

## HR 1488: Trojan Horse in the Pro-gun Community? - Gun Owners of America

Written by Gun Owners  
Tuesday, 01 August 1995 00:00

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by Gun Owners of America

While there are several good bills in the House to repeal the semi-auto ban, the bill which the House leadership has "anointed" for consideration has some tremendous problems with it. H.R. 1488, introduced by Rep. Bob Barr (R-GA), contains an impossible-to-swallow provision which would enormously expand the powers of the BATF.

GOA members have deluged Congress with postcards opposing this provision. Already, some Representatives have responded favorably and are working hard to fix the problem section in the bill:

\* Rep. David Funderburk (R-NC) stated in a letter dated July 5, that "I agree with you entirely; we must not allow an otherwise good bill to be used as a vehicle to expand the power and authority of the BATF."

\* Rep. Steve Stockman (R-TX) said, "I agree with Gun Owners of America that it is imperative to fix Section 3 of H.R. 1488. I have checked with my legal counsel and he assures me that Section 3 of the bill amends the part of the U.S. Code which authorizes the BATF. Unless we can fix Section 3, this bill will federalize virtually every significant state crime involving a firearm; will increase the jurisdiction of the BATF; and could subject law-abiding citizens to a twenty year minimum jail sentence for using a firearm in self-defense."

However, some have still wondered if this expansion would be that bad. GOA's position is that Section 3 of H.R. 1488 would greatly threaten the rights of gun owners, and that this section **MUST** be fixed. Since many people have asked us for a more detailed breakdown of the problems in Section 3, the following will analyze the language and problems with this section.

How Federal Law Defines the Language of Section 3  
Section 3 of H.R. 1488 states that,

A person who, during and in relation to a serious violent felony [defined below] . . . for which the person may be prosecuted in the court of any state [state crime] . . . (ii) brandishes a firearm . . .

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shall be sentenced to imprisonment for not less than 10 years.

Some have focused on the language relating to a "serious violent felony" and have mistakenly concluded the mandatory minimum prison terms in this section will only apply to actual, violent criminals.

The problem is, the meaning of "serious violent felony" is not open to interpretation. It does not matter what a reasonable person might think this term means. Federal law defines what is a "serious violent felony" and that definition needs to guide one's interpretation of Section 3.

As defined, "serious violent felony" could easily allow officials to charge a person who used a gun to discourage an assailant. Indeed, a Pennsylvania man recently took a licensed firearm from his glove compartment and merely laid it on his passenger-side seat in view of an individual who was attempting to force him off an interstate highway. The other individual never even claimed that the man had pointed the gun at him. Nevertheless, state authorities charged the gun owner with intent to "brandish a firearm" and "threatening same which served no legitimate purpose."

If the federal authorities were to get involved in such a case, the gun owner could face a mandatory minimum of 10 years in prison for brandishing a firearm during and in relation to "a serious violent felony." The crime in this case is a "serious violent felony" because of the following progression:

\* "Serious violent felony," as defined by 18 U.S.C. 3559(c)(2)(F) includes "firearms use," which is defined by:

\* 18 U.S.C. 3559(c)(2)(D) as "brandishing," when that brandishing is subject to prosecution in the court of any state and has the elements described in 18 U.S.C. 924(c);

\* These elements include carrying a firearm during and in relation to a "crime of violence" which is defined as "the use, attempted use, or threatened use of physical force against the person or property of another."

The above crime would subject a person to a 10 year mandatory minimum prison sentence under H.R. 1488, Section 3. Moreover, the fact that this section is amending the gun offenses of Title 18 of the U.S. Code means that the BATF is necessarily involved because it has jurisdiction over that section of the code.

Self-defense Provision not Sufficient

This problem with Section 3 escalates when the gun owner actually fires his gun to deter a

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---

violent attack. Under this section, if prosecutors can convince a jury that a gun owner did not act within their narrow definition of self-defense, then the defender would get a MANDATORY MINIMUM sentence of 20 years!

Moreover, there can often be a huge discrepancy between the way state and federal prosecutors look at self-defense cases. Examples abound where a local, anti-gun prosecutor wanted to harass a person who used a gun in self-defense, but community pressure forced them to drop the case. One wonders if federal prosecutors would be as responsive to local, community pressure.

Lance Cpl. Rayna Ross is a classic example of how state and federal officials can look at the same shooting with "different eyes."

Ms. Ross is a Marine living in northern Virginia. In 1994, she used her handgun to kill a man who had stalked and threatened her on several occasions. Ms. Ross shot the attacker after he forced his way into her residence in the middle of the night dressed in a black jumpsuit and armed with a bayonet.

The local prosecutor declined to prosecute, calling it a "justifiable homicide." However, the Marine Corps decided to prosecute Ms. Ross and charged her with crimes that, if convicted, could imprison her for life in Fort Leavenworth, Kansas.

