

Senate Judiciary Committee

Jennifer Horgan 271-3092

SB 12-FN, repealing the licensing requirement for carrying a concealed pistol or revolver.

Hearing Date: January 10, 2017

Time Opened: 9:00 a.m.

Time Closed: 11:30 a.m.

Members of the Committee Present: Senators Carson, Lasky, French, Gannon and Hennessey

Members of the Committee Absent: None

Bill Analysis : This bill: I. Increases the length of time for which a license to carry a pistol or revolver is valid. II. Allows a person to carry a loaded, concealed pistol or revolver without a license unless such person is otherwise prohibited by New Hampshire statute. III. Requires the director of the division of state police to negotiate and enter into agreements with other jurisdictions to recognize in those jurisdictions the validity of the license to carry issued in this state. IV. Repeals the requirement to obtain a license to carry a concealed pistol or revolver.

Sponsors :

Sen. Bradley
Sen. Carson
Sen. Guida
Sen. Morse
Sen. Ward
Rep. Pearl

Sen. Avar
Sen. Daniels
Sen. Gray
Sen. Reagan
Rep. Itse
Rep. Hinch

Sen. Birdsell
Sen. Gannon
Sen. Innis
Sen. Sanborn
Rep. Spillane
Rep. Harrington

Who supports the bill: Senator Carson; Senator Morse; Senator Bradley; Senator Gannon; Senator Guida; Senator Daniels; Senator Reagan; Senator Sanborn; Senator Ward; Senator Birdsell; Senator Avar; Senator Gray; Representative Turncotte; Representative Rice; Representative Hinch; Representative Harrington; Representative Pearl; Representative Janvrin; Representative Hoell; Representative Baldasaro; Representative Burt; Representative Valera; Representative Kuch; Representative Ferreira; Representative Itse; Hon. Dr. Joesph Hannon; Hon. Kenneth Krois Sr.; Christopher Stone (National Association for Gun Rights); Susan Olsen (Women's Defense League); Robert Clegg (Pro Gun NH); Alan Rice (NH Firearms Coalition/Gun Owners of America); Michelle Levell (Women's Defense League); Mark Hounsell; A.R. Lindner; Larry R Jones; John Hohenwarter (National Rifle Association); Dan McGuire (NH Liberty Alliance); Daryl W. Perry (Liberty Lobby LLC); Alvin See; Mitch Kopacz (Gun Owners of NH); Penny Dean; James Spillane; Josh Moore; Bill Alleman;

Who opposes the bill: Senator Woodburn; Senator Feltes; Senator Watters; Senator McGilvray; Representative Klee; Representative MacKay; Representative Horrigan; Representative Notting; Representative Newman; Representative Burton; Representative Oxenham; Representative Doherty; Representative Corwell; Representative Schmidt;

Representative Cahill; Representative Mangipudi; Representative Frost; Representative Norgden; Representative Lovejoy; Representative Alicea; Deborah Howard (Moms Demand Action); Robin Helrich; Tom Prasol (Everytown for Gun Safety); Sylvia Gale; Patrick Eggleston; Kathleen Berg; Daniel Tomlinson; Anne Lyezak; Ann Heaser; Faye O'Neill (Moms Demand Action); Kathleen Berry (Moms Demand Action); Laura Simoes (Episcopal Diocese of NH); Polly Campion; Maura Willing (Moms Demand Action); Liz Ann Platt (Moms Demand Action); Paula Zaike; L.H. Sathagill; Gloria Timmons; Sonia Prince (Moms Demand Action); Dena Romero; Cynthia Sweeney; Zandra Rice Hawkins (Granite State Progress); Linette Miles; Bonnie Wright; Julie Smiley; Timothy McKenna (Granite State Progressive Fund); Liz McConnell

Who is neutral on the bill: Representative Harvey

Summary of testimony presented in support:

