

March 27th of 2023. SB 348 Hearing Before persons entrusted in making Oregon a safer place for all.

Morning of March 27th of 2023. A shooting at a religious school in Nashville. Three children dead. I am sick of it. We can do something to help. You have that power. I trust you will use it wisely. I, and many people, can be a resource for you. Thank you for all you do and will do on this important issue of safety.

I want to make clear my concern about the issue of the Permit agent's responsibility in the current draft SB 348. A major concern is to keep firearms out of the hands of those who may self harm and those who may harm others. It is what the voters of Oregon wanted to keep their community safer. Lets examine SB 348.

Page 3 line starting at line 7 and 30 is the language of M114:

"An applicant is qualified to be issued a permit-to-purchase under this section if the person is at least 21 years of age and:.....

(b)(E) Does not present reasonable grounds for a permit agent to conclude that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental or psychological state or as demonstrated by the applicant's past pattern of behavior involving unlawful violence or threats of unlawful violence;"

This same paragraph is repeated exactly the same at Page 6 line 16, (by reference) and Page 11 line 2-10 and page 12 line 13 (by reference). It can be argued that a "reasonable permit agent" would require a minimal investigation. What that would involve is subject to experience, experts and ultimately the Courts.

Page 4, the 348 draft says the applicant needs to be fingerprinted and photographed and then adds at line 9 (emphasis added).

"The permit agent shall.....conduct an investigation necessary to determine whether the applicant meets the qualifications described in paragraph (b) of this subsection. An investigation into whether the circumstances described in paragraph (b)(E) exist must be based on objective facts and information KNOWN by, or records available to, the permit agent that establish a pattern of behavior involving" LEFT OUT MENTAL OR PSYCHOLOGICAL STATE "unlawful violence or threats of unlawful violence sufficient to CLEARLY ESTABLISH that the applicant has been or is reasonably likely to be a danger to self or to others."

Now assume joe has suffered cyclical depression periods, and is in one right now. He talks about life not worth living, all of which his family knows. Further Joe has been posting on social media that he intends on killing children at a school, he is so depressed.

Now assume Joe comes to me, a Permit agent and applies for permit to purchase a firearm. I do all the background checks but do not contact a family member or check social media. So his depression and social media comments are not "known" to me. I give him the permit. He does as promised: buys a firearm, kills children in a school and then kills himself. The news media asks me why I gave him the permit. I say I did not "know" about the depression and social media comments. And based upon the language on page 4, I am correct, because I did not "know". And there was not a direction for me to perform a reasonable investigation to find out. The original M114 language of "does not present reasonable grounds for" implies there must not be inaction, but reasonable action, to determine if grounds exist. SB 348 removes that emphatically. -----But there is more.

The added language on page 4 does not say there needs to be investigation in, or even consideration of the, "mental or psychological state" of applicant. Page 3 original M114 does, page 4, SB 348, does not. The will of the voting public said include this. It helps to determine suicide and violence risk. Page language 4 limits the investigation in a material way removing available objective facts relevant to the issue of suicide and violence.

Next the weight of proof is also changed. On page 3 the weight of proof is if it "is reasonably likely to be". The term likely has legal significance. It means more likely than not. The classic picture of the lady of justice holding two scales, one in each hand, deciding which is the greater, ie or more likely than not. It is the burden used in civil trials. And the standard expected in M114. Another standard for proof is "clear and convincing". This is used in civil and criminal trials and generally referenced as meaning "evidence is highly and substantially more likely to be true than untrue. The fact finder must be convinced that the contention is highly probable. So on page 4 there is added the word "objective facts and informationsufficient to CLEARLY ESTABLISH that the applicant has been or is reasonably likely to be a danger..... It thus creates an unusually higher burden and greater weight of evidence to deny the permit. Not what the voters of M114 supported. A change that does not act to save lives but makes it easier for the Permit agent to not be careful and ask few, if any, investigative questions. If it is more probable than not, ie likely, that a risk exists, then the permit should not be given and this person should not be able to acquire a lethal firearm.

If the committee wanted some change in M114 to give more direction to the Permit agent then something like this would work with the added language to M114 in bold type.

"An applicant is qualified to be issued a permit-to-purchase under this section if the person is at least 21 years of age and:.....

FROM OBJECTIVE FACTS, OBTAINED FROM A RELEVANT REASONABLE INVESTIGATION SPECIFICALLY CONFINED TO THE SUBJECT OF THIS PARAGRAPH INCLUDING BUT NOT LIMITED TO, AS APPROPRIATE CONTACT WITH IMMEDIATE FAMILY, RECORDS AND SOCIAL MEDIA, APPLICANT

(b)(E) Does not present reasonable grounds for a permit agent to conclude that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental or psychological state or as demonstrated by the applicant's past pattern of behavior involving unlawful violence or threats of unlawful violence;"

In summary the added language on page 4, eliminates from M114, (a) a reasonable investigation, (b) eliminates investigation into the mental and psychological state of the applicant and (c) requires greater proof than simply proof that it is "likely" that there is a risk to self or others or the community. One would think, if I were told if I left my home it would be "likely" I would die, that would be sufficient to keep me inside. I would not say to myself, "I think I will go out because it was not "clear" or "highly likely" that I would die". All this work is done to say lives. Can't forget that. Hopefully this helps your thoughts on this one issue on SB348.

jim