGISLATIVE
OPTIONS

DISCUSSION PAPER

Purpose

This memo provides a summary of potential announcements in gun policy for the State of the Union and later in the year. The first proposal is for a state-based licensing scheme, and was developed in consultation with the Treasury and Justice Departments. In addition, we outline three possible ways to regulate the secondary market for firearms.

State-Based Handgun Licensing

This proposal would build on the broad acceptance of hunting and driver's licenses by creating a federally-mandated state-based licensing system for all handgun purchases. [The Justice Department wants to extend the license requirement for possession of handguns as well, with a grandfather period.] This system would help ensure that all prospective handgun purchasers are permitted by law to possess firearms and have demonstrated some minimum level of knowledge on responsible handling and safe storage of firearms. All handgun purchasers would be required to obtain a photo license from their state of residence, and to present this license whenever they purchase handguns from licensed and unlicensed sellers. Sales from licensed gun dealers would continue to require background checks through the Brady Law.

Under the proposed licensing system, states would issue the license only if the applicant has: 1) passed a Brady background check; and 2) shown proof of having completed a certified safety course or a state-administered safety exam, much like a driving test. States would be encouraged to enact licensing schemes through federal grants that would cover some or all of the cost for a certain period of years, after which time certain law enforcement grant funds could be made conditional, if necessary. For states that choose not to implement licensing, federally-licensed gun dealers (FFLs) or a federal entity would be authorized to issue licenses.

In order to ensure the eligibility of licensees, each licensing authority would periodically check the National Instant Check System (NICS) to identify persons who, since obtaining a license, have become prohibited from possessing firearms. Prohibited persons (felons, for instance) would be notified that their license was revoked and prompt arrangements would be made for the surrender of their firearms.

Regulating the Secondary Market: Three Options

Studies have estimated that approximately 40 percent of all firearms sales are conducted on the secondary market, through unlicensed private sellers (e.g., at gun shows) who are not required by law to perform background checks or keep sales records. A 1998 ATF report analyzing over 640 youth-related trafficking investigations involving over 27,000 crime guns indicated that: (1) over half of all investigations involved second-hand guns; and (2) over 30 percent of investigations involved individuals dealing guns without a dealer's license. In addition, over 20 percent of ATF trafficking investigations involve trafficking in firearms by unregulated private sellers, and 14 percent involve trafficking in firearms at gun shows and flea markets. In addition, a recent study by Senator Schumer concludes that close to 90 percent of traced firearms are recovered from someone other than the purchaser -- indicating that the secondary market is a major source of guns to criminals.

The Administration's gun show measure addresses secondary market sales by requiring private gun sellers at gun shows and flea markets (defined as events where two or more vendors offer 50 or more guns for sale) to complete all transactions through licensed gun dealers, who would conduct background checks and keep records on all sales. Here we describe three possible ways to enhance our efforts in the secondary market. All three build on the gun show legislation and could be done in addition to the state-based licensing proposal.

Option 1: Require anyone transferring a handgun (including private sellers) to ensure that the purchaser has a valid firearms license. To comply, private sellers could be required to call a hotline to verify the validity of a license and keep a record of the sale. Licensed gun dealers would continue to run Brady background checks on purchasers and verify the validity of the license. This option would strengthen current law, which does not require private sellers to take any precautions to ensure that purchasers are not criminals or otherwise prohibited. However, private sellers here would not be required to conduct more reliable Brady checks, and guns sold by private sellers could not be as easily traced by law enforcement. This option is the least burdensome for otherwise law-abiding private persons selling guns.

Option 2: Require: a) all private persons who sell or transfer more than 10 handguns in a calendar year to conduct all transactions through a licensed gun dealer. This would require an increased level of accountability for individuals who sell more than a handful of firearms by requiring additional measures to ensure that they are not selling to prohibited persons, and would make tracing records more readily available for law enforcement; OR b) all private persons who advertise handgun sales on the Internet, newspapers, and other media to run all transactions through a licensed dealer. Like the gun show legislation, this would target unregulated commerce in firearms between individuals who do not know each other. While both proposals would present enforcement challenges, they would improve controls over the widely unregulated secondary market, short of mandating that all private handgun sales go through licensed dealers.