Senator Bradley

- This bill allows for the exercise of the constitutional right to carry a pistol on a concealed basis without a separate permit unless an individual is otherwise prohibited under federal or NH statute.
- If an individual is a convicted felon, convicted of drug crimes, convicted of domestic violence, or adjudicated mental health issues, they are prohibited from having a gun.
- This bill also requires the state police to negotiate reciprocity agreements with other states and it changes the renewal date for the permit from 4 years to 5 years.
- Under the Second Amendment and the NH Constitution, individuals have the right to bear arms and defend themselves and their loved ones.
- This is common sense bill, as NH already allows people to open carry and many would prefer that those who choose to exercise that right do it on a concealed basis.
- Believes this bill will enhance public safety.
- Those who are likely to carry out a crime are not likely to be dissuaded by a misdemeanor punishment
- The people who will be impacted by this are not criminals, they are law abiding citizens.
- This right should not be abridged by unnecessary burdens.
- FBI statistics show that in NH for 2015, incidents of violent crime were 199.3 per 100,000 inhabitants.
- The US average is 383 per 100,000 and it increased 3% last year
- Maine has recently adopted similar legislation and Vermont has never required a concealed carry permit, and they are the #1 and #2 safest states in the country.
- In 2015 VT had 118 incidents of violent crime per 100,000 and ME had 130 per 100,000.
- Look no further than Chicago where they have some of the toughest gun laws and they have had over 700 people murdered.

Penny Dean

- Works as an attorney in NH, ME and DC.
- The average person cannot afford to litigate after a wrongful denial.
- Many people get scared off litigating a wrongful denial, as the court case will go in the paper and people worry about the reaction of employers.
- It is currently possible to open carry, but when doing so, no matter how you dress, someone is going to call the police, who will come and confront you.
- There is a minor amendment that should be made to the bill. On page 2, lines 11-12

it says “unless the applicant is prohibited by New Hampshire or federal statute from possessing a firearm” which is fine, but on page 2, line 6 it says “not otherwise prohibited by statute”

- Some judge could say that the legislature says what it means and if there are two different phrases, they then mean different things. The problem would then be, if someone lost their right in one state for reasons that are not a cause for loss of the right here, they could be prohibited from carrying here.
- Any member of the Senate who thinks this is a bad idea should try open carrying and see what happens.
- Senator Lasky asked if Ms. Dean believes that the reason this bill should pass is to save people from the embarrassment of open carrying.
 - This bill is about allowing people to exercise their constitutional rights and a lot of people cannot afford to litigate a wrongful denial. If you allow people to open carry, then why not allow them to concealed carry.
- Senator Lasky questioned if this law would allow someone to carry a concealed weapon without any obligations, such as education on safety and use.
 - That’s correct. NH doesn’t have those requirements now.
- Senator Lasky asked if there are four other states that similarly have no requirements.
 - That is close to the correct number. NH doesn’t have a training requirement now and it is not an issue
- Senator Gannon asked how much it costs on average to challenge a denial.
 - In general between \$10,000 and \$50,000 to do it correctly, but it is not just the money, as some people are concerned about losing their jobs.

Representative Baldasaro

- Nowhere in Article 2-A does it say that you have to ask the police to carry a weapon.
- Congress is working on a national ID, so that you can go from state to state with your firearm.
- This is giving the people of NH their rights back.
- A lot of people are uncomfortable with open carry.
- Senator Hennessey asked where in the Constitution it says individuals have the right to a concealed carry
 - Article 2-a gives the right to defend. What is the difference when it is open or concealed?

Former Senator Robert Clegg (Pro Gun NH)

- This permit is currently charging people for their constitutional rights
- Shared a personal story of his wife driving in his car for a medical emergency and his firearm was in the glove compartment, which made it so that she was illegally carrying concealed.
- The current system uses the word “suitable”, which is a subjective term.
- Even former Commissioner Sweeney said there is abuse with these denials.
- In terms of polls done regarding this issue, the question being asked is designed to elicit a certain response, and therefore polls must be considered in that context.
- Senator Lasky asked if it would be more reasonable to work on dealing with the ‘suitable’ portion of the law instead of giving the ability without discretion in perpetuity.
 - Putting anything in there where a person is making a decision about whether they like someone or not, will not work. Typically, it costs \$15,000 to litigate this and not many people have that kind of money. The state of NH is not

giving people permission to do this, as the federal Constitution does that. In terms of the shooting in Fort Lauderdale, someone thought it was suitable to give that individual back his gun after he reported hearing voices. In a domestic violence conviction or a mental issue, they take all of the individual's guns. The community is aware of these people. People who are committing crimes will get the weapons anyway.

- Senator Lasky pointed out that law enforcement is aware of these people of concern because of the permitting process.
 - An individual could their license one day and then two weeks later beat their wife, as they were suitable two weeks ago and now they are not. If I haven't done anything why treat me like a criminal. These forms are done in triplicate with one going to a list with the State, even though that is illegal.

