

2011 HOUSE ENERGY AND NATURAL RESOURCES

HB 1209

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1209
1/21/2011
13232

Conference Committee

Committee Clerk Signature

J. Mineth

Relating to a definition of firearm or weapon.

Minutes;

Rep. Porter: We will open the hearing for HB 1209

Rep. DeKrey: Right now North Dakota Law is more restrictive on the definition than the federal law is. This has moved the North Dakota Law to the federal definition.

Rep. Nelson: What effect would have on other parts? If we pass it, a convicted felon could buy a Muzzle loader and wouldn't be violating anything, if we put an emergency clause on it we could shot our muzzle loaders in the air in the city limits and carry a black powder firearm and not be in violation of the law, because it wouldn't be a firearm. A bb gun would be more regulated than the muzzle loader. I hope the individual would change it to make a specific exemption, rather than changing the entire definition of firearm. Under the federal law can a felon buy a muzzle loader and not be in violation?

Rep. DeKrey: That's correct. I wonder if he would come in at a later date.

Rep. Porter: Is there further testimony of support of HB 1209. Is there any opposition to HB 1209?

Mike Reitan: I oppose this bill. The paper that I presented to you explains a firearm, a weapon that you can buy on line that has an effective range of 200 yards. It fires a 50 caliber projectile. On the back side of the sheet is the velocities and the energy in which that projectile will hit you as a person. A black powder weapon is not as regulated for the purpose of purchasing and other rules dealing in federal law, it is still something that is in dangerous and needs to be treated with the same respect as any other firearm that we currently have regulated in the state of North Dakota. (see attachment1)

Rep. Kasper: What would be the reason for excluding these weapons from the definition of firearms or weapon?

Mike Reitan: It might be that somebody wants to go hunting under some sort of circumstance and that being a felon they wouldn't be in violation of federal law.

Rep. DeKrey: I don't see a good reason to remove this from the definition when we leave in brass knuckles and other weapons.

Rep Kasper: This picture would be removed if we pass this bill?

Mike Reitan: Yes this weapon would be taken out of the definition of weapon. There is also a black powder six shooter available that you pull the cylinder out, pack each of the chambers and put a cap on each chamber. If we remove this from the definition a person can carry this weapon into any government or other business.

Rep. Nelson: Does West Fargo differentiate between muzzle loader and other types of firearms?

Mike Reitan: No there is no distinction between the black powder and any of the other firearms.

Rep. Porter: are there any other questions? Mr. Reitan, under the current definition of what a firearm or a weapon is, do you think that this includes black powder as they stand?

Mike Reitan: Yes I do believe that would cover black powder. Creating that chemical explosion that sends a projectile to strike a target makes it a firearm or a weapon.

Jerry Hjelmstad: Changing the definition of the firearms in section will also impact other sections of the next chapter of code relating to the procession of these firearms, would not be covered under this definition.

Foster Ray Hager: Can you carry a weapon in to the school? It appears this bill is for one or two people or a felon so that he can hunt deer. I think this bill opens a can of worms.

Roger Ness: Because of the federal exclusion of a muzzle loader as a weapon a convicted felon can hunt with a muzzle loader.

Rep. Damschen: we had a bill last session that talked about this topic they could hunt in season with a muzzle loader with a conviction, the proposed change we were making would have taken that away from them.

Rep. Damschen: Are there other sections to the code that refer to firearms or make exceptions for the muzzle loaders or black powder guns?

Roger Ness: To the best of my knowledge firearms and muzzle loaders are included as firearms.

Rep. Porter: We will do some further checking on these definitions

Rep. Porter: We are going to keep this hearing open in the event that Rep. DeKrey's individual comes in?. We have unanswered questions that we want answered from the Attorney General's Office.

Rep. Porter: We will hold this one open.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1209
2/10/2011
14380

Conference Committee

Committee Clerk Signature



Minutes:

Rep. Porter: We will open the hearing on HB 1209.