Option 3: Require every handgun sale, including all private sales, to go through a federally-licensed gun dealer. Under this proposal, called "no background check, no gun," federally-licensed gun dealers would verify the validity of handgun licenses, conduct Brady background checks, and keep records on all sales to assist with tracing. Intra-family transfers would be exempted. This is the most comprehensive option and provides a number of beneficial tools to law enforcement. However, it may be seen as a significant government intrusion by law-abiding gun owners who sell small numbers of guns to friends and neighbors in purely private, non-commercial transactions.

THE WHITE HOUSE
WASHINGTON

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COMMENTS: FYI - DOJ's comments to the Treasury-submitted proposals from yesterday.

DOJ's Version of Legislation Proposals for State of Union

Safety Certification Requirement

We don't necessarily recommend the term "Licensing."

It shall be a violation of federal law to possess any firearm without a Safety Certificate; provided, however, that anyone who possesses a firearm at the time of enactment has up to three years from enactment to acquire a Certificate, if such person does not acquire any other firearm during that time. (Anyone who acquires a firearm after the time of enactment must have a Certificate prior to acquisition.)

This proposal is consistent with one of the Treasury options to their primary proposal. The primary Treasury proposal would require a license only for those who receive a gun from an FFL after the date of enactment.

We also submit that a different type of certificate may be appropriate for different types of guns – such as rifles, handguns and semiautomatic assault weapons.

Safety Certificates will be issued by the states; provided, however, that the federal government shall issue such certificates where states opt not to do so. .(A qualifying certificate under this statute must, at a minimum, be based on submission of evidence of completion of an approved firearms safety course and passage of a background check.)

This is consistent with Treasury's proposal, although we do not believe that States should be encouraged to issue certificates through the conditioning of current grants. (And of course OLC would need to review any proposal for constitutionality.)

FFLs can transfer firearms, or complete a background check for a transfer by a non-FFL, [see proposal #2, Universal Background Checks], only upon presentation of a valid Safety Certificate by the transferee.

Universal Background Checks

For any transfer of a firearm by a non-FFL, an FFL must conduct a background check and keep required records; provided, however, that intra-family transfers are exempted from this requirement.

> *This is materially different from Treasury's proposal in that our proposal would cover all types of firearms.*
>
> *We strongly support Treasury's proposal that the required recordkeeping include submission of used gun information to the National Tracing Center.*

It shall be a violation of federal law to transfer or receive a firearm without complying with this requirement.

> *Treasury had offered, as possible variations on this suggestion: 1) that there be a numerical threshold of a number of guns that a seller had to meet before being required to run a background check and 2) the creation or imposition of civil liability for those who did not run a background check. The DPC staff suggested a third variation: restricting the background check requirement to those persons who transfer firearms after advertising them. We believe Treasury's first alternative to be unworkable, and its second to be unnecessary. We believe DPC's suggestion would be difficult to implement, and would fail to cover many dangerous black market transactions. (OLC is also reviewing it for constitutional issues.)*

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Two Possible Firearms Legislative Proposals

These proposals are not mutually exclusive. Indeed, as noted, the second proposal will enhance the enforceability of the licensing proposal.