Susan Olsen (Women's Defense League of NH) (provided written testimony)

- This language has passed both houses twice.
- NH's pistol license was enacted 1923 for the purpose of retaliating against certain trade union members and ethnic minorities who had participated in a strike against Amoskeag Mills, by making them felons and prohibited them from carrying or owning a pistol.
- It also carved out sanctions against law abiding citizens by requiring a license to carry a firearm discretely, as they had to be 'suitable' in order to receive the license.
- Today, there are more than 200 definitions for the term 'suitable' in NH. Any municipality, typically through the chief of police, may exercise wholly discretionary and subsection application of that terminology to any of its citizens.
- What 'suitable' means in one municipality may be very different than what it means in another.
- In 2013, the Hooksett chief of police was sued after denying a license to an applicant. The resulting 2014 court decision ruled that ordinary citizens cannot rely on the plain meaning of words printed and published by the Department of Safety. Three different iterations of the pistol license references the meaning of suitable person on the back, which people relied on until the 2014 court decision.
- Following the 2014 ruling, police chiefs are allowed to capriciously continue applying the language.
- Last year, former Commissioner Sweeny said that the 'suitable' term is only seldom abused. Is it okay if women or children or laws are seldom abused?
- Asking to end a century of profiling and discrimination.
- Senator Lasky pointed out that in RSA 159:6 the license to carry refers to a pistol or revolver. Expressed concern that, that language may not carry through to this legislation and other weapons would be allowed to be carried without any kind of permit concealed.
 - It is very difficult to conceal a rifle or shotgun. The concern is about this horribly discriminatory approach.
- Senator Lasky asked if we could not address the subjective-ness without giving blanket approval.
 - That would have been SB336 from last year, which was vetoed.
- Senator Gannon asked if a judge has ever found for vagueness.
 - Not aware of one in regards to firearms, but there is a case, Baker-Chaput v Cammett, that addressed the issue of standard-less administration and application of law.

Michelle Levell (Women's Defense League of NH) (provided written testimony)

- Shared a personal story of being denied a Pistol Revolver License renewal . The chief was the same one who had issued the original license and the reason given for denial, which was provided on day 12 of the 14 day process, was that they were unable to get suitable information from the reference even though their contact information was provided.
- Met with Sargent McQuaid from Dept. of Safety last week and he said that he get calls frequently from his chiefs asking what 'suitable' means.
- Senator Lasky asked if the police chief has to put the reason for denial in writing.
 - Yes, and the reason the chief gave was because he had not heard back from the references. The chief asked for the references' phone numbers and she provided how to contact them. The chief did not reach out to them until day 12 through a letter and by that point he had already issued the denial.
- Senator Lasky questioned on what date she received the denial.
 - Received it on day 13 of 14 and therefore knew the only option was to go to court.

Representative Harrington

- Runs NRA training classes and speaks with hundreds of NRA members. Has never heard one who does not support changing the current law.
- This law is kind of silly because the act of brushing a jacket back makes the firearm open and therefore legal.
- Someone who is willing to commit a felony or murder and is unlikely to be deterred about a misdemeanor charge for carrying concealed
- The State would never apply the 'suitable' standard to other types of constitutional rights.
- Works hard to ensure people know how to safely handle guns, but that shouldn't be a mandatory obligation, as there is no requirement of education to vote.
- Chicago is evidence that gun control does not reduce crime; it just makes criminals of innocent people.
- There are a lot of people who don't travel with their guns and don't need reciprocity.
- Went into a store and left a gun in the glove compartment while his wife was in the car, technically she was then concealed carrying illegally.

Alan Rice (NH Firearms Coalition and Gun Owners of America) (provided written testimony)

- Time after time, it has been proven that armed self-defense works.
- Florida is one of the few states that prohibits people from carrying a firearm in the airport before the checkpoint, but that did not stop the shooting in Fort Lauderdale.
- Depending on where you live in NH, this is not an easy license to get.
- People keep equating people who commit these mass shootings with law abiding organizations. Those shooters are not a reflection of our members.
- In NH, people get a license and take it upon themselves to take more advanced training classes.
- NH has better trained and more responsible gun owners.
- Believes there are ten constitutional carry states and there are others, but for residents only.
- NH would have heard if this caused a crisis in Maine.
- Our license is valid in 27 other states and expects that would continue if this law passes.

Representative Itse

- The perception of firearms has changed dramatically since the founding of NH, when

residents were required to carry.

