

HB 190: What It Is, What It Isn't

Lauren's Law DOES:

- **Encourage responsible gun stewardship.** All gun enthusiasts can agree that owning a gun is an important responsibility. The majority of gun-related crimes are *not* committed by legal gun owners, and this legislation does not stigmatize or endanger gun owners -- rather, it encourages responsibility and increases barriers to crime.
- **Provide a pathway to civil litigation for victims and families.** The victimization process is horrific for everyone involved. HB 190 provides an opportunity for, in rare cases, a level of closure and restitution that could not otherwise be sought.
- **Penalize the commission of felony crimes only.** Examples include murder, kidnapping, human trafficking, rape, robbery, aggravated assault, stalking, etc. Misdemeanor crimes are not included in the purview of HB 190.
- **Strengthen existing laws by providing an incentive for gun enthusiasts to obtain firearms through legal means.** HB 190 simply strengthens the pathway to civil litigation, rather than creating any new laws or criminal liability. This will act as a boon to existing Utah laws, by encouraging firearm owners to uphold the highest standards of personal responsibility. This also aids the work of law enforcement (see below.)
- **Provide positive economic value for the gun and sport shooting industry in Utah.** Incentivizing legal means of obtaining firearms provides an economic benefit for related industries in Utah, including dozens of locally-owned gun stores and shooting ranges.
- **Reinforce Utah values of individual responsibility.** It is a testament to the responsible gun owner culture in Utah that a minority of firearm-related crimes are felonies. However, one life lost is too many, and with no legislative response to the actions that led to Lauren McCluskey's death, there will be no consequence for future individuals faced with these choices. Leaders in the gun advocacy community willingly admit that gun enthusiasts and collectors regularly lend each other guns in informal settings. This law will ensure that negligence has consequences, without limiting legal methods of obtaining and using firearms.
- **Encourage cooperation with law enforcement through incentivizing reporting when a firearm is stolen.** At this time, there is no legal requirement for gun owners in Utah to report a lost or stolen firearm to law enforcement -- indeed, reporting requirements only exist in 11 U.S. states and the District of Columbia, and there is no federal requirement. While HB 190 does not establish reporting requirements as a legal precedent, it does encourage reporting when a firearm is stolen, which assists law enforcement with their work to crack down on illegal weapons trade.

Lauren's Law DOES NOT:

- **Penalize responsible gun owners.** No gun owner who monitors the status of their weapon with a basic degree of responsibility will ever be subject to civil liability under HB 190. Maintaining an awareness of your firearm's location and use is a basic tenet of responsible gun ownership.
- **Criminalize lending a gun.** HB 190 does not create penalties for the act of lending a weapon in itself -- it only becomes relevant if the weapon is used in the commission of a felony crime. Lending and borrowing weapons will still be fully legal under federal and state law.
- **Create any form of criminal liability.** This legislation does *not* create, or seek to create, any form of criminal penalty or liability for firearm owners. The intentional focus on civil liability is a reflection of the culture of individual responsibility in Utah.
- **Create any barriers or obstacles to legally obtaining a firearm.** HB 190 has no impact on the process of purchasing a firearm, nor on the legal requirements of storing and maintaining previously purchased firearms. The legislation does not include any form of storage or maintenance requirement.
- **Trigger immediate civil liability for firearm owners.** In this legislation, liability only exists if the injured party decides to pursue a lawsuit. Many victims and their immediate family will not seek damages in civil court, as the criminal justice system exists to detain and prosecute the individual directly responsible for the commission of the crime. It is anticipated that application of HB 190 will be rare and will be used almost exclusively in instances where the firearm custodian demonstrated clear negligence.
- **Infringe upon the right to keep and bear arms.** As mentioned above, this law has no bearing on the purchase, sale, carry, or storage of firearms, and it only relates to use and/or discharge as it applies to the commission of felony crimes. This legislation clearly fits into the language of "well-regulated" as it applies to any form of citizen militia.
- **Penalize acts of self-defense.** The text of HB 190 contains a specific exception that removes the option for civil liability if the weapon was used in an act of self-defense or otherwise justified commission of a felony crime.
- **Penalize or re-victimize crime victims.** It must not be forgotten that individuals whose firearms are stolen from them are victims of a crime, and do not deserve to be re-victimized. This is why HB 190 includes specific provisions for the reasonable report of firearm theft, in order to protect the firearm custodian from re-victimization by civil courts. If the firearm is reported stolen or is not reported because of circumstances outlined in the text of HB 190, the legislation will not apply regardless of the results of the discharge in question.

SCENARIOS:

1. A father lends his gun to his daughter for protection. She is legally allowed to own a firearm, but is saving up to buy one of her own, and has just moved into a new apartment where she feels unsafe. She is attacked in the home and uses the weapon in self-defense, killing her attacker. The family of the deceased wants to sue her father for civil damages.

DOES NOT APPLY. Although the individual who fired the weapon did not own it, the discharge was in an act of self-defense. Lauren's law would not provide any pathway to civil liability.

2. A 22-year old is heading to the range with his friends. His father lends him his new Glock 19. On the way there, the son's friend uses the firearm to shoot a road sign, and pieces of debris fly off and injure a pedestrian. The friend is cited for a misdemeanor, and the pedestrian wants to pursue civil damages.

DOES NOT APPLY. Destruction of a highway sign is a Class B misdemeanor, and destruction of a highway sign that results in personal injury is a Class A misdemeanor. HB190 only applies to felony crimes.

3. An individual steals a friend's firearm while they are visiting their home. Later that day, they use the firearm to rob a convenience store. The store owner wants to pursue civil damages against the firearm owner, although the owner did not realize the firearm had been stolen.

DOES NOT APPLY. The firearm owner is protected under two parts of Lauren's Law in this case. If the weapon was stored and secured with reasonable care, criminal liability is removed under Section 3(ii)(B) (line 39-40), and even if the firearm was *not* stored and secured with reasonable care, the owner is still protected under line 41, regarding reasonable turnaround time, as the completion of the crime within hours of the theft did not provide reasonable notification time for the owner.

4. Same as scenario 3, but the firearm custodian notices the weapon is missing within hours of it being taken. They report it to the police. The next day, the weapon is used in an aggravated assault. The victim wants to pursue civil charges against the owner.

DOES NOT APPLY. Since the theft was reported to the police prior to the discharge, the firearm custodian cannot be held civilly liable.

5. An individual lends his firearm to his friend, who says he wants to use it to teach his girlfriend how to shoot. Instead, he uses the weapon to murder an ex-girlfriend. Although the firearm owner was not aware of this, the perpetrator was a registered sex offender and therefore unable to legally own a gun. The

family of the victim is pressing criminal charges against the perpetrator, but also wants to seek civil damages from the firearm owner.

DOES APPLY. This is the exact scenario in which Lauren McCluskey was murdered, except in this case, the perpetrator is alive to face criminal charges. The firearm owner would still be civilly liable, as the law does not seek simply to hold gun owners accountable for the actions of others, but rather to create liability for the gun owner that is separate from that of the perpetrator. In this scenario, the gun owner should have taken several different routes to avoid civil liability, including but not limited to:

- Agreeing to lend the gun if they were allowed to accompany the friend and girlfriend to the shooting range.
- Inquiring further as to why the perpetrator needed to borrow a gun rather than purchasing their own or renting one from the range. Ranges in Utah regularly offer rental options for affordable prices, and gun purchases in Utah are often completed same-day. Even one more question could have made the process difficult enough to deter the perpetrator from attempting to borrow the weapon or could have revealed the perpetrator's status as a prohibited person.