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September 11. 2025

Minnesota Senate Judiciary Committee

Re: Some Gun Law Amendments that Might Actually be Enacted

Committee Members:

Since 2018 on multiple occasions I have written essentially this same letter to advocacy groups such as Protect Minnesota, to Attorney General Ellison and various members of the Legislature and other policy makers. Each time I have never received a response so I try once again to suggest some firearms policy changes that I believe all sides in the firearms discussion except perhaps the extremists of each position, could agree are reasonable, moderate and might help with gun violence and keeping firearms from the hands of criminals who should not have them. I will try one more time because I keep hearing people talking about common sense gun laws and these ideas are that.

When I assert these ideas would help deal with guns, violence and crime I come to you with a background of over 45 years as a government lawyer, prosecutor and representative of law enforcement professionals including the Minnesota Sheriff's Association. What I suggest in this letter are only my personal views but are based on all of that experience in dealing with firearm issues. There are several reasonable things that could be done to reduce the risk that firearms are in the possession of the wrong people and would still be politically acceptable to a vast majority of the voters of Minnesota. While none of these suggestions may be particularly flashy in terms of getting the public's attention, that might in fact be one of their virtues. Several would make it much easier for law enforcement to try to keep firearms out of the hands of people that most people agree should not have them. What I suggest are several different options and alternatives some of which might be mutually exclusive or could be a compromise position for some of the other suggestions in this letter. I have written dozens of statutes and amended dozens more in my career and if you are interested in any of these suggestions I volunteer my services to work on actual statutory language.

There has been much discussion about people with mental health issues being able to legally obtain and possess firearms. Prior to 2009 law enforcement was able to deny gun permits to a significantly greater number of individuals with mental health issues because of a provision in Minn. Stat. 624.713 subdivision 1(3). Until the law was amended to

disqualify people from purchasing in possession firearms only if they were judicially committed as mentally ill the law provided that a person who was confined or committed for mental health issues was disqualified to possess firearms. Under the old language an individual who had been subject to a 72-hour hold or who had been petitioned and held under a stayed mental health commitment was prohibited from possession of firearms. The change in the law has had the effect to provide that many people with serious and major mental health issues but for whatever reason have never been formally committed as mentally ill may still lawfully possess weapons. I realize that the enactment of the Extreme Risk Protection Order statutes, which I have trained hundreds of attorneys and law enforcement people about, is a start in this direction, but returning to the prior language would go even further. Reversion to the prior language and maintaining this restoration provision that exists in current law would strike an equitable and fair balance between the rights individuals who experience mental health issues and public safety.

Current Minnesota law provides that a person who has been convicted or adjudicated of a crime of violence may not lawfully possess a firearm. The definition of a crime of violence is found in Minn. Stat. 624.712 subdivision 5. It lists a series of crimes under Minnesota Statutes and provides a conviction from another state that would be a crime of violence if committed in this state is also a disqualification here. The statute also provides an attempt to commit any of these crimes is a disqualifying crime of violence. I was contacted by a colleague who pointed out a gap in this statute. His city police chief sought assistance when a person that had a first-degree murder conspiracy conviction on his record applied for a transfer permit. While an attempt to commit the listed offenses is a disqualifying crime of violence we were rather surprised to realize a conspiracy conviction is not. A conspiracy conviction for a felony drug violation is the only conspiracy that is currently a disqualification. It would seem to me to be relatively noncontroversial to simply add to the definition of crime of violence that a conviction for a crime of violence conspiracy is within the definition.

Another possible amendment to the definition of crime of violence would make it clear that persons convicted of any of these violent crimes could not lawfully possess firearms. The current definition states that crime of violence means a felony conviction for the listed crimes. The problem with that definition is sometimes with the agreement of a prosecutor and sometimes over the objection of the prosecutor a person might plead guilty to a felony level crime of violence but the judge imposes a sentence as a gross misdemeanor. The federal prohibitions about possession of firearms by a person convicted of a crime punishable by imprisonment for more than one year do not depend on the actual sentence imposed but rather is dependent only on the statutory maximum for the crime. Minnesota law could readily be clarified to parallel this provision for crimes of violence by simply moving the word felony from the beginning of the statute and inserting it at the end of the definition to provide that the felony sentencing requirement applies to only controlled substance chapter 152 convictions. This change would be consistent with other provisions of the law relative to drug convictions being a disqualification for possession of firearms but makes clear that a person convicted of a crime of violence would be disqualified from possession of firearms without regard to the actual sentence imposed.

In an era in which the watchword in government seems to be transparency there is a provision in the carry permit statute of 624.714 subdivision 12 that is contrary to that philosophy. That subdivision addresses hearings upon denial or revocation of a carry permit. I suggest repeal of one sentence in that subdivision. The sentence specifically to be removed states "The record of the hearing must be sealed." If the purpose of these hearings is for the public to hold sheriffs, permit holders or persons denied permits and judges accountable, that cannot be accomplished by keeping these records from public view. In addition as a practical matter it does not provide the public, law enforcement or the bench with any sort of guidelines and precedents for consistency because of the secret nature of these proceedings. Repeal of that one sentence would solve the transparency problem.