This problem would be multiplied nationwide if federal prosecutors could seek 20 year mandatory minimums using Section 3 of H.R. 1488.

While H.R. 1488 does make some allowances for people who use a firearm to protect themselves, this provision would not prevent BATF from investigating a self-defense shooting and harassing an honest gun owner in the process. Also, this "self-defense exception" is inferior to the laws of many states and would not protect defensive shootings that hit the attacker's back. H.R. 1488 would supersede those state laws if federal prosecutors are arguing the case.

As we have seen with Bernie Goetz and others, prosecutors have not hesitated to go after

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persons defending themselves with firearms in life-threatening situations. Such law-abiding citizens could be liable to prosecution because a robber or mugger had momentarily turned away from the defender, perhaps to flee, or perhaps to grab a weapon. Hence, these spilt-second decisions, made in the heat of the moment, would determine whether a gun owner was, in the eyes of the law, engaged in a commendable action in defense of self, family, and others -- or whether he was a felon subject to a twenty year mandatory minimum sentence under Section 3 of this bill.

### Feds to the Rescue?

Some House offices have claimed that the state authorities must first charge a person with a "gun crime" before the federal authorities can act. However, nowhere does the bill state this. In fact, the closest the bill comes to this claim is language that purports to give the federal government deference to the states in prosecuting gun crimes. But this language is non-binding and there are no penalties against federal officials for ignoring this section. Besides, officials can easily claim there is a compelling federal interest which allows them to usurp the state's jurisdiction. There are many examples of the federal government running roughshod over states' rights.

Even if federal officials do give deference to the states, a person could still be prosecuted sequentially under both federal and state law. GOA's experience with federal interference in state tasks has taught us that the federal government will not, for long, take a "back seat" to state enforcement or policy.

Finally, and perhaps most dangerous of all, Section 3 of the bill opens the door to getting the federal government involved in ALL gun possession charges, both state and federal. Under H.R. 1488, the BATF will start enforcing gun laws -- that up until now -- have been enforced by the states. And once the Congress has stuck its legislative foot in this area, it could easily broaden its jurisdiction to all gun possession charges. The BATF would then become the gun cops enforcing every local gun control ordinance. As long as the law continues to criminalize mere possession of certain firearms, non-violent persons (like the children of the Weavers and the Davidians) will continue to be harassed and killed by our federal government.

### H.R. 1488: Fact and Fiction

Gun owners might find some House offices quibbling with GOA's arguments. Some of the attacks, such as an assertion that we had suggested that H.R. 1488 constitutes unconstitutional "double jeopardy," are simply distortions of our arguments. (We do not, however, believe that regular multiple prosecutions by different levels of government arising out of the same acts, such as the prosecutions in the Rodney King case, represent good policy.)

In three cases, however, our attackers have correctly identified our arguments and attempted to rebut them with erroneous facts. In order to set the record straight, GOA would like to reiterate our opposition to the bill as currently drafted and to refute the erroneous charges which have been made against our analysis of the bill:

1. FACT: H.R. 1488 would federalize virtually every significant state crime involving a gun. **ERRONEOUS Rebuttal** (the erroneous statement is in italics): "State crimes would also be included under the bill [H.R. 1488]. However, the state crime must be a 'serious violent felony or serious drug offense.' Serious violent felonies are defined to include such felonies as murder, kidnapping, and rape."

**THE TRUTH:** What this statement fails to tell you is that "serious violent felony" also includes "FIREARMS USE." As a result, just brandishing a firearm to discourage an assailant could subject a person to the investigative jurisdiction of the BATF. In such a case, the gun owner could be charged with committing a "serious violent felony" and, as stated earlier, would face a 10-year mandatory minimum based on the following progression:

"Serious violent felony" includes "firearms use," which in turn, is defined to mean brandishing a firearm in connection with a federal or state crime having the elements of 18 U.S.C. 924(c); 18 U.S.C. 924(c) punishes carrying a firearm "during and in relation to any crime of violence . . ."; and "Crime of violence" is defined to mean a felony which "has as an element the use, attempted use, or threatened use of physical force against the person or property of another. . . ."

So, at its core, H.R. 1488 imposes a ten-year mandatory minimum sentence for brandishing a firearm during and in relation to the threatened use of force against person or property. If the gun owner fires the weapon at another person (for instance, at a burglar who has just spun around in an apparent attempt to grab a gun), the mandatory minimum jumps to twenty years, and hence, could send people like Bernie Goetz to jail for much longer than a state penalty would.

There is something fundamentally dishonest when advocates of the bill try to tell you that H.R. 1488 punishes "murder, kidnapping, and rape," but fail to tell you that it also punishes "firearms use," and therefore, that it could punish people like Bernie Goetz or even someone like the Pennsylvania man (mentioned earlier) who brandished his firearm in an attempt to ward off a dangerous confrontation.

