

February 5, 2020

Oregon House Judiciary Committee  
900 Court Street  
Salem, Oregon 97301

Dear Committee Members:

I write in strong opposition to HB 4005 pertaining to the securing of firearms.

My perspective is based upon nearly 30 years of municipal police service in Boise, ID (3 years) La Grande, OR (3 years) and about 24 years with the City of Salem, OR, along with 2 years of honorable service in the US Army. Currently, I am retired. Furthermore, my perspective is influenced by my closely held belief that it is the innate human condition that is the root cause and thus responsible for evil and violence, not an object, in this case firearms.

There are two serious flaws in HB 4005 in my judgement: (1) the applied practicality of compliance and subsequent liability for failure to do so, and (2) State of Oregon Constitutional violations.

(1) Applied Practicality

There have been several instances in my law enforcement career where armed citizens have either come to my assistance, offered to do so, or have held a felon at gunpoint. No assistance would have happened had they not had immediate access to their firearm. This bill will reduce the opportunities for courageous citizens to assist law enforcement.

If a person were to be in compliance with this law, there would rarely if ever, day or night, be enough time to respond to a threat and their right to lawfully use their firearm. It is nonsense for anyone to think a victim could unlock their secured firearm and utilize it in self-defense. Situations are fluid; they are not static. A suspicious circumstance can evolve into an immediate threat in seconds. This law will endanger innocent people. Thus, Section 2 (3) "Control" definition is worthless. Furthermore, it fails to define "sufficiently close proximity." Section 2 (9) (A) (i) would seem to bar target shooting on State or Federal lands because they are not designated, nor should they be, shooting ranges or shooting galleries. Section 2 (9) (vi)

is again nonsense. No one can stand in the shoes of the person who has possession of his/her firearm for the purpose of preventing imminent death or serious physical injury. I fear the wording “and the provision lasts only as long as is necessary....” is an intrusion by lawmakers before the fact, and perhaps lawyers and the courts after the fact. If law enforcement is on the scene where firearms are part of the incident, they jointly work with the citizenry to ensure that firearms are rendered safe. It is the totality of the circumstances that justifies action, not what might be or might have been.

Section 3 (1) (b)(B) refers to a handgun left unattended in a vehicle. Granted, one should not leave one visibly unattended in a vehicle. Having said that, there is no law that makes a vehicle owner liable for injury caused by a vehicle thief who steals a vehicle where the owner left the keys in the ignition (or any other place visible therein.) Injury and death do occur in these circumstances, but it is not codified that the victim is responsible.

#### Subsequent Liability

The logic, rationale, and suggestion that a victim is somehow responsible for the wrongful actions of a criminal is so twisted it is an affront to a reasonable person’s intellect! A reading of the bill is all it takes to support my conclusion.

#### (2) State of Oregon Constitutional Issues

I am neither a lawyer or a Constitutional scholar; however, over the years I have had occasion to study both the US and Oregon ones. HB 4005 conflicts with the Oregon Constitution to include its Preamble and the Bill of Rights.

The Preamble says, “We the people of the State of Oregon to the end that Justice be established, order maintained, and liberty perpetuated, do ordain this Constitution.” HB 4005 tramples Justice when it can make a victim a criminal; this will lead to a denigration of order maintained because it will give criminals a statutory argument that whatever they did was somehow the victims fault; liberty becomes constrained, not perpetuated, because citizens will be, practically speaking, adversely impacted by legislative modification of their Bill of Rights.

**Bill of Rights – Section 9. Unreasonable searches or seizures.**

While this is thought generally to restrict government intrusion, the premise upon which it is based applies to HB 4005. That premise is: “No law shall violate the right of the people to be secure in their persons, houses....and effects.....” The restrictions imposed upon law abiding citizens by HB 4005 violates their right to be secure.

**Bill of Rights – Section 15. Foundation principles of criminal law.**

“Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one’s actions and reformation.” HB 4005 will create criminals out of citizens heretofore with no criminal history if they fail to comply. Furthermore, the liability wording in the bill defies this Section which clearly refers to crime and punishment. Crime victims do not need reformed! This bill shifts some responsibility to the victim. I thought we had gotten beyond the thinking that somehow a woman’s attire contributed to a sexual assault because “she was asking for it”.

**Bill of Rights – Section 27. Right to bear arms....**

“The people shall have the right to bear arms for the defence [sic] of themselves, and the State.....” HB 4005 infringes upon this right. One cannot defend themselves with a firearm if they cannot access it in a timely manner. I’ll leave it to others to more deeply address this right.

**Bill of Rights – Section 42. Rights of victim in criminal prosecutions.....**

This section is designed to protect the right of crime victims to justice, a meaningful role in the criminal justice system, to accord them due dignity and respect and ensures certain rights.

**Bill of Rights – Section 43. Rights of victim and public to protection from accused person during criminal proceedings....**

This section is designed to balance rights of both victims and criminal defendants. It provides for reasonable protection of the victim from the criminal defendant.

Imagine the chaos of these hypothetical situations. A person has an unsecured firearm anywhere in their home and they fail to take it with them to the toilet, shower, dinner table, closet, or any other activity of daily living. They fail to take it with them to an adjoining room, to the garage or

detached shop 50 feet away, etc. The possibilities are endless. Then suppose someone enters upon the premises or into their home and steals the unsecured firearm. We now have two criminals: the homeowner and the thief! Imagine, the homeowner reports the crime to the police and they come to investigate but part way through the report the victim demands an attorney because he/she is about to incriminate themselves because they violated the law of having a firearm unsecured! The thief subsequently commits a crime with the stolen firearm. The lawful owner is now criminally liable and additionally gets sued in civil court with HB 4005 on the side of the plaintiff. In both courts how is the true victim shown dignity, respect and protection under Section 42 and 43? They are not. I would submit there are adequate laws already that address criminal behavior and provide for civil relief when warranted.

In conclusion, I have witnessed far too much death and injury (both physical and mental) caused by criminal conduct, negligence, and accidents. Many did involve firearms. It was not easy to write this letter without the specter of those haunting memories coming front and center. I can certainly empathize with all of those affected by the "Whereas" reasons listed by the sponsors of HB 4005. But it fails to address the practical issues, the Constitutional ones, or the most basic one of all, the human condition.

Therefore, while I support private and public safety by a variety of methods, to include rapid response and adjudication of mental health issues, I do not believe it can, nor will it be, accomplished by diminishing ones right to defend themselves with a firearm. Please oppose HB 4005.

Sincerely,

Hal Smith