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LEGISLATION NOTES

ILLINOIS FIREARM CONTROL—A HIGH CALIBER SOLUTION TARGETING THE OWNER

Since the assassination of President Kennedy, a vast quantity of oratory and ink has been offered concerning the role of firearms in an increasingly lawless American society. Steeped in the inveterate notion of cure-all legislation, the justifiably concerned public has brought great pressure to bear upon state and federal authorities to institute controls on the proliferation of firearms. These controls would, in theory, deny such weapons to those individuals who would endanger the lives and welfare of the citizenry. Illinois now has legislation designed to meet the need for these controls. It was enacted in the form of four bills,¹ three of which amend and add to the existing Illinois Criminal Code,² while the other establishes a firearms training program to be conducted under the direction of the Department of Conservation.

The purpose of this legislation note is to examine and analyze the scope, purposes, and value of this legislation, with an eye to previously existing Illinois and federal firearms legislation. Consequently, this note will first consider the prior relevant Illinois firearms legislation contained in the Criminal Code of 1961³ and the recent amendments and additions thereto. It will then examine the new provisions for enforcement of firearms legislation and analyze these provisions in view of their practical application and announced objectives.

Under the Illinois Criminal Code of 1961 there were four provisions which pertained to firearms: section 24-1, on the unlawful use of weapons; section 24-3, providing for unlawful sale of firearms; section 24-4, requiring registration of sales by dealers; and, section 24-5, on defacing the identification marks on firearms.⁴ Limited in their scope, these laws were largely inadequate in providing for effective control of firearms. Section 24-1 enumerated acts which constituted unlawful use of weapons if: (a) done knowingly, and in some cases with intent, and (b) the actor was not within the exceptions provided in section 24-2.⁵ Section 24-3 contained only three

¹ Ill. Laws, 75th Gen. Ass. (1967), S.B. 1350, 1351, 1352; H.B. 1258, approved Aug. 3, 1967 (hereinafter cited as Ill. S.B. and Ill. H.B.).

² ILL. REV. STAT. ch. 38 (1963).

³ ILL. REV. STAT. ch. 38 (1963).

⁴ ILL. REV. STAT. ch. 38, §§ 24-1, 24-3, 24-5 (1963).

⁵ ILL. REV. STAT. ch. 38, §§ 24-1, 24-2 (1963).

categories of individuals to whom it was unlawful to knowingly sell or give firearms: persons under the age of eighteen, where the firearm transferred was of a size which could be concealed; narcotic addicts; and, persons convicted of a felony under the laws of any jurisdiction where the transfer would occur within five years from his release from a penitentiary, or within five years of conviction if a penitentiary sentence was not imposed.⁶

The Seventy-Fifth Illinois General Assembly sought to partially ameliorate these inadequacies by enacting laws which would amend and expand article 24 of the Illinois Criminal Code. By these laws, it is apparent that the legislature felt that a law aimed at prevention would be more effective than volumes of punitive provisions. The specific 1967 enactments were: amendment of section 24-3 increasing the classes of individuals to whom it is unlawful to knowingly sell or give firearms;⁷ providing a seventy-two hour delay in delivery of a firearm by the seller to the purchaser;⁸ and the addition of a new section, 24-3.1, on unlawful possession of firearms.⁹ Section 24-3.1 provides that a person commits an offense of unlawful possession of firearms or firearm ammunition if:

- (1) He is under 18 years of age and has in his possession any firearm of a size which may be concealed upon the person.
- (2) He is under 21 years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearms or firearm ammunition in his possession; or
- (3) He has been convicted of a felony under the laws of this or any other jurisdiction within 5 years from release from the penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed, and has any firearms or firearm ammunition in his possession; or
- (4) He is a narcotic addict and has any firearms or firearm ammunition in his possession; or
- (5) He has been a patient in a mental hospital within the past 5 years and has any firearms or firearm ammunition in his possession; or
- (6) He is mentally retarded and has any firearms or firearm ammunition in his possession.¹⁰

Section 24-3 was then amended to encompass as persons to whom it is unlawful to knowingly sell or give firearms, all of the categories enumerated in section 24-3.1.¹¹ The addition of the seventy-two hour waiting or cooling

⁶ ILL. REV. STAT. ch. 38, § 24-3 (1963).

⁷ Ill. S.B. 1351, § 24-3.

⁸ Ill. H.B. 1258, § 24-3(e).

⁹ Ill. S.B. 1351, § 24-3.1.

¹⁰ Ill. S.B. 1351, § 24-3.1.

