

WISCONSIN POLICE JOURNAL



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FALL, 1993

THE OFFICIAL PUBLICATION OF THE WISCONSIN PROFESSIONAL POLICE ASSOCIATION



**Wisconsin teams up with McGruff
for Crime Prevention Month
October, 1993**

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WISCONSIN PROFESSIONAL POLICE ASSOCIATION

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NAPO Washington Report

The Anti-Drug Assault Weapons Limitation Act of 1993

Background

On July 7, 1989, former President Bush permanently banned the importation of 43 types of semi-automatic assault rifles. However, no action has been taken on domestically produced assault rifles. The Senate in the 101st and 102nd Congress passed the Assault Weapons Limitation Act sponsored by Senator Dennis DeConcini (D-AZ). The House has refused to move on this legislation and has rejected broader legislation. Senator DeConcini has reintroduced the Assault Weapons Limitation Act of 1993 in the 103rd Congress (S. 639).

Facts

BATF reports that although assault weapons comprise only .5 percent of the 200 million firearms currently held in the U.S., they account for 30 percent of all firearms traced to organized crime, terrorism, and gun trafficking. The fourteen guns covered in the bill are the assault weapons most frequently used in this country. They are the weapons of choice for drug kingpins at home and abroad.

The DeConcini bill would prohibit the importation, domestic manufacture, and sale of new assault weapons,

which are defined as the 14 weapons specifically listed. While the Secretary of the Treasury would be able to recommend to Congress the restriction of additional weapons, no assault weapons may be banned without further legislation from Congress.

In addition, there are no restrictions on the possession, transfer, and sale of assault weapons lawfully possessed before the effective date. Current owners of assault weapons would be required to document proof of ownership according to

Form 4473. This form is also required of future transactions involving non-dealers. Registration would occur within 90 days after the Secretary of the Treasury issues record-keeping regulations.

NAPO Position

NAPO, representing 140,000 federal, state and local police officers across the country, supports this bill and is working towards its enactment as a necessary measure to curb the proliferation of these weapons of choice of drug dealers.

NAPO also supports similar legislation sponsored by Senator Metzenbaum (D-OH), S. 653, and

Congressman Stark (D-CA), HR. 1421.



The Brady Bill establishes a national five business-day waiting period to require local law enforcement to conduct background checks on handgun purchasers.

Waiting Period (Brady Bill)

Background

Over 20,000 people, including many police officers, are killed annually in this country by handgun misuse. NAPO believes that this bill is an important and needed measure designed to protect law enforcement officers and the American public we are sworn to protect.

Summary of the Brady Bill

The Brady Bill establishes a national five business-day waiting period to require local law enforcement to conduct background checks on handgun purchasers. The bill applies only to handgun sales through licensed dealers.

Within one day of the proposed transfer, the dealer is required to provide information from the purchaser's statement to the chief law enforcement officer where the purchaser resides. The statement (verified by some form of photo identification) must include the purchaser's name, address, date of birth, and the date the statement is made.

Unless law enforcement notifies the dealer that the sale would violate federal, state or local law, the sale may proceed five business days after the date when purchaser signs the statement.

Handgun transfers may take place in fewer than five days if the chief law enforcement officer or his designee notifies the dealer that the officer has no information indicating that receipt of possession of the handgun by the transferee would violate federal, state or local law.

Unless the sale is prohibited, the local law enforcement chief is required to destroy his copy of the statement and any other record of the transaction within 20 business days. Sunset provisions when telephone check system is implemented: The waiting period will be superseded

when the nationwide "instant" felon identification system becomes operational and is used by dealers.

States exempted from waiting period: The Brady Bill does not apply to handgun purchases where state law requires that an authorized government official has verified that the information available does not indicate that the sale would violate the law, either through a permit-to-purchase or "instant check" system. States which are not now exempt from the Brady Bill could, at any future time, set up their own systems to exempt themselves from the waiting period requirement.

Individuals exempted from waiting period: Should an individual require access to a handgun because of a threat to his life or the life of a member of his household, local law enforcement may waive the waiting period.