2. FACT: Section 3 of H.R. 1488 will greatly increase the authority of the BATF.

Erroneous Rebuttal (the erroneous statement is in *italics*): "The BATF is not even mentioned in the entire text of H.R. 1488, let alone in Section 3 of the bill. . . . [Section 3] does not even deal with the BATF at all."

THE TRUTH: Section 3 of H.R. 1488 amends Chapter 44 of Title 18 of the U.S. Code -- the chapter dealing with firearms offenses. This is the same chapter which establishes the law concerning which persons may or may not own firearms, which firearms they can own, and what procedures need to be followed in order to transfer firearms. Section 3 does not need to mention the BATF because it already has jurisdiction over that entire chapter as a result of executive actions taken by the Treasury Department many years ago. The fact that BATF is not specifically mentioned in H.R. 1488 is, therefore, irrelevant. For instance, none of the federal gun provisions contained in Chapter 44 even mention the BATF by name in their text, and yet, the BATF enforces those laws.

If any more proof is needed, the language of 18 USC 926 specifically gives the Secretary of the Treasury, and hence the BATF, the authority to promulgate regulations and exercise jurisdiction over all of Chapter 44: "The Secretary [of the Treasury] may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter . . . ."

3. FACT: Under H.R. 1488, you could be subjected to a twenty year mandatory minimum sentence for actions in defense of yourself or others.

ERRONEOUS Rebuttal: "It is ridiculous to claim that the self-defense provision in H.R. 1488 does not go far enough. Besides, a person has more protection in federal court [in cases of self-defense] because in all felony cases a grand jury must first indict the defendant."

THE TRUTH: Section 8 of H.R. 1488 was supposed to incorporate Congressman Roscoe Bartlett's excellent bill, the Citizen's Self-Defense Act (H.R. 78). Bartlett's bill codifies many of the good state laws by unequivocally protecting one's right to defend his self, family or home with a firearm.

Unfortunately, Section 8 of H.R. 1488 reduces many of the benefits found in Bartlett's original bill. For example, the new H.R. 1488 language excludes any reference to protection of self or others outside the home and prohibits the use of deadly force against a burglar in your home

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unless you can demonstrate that you or a member of your family was imminently endangered with serious bodily injury.

Similarly, the "self-defense" provisions in Section 3 of H.R. 1488 would not prevent a ten or twenty-year mandatory minimum sentence from being applied to a police officer or other law-abiding citizen if that person's defensive actions were outside the narrow, hyper-technical definition which the courts have applied to "self-defense." Hence, under Section 3, one might be subject to a twenty year mandatory minimum sentence for shooting a burglar in the home right after the attacker had turned his back in an apparent attempt to locate a firearm.

There is, furthermore, no doubt that prosecutors have been increasingly aggressive in bringing cases against private citizens attempting to defend themselves or their families. In Michigan, Donald Campbell was charged for shooting a burglar in 1991. Despite the fact that the intruder had attacked Campbell, the local police confiscated his firearm and told him that, "We can't have shooters going around wounding and maiming people. We are going to make an example out of you." The prosecutor eventually dropped the case, but only after community pressure forced him to do so. GOA has alerted its members to many cases like this, where local officials have prosecuted otherwise law-abiding citizens for using a gun in self-defense.

There is a difference, however, between state laws where actions exceeding a prosecutor's narrow view of self-defense will result in a year or two in jail, and a federal law (in section 3 of H.R. 1488) where similar actions will result in a ten year mandatory minimum sentence for brandishing, and a twenty year mandatory minimum sentence for actual firearms use.

Finally, the notion that a grand jury -- normally a wholly owned subsidiary of a prosecutor -- constitutes some enormous protection of a federal defendant would be regarded as laughable by any practicing attorney. The grand jury is often called a mere rubber stamp for the prosecutor and understandably so, as it only hears one side of the story -- the prosecutor's.

Prospects on the horizon:

\* Congressmen Roscoe Bartlett (R-MD) is extremely concerned with the BATF enhancement provision in Section 3. His office is working with GOA to draft an amendment which will completely strip away any new authority which otherwise would have been given to BATF.

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\* This fall, Rep. Steve Stockman intends to file a discharge petition to force House consideration of his bill to repeal the semi-auto ban. Having already introduced the rule (H.Res. 210), Stockman has now set the wheels in motion for getting the House to vote on a pure gun ban repeal. Stockman's upcoming discharge petition will pull the "Bartlett/Stockman Assault Weapon Ban Repeal Act" (H.R. 464) out of the Judiciary committee and bring the bill to the floor for an immediate vote -- under the rule established in H.Res. 210 which prevents any and all anti-gun amendments from being offered. H.R. 464 is infinitely superior to H.R. 1488. Stockman will need to get 218 signatures on his discharge petition before the bill, H.R. 464, can be voted on.

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