¹¹ Ill. S.B. 1351, § 24-3, which states: "A person commits the offense of unlawful sale of firearms when he knowingly:

off period was one of the measures aimed at prevention rather than subsequent punishment. Under that provision it is an offense to knowingly deliver any firearm, incidental to a sale (other than a mail order sale to a non-resident of Illinois under which merchandise is mailed to a point outside the boundaries of Illinois) to any person, without withholding delivery of such firearm for at least seventy-two hours after application for its purchase.¹² This new addition apparently was intended to aid in preventing shootings committed during a time of unreasoning rage. Both section 24-3 and section 24-3.1 under the 1967 enactments are punishable by a fine not exceeding one thousand dollars and/or imprisonment in a penal institution other than the penitentiary not exceeding one year.¹³

The preventative characteristic of the new firearms and firearm ammunition control legislation was sought to be achieved by: the more definitive and stringent provisions governing the sale of firearms incorporated in section 24-3 of the Criminal Code, which have already been considered; new legislation which requires the registration of *owners* of firearms; and, with the institution of a licensing system, qualification of Illinois under the Federal Firearms Act of 1938, thereby effecting an almost total prohibition on mail order sale of firearms into the state.

Under Senate Bill 1350, which will become effective on July 1, 1968:

No person may acquire or possess any firearm or any firearm ammunition within this State without having in his possession a Firearm Owner's Identification Card previously issued in his name by the Department of Public Safety. . . .¹⁴

Section four of the bill provides the method by which individuals desirous of obtaining firearms must proceed in order to be entitled to issuance of the Card.

(a) Each applicant for a Firearm Owner's Identification Card shall:

(1) Make application on blank forms prepared and furnished at convenient locations throughout the State by the Department of Public Safety; and

(a) Sells or gives any firearm of a size which may be concealed upon the person to any person 18 years of age; or

(b) Sells or gives any firearm to a person under 21 years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; or

(c), Sells or gives any firearm to any narcotic addict; or

(d) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within 5 years from release from the penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed; or

(e) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past 5 years; or

(f) Sells or gives any firearm to any person who is mentally retarded. . . ."

¹² Ill. H.B. 1258, § 24-3(g).

¹³ Ill. S.B. 1351, §§ 24-3(g), 24-3.1(b).

¹⁴ Ill. S.B. 1350, § 2(a). See also S.B. 1350, § 2(b) for exceptions.

- (2) Submit evidence under oath to the Department of Public Safety that:
- (i) He is 21 years of age or over, or if he is under 21 years of age that he has the written consent of his parent or legal guardian to possess and acquire firearms and firearm ammunition and that he has never been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; Provided, however, that such parent or legal guardian shall have a currently valid Firearm Owner's Identification Card.
 - (ii) He has never been convicted of a felony under the laws of this or any other jurisdiction within the prior five years.
 - (iii) He is not addicted to narcotics;
 - (iv) He has not been a patient in a mental institution within the past 5 years; and
 - (v) He is not mentally retarded.¹⁵

Thus, the bill requires the applicant to submit evidence that he does not fall within any of the classes of persons for which possession of firearms or firearm ammunition is made unlawful under section 24-3.1 of the Criminal Code.

Approval or denial of the application must be made by the Department of Public Safety within thirty days from receipt,¹⁶ and if denied, notice of the specific grounds for denial (or for revocation or seizure of an already issued Card) must be sent to the applicant.¹⁷ If the application is approved, the applicant is entitled to have issued to him, upon payment of a five dollar fee,¹⁸ a Firearm Owner's Identification Card, which will be valid for five years,¹⁹ subject to revocation.

Little or no discretion is allowed the Department of Public Safety in determining if an applicant is entitled to have the Firearm Owner's Identification Card issued. The only ground provided for denial or revocation is that, at the time of application, or at the present time in the case where the card has already been issued, the person is within one of the classes prohibited from possessing firearms or firearm ammunition under the Illinois Criminal Code.²⁰

¹⁵ Ill. S.B. 1350, § 4(a)(1)-(2).

¹⁶ Ill. S.B. 1350, § 5.

¹⁷ Ill. S.B. 1350, § 9.

¹⁸ Ill. S.B. 1350, § 5.

¹⁹ Ill. S.B. 1350, § 7.

