

## *Judiciary*

### **HB 1148**

**Title:** *An act relating to unwitting possession of a firearm.*

**Brief Description:** *Establishing unwitting possession of a firearm as an affirmative defense.*

**Sponsors:** *Representatives Lantz (co-prime sponsor), Carrell (co-prime sponsor), O'Brien, Lovick, Ballasiotes, McDermott and Esser.*

#### **Brief Summary of Bill**

- *Explicitly removes knowledge as an element that the prosecution must prove in a case of unlawful possession of a firearm.*
- *Explicitly allows a defense of "unwitting possession" of a firearm, which the defendant must prove by a preponderance of the evidence.*

**Hearing Date:** *1/26/01*

**Staff:** *Bill Perry (786-7123).*

#### **Background:**

*The statutes defining many crimes contain explicit "state of mind" elements. States of mind in the criminal code include "intent," "knowledge," "recklessness," and "criminal negligence." A state of mind requirement in a crime, like any other element of the crime, must be proved by the prosecutor beyond a reasonable doubt. For instance, the definition of first-degree assault includes as an element that the defendant acted "with intent." Therefore, to obtain a conviction in a case of first-degree assault, the prosecution must prove, among other things, that the defendant intended to inflict great bodily harm on the victim.*

*Some crimes do not include an explicit state of mind element. For instance, the crime of unlawful possession of a firearm does not. The statute simply says that a person who is disqualified from possessing a firearm is guilty of the crime if he or she "has in his or her*

*possession" a firearm. The statute does not say that the defendant must "knowingly" possess the firearm to commit the crime. The statute is silent on the issue of the defendant's state of mind.*

*In a recent decision, State v. Anderson, the state supreme court considered a charge of unlawful possession of a firearm in a case in which the defendant claimed that he didn't know the firearm was under the seat of the car he was driving. The court held that the unlawful possession of a firearm statute must be construed to include an implicit knowledge requirement. That is, in order to convict a person of the crime, the prosecution must prove beyond a reasonable doubt that the defendant knew that he or she possessed the firearm.*

*In reaching its decision, the majority in Anderson applied an eight-part test to determine whether a state of mind element should be included in the crime. The factors considered include:*

- the background of common law history on state of mind requirements;*
- whether the crime was considered a "public welfare offense" by the Legislature;*
- whether a lack of state of mind requirement would lead to prosecution of "entirely innocent conduct;"*
- the level of harshness of the penalty for conviction;*
- the seriousness of the harm done to the public by the offense;*
- the relative difficulty for a defendant to ascertain the "true facts;"*
- whether the Legislature intended to relieve the prosecution of the burden of a difficult proof, even at the cost of convicting "innocent minded and blameless people;"*
- how many prosecutions are to be expected.*

*The dissent in Anderson argued that the clear intent of the Legislature was not to have a knowledge requirement and to allow, instead, for an affirmative defense in which the defendant bears the burden of showing by a preponderance of the evidence that he or she did not know of the firearm.*

**Summary of Bill:**

*Knowledge is explicitly not an element of the crime of unlawful possession of a firearm in the first or second degree. An affirmative defense of unwitting possession of a firearm is explicitly provided. A defendant must show by a preponderance of the evidence that his or her possession was unwitting in order to prevail on that defense.*

**Effective Date:** *Ninety days after adjournment of session in which bill is passed.*

**Appropriation:** *None.*

**Fiscal Note:** *Not Requested.*