One change that nearly every member of the public already seems to believe is Minnesota law could make great strides to insure convicted felons do not have legal access to firearms under state law. Minn. Stat. 624.713 subdivision 1(10) (i) provides that a person may not lawfully possess firearms if the person has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. This is the same language that exists under federal law. On the face of it this would appear that anyone convicted of a felony crime could not lawfully possess firearms. I suspect 9 out of 10 Minnesota asked the question of whether or not felons can possess firearms under state law would give you a funny look and state of course not. However Minnesota Statutes do not match the general perception. The problem lies with Minn. Stat. 624.712, subdivision 10. That subdivision defines the term "crime punishable by imprisonment for a term exceeding one year." The last sentence of the statute goes on to provide a conviction that has been expunged, set aside or for which that person has been pardoned or had civil rights restored is not considered a disqualification under this clause. I propose repeal of that sentence. With that repeal Minnesota law would then provide a person who was been convicted of a felony crime could not lawfully possess firearms without going through a process for a legal set aside such as a pardon or other form of relief.

Changes in Minnesota expungement law that went into effect January 1, 2015, have created major administrative problems for law enforcement processing gun permits and for prosecutors who oppose petitions to restore firearm authority brought under Minn. Stat. 609.165, subd. 1d, which I shall discuss later in this letter. The change in the expungement law was a major expansion of who is eligible to have their records sealed and the Clean Slate Act expungement law has compounded this problem to some degree. Prior to the 2015 change a person with a criminal conviction was not eligible to have the records sealed and therefore if a person with a disqualifying gun offense such as domestic assault or a felony crime of violence petitioned for restoration of firearm authority or applied for a gun permit law enforcement was able to find those disqualifying convictions. Under the change in the expungement statute many people who have disqualifying criminal convictions such as domestic assault or felony drug crimes are now eligible to get their conviction sealed by court order and they are doing so in large numbers. When they get their convictions sealed they then wait 60 days for the sealing order to go into effect and then proceed to either petition to restore firearm authority or

apply for a gun permit. While the expungement statute under 609 A.03 subdivision 7a provides these records can be accessed by law enforcement without a court order for the purposes of initiating, furthering or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correctional services some courts have ruled that litigation of a gun restoration case or processing a gun permit application does not fall within that provision. This means that in running a criminal history record check the law enforcement agency at best will find out from BCA records there is a sealed file but neither BCA nor the courts will provide any information beyond that unless the agency through its legal counsel goes through the process of applying for an order to unseal the record. I am aware of many cases in which the application to unseal the record has been denied by the court. It would help ensure that permits are not issued to persons who are not entitled to possess a firearm if it were made clear that these records are accessible to law enforcement without a court order for the purpose of firearms background checks. Such a change should be relatively noncontroversial since Minn. Stat. 609A.03, subdivision 5 already recognizes that if an expungement exists for a crime of violence it does not restore firearm authority. The irony is that while the expungement does not restore firearm authority under current law it is difficult or impossible for law enforcement to find out about the disqualifying conviction.

The last area I bring to your attention is Minn. Stat. 609.165, subd. 1d. That statute allows persons convicted of a felony crime of violence to petition to restore firearm authority. For many years I handled all those cases for Washington County as an assistant county attorney. There are a couple of changes that should be enacted. The statute provides a petition must be presented to the court and logic dictates that it should be the court in which the disqualifying conviction took place. However that is not the practice and attorneys who specialize in this area often forum shop to find what they believe to be a more advantageous jurisdiction to bring these petitions in. I represented the State in opposing restoration petitions from Washington County convictions that were brought before over almost a dozen different County District Courts. This presents a significant disadvantage to the prosecutor's ability to represent the public interest. Records of the prosecution, of the courts, of community corrections and the community interest itself as well as any victim input would be best served by a requirement for a Minnesota disqualifying conviction be heard in the county in which the disqualification arose. This will not address out-of-state disqualifying crime of violence convictions but it will go a long way to level the playing field for public safety.

A second change to the statute is to lengthen the time a person must wait before they can apply after they have been denied a restoration petition. Current law provides that the petition may not be filed again for 3 years after the denial without good cause being shown. I had several cases in which like clockwork in a short period of time after the 3 years of a prior denial the individual was back petitioning once again and very little had changed other than the passage of 3 short years. In addition there is currently no waiting time after discharge from supervision to bring a petition and I had cases in which individuals petitioned to restore firearm authority literally within a few weeks of having been discharged from sentence for a felony crime of violence. The expungement statute I referenced earlier in this letter requires a person who is seeking to have a felony

conviction expunged must wait at least 5 years from discharge of supervision and I suggest that same 5 year waiting period should be applied to restoration petitions.

I hope this document has provided some useful ideas as you advance the interest of public safety and reasonable regulation of firearms. If I can be of further assistance please do not hesitate to call me.

Sincerely,

S/Richard Hodsdon