²⁰ Ill. S.B. 1350, § 8, which provides that:

"The Department of Public Safety has authority to deny an application for or to revoke and seize a Firearm Owner's Identification Card previously issued under this Act only if the Department finds that the applicant or the person to whom such card was issued is or was at the time of issuance:

(a) A person under 21 years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent;

(b) A person under 21 years of age who does not have the written consent of his parent or guardian to acquire and possess firearms and firearm ammunition, or whose

Senate Bill 1350 provides for administrative remedies where the Firearm Owner's Identification Card is denied, revoked, or seized, or where an application was not acted upon within thirty days. In such cases "the aggrieved party may appeal to the Director of the Department of Public Safety for a hearing. . . ." If the Director feels that "substantial justice has not been done, he may order a hearing to be held by the Department. . . ." The bill provides that all final administrative decisions of the Department of Public Safety are subject to judicial review as provided for in the Administrative Review Act.²¹

Also included in the Senate Bill is a provision concerning the sale and transfer of firearms. Section three of the bill places the onus upon the transferor to transfer only to persons who present a currently valid Firearm Owner's Identification Card issued in the transferee's name. Moreover, the transferor must keep a record of all transfers for a period of at least ten years from the date of transfer. The records must include the "description, serial number or other information identifying the firearm if no serial number is available; and, if the transfer was completed within this State, the transferee's Firearm Owner's Identification Card number." All such records must be immediately surrendered to any peace officer upon demand.²²

The supporters of the new legislation posit that these enactments will accomplish four objectives.²³ Having examined the legislation itself, it would be fruitful to view it in light of these announced ends.

The legislation's supporters claimed that the new laws would provide for the complete investigation and approval before an individual could acquire firearms or firearm ammunition. The legislation, as we have seen, provides for this preventative measure by creating a licensing system with which a prospective purchaser must comply before he can buy a firearm or ammunition from a legitimate seller. But it would be fallacious to think that those who do not qualify under the new laws to possess firearms will now be totally barred from obtaining them. The only reasonable aspiration for the enactments can be that they will make it significantly more difficult

parent or guardian has revoked such written consent, or where such parent or guardian does not have a currently valid Firearm Owner's Identification Card;

(c) A person convicted of a felony under the laws of this or any other jurisdiction within the prior 5 years or a person confined to a penitentiary within the prior 5 years;

(d) A person addicted to narcotics;

(e) A person who has been a patient of a mental institution within the past 5 years; or

(f) A person who is mentally retarded."

²¹ Ill. S.B. 1350, § 11.

²² Ill. S.B. 1350, § 3.

²³ REPUBLICAN LEG. BULL., 75TH ILL. GEN. ASS., A PROPOSAL FOR FIREARMS CONTROL (Apr. 25, 1967).

for unqualified persons to acquire firearms, and this, to be sure, is a valid and practical end.

Another avowed purpose of the statute was to prohibit mail order sale of firearms into Illinois. By enacting a firearm owner's licensing system, the legislature qualified Illinois to come within the provisions of the Federal Firearms Act of 1938.²⁴ Under that Act, the violation of which subjects one to a penalty of not more than a two thousand dollar fine and/or imprisonment for not more than five years, it is unlawful:

for any licensed manufacturer or dealer to transport or ship any firearm in interstate or foreign commerce to any person other than a licensed manufacturer or dealer in any State the laws of which require that a license be obtained for the purchase of such firearm, unless such license is exhibited to such manufacturer or dealer by the prospective purchaser.²⁵

This interdiction of mail order sales into Illinois makes it even more difficult for unqualified individuals to acquire firearms, and it makes the licensing system that much more effective.

A third objective was to prohibit possession of firearms by irresponsible juveniles. Under the new legislation, juveniles who have been adjudged delinquent are barred from obtaining a Firearm Owner's Identification Card and therefore from legally obtaining and possessing firearms or ammunition. All juveniles must have the written permission of their parent or guardian to be entitled to obtain the Identification Card. This is made more meaningful by requiring the consenting parent or guardian to have a currently valid Owner's Identification Card himself,²⁶ and by making the consenting parent or guardian liable for all damages incurred by the juvenile's negligent use of firearms or ammunition.²⁷

Embodied in the legislation which seeks to achieve this third objective is a very positive measure. Senate Bill 1352 establishes a training program, to be administered by the Department of Conservation, whereby persons between the ages of twelve and twenty-one,²⁸ for a fee of six dollars,²⁹ will be instructed in the safe handling of firearms. This program is to be carried on by both public and private organizations. A farsighted law, it provides a constructive outlet for youths who are interested in firearms but whose parents are not qualified to properly guide and instruct them. This should do much to encourage and develop responsible gun owners of the future.

²⁴ 15 U.S.C. §§ 901-09 (1958).

²⁵ 15 U.S.C. §§ 902(e), 905 (1958).

²⁶ Ill. S.B. 1350, § 4(a)(2)(i).

²⁷ Ill. S.B. 1350, § 4(b).

²⁸ Ill. S.B. 1352, § 1.

²⁹ Ill. S.B. 1352, § 2.

