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DEPARTMENT OF POLICE

HALL OF JUSTICE
813 - 8TH STREET

SACRAMENTO, CALIFORNIA 95814
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**JOHN P. KEARNS
CHIEF OF POLICE**

December 17, 1985

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: REQUEST FOR RESOLUTION TO OPPOSE FEDERAL LEGISLATION TO EASE HANDGUN OWNERSHIP LAWS

SUMMARY

The Sacramento Police Department is requesting that the Law and Legislation Committee pass a resolution opposing pending federal legislation affecting gun control. The McClure/Volkmer Bill, S.49/H.R. 945, will make it easier for criminals to obtain handguns. The International Association of Chiefs of Police has urged all Police Departments to join in lobbying against the Bill.

BACKGROUND

The 1968 Gun Control Act was enacted into law mainly because of the problems discovered in the investigation into the assassination of President John F. Kennedy 5 years earlier. There were numerous problems encountered with mail order gun sales and unscrupulous gun dealers were found to be selling in violation of existing laws. The 1968 Gun Control Act was enacted to counter these activities and other weaknesses in gun control.

The McClure/Volkmer Bill will make it easier for criminals to obtain handguns. The laws relating to sales to out-of-state customers will be eased and shopping around in other states will make it easier for criminals to obtain guns. The Bill will also weaken the mandatory sentences imposed on convicted individuals who carry guns in the commission of violent federal felonies. Under this Bill, the government will have to give notice to dealers before a warrantless inspection of inventory and records can take place. The recordkeeping required of dealers will be eased, making it difficult to track ownership of guns used in crimes. Finally, this bill will make it difficult to prosecute gun dealers who are found in violation of the law.

This bill is being proposed under the guise of freeing "gun owners from burdensome and unnecessary regulation and strengthen current gun laws." The Bill will not strengthen gun control but effectively weaken it. The Bill will make it extremely easy for unscrupulous gun dealers to sell to criminals, and it will make it easier for the criminals to obtain guns. In effect, this bill will make work for law enforcement that much more difficult.

The attached letter from the International Association of Chiefs of Police covers the subject and shows in greater detail the problems that will be created by passage of the Bill.

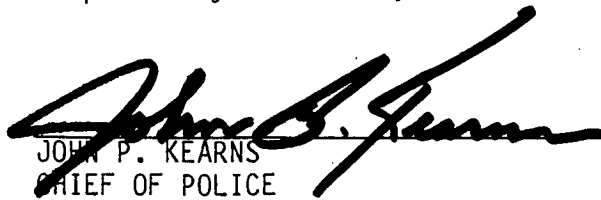
FINANCIAL DATA

No cost to the City.

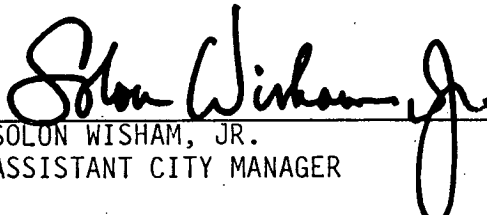
RECOMMENDATION

The Police Department urges the Law and Legislation Committee to pass a resolution opposing the McClure/Volkmer Bill.

Respectfully submitted,


JOHN P. KEARNS
CHIEF OF POLICE

RECOMMENDATION APPROVED:


SOLON WISHAM, JR.
ASSISTANT CITY MANAGER

JPK:jt
Attachment

REF: 12-44



**International
Association of
Chiefs of
Police, Inc.**

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Past President and
Parliamentarian
Francis B. Looney
Farmingdale, NY

Jerald R. Vaughn
Executive Director

December 11, 1985

Dear Chief:

Legislation is now pending in Congress that would make it easier for criminals to obtain handguns. Supporters of this legislation, S.49/H.R.945, the McClure/Volkmer Bill, claim that the bill will free gun owners from burdensome and unnecessary regulation and strengthen current gun laws. Nothing could be further from the truth. The fact is that these measures would have the effect of repealing rational gun laws that currently are on the books of states across the country. As police administrators, you know how criminals get guns and you know that weakening our current gun laws will only make it easier for those who should not have access to them to get handguns.

In recent months, several major law enforcement organizations have worked together to stop this troublesome legislation. These groups, Federal Law Enforcement Officers Association, Fraternal Order of Police, International Association of Chiefs of Police, International Brotherhood of Police Officers, National Association of Police Organizations, National Organization of Black Law Enforcement Executives, National Sheriffs' Association, National Troopers Coalition, Police Executive Research Forum, Police Foundation, and United Federation of Police, Inc., have come together in an unprecedented show of unity to inform the public and Congress of law enforcement's objections to the proposed changes this legislation would bring to the 1968 Gun Control Act.

Simply put, McClure/Volkmer would allow for the interstate sale of handguns, lifting the current ban on such sales, and would thus make it easier for criminals to bypass state and local handgun laws. These proposed amendments also would weaken current federal laws which impose a mandatory prison term for use or possession of a firearm in the commission of a violent felony. Further, S.49 and H.R.945 would undermine the ability of law enforcement officers to trace thousands of weapons used in violent crimes every year. These measures also would prevent the identification and prosecution of unscrupulous gun dealers by requiring advance notice of every annual regulatory inspection.



Incredibly, these are just a handful of the problems that McClure/Volkmer would create for those of us in law enforcement.

The U.S. Senate passed this bill last July using legislative tactics that served to muffle the voice of law enforcement and to open the door to those who misrepresented our position. This legislation was passed without hearing and debate. Unless law enforcement works quickly, vigorously, and effectively to bring its views on this dangerous legislation to the attention of the members of the House of Representatives, the offensive history of what took place in the Senate could be repeated in the House.