Jerod Tuft: I am from Dawson North Dakota. I am part time States Attorney for Kidder Sheridan counties. This issue has come up with some clients that I deal with. Also as a result of my writing a hand book on to the gun laws in North Dakota and South Dakota I had an opportunity to compare the laws in the two states as a way to help explain how the laws in each state work. In that process one of the things that came up was that both the federal law and the South Dakota law exclude the muzzle loaders and the black power weapons from the definition of firearms. I think this is for logical reasons these are different in their own degree of dangerousness and the degree of risk that they pose to use. The only time muzzle loaders come up in criminal cases is when they used a muzzle loader to shot a deer during muzzle loader season and in fact they shoot it with a regular riffle. (see attachment 1) One proposal I have is to move this to 62.10201 which is the restriction to possession only. It does not affect anything else but uses the defined term "firearm" and still achieve the main objective that I have in suggesting this bill to Rep. DeKrey, which was to take into account that these are different in character and degree in danger then regular firearms. One point muzzle loaders are legal during the regular deer gun season.

Rep. Porter: Are there any questions for Mr. Tuft?

Rep. DeKrey: I have 2 amendments. The one 001002 what that amendment does is that it would do away with the muzzle loader 6 shooter, that would qualify under this section the law. That would be limited to long gun to take care of the pistol, and the other amendment which is 01001 is language that describes which felons would be eligible to hunt with a muzzle loader and the section that is there has been expanded because the Attorney General told us there are also misdemeanors that can be violent.

Rep. Porter: 01001 is being replaced with the one they are passing out now. Are there questions for Rep. DeKrey?

Rep. Keiser: I make a motion to move of the amendment 01002 and the DeKrey amendment which has DeKrey on the upper left corner.

Rep. Nathe: Second

Rep. Porter: Is there any discussion?

Rep. Kreun: Isn't this part of a deterrent system that would keep people from harming other people in other ways as well?

Rep. Damschen: I have a hard time with this.

Rep. DeKrey: When people have harmed but haven't done so physically the reason they would take him to trial is because they know with a felony they would lose their hunting privilege.

Rep. Porter: All those in favor, voice vote taken motion carried. We have amended bill 1209 in front of us.

Rep. Keiser: I move a Do Pass as amended.

Rep. DeKrey: Second

Rep. Porter: Is there any discussion? We will take roll call. Motion carried

YES 10 NO 5 ABSENT 0 Carrier: Rep. DeKrey

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1209

Page 1, line 9, after "include" insert "a firearm or weapon that is a rifle that has a barrel sixteen inches [40.64 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following"

Page 1, line 17, replace the first underscored comma with "or"

Page 1, line 17, remove ", or muzzleloading pistol."

Renumber accordingly

DeKney

Page 5, after line 5, insert:

“SECTION 4. AMENDMENT. A new section to chapter 62.1-02 of the North Dakota Century Code is created and enacted as follows:

Restoration of Right to Possess Firearm

1. A person who is prohibited from possessing a firearm due to a conviction of a felony under sub-subsection b of subsection 1 of section 62.1-02-01 of the North Dakota Century Code may petition the district court in the district where the person resides for restoration of the person's firearm rights.
2. The district court may restore the right of a person to possess a firearm if it determines, by clear and convincing evidence, that all of the following circumstances exist:
 - a. The person has paid all fines imposed for the violation resulting in the prohibition.
 - b. The person has served all terms of imprisonment imposed for the violation resulting in the prohibition.
 - c. The person has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition.
 - d. The person's record and reputation are such that the person is not likely to act in a manner dangerous to the safety of other persons.

Date: 2-10-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1209

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Keiser Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*voice vote taken to move the Amendments
01002 and the Dudley Amendment.
motion carried*

February 10, 2011

JK
2/11/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1209

Page 1, line 1, after "to" insert "create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to the restoration of the right to possess a firearm; and to"

Page 1, line 9, replace "The" with "For a felon who is not sentenced under section 12.1-32-09.1, the"

Page 1, line 9, after "include" insert "a firearm or weapon that is a rifle that has a barrel sixteen inches [40.64 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following"

Page 1, line 17, replace the first underscored comma with "or"

Page 1, line 17, remove ", or muzzleloading pistol."

Page 1, after line 19, insert:

"**SECTION 2.** A new section to chapter 62.1-02 of the North Dakota Century Code is created and enacted as follows:

Restoration of right to possess firearm.

1. An individual who is prohibited from possessing a firearm due to a conviction of a felony under subdivision b of subsection 1 of section 62.1-02-01 may petition the district court in the district where the individual resides for restoration of the individual's firearm rights.
2. The district court may restore the right of an individual to possess a firearm if the court determines, by clear and convincing evidence, that all of the following circumstances exist:
 - a. The individual has paid all fines imposed for the violation resulting in the prohibition;
 - b. The individual has served all terms of imprisonment imposed for the violation resulting in the prohibition;
 - c. The individual has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition; and
 - d. The individual's record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of others."