NAPO Position

Experience with this kind of legislation in a number of states has demonstrated its effectiveness in preventing handgun violence. A national law to the same effect would help to close gaps in state laws and avoid the out-of-state purchases of handguns by those who ought not to be permitted to obtain them.

For one thing, the measure would give local police departments an opportunity to check the criminal history of proposed gun purchasers and secondly, it would provide a "cooling off" period, which would help avoid the impulsive use of handguns.

NAPO is on record giving its wholehearted and unqualified support for HR. 1025 and S.414.

HIV/AIDS and Police Officer

Background

Law enforcement officers are at risk of occupational exposure to bloodborne pathogens, including HIV and Hepatitis B. The Center of Disease Control (CDC) is considering provisions to reduce the risk of the spread of bloodborne diseases. Although the Occupational Safety and Health Ad-

ministration (OSHA) issued regulations in March 1992, adoption of OSHA's standards are not mandatory in 25 states and even where OSHA standards are adopted, police management throughout the country has been recalcitrant in implementation of provisions to reduce the risk of AIDS. NAPO has pushed for tough standards to protect law enforcement officers.

Facts

There are a variety of ways in which officers potentially come in contact with bloodborne diseases, including Hepatitis B and the AIDS virus, the most frequent of which is assaults by criminals wielding weapons. Frequently, these criminals are drug users who are in the fastest growing population of individuals infected by the AIDS and Hepatitis B viruses. It is not uncommon for police officers to sustain cuts and abrasions in the course of struggles and to come in contact with the criminals' blood and bodily products. Examples abound of law enforcement personnel being stuck by needles, bitten or otherwise attacked while performing their duties. Police are also at risk from handling evidence samples, patting down suspects following an arrest, or helping accident victims.

NAPO Position

The OSHA standards, while a step in the right direction, do not do enough to protect police officers from the threat of this deadly disease. Therefore, when CDC asked NAPO to comment on provisions to regulate the spread of bloodborne diseases, we urged CDC to strengthen regulations in three areas. First, in education and training, NAPO urged CDC to require police departments to: conduct periodic and continual education and training on how to avoid infection; provide access to written material on AIDS for employees; notify employees who are at risk because of their exposure to possibly infectious material or contact with blood or bodily fluids; and provide counseling for employees who may have been exposed to HIV. Second, NAPO urged CDC to require police departments to provide preventative safety

equipment including: thick rubber gloves, ballistic gloves, masks, mouth shields, and resuscitation equipment, all at no cost to the police officers. Third, NAPO urged CDC to study and recommend to Congress the rationales behind testing for AIDS of persons who have bitten, scratched, or otherwise made physical contact with police officers resulting in the transfer of blood or other bodily fluids.

Omnibus Anti-Crime Legislation

Background

The Crime Bill that NAPO sought to enact in the 102nd Congress provided tougher penalties for violent crimes, money for prison construction, anti-gang programs, a five-day waiting period for handgun purchases (Brady Bill), crime victim compensation, anti-terrorism programs, new federal death penalty provisions, money for new federal criminal investigators, \$1 billion for local law enforcement, habeas corpus reform, establishment of a National Commission to support law enforcement, police officer scholarship funds, a program to combat police stress, and many other innovative anti-crime measures. In the 102nd Congress, the Omnibus Anti-Crime Bill became HR. 3371.

Current Status

Unfortunately, even though the bill passed the House of Representatives in November 1991, and had the support of a majority of the Senate, law enforcement supporters of the measure could not muster the 60 votes necessary to invoke cloture and end the Senate Republican filibuster. On October 2, 1992, the cloture vote was 55 in favor and 43 against.

NAPO Position

NAPO supported the Conference Report to accompany HR. 3371 because NAPO believes strongly that the Congress must enact a crime bill to address the many problems that law enforcement agencies and the criminal justice system face in fighting the war against drugs and crime. Mem-

bers must not let partisan consideration stand in the way of the nation's 600,000 police officers sworn to protect the public. Now that the 103rd Congress has begun, NAPO strongly believes the new administration must take swift action against crime by enacting strong crime legislation.

