118TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
118–

FEDERAL LAW ENFORCEMENT OFFICER SERVICE WEAPON PURCHASE ACT

MAY --, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

_____ VIEWS

[To accompany H.R. 3091]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3091) to allow Federal law enforcement officers to purchase retired service weapons, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Law Enforcement Officer Service Weapon Purchase Act".

SEC. 2. PURCHASE OF RETIRED HANDGUNS BY FEDERAL LAW ENFORCEMENT OFFICERS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator of General Services shall establish a program under which a Federal law enforcement officer may purchase a retired handgun from the Federal agency that issued the handgun to such officer.

(b) LIMITATIONS.—A Federal law enforcement officer may purchase a retired handgun under subsection (a) if—

(1) the purchase is made during the six-month period beginning on the date the handgun was so retired; and

(2) with respect to such purchase, the officer is in good standing with the Federal agency that employs such officer.

(c) COST.—A handgun purchased under this section shall be sold at the fair market value for such handgun taking into account the age and condition of the handgun.

(d) DEFINITIONS.—In this section—

(1) the term "Federal law enforcement officer" has the meaning given that term in section 115(c)(1) of title 18, United States Code;

(2) the term "handgun" has the meaning given that term in section 921(a) of title 18, United States Code; and

(3) the term "retired handgun" means any handgun that has been declared surplus by the applicable agency.

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Purpose and Summary

H.R. 3091, the Federal Law Enforcement Officer Service Weapon Purchase Act, introduced by Rep. Russell Fry (R-SC), would allow federal law enforcement officers to purchase retired service weapons at fair market value.

Background and Need for the Legislation

Under current policy, federal agencies are required to destroy retired firearms by "crushing, cutting, breaking, or deforming each firearm to ensure that they are rendered completely inoperable and incapable of being made operable for any purpose except the recovery of basic material for reuse."[1] Additionally, "destruction of firearms must be performed by an entity authorized" by the head of an agency, and the destruction "must be witnessed by two additional agency employees authorized by the agency head or designee."[2] These actions come at a cost to the American taxpayer.

Because of the requirement that service weapons be destroyed, American taxpayers effectively pay for the same firearm twice—when the firearm is acquired and then again when the firearm is destroyed. Not only would this legislation cause agencies and the taxpayers to avoid the cost of destroying these firearms, but it would also recoup a portion of the taxpayer dollars spent on the initial purchase of the firearm. The bill would allow federal law enforcement officers who used these firearms in the course of their official duties to purchase the firearms. The Fraternal Order of Police wrote to Congress that multiple federal law enforcement agencies are in the process of replacing their service weapons.[3] These actions account for approximately 20,000 firearms that would otherwise be destroyed, costing American taxpayers roughly $8 million.[4]

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to develop H.R. 3091 before the House Judiciary Committee: "Victims of Violent Crime in Manhattan," a hearing held on April 17, 2023, before the House Judiciary Committee. The Committee heard testimony from the following witnesses:

- Madeline Brame, Chairwoman of the Victims Rights Reform Council and mother of a homicide victim;
- Jose Alba, Former Manhattan bodega clerk and victim of assault in Manhattan;
- Jennifer Harrison, Founder of Victim's Rights New York;

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[1] 41 C.F.R. § 102-40.175(f).
[2] 41 C.F.R. § 102-40.175(e).
[3] Letter to Sen. Cornyn et. al. from Patrick Yoes, National President Fraternal Order of Police (May 18, 2022). https://fop.net/letter/s-4150-the-federal-law-enforcement-service-weapon-purchase-act/
[4] *Id.*

- Paul Digiacomo, President of the New York Police Department Detectives' Endowment Association;
- Barry Borgen, Father of a victim of anti-Semitic attack in Manhattan;
- Robert F. Holden, New York City Council Member;
- Jim Kessler, Executive Vice President for Policy, Third Way; and
- Rebecca Fischer, Executive Director, New Yorkers Against Gun Violence.

The Committee heard directly from victims of New York's pro-criminal policies spelled out in District Attorney Alvin Bragg's "Day One Memo." Victims testified how the DA Bragg is rereleasing violent criminals and giving them sweetheart deals. The Committee also heard powerful testimony from the Detectives Endowment Association (DEA) President Paul DiGiacomo on how DA Bragg and progressive DAs in other blue cities are harming law enforcement officers. DiGiacomo specifically testified about the failure and danger of progressive bail reform policies, and how both law enforcement and the communities they protect are now more in danger. DiGiacomo made it clear there needs to be more options for officers to keep themselves and their families safe with the rise of senseless violent attacks on law enforcement. Allowing federal law enforcement officers to purchase retired service weapons provides a starting point to keeping them safe so they may protect their communities as well as themselves and their families.

Committee Consideration

On May 10, 2023, the Committee met in open session and ordered the bill, H.R. 3091, favorably reported with an amendment in the nature of a substitute, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the Committee states that no recorded votes were taken during consideration of H.R. 3091.

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to eh requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not

received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 3091 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 3091 would allow federal law enforcement officers to purchase retired service weapons at fair market value.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 3091 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House Rule XXI.

Federal Mandates Statement

An estimate of federal mandates prepared by the Director of the Congressional Budget office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to

the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104-1).

Section-by-Section Analysis

Sec. 1. Short Title: The "Federal Law Enforcement Officer Service Weapon Purchase Act."

Sec. 2. Purchase of Retired Handguns by Federal Law Enforcement Officers: Requires the Administrator of the General Services Administration to establish a program under which a federal law enforcement officer in good standing may purchase a retired handgun from the federal agency that issued the handgun to such officer.