Re-number accordingly

Date: 2-10-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1209

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Keiser Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen		✓	Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh	✓	
Rep. Clark		✓	Rep. Nelson		✓
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper	✓				
Rep. Keiser	✓				
Rep. Kreun		✓			
Rep. Nathe	✓				
Rep. Anderson		✓			

Total (Yes) 10 No 5

Absent 0

Floor Assignment Rep De Krey

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1209: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1209 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 62.1-02 of the North Dakota Century Code, relating to the restoration of the right to possess a firearm; and to"

Page 1, line 9, replace "The" with "For a felon who is not sentenced under section 12.1-32-09.1, the"

Page 1, line 9, after "include" insert "a firearm or weapon that is a rifle that has a barrel sixteen inches [40.64 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following"

Page 1, line 17, replace the first underscored comma with "or"

Page 1, line 17, remove ", or muzzleloading pistol,"

Page 1, after line 19, insert:

"**SECTION 2.** A new section to chapter 62.1-02 of the North Dakota Century Code is created and enacted as follows:

Restoration of right to possess firearm.

1. An individual who is prohibited from possessing a firearm due to a conviction of a felony under subdivision b of subsection 1 of section 62.1-02-01 may petition the district court in the district where the individual resides for restoration of the individual's firearm rights.
2. The district court may restore the right of an individual to possess a firearm if the court determines, by clear and convincing evidence, that all of the following circumstances exist:
 - a. The individual has paid all fines imposed for the violation resulting in the prohibition;
 - b. The individual has served all terms of imprisonment imposed for the violation resulting in the prohibition;
 - c. The individual has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition; and
 - d. The individual's record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of others."

Re-number accordingly

2011 SENATE JUDICIARY

HB 1209

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1209
3/21/11
Job #15784

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the restoration of the right to possess a firearm, relating to a definition of firearm or weapon

Minutes:

There is attached testimony

Senator Nething – Chairman

Jerod Tuft – States Attorney – Here on his own behalf – See written testimony.

Senator Sitte – Asks if a felon of any type loses his gun rights forever unless he has a plea agreement that allows him to lose them for five years.

Tuft – Replies that under the Federal system it is a life time band, they become a prohibited possessor. They cannot possess a firearm federally or under state law for a period of years. Federal law does not include muzzle loader. Only state law could say they can't possess a muzzle loader or a pre-1898 weapon of any sort. These are long guns only.

Senator Sorvaag – States it isn't just weapons before 1898 because it also includes replicas made a month ago.

Tuft – Agrees and there is no back ground check for anybody right now.

Senator Nething – Said he doesn't understand the demand for this.

Tuft – Replies it won't have broad impact or notice significant changes. He explains how it could help in convictions.

Senator Lyson – Asks if the court can restore their use of any firearm not just muzzle loaders.

Tuft – Replies it can be restored if the state lifts its restrictions the federal restrictions go away.

Senator Nething – Asks if he would object if we limited it to just muzzle loaders which seems to him was the real intent.

Tufte – Responds the language was borrowed from the US code as to have a parallel definition to the definition used in federal law.

Senator Nething – Says he was referring to the right to restore any firearm so that it would limit it to just the muzzle loader.

Tufte - Said he wouldn't be in favor of restricting that. They still have the judge having defined by clearing convincing evidence that the person has been rehabilitated and is now a person that it's appropriate to be able to defend their home and property with firearms to possess them for hunting and other purposes. He says the first part of the bill simply say muzzle loaders aren't firearms and we aren't going to treat them quite the same as conventional modern firearms.

Senator Nething – Questions section two opening it up to firearm.

Tufte – Says that portion is similar to federal system and other states that allow good cause shown. That would not be unique to ND to restore those rights across the board. This would be consistent with the way other states do it and the federal system. He says in full disclosure that it hasn't been funded for several years. So a person convicted under the federal system right now has no redress because Congress has chosen not to fund that right now.

Senator Nething – Ask how one gets into court, who do they serve.

Tufte – Says you would file petition with court, the state attorney's office. The person would have to testify and present other evidence. He explains more of the process.