- It is a virtual impossibility to carry open in the winter or if you are wearing a suit.
- Anyone in NH can buy a gun without any record being kept.
- Police should be more concerned when there is no record of a firearm in a home, as those people are more likely to have purchased a weapon surreptitiously.
- If someone were to conceal carry without a license and went into a school, they would still be in violation of the law. Only those with a license would be permitted, as it is now.
- Senator French asked if a person is denied a concealed carry permit, can they still open carry.
 - Believes so.
- Senator French asked if there are any age requirements.
 - For open carry, no, but for concealed carry there is some dispute.
- Senator Hennessey asked what the process for obtaining a permit is.
 - Ideally, when done properly, it is relatively easy. An individual submits the application to the police station with three references and within two weeks they should receive the permit or a denial. There is a former representative who sought to get an out of state permit, which has the same 14 day requirement, and it took 30 days; he is now suing the state because of it. There are also cases of those who rub law enforcement the wrong way and they are arbitrarily denied and have to take the municipality to court. A victim of domestic abuse still has to wait those 14 days to receive the permit.
- Senator Hennessey asked how many individuals are denied a permit.
 - Does not know. Knows of some high profile denials. Would think it is few and far between.

Christopher Stone (National Association for Gun Rights) (provided written testimony)

- This is about recognizing the constitutional right of every lawful person without paying a tax.
- There are dozens of other states who are considering passing this.
- In terms of training requirements, constitutional carry states have more people volunteer for training.
- There is a high threshold and desire within the gun owning community to understand their firearms.
- This does not allow criminals to carry firearms, it just restores our natural and constitutional rights.
- Senator Lasky asked if NH has a minimum age requirement.
 - Not 100% sure.
- Senator Lasky asked if this bill speaks to an age requirement.
 - This would be the same as the current law.

John Hohenwarter (National Rifle Association) (provided written testimony)

- This has already passed the Legislature a couple times
- The argument against concealed carry is that if it is instituted crime will go up, but there have been trends across the country of a reduction of crime.
- Maine has not had a problem instituting this and the number of licenses are still holding steady because people want reciprocity.
- The Maine Dept. of Public Safety was neutral on this issue.
- This is a self-defense issue and a practical one in terms of transportation.

Larry Jones (provided written testimony)

- If you reverse the engineer the current law, it is charging a fee to exercise a

constitutional right.

- The real reason for the existing statute comes from those with a rabid hatred for the Second Amendment, who believe that no one other than agents of the omnipotent government should have firearms.
- Loathers of liberty have openly declared their ultimate goal to take away all guns and the de facto registry of NH gun owners gives them hope that one day they can achieve that goal.

Mitch Kopacz (Gun Owners of NH)

- This does not give criminals rights, it simply returns constitutional rights.
- This takes away the ability of the police departments to say they don't like an individual so, that individual can't have a gun.
- This is simply allowing someone to put on a coat while hunting.
- Under the current law, a person has to unload their firearms when getting into a car.
- This is not going to affect crime one way or another.

Former Representative Joe Hannon (Gun Owners of NH)

- Is not being paid to lobby on this.
- A person is legally allowed to carry a firearm without a permit if it is unloaded, even if the bullets are right next to the firearm.
- This will improve public safety, so people do not have to load and unload their firearms while getting in and out of their cars.
- This is about revenue for a right.

Summary of testimony presented in opposition :

Representative Horrigan (provided written testimony)

- This bill makes a mockery of the law on guns, as it effectively eliminates the need for a permit.
- The punishment for not having a gun license is only \$10 for an in-state resident and \$100 for an out-of-state individual.
- Anyone is already allowed to open carry.
- There are a lot of people who are made uncomfortable by these weapons.
- NH's licensing program may not pass muster with other states and changing the permit process may prevent reciprocity.
- It is unclear what this law does to those who have a restraining order against them.
- The current licensing law is fine and 95% of applicants do get approved.
- Gun laws are not passed in a vacuum; VT has a low violence rate and therefore they cannot be compared to Chicago.

Representative Newman (provided written testimony)

- Not hostile or indifferent to the Second Amendment.
- The current 4 year concealed carry permit costs \$10, which is less than four Starbucks lattes.
- Spoke with individuals who are gun owners who have their concealed carry permit and they think the current process is reasonable.
- The fee process is not a huge amount for the State, but it does seem to generate about \$1million that goes to local law enforcement agencies.
- It is important to keep those revenue streams.
- Does not see the current law as an issue.
- Does not think this should be the highest priority for the legislature.

Representative Klee (provided written testimony)

- Is a victim of workplace and domestic violence.

- Is not opposed to anyone having a gun or concealed carrying.
- Feels more comfortable when seeing someone with a concealed weapon due to knowing they have been through a little more vetting with the permit process.