Source Tax

Background

A source tax arises when a state tries to tax the pension income of those who once worked in that state but then chose to retire elsewhere. In other words, the state is attempting to "source" that income back to the state.

According to the Congressional Research Service, at least five states aggressively look to impose these taxes. As many as 13 states require companies to report annual payments to pension plans. And without federal legislation, any state may look to assess these taxes.

The retirees who are asked to pay these taxes are no longer living in the state that attempts to impose them. Thus they are asked to pay taxes to a state that provides them no government services, and they have absolutely no recourse at the ballot box to determine how their tax money is used. Also, these people are being doubled taxed because they pay taxes to the state in which they currently reside. And in Washington and other non-income tax states, there is no way for them to credit source taxes paid on their income tax return.

Washington State passed a law in 1991 to prohibit source taxes, but that still does not stop other states from attempting to impose them. Only federal legislation would effectively do so. Legal experts have determined that Congress has the authority to limit these source taxes—and past efforts by Congresswoman Unsoeld and others have narrowly failed.

Current Status

In the 102nd Congress, three pieces of legislation were introduced

to resolve this problem. Senator Reid (D-NV) attached his bill to the Omnibus Tax Bill and this amendment passed the Senate. Unfortunately, the underlying measure did not become law because of President's Bush's veto. Senator Bentsen (D-TX) then included a revised reversion of the source tax in the subsequent version after the tax bill (HR. 11). This revision was removed in the conference report.

NAPO Position

Thus far in the 103rd Congress three bills have been introduced calling for the elimination of the "source tax," HR. 546 by Congresswoman Unsoeld (D-WA), HR. 702 by Congresswoman Vucanovich (R-NV) and S. 235 by Senator Reid (D-NV). NAPO will continue to actively pursue this issue.

IRS Section 415

Background

Section 415 of the Internal Revenue Code (IRC) limits the annual pension contribution or benefit level a public or private employer may fund. It was added to the IRC in 1974 (effective in 1976) with passage of ERISA. Pension plans must comply with these limits in order to receive or maintain their tax-qualified status. Under the 1986 Tax Act, the maximum annual benefit payable from a governmental defined benefit plan is the lesser of (1) 100 percent of the participant's average compensation for the highest three years, or (2) \$90,000 (indexed to \$115,641 in 1993). These ceilings are actuarially reduced for retirement that takes place before age 62. Police and fire fighters with 15 years or more of service are not subject to actuarial reductions for early retirement.

State and local government retirement systems have been frustrated in their attempts to comply with Section 415 by definitional differences and plan design aspects distinctive to public plans.

Current Status

On May 6, 1993, Congressman Robert T. Matsui (D-CA) introduced the

Public Pension Equity Restoration Act of 1993. This legislation was co-sponsored last year by a bipartisan group of almost half the members of this House, including 27 members of the Ways and Means Committee. The legislation enjoys broad support of members from across the country.

The legislation is non-controversial. The provisions were adopted by the House twice last year and were included in the final version of both tax measures (HR. 4210 and HR. 11) that Congress sent to the President. The provisions also have been included in the tax simplification package introduced this year by Ways and Means Chairman Rostenkowski (HR. 13). The legislation has been estimated by the Joint Committee on Taxation staff to have no revenue impact.

In the past, Congress has tried to tinker with the application of the Section 415 limits to governmental plans, most recently in the 1988 Tax Act which provided some protection in the form of a limited grandfather election for governmental plans. However, the underlying structural problems in the application of Section 415 to governmental plans have persisted, crying out for a long-term solution to resolve these underlying problems once and for all.

That permanent solution has now been developed and is reflected in the Public Pension Equity Restoration Act of 1993. This legislation will permit the necessary flexibility for continued future compliance by governmental plans without the potential for abuse. The legislation has four principal provisions.

First, the bill would achieve a greater degree of consistency between the statutory definition of compensation used to determine the Section 415 limits and the compensation definition used by governmental plans to determine retirement benefits by including in the Section 415 definition items of deferred compensation of governmental workers, such as Section 403(b) and Section 457 amounts.