Senator Olafson – Also questions section two. He asks if a person convicted of a violent felony could also have their rights restored.

Tufte – Replies the life time restriction is imposed by federal law so the dual state federal system makes discretion of some of these issues complicated. A felony conviction under either state law or federal law imposes a federal prohibition for life on possession of firearms. If a state restores their rights that can restore their rights under the federal system as well.

Senator Olafson – Responds section 2 will not allow a person convicted of a violent felony to reapply to the court.

Tufte – Replies right and state law says 10 years for a violent felony you can't have firearms. Even after that 10 years runs out, federal law says you can't have a firearm.

Senator Lyson – Asks if we should change it to rights back just for a long gun so they can hunt.

Tufte – Replies he would need to know if that triggers the release from federal firearm disabilities. He isn't certain if that change would have any effect.

Representative DeKrey – Introduces the bill – and says the intent in the House was to restrict it to long guns. He said the second part of the bill came from the Attorney General's office who said that needed to be put into the law. He says even with this ND is still more restrictive than federal law.

Opposition – 0

Neutral – 0


Close the hearing on 1209

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1209
3/21/11
Job #15777

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to the restoration of the right to possess a firearm, relating to a definition of firearm or weapon.

Minutes:

Senator Nething – Chairman

Committee work

Senator Nething says he would like to limit section two so it corresponds with section one so they are tying it down as Rep. DeKrey said the purpose of what it came in for which was the muzzle loading. Senator Sorvaag says we are not just limiting to antique muzzle loaders but any replica but you can still kill somebody, it is still deadly. The committee discusses the federal law and to bring a consistency. Senator Nelson asked about what was not federally funded that was brought up in testimony for section two. The committee discusses that section two came from the AG's office. Senator Lyson says he would like to see it changed to a long gun only. Committee reads from the Century Code. Senator Sitte says she doesn't have a problem with it because the person still has to appeal to the courts to get their right back. Senator Olafson says they the Code says they have 5 years after they have completed their sentence or probation whichever is longer. Senator Sitte says this is basically so they can hunt and doesn't have a problem with that. Senator Nething asks Senator Lyson to work with the intern on getting an amendment together.

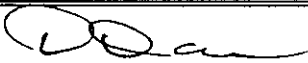
Committee will discuss at a later time.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1209
3/30/11
Job #16196

Conference Committee

Committee Clerk Signature	
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Explanation or reason for introduction of bill/resolution:

Relating to the restoration of the right to possess a firearm, relating to a definition of firearm or weapon.

Minutes:

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Senator Nething – Chairman

Committee work

Senator Nething asks Senator Lyson if he is going to offer an amendment and Senator Lyson replies no because they do have to petition the court.

Senator Lyson moves a do pass
Senator Olafson seconded

Discussion

Committee discusses the intent and Senator Nething reads it into the record.

Roll call vote – 6 yes, 0 no

Senator Lyson will carry

REPORT OF STANDING COMMITTEE

HB 1209, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1209 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1209

11.0480.01001 *replaced with*
Title. *DeKrey on top left side*

Prepared by the Legislative Council staff for
Representative DeKrey
February 7, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1209

Page 1, line 9, replace "The" with "For a felon who is not sentenced under section 12.1-32-09.1. the"

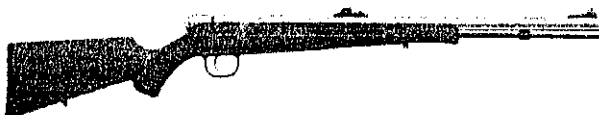
Renumber accordingly

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Comments in Support of HB1209
Jerod Tufte, Dawson, ND

SUMMARY

This bill was proposed as a result of conversations I had with two individuals who years ago had been convicted of non-violent felonies and as a result had lost their right to possess firearms. In the course of researching some of the details of the law pertaining to each situation, I learned that federal law does not prohibit possession of antiques and muzzle loaders by felons because the federal definition of "firearm" excludes them. As it turns out, South Dakota has a similar exclusion. I feel that opportunities for muzzle loader possession, primarily for purposes of hunting and associated practice and target shooting, can and should be opened up for many but not all persons who have been convicted of felonies.

1. CURRENT DEFINITIONS IN FEDERAL AND STATE LAW

The North Dakota Century Code currently contains the following definitions:

"**Dangerous weapon**" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any stun gun; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

"**Firearm**" or "**weapon**" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.