Deborah Howard (provided written testimony)

- A survey done in 2015 reported that 73% of NH residents want to keep the current concealed carry system and 71% of permit holders support the current process.
- The Second Amendment gives people the right to bear arms, but that right is not unlimited in type or manner.
- This permit is not an unreasonable burden
- This would strip law enforcement of the power to prevent those who are mentally ill or are a danger to themselves or the community from having a gun.
- This bill would prevent law enforcement from knowing whether or not an individual is allowed to carry.
- Law enforcement and most NH voters want to keep the current system.

Gloria Timmons

- Offered testimony on behalf of Sylvia Gale
 - Wearing a handgun under a coat or in a purse is a personal choice, not a right
 - Repealing this law will prevent denial of a concealed carry license to individuals who are a danger to society, such as someone who is a domestic abuser who has not been formally indicted.
 - Trusts NH law enforcement's judgment

Patrick Eggleston

- Thinks there should be permits required to carry concealed and licensing that allows for the exclusion of those who have committed felonies and those with mental illness.
- In regards to the Second Amendment, those who put the Constitution in place realized that changes would need to be made in the future. During that time, a rifle would take a minute or two to reload and now we are dealing with weapons that are firing multiple rounds per minute.
- Fewer guns do make for less crime.

Zandra Rice Hawkins (Granite State Progress) (provided written testimony)

- The presence of concealed guns increases the possibility of a situation escalating.
- There are 42 states that require a concealed carry permit. Nine of those have 'may issue' laws and the other 33 are 'shall issue'; of those 33, they are divided into two subsections one, where some provide no discretion at all and the rest provide some discretion, as NH does now.
- If an individual in a community is a known domestic abuser, but has not been convicted, this discretion allows for the prevention of that person concealed carrying.
- Other states have restrictions on where a concealed carry can take place, such as in bars or other establishments where alcohol is served, polling locations, and sporting events.
- Vermont has a ban on firearms in schools.
- This bill does not provide protections, but rather allows those with a violent track record to carry concealed.
- In NH, it is already easier to carry concealed than to get a driver's license.
- In a 2014 and 2016 case, the suitability requirement was upheld.
- Senator Hennessey asked what law enforcement thinks.
 - Law enforcement is opposed to this because currently, they can deny a known, non-convicted domestic abuser or those who are known to frequently get into bar fights. NH's permit gives local control to law enforcement in that

community who have a sense of who these people are. When a person is open carrying you have an idea of the situation you are getting into, but when they are concealed carrying you may not know. There has also been concern about the age requirements.

- Senator Lasky raised the concern over the ability of public or private institutions to be able to make policy excluding the carrying of guns on their property.
 - In looking at the concealed carrying laws in other states, 28 other states have firearms training or restrictions on where they can carry. NH certainly needs to look at gun free school zones, as we allow concealed carry in schools.

Dena Romero (provided written testimony)

- This issue and any issue in relation to firearms are incredibly polarized and there is little effort to find common ground.
- Do not want to take people's firearms away but, does not think it is asking too much to ensure people who are concealed carrying are level headed and not criminals.
- Former Justice Scalia said that like most rights, the Second Amendment is not unlimited.
- There have been a lot of references that the bad person is going to do what they want no matter what, but according to that line of reasoning we should not have any laws
- Do you honestly believe repealing this will enhance public safety? Do you really want more people walking around with a concealed weapon?

Anne Lyezak (provided written testimony)

- Is a mother, teacher, and widow of a murder victim of gun violence.
- Gun deaths have become so prevalent that we hardly notice them in the news anymore.
- Shouldn't we try to ensure a safer environment.
- What is going to happen when far more, less mature younger people can carry without a permit?
- NH requires a license for fishing, hunting, getting married, 25 different health professionals and 20 technical professionals.
- There are no hunters in this hearing complaining about this or the cost or increasing number of years, as they recognize that this is for the common good.
- The mission statement of the NH Office of Professional Licensure is "to safeguard the public health, safety, welfare, environment and the public trust of the citizens of the State of New Hampshire" and that should be the Legislature's mission as well.

Sonia Prince (provided written testimony)

- Things have changed dramatically in the past decade and everyone is working hard to keep their kids safe.
- Does not see how this will help to make anyone safer.
- In Connecticut, they put in a permit to purchase law and safety classes, which reduced violence in the state.
- WBUR news posted an article in 2014, based on statistics from 2012, which stated that many of the guns seized in Massachusetts came from other states, with the biggest suppliers being NH and ME.
- Florida has no suitability clause.
- \$10 is not a big price to pay to keep people safe.

Future Action: Ought to Pass

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Date Hearing Report completed: January 11, 2017