A salient objective which the new legislation also sought to accomplish was to provide for an efficient and practicable means of enforcement. What apparently was contemplated by the bill's supporters was to allow law enforcement personnel to arrest violators of the firearm laws without extensive investigation. This goal has been achieved by the enactment of a statute which requires one who has the statutory capacity to own or possess a firearm or ammunition to obtain an Owner's Identification Card. Under previous criminal provisions, intent and knowledge were essential elements in establishing the crime of unlawful use of weapons. The new laws do not affect those provisions, but now it is *prima facie* a violation of the law to possess a firearm or firearm ammunition without a currently valid Firearm Owner's Identification Card or to sell or give firearms or ammunition to an individual who does not display such a card. The arresting officer is not required to investigate if there was *scienter* or intent. It is also now possible, since it is *prima facie* a crime to possess weapons without the requisite card, that the arresting officer may conduct a further search of the arrested person and the premises without a search warrant.

The enacted gun control legislation does then address itself to the objectives of its creators in a practical way. No law, in and of itself, can prevent crime or establish morality. At most it can aid in the prevention of crime and in establishing mores; at least, it can punish unacceptable conduct. Both the most and the least are attempted in the Illinois gun control laws. But the new gun control legislation is not without defects—defects of omission.

A serious defect is found in the methods provided for appeal of a denial or revocation by the Department of Public Safety of an individual's Owner's Identification Card. Under the new law the individual may appeal the case to the judiciary upon exhausting his administrative remedies, but he bears the burden of initiating such an appeal, and this entails considerable time and expense. A more equitable law should be modeled after the New Jersey Statutes, where, within thirty days after revocation or denial of a license, a hearing may be held in the local county court and no formal pleadings or filing fees are required.⁸⁰ Such a provision would provide for greater protection of legitimate gun owners against possible, although maybe not probable, administrative abuses under the Illinois firearm control laws.

The omission of a provision providing for legitimate mail order purchase of firearms and firearm ammunition is another serious defect in the gun control legislation. Many serious and responsible gun collectors and enthusiasts swap, sell, and purchase weapons, parts, and ammunition through the mails. The legislature, for all practicable purposes, has denied this market to Illinois gun buffs in an effort to prevent irresponsible individuals from

⁸⁰ N.J. STAT. ANN. § 2A:151-34 (Supp. 1966).

acquiring firearms. By their omission, the legislators have placed an unnecessary and unjustified burden upon responsible firearm owners. During the next session of the General Assembly the registration laws should be amended to provide that holders of a currently valid Firearm Owner's Identification Card may for a reasonable fee (two or three dollars) request the Department of Public Safety to mail certification, to a mail order seller, that the prospective purchaser is a holder of a currently valid Firearm Owner's Identification Card³¹ and that the seller may ship firearms to the named purchaser under the laws of the State of Illinois. The certification should be required to be sent by either registered or certified mail, the cost of which would be covered by the two or three dollar fee, and the Department of Public Safety should also be required to mail the certification within a reasonable time specified by the legislature (seven to ten days), with the delivery notification slip addressed to the purchaser. This provision would in no way hinder enforcement of the laws against mail order sales to unqualified persons since it would still be unlawful under the Federal Firearms Act of 1938 for a manufacturer or dealer to ship or transport in interstate or foreign commerce firearms to persons for whom no certification by the Department of Public Safety has been received.

The Illinois laws on firearms and firearm ammunition are, by the recent enactments, more effective and complete. Beyond only defining illegal use, possession, and sale of such weapons and creating a system for registration of prospective and existing gun owners, they have provided for more practical enforcement of the laws and have initiated a constructive and positive means for teaching youth the safe and responsible use of firearms. Yet, to the advocates of unrestricted ownership of firearms, the right to bear arms is an important part of our national heritage and an essential element in the American concept of freedom, perhaps as much as is freedom of religion or freedom of speech. To be sure, there are those who demand *unfettered freedom* in their acquisition and use of firearms, just as there are those who urge the *total prohibition* of these weapons. These doctrinaire positions are incompatible with the concept of democracy. This note has supported well reasoned legislation in the area of firearms, and has attempted to make suggestions to effect a more equitable balance of the rights of society and of the individual; indeed it cannot be gainsaid that a reconciliation of the need for

³¹ To insure that the person who is requesting the certification does hold a currently valid Firearm Owner's Identification Card issued in his name, forms should be made available at local police departments. There positive identification could be made of the individual by requiring him to personally appear and present his card, and by requiring all such requests to be signed (without discretion) by a police officer. Ill. S.B. 1350, § 6 specifies that the Firearm Owner's Identification Card "shall contain the applicant's name, residence, date of birth, sex, physical description, recent photograph and such other personal identifying information as may be required by the Director."