The United States Code contains the following definitions in 18 USC § 921:

The term "**firearm**" means

- (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon;
- (C) any firearm muffler or firearm silencer; or
- (D) any destructive device. **Such term does not include an antique firearm.**

The term "**antique firearm**" means—

- (A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
- (B) any replica of any firearm described in subparagraph (A) if such replica—
 - (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or
- (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

2. RESTRICTIONS ON POSSESSION OF FIREARMS

Under federal law, a felon is prohibited from possessing firearms for life. But, under the definition quoted above, federal law does not prohibit a felon from buying or using a muzzle loader or other antique or black powder weapon because they are excluded from the federal definition of "firearm".

Under North Dakota law (§ 62.1-02-01), a felon is a prohibited possessor of firearms for a term of years depending on the felony: 10 years from end of custody, parole, or probation for violent felonies such as homicide, assault, kidnapping, robbery, and sex offenses. For violent misdemeanors and all other felonies, the period of time during which a person is prohibited from

possessing a firearm is five years from the date of release or completion of probation or parole. As an example, a person convicted of a nonviolent (but nonetheless serious) felony such as theft or embezzlement of ten thousand dollars or more may receive a 10-year sentence might be released after 5 years, serve 5 more years on supervised probation, and after those five years of probation expire, then the 5-year firearm prohibition begins. In this example, the period of time runs 20 years from the date of conviction.

It should be noted that in Section 12.1-32-07(3), the North Dakota Century Code requires “The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation.” Thus, at present all probationers, for anything from a bad check to a DUI to game and fish offenses to violent felonies, everyone sentenced to probation has a restriction on not just firearms but all dangerous weapons unless the court finds good cause to waive this restriction and only for a first-offense. This prohibition amounts to a stealth suspension of hunting privileges for those affected.

One very practical effect is that a person facing an offense that would result in loss of firearms rights is far more likely to fight the charge through trial – even for a felony check or other nonviolent felony unlikely to result in significant jail time.

3. MAINTAINING RESTRICTIONS IN APPROPRIATE CASES FOR ADEQUATE TIMES

Probation restrictions may still prohibit possession of all weapons, not just statutorily-defined “firearms”. Probation for felony offenses can extend for five years after release from incarceration. We have offenses where society should not trust the offender with weapons, and we have other offenses where there’s no indication that there’s a danger of future violence.

Game and Fish proclamations don’t generally rely on Century Code definitions, but specify in detail which weapons are legal for which seasons.

4. RESPONSES TO MISUSE OF MUZZLELOADERS

The bill as originally introduced raises some questions about possibly opening up potential avenues for misbehavior, such as celebratory gunfire or concealed carry of blackpowder weapons. First, we just don’t see felons or others taking advantage of the federal “loophole” in the definition of firearm by committing bank robberies or other crimes with antique weapons. If someone wants to commit a crime with a weapon, there is little reason to believe he will choose to bring along a single-shot weapon that takes tens of seconds if not a minute or more to reload just in order to avoid an add-on weapons charge. If it happened in the federal system, the local US Attorney would no doubt promptly have raised this issue to his Congressman for an amendment. It hasn’t happened.

In addition, in nearly every example that has been brought to my attention, there are several options for addressing misbehavior with muzzle loaders. There are perfectly adequate laws against terrorizing, menacing, assault, disorderly conduct, reckless endangerment, and others. As an example, firing a muzzle loader into the air in town could easily be charged as reckless endangerment or disorderly conduct.

In my experience as a State’s Attorney, the only time I have heard of muzzle loaders coming up in any case I’ve heard about is when someone shoots a deer with a regular hunting rifle and claims to have shot it with a muzzle loader because the deer was shot after the regular gun season and during the muzzle loader season.

Muzzle loaders are different than regular firearms. They are not as accurate, they are much slower to load, they fire one round and then must be reloaded. They do not have a track record of criminal abuse. They are still dangerous and should be treated as a weapon subject to regulation as other dangerous weapons but they do not require the higher restrictions appropriate for modern firearms.

INTENT

In recommending the passage of HB 1209, the Senate Judiciary Committee recognizes the inherent power of the judiciary to limit the type and quantity of firearms allowed to be possessed or owned by a successful applicant under this legislation.