Minority Views

[INSERT "B" – MINORITY VIEWS]

Additional Views, H.R. 3091, the Federal Law Enforcement Officer Service Weapon Purchase Act

Although Democrats support passage in the Judiciary Committee of H.R. 3091, the "Federal Law Enforcement Officer Service Weapon Purchase Act," we are disappointed that the bill is significantly weaker than the bipartisan bill first introduced by former Congresswoman Val Demings in the 117th Congress and reintroduced in the 118th Congress as H.R. 3091. The current version of the bill removes two important provisions that served the bill's goal of improving public safety while recouping federal funds through the sale of surplus service weapons.

I. Backgounnd

H.R. 3091 was introduced on May 5, 2023, by Rep. Russell Fry (R-SC) and two Republican cosponsors. The bill would allow federal agencies to sell a retired handgun to a federal law enforcement officer in good standing rather than destroy the handgun.

Federal regulations for the management of federal property currently prohibit an agency from disposing of functional or repairable firearms by selling them. Under these regulations, when an agency no longer has a need for a firearm, it must be destroyed or transferred to another law enforcement agency. This legislation would give agencies the option to sell a surplus handgun to the federal law enforcement officer to whom the agency issued the gun, so long as the sale occurs within six months of the handgun being retired (declared surplus by the agency) and the officer is in good standing.

A prior version of this legislation was introduced in the 117th Congress as H.R. 3096 by former Congresswoman Val Demings (D-FL). This current legislation is substantially similar to Rep. Demings' bill but removes the requirement that the law enforcement officer pass a background check as part of the transfer and omits the sense of Congress that the proceeds from the sale should be used to fund gun violence prevention or gun safety programs. In the 117th Congress, this legislation was endorsed by the Federal Law Enforcement Officers Association, the National Association of Police Organizations, the Fraternal Order of the Police, Women in Federal Law Enforcement, and the National Treasury Employees Union.

II. Concerns with H.R. 3091

1. Removal of Background Check Requirement

The Brady Handgun Violence Prevention Act of 1993 required the establishment of a national namecheck system to be used by federal firearms licensees (FFLs). In response, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) developed the National Instant Criminal Background Check System (NICS). NICS is operated by the Federal Bureau of Investigation.[1] When FFLs run a NICS check, the name of a potential firearm purchaser is searched for in three databases that contain records relevant to whether a person might be

[1] Federal Bureau of Investigation, About NICS, https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics.

prohibited from possessing a firearm.[2] Since its inception, NICS has been a critical tool in helping to keep firearms out of the hands of those who are not legally allowed to possess them.[3] The efficacy of the NICS system depends on complete, accurate, and timely submission of records to the three databases, which each contain different types of records, such as criminal history records, protection orders, and wanted persons. Congress has worked to improve NICS through the Fix NICS Act of 2018 which increased the number and accuracy of records in NICS.

In the 117th Congress, the prior version of this legislation, then led by Congresswoman Demings, required a NICS check for a law enforcement officer to purchase a service weapon under the Act. By removing this requirement, H.R. 3091 relies solely on an agency's determination that the officer is in good standing. One might assume that an officer could not be in good standing if he or she was prohibited from possessing a firearm, but the reality is that an agency may not instantly become aware of circumstances that would lead a person to be prohibited. Further, even if the agency does learn of a relevant circumstance, the officer's standing may not automatically change, or a clerical error could lead the agency to still regard the officer as in good standing. NICS was designed to search the relevant records and Congress has worked to improve its completeness, accuracy, and timeliness in subsequent legislation. An agency's determination that an officer is in good standing should not be the substitute for a system that has been carefully designed and improved for the specific purpose of determining if a person is legally allowed to possess a firearm.

Existing ATF regulations illustrate that background checks are the gold standard for determining who may possess a firearm. Currently, a law enforcement officer may obtain a firearm for official use without undergoing a background check, but ATF regulations require much more than a simple showing that the officer is in good standing. For an officer to purchase a firearm for official use without undergoing a background check, the officer must present a certification on agency letterhead that the officer will use the firearm in official duties and that a records check reveals the purchasing officer has no convictions for misdemeanor crimes of domestic violence.[4] This demonstrates that a NICS check carries significant weight and any substitute process should at least include a search of certain criminal records.

NICS checks are not only the best way to identify prohibited purchasers but would also promote public trust in the program established by this Act. Since members of the public must undergo a NICS check when purchasing a firearm in many circumstances, they will be more confident of the process when law enforcement is held to this same standard when a service weapon is transferred.

The requirement that the officer receiving the firearm pass a background check is a meaningful step to ensure that guns do not fall into the wrong hands. This requirement should not have been stripped from the legislation upon reintroduction of the bill this Congress.

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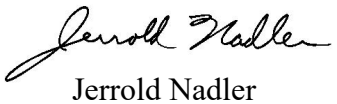
[2] Department of Justice, The Department of Justice's Semiannual Report on the Fix NICS Act (Sept. 2022), https://www.justice.gov/d9/nics_semiannual_report_-_september_2022.pdf.
[3] Id.
[4] 27 CFR 478.134.

2. Use of Funds

Congresswoman Demings' version of this legislation also included a sense of Congress provision that the amounts received by the government from selling a retired service weapon should be used to fund evidence-based gun violence prevention or gun safety education and training programs. This provision furthers the bill's goal of improving public safety and should be noncontroversial. It is unfortunate that this provision was also removed from the bill when it was reintroduced this Congress.

III. Conclusion

The prior version of this legislation was stronger than the current version because it required a background check for retired service weapon sales and because it encouraged reinvestment of the proceeds from these gun sales in gun violence prevention and safety education and training programs. Nonetheless, we support passage of this bill in its weakened form.



Jerrold Nadler

Ranking Member