Second, under current law, pension benefits under a defined benefit plan cannot exceed 100 percent of the employee's average annual compensation over his or her highest three years. As applied to governmental plans, this limitation can reduce even relatively small pensions payable to employees with long periods of service. The bill would eliminate this problem by removing the limitation for governmental plans.

Third, governmental plans are somewhat unique in providing substantial disability and death benefits as part of the qualified retirement plan, rather than by separate employer-provided insurance arrangements as in the private sector. These private sector benefits are not subject to the Section 415 limits. The legislation would eliminate this disparity by expressly removing the governmental plans' survivor and disability benefits from the Section 415 limits.

Finally, the bill provides governmental plans with an "overflow" mechanism to pay benefits above the Section 415 limits for the relatively small number of employees whose benefits happen to exceed the limits simply by operation of the regular benefit formula applicable to all employees under the governmental plan because, for example, of particularly long service. This overflow mechanism will enable governmental plans to pay the benefits guaranteed under the plan—and in many cases strictly protected by state constitutions—without running afoul of Section 415. Participants in such an overflow arrangement would be subject to tax in the same manner as participants in the excess benefit arrangements that are widely used in the private sector.

NAPO Position

The Public Pension Equity Restoration Act of 1993 represents a carefully-crafted, non-controversial, revenue-neutral, widely-supported solution to the unique and pressing problems faced by the pension plans of state and local governments across the country.

NAPO strongly urges each member

of the House to sign onto HR. 2023 and pass this much needed legislation that is so vital to public sector pension systems.

Police Officers' Bill of Rights

Background

There is no question that law enforcement officers are engaged in a dangerous and stressful occupation. They are also held to a higher standard of conduct than is required by other occupations and are vulnerable to false accusations and abusive conduct in the course of performing their jobs. Further, any officer who has been terminated for alleged misconduct finds it impossible to be re-employed in law enforcement. These conditions and the absence of basic procedural rights make the prompt enactment of the POBR imperative.

Within the past few years a number of bills have been introduced in Congress that would provide state and local law enforcement officers specific procedural rights in connection with departmental disciplinary proceedings. These bills, generally referred to as the "Police Officers' Bill of Rights," reflect the fact that many law enforcement officers have no protection against arbitrary, vindictive and discriminatory discipline.

NAPO was instrumental in having the POBR included in the Senate version of the Crime Bill in the 102nd Congress. A similar bill, introduced in the House of Representatives, was rejected by the House Judiciary Committee primarily because of massive opposition from police management and state, county and city lobbyists.

NAPO testified at the House Judiciary Committee hearing in March 1992 in support of the POBR and also provided two expert witnesses for the hearing.

Proposal

Congressional concern for the procedural rights of officers reached its high when the Senate adopted the Police Officers' Bill of Rights Act of 1991. Under this bill, officers subjected

to investigation or interrogation in regard to disciplinary matters (other than of a criminal nature) would be entitled to the following basic rights:

- Questioning must be conducted at reasonable times and for a reasonable amount of time.
- Questions must be held at the office of those conducting the investigation or where the officer normally reports for duty unless the officer agrees otherwise.
- The officer must be advised in advance of the identity of the interrogator and the nature of the investigation.
- Officers must not be threatened, harassed or rewarded (except an offer of immunity from prosecution) to induce the answering of questions.
- Questioning must be recorded and a copy of a transcript be made available to the officer under investigation.
- The officer shall be entitled to have counsel or any other individual of his choice present at the interrogation.
- An officer shall be entitled to be advised of the results of the investigation.
- An officer under investigation shall be entitled to a hearing and to hearing transcripts and documents.

The bill also protects an officer from having any adverse material placed in his file without an opportunity to review and comment in writing. This bill would also allow officers to engage in political activity while off-duty.

NAPO Position

NAPO supports the Police Officers' Bill of Rights. The purpose of the bill is to afford to police officers fair procedures when determining discipline and to increase the professionalism of law enforcement. Police should be accorded this fundamental due process protection.

NAPO has worked with two other police labor and two police management organizations in drafting the 1993 Police Officers' Bill of Rights and is presently working with Congressional representatives in this 103rd Congress to enact this important legislation.