State-Based Licensing

- HG ~~Firearm~~ purchasers would have to obtain a license from their state of residence.
- The state will issue a license only if the applicant—
  - passes a Brady check; and
  - demonstrates that he or she can handle and store a gun safely, by passing a certified exam or providing proof of having completed a certified safety course. (Alternatively, the state could administer a test itself, much like a driving test.)
- States would be encouraged to enact licensing schemes through grants that would cover some or all of the cost and through conditioning the receipt of other grant funds, most likely related to law enforcement.
- If states do not establish appropriate licensing schemes, the federal government would provide for licenses in those states under the same terms as state licenses, either by—
  - Issuing licenses itself; or
  - Authorizing federal firearms licensees (FFLs) to issue purchaser licenses.
- The federal or state licensing authority would periodically check all licensees against the Brady NICS to identify persons who have become prohibited from possessing firearms since they obtained their purchaser license. Prohibited persons would be notified that their license was revoked and arrangements made for them to surrender their firearms.
- FFLs will sell or transfer a gun only if—
  - Purchaser has a valid license; and
  - Purchaser passes a time-of-purchase Brady check.
- 1 *Option: Anyone transferring a firearm, licensed dealer or not, would have to ensure that their purchaser had a valid license – however, this could be very difficult to enforce.*
- *Option: Anyone possessing a firearm, perhaps 20-25% of the adult population, would have to obtain a license.*

<u>Advantages</u>

- Builds on broad acceptance of state-based licensing for driving, hunting, fishing, etc.
- Gives the states a prominent role in controlling who can purchase (or possess) firearms.
- Ensures that firearm purchasers (or possessors) have at least some minimum level of knowledge of the dangers of firearms and how to handle and store them safely.
- Allows for the retrieval of firearms from persons who become prohibited after being licensed.

Disadvantages

- Unlikely that all states would enact a licensing scheme, requiring some federal back up.
- Could drive more purchasers to unlicensed sellers to avoid the licensing requirement; such sales are not subject to Brady checks and guns sold by unlicensed sellers cannot be traced.
- Could be difficult to enforce and, particularly with possessors' licenses, could be widely ignored.
- Likely to be expensive, requiring a substantial bureaucracy.
- Primarily affects law abiding gun owners.

No background check, no records, no gun

- All transfers of handguns and semiautomatic assault weapons would be through an FFL.
- The FFL will authorize the transfer only after—
  - conducting a Brady background check;
  - recording the transfer and forwarding firearms identification information on the transferred weapon (but not information about the purchaser) to the National Tracing Center; and
  - checking the validity of the purchaser's license (if a license is required).
- Intra-family transfers and inheritances would be exempted.
- *Option: Allow transfer of less than three firearms in a calendar year without having to transfer the firearms through an FFL. However, this could be difficult to enforce and would open a significant loophole. Even a single firearm in the wrong hands poses a significant public safety threat.*
- *Option: Do not require that all handguns and semiautomatic assault weapons be transferred through an FFL, but impose criminal or civil liability on a transferor who does not go through an FFL if the firearm is subsequently used in crime by the transferee. (This is similar to the Child Access Prevention (CAP) laws in several states and proposed federally by the Administration last year).*

Advantages

- This proposal directly benefits law enforcement while a licensing scheme aimed primarily at firearm safety.
- Brady checks will be conducted on all firearm transfers, including between all private parties.
- Eliminating the legal, unregulated market in handguns and semiautomatic assault weapons will significantly reduce private sales to criminals and other prohibited persons.
- By enabling tracing of the many crime guns sold privately that are now untraceable, our ability to fight firearms traffickers will be substantially enhanced.
- Significantly simplifies prosecutions of illegal traffickers by eliminating the need to prove that they are "engaged in the business" of dealing without a license.
- Extends the Administration's gun show proposals to all private sales.
- Builds on the existing FFL network and minimizes the need to create a new bureaucracy—federal *or* state.

- Ensures that any purchaser's license proposal would be enforceable, because the FFL would be required to check the validity of the license.
- Exempts long guns (rifles and shotguns). Since handguns make up approximately 80% of crime guns, such a limitation makes sense and would effectively exempt most firearms used in hunting.
- No need to obtain state legislation or condition law enforcement grants.

Disadvantages

- Might be characterized as gun registration (which it is not because no information on the purchaser is sent to the government).
- Might be seen as intrusive into purely private, non-commercial transactions.