Proponents of this legislation are once again attempting to circumvent normal Congressional procedure and bring McClure/Volkmer to the House floor, bypassing consideration in the House Judiciary Committee. The vehicle being employed to avoid committee is known as a discharge petition. If enough House members, 218, sign this petition, the bill will be presented to the full House directly for a vote. To date, some 140 members of the House have signed on. Every effort must be made to prevent more members from adding their names to this petition and to encourage those who have signed to remove their names at once.


Clearly McClure/Volkmer presents police administrators with a potential for making the already difficult task of providing for the public safety and for maintaining public order all the more difficult. Law enforcement must take immediate action to bring our problems with this bill to the attention of every member of the U.S. House of Representatives. These members must know of our concerns and they must receive accurate information from us directly about our positions on this bill. You have a responsibility to speak out on this issue and we urge you to join us in making sure that the voice of law enforcement in this country is heard accurately and strongly—say no to McClure/Volkmer.



Congress is about to begin the holiday recess that will bring most members back to their home districts. The time for you to take action is, therefore, now.

Write, call, or visit the Congressmen in your area today. Urge them not to sign the discharge petition. Tell them of your opposition to this bill. Ask them truly to support law enforcement and public safety in this nation—ask them to defeat McClure/Volkmer.

Attached to this letter is a fact sheet which illustrates many of the weaknesses that are contained in the proposed changes to the 1968 Gun Control Act which McClure/Volkmer would bring about. In the weeks ahead we will be providing you with more information on this measure, its status in the 99th Congress, and further steps you can take to defeat it. In the meantime, if you have any questions or need any assistance, please don't hesitate to give any one of us a call.

Sincerely,


Jerald R. Vaughn
Executive Director
International Association of
Chiefs of Police

 
Hubert Williams
President
Police Foundation

Cornelius Behan
President
Police Executive
Research Forum

LAW ENFORCEMENT PROBLEMS CREATED BY MCCLURE-VOLKMER
(S.49/H.R.945)

A. Interstate Sales

The Gun Control Act of 1968 preserves the ability of states and localities to regulate guns among their residents by prohibiting the interstate sale of guns. Except for very limited exceptions, a resident of one state cannot travel to another state and purchase a firearm. The bill would overturn this provision and specifically authorize dealers to make face-to-face firearms sales to out-of-state customers if the sale would be lawful under the laws of the seller's and the buyer's jurisdiction.

Because handgun laws vary not only from state to state but city to city, it would be virtually impossible for a dealer to make sure that sales to out-of-state purchasers conform to law. A compilation of these laws consists of thousands of pages. Local laws are constantly changing and, although several states may have similarly worded provisions, the actual application of those statutes may vary greatly according to individual state court decisions. As a practical matter, the provision that interstate sales must meet requirement in both seller's and purchaser's residence cannot be applied by the vast majority of dealers. As a consequence, S.49 would encourage nationwide gun shopping. A criminal who is unable to purchase a gun in his own state could simply cross state lines to purchase a handgun in a state with few or no handgun restrictions.

B. Mandatory Sentences for Violent Criminals

Current law already makes it a crime to use or carry a firearm in the commission of a violent Federal felony, for which a mandatory 5-10 year prison term is imposed. Obviously, this statute is applicable only to violent criminal behavior, e.g., bank robbery, and not to violations of Federal gun regulations by gun owners, collectors and dealers. Yet, S.49 would water down the statute in two respects. First, current law simply requires that the felon carry a firearm while committing a crime, under S.49 the government would have to prove that the firearm was actually carried "in furtherance" of the crime. Second, S.49 would amend current law to require that notwithstanding a proper conviction for such illegal carrying or use of a firearm, the court shall not impose the mandatory sentence where the defendant used the gun to protect himself or another from a "perceived immediate danger."

C. Notice to Firearms Licensees of Regulatory Inspections

Under current law, the Government may lawfully make warrantless inspections of licensees' firearms and ammunition records at reasonable times and without prior notice. S.49 would require advance notice of every annual regulatory inspection, thereby allowing an unscrupulous dealer to conceal his violations of the law. Addressing the current inspection provision, the Supreme Court states in United States v. Briswell, 406 U.S. 311 (1972), that "... if inspection is to be effective and serve as a credible deterrent,

unannounced, even frequent, inspections are essential... inspection for compliance with the Gun Control Act pose only limited threats to the dealer's justifiable expectations of privacy. When a dealer chooses to engage in this pervasively regulated business and to accept a Federal licensee, he does so with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection...."

D. Recordkeeping

Under S.49, firearms dealers would not be required to keep records of personal firearms transferred from their business inventory if held for longer than one year. This provision will allow for the easy circumvention of the recordkeeping requirements of the Gun Control Act since dealers may simply designate firearms as "personal" firearms without recording the transaction if the gun were obtained from a source other than their inventory. It would be difficult to disprove a contention that firearms were received by the licensee as personal rather than business property. This loophole in the law allowing dealers to make unrecorded sales of guns from so-called personal collections will provide a convenient source of untraceable crime guns.

E. Restrictions on Prosecution of Crimes Discovered During Regulatory Inspections

S.49 would preclude a licensee's prosecution for violations uncovered during the annual inspection other than willfull recordkeeping violations and illegal gun sales to felons and other prohibited persons. For example, if the inspection disclosed illegal sales of handguns to minors, illegal gun sales to out-of-state residents, illegal transactions in stolen guns, illegal transactions in machineguns or bombs, or violations of State or local laws, the evidence found during the inspection could not be used in a criminal prosecution. It is unprecedented in criminal law that evidence of crimes lawfully discovered by enforcement officers cannot be used as the basis for prosecution. This feature of the bill would create a privileged class of citizenry - federally licensed dealers - having extraordinary rights not shared by other citizens.