
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2739 **Hearing Date:** June 11, 2024
Author: Maienschein
Version: February 15, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms*

HISTORY

Source: Author

Prior Legislation: AB 733 (Mike Fong, 2023), vetoed by the Governor
AB 200 (Committee on Budget, Ch. 58, Stats. of 2022)
AB 178 (Ting, Ch. 45, Stats. of 2022)
AB 1594 (Ting, Ch. 98, Stats. of 2022)
SB 129 (Skinner, Ch. 69, Stats. of 2021)

Support: California District Attorneys Association

Opposition: None known

Assembly Floor Vote: 63 - 0

PURPOSE

The purpose of this bill is to 1) require the surrender of a firearm that is used in the commission of a crime where the defendant is granted diversion if the crime would require surrender of the firearm if the defendant had been convicted, and to 2) provide that any loaded firearm unlawfully carried in public or unloaded firearm openly and unlawfully carried in public constitutes a public nuisance and must be surrendered to law enforcement, as specified.

Existing law makes concealed carry of an explosive substance other than fixed ammunition, a nuisance subject to surrender of a firearm. (Pen. Code, § 19190.)

Existing law makes the unlawful carrying of a concealed dirk or dagger a nuisance, subject to surrender to law enforcement. (Pen. Code, § 21390.)

Existing law makes the unlawful carrying of any switchblade knife a nuisance, subject to surrender to law enforcement. (Pen. Code, § 21590.)

Existing law provides that any weapon which is considered a nuisance under specified provisions of existing law shall be surrendered to the sheriff of a county, the chief of police or other head of a municipal police department of any city or city and county, the chief of police of any campus

of the University of California or the California State University, or the Commissioner of the Highway Patrol (CHP). (Pen. Code § 18000, subd. (a).)

Existing law specifies that, for the purposes of the requirement above, the Commissioner of the CHP shall receive only weapons that were confiscated by a member of the CHP. (Pen. Code § 18000, subd. (b).)

Existing law provides that a finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purpose of the surrender requirement above. (Pen. Code § 18000, subd. (c).)

Existing law states a judge in the superior court in which a misdemeanor is being prosecuted may, at the judge's discretion, and over the objection of a prosecuting attorney, offer diversion to a defendant. (Pen. Code, § 1001.95, subd. (a).)

Existing law states if the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant. (Pen. Code, § 1001.95, subd. (b).)

This bill provides that the surrender requirement above shall also apply to a weapon when a defendant is granted diversion for a crime for which the surrender requirement would apply if the defendant had been convicted of that crime.

Existing law provides that the judge before whom any person is tried for a violation of any provision of the Public Resources Code, as specified, or regulation adopted pursuant thereto, may, upon the conviction of the accused, order the forfeiture of any device or apparatus which is designed to and capable of injuring or killing any person or animal or capturing any animal and which was used in committing the offense charged. The department shall either sell or destroy any device or apparatus so forfeited. (Public Resources Code, § 5008.6)

Existing law makes it a crime to carry a loaded firearm on the person or in a vehicle while in any public place in a city, or any prohibited place in an unincorporated area of a county, punishable as a felony or a misdemeanor depending on specified circumstances. (Pen. Code, §25850, subs. (a), (c).)

Existing law makes it a crime to openly carry an unloaded handgun upon the person outside a vehicle while in or on any of the following:

- A public place or public street in an incorporated city or city and county.
- A public street in a prohibited area of an unincorporated area of a county or city and county.
- A public place in a prohibited area of a county or city and county. (Pen. Code, §26350, subd. (a)(1).)

Existing law makes it a crime to openly carry an unloaded handgun inside or on a vehicle, whether or not on the firearm is on their person, while in or on any of the following:

- A public place or public street in an incorporated city or city and county.
- A public street in a prohibited area of an unincorporated area of a county or city and county.
- A public place in a prohibited area of a county or city and county. (Pen. Code, §26350, subd. (a)(2).)

Existing law provides that the two open carry crimes above are punishable as a standard misdemeanor, except as specified. (Pen. Code, §26350, subd. (b).)

This bill provides that the unlawful carrying of any loaded firearm is a nuisance and renders the firearm subject to surrender to law enforcement and subsequent destruction, except with regard to the following firearms:

- Any firearm in the possession of the Department of Fish and Wildlife.
- Any firearm used in violation of the Fish and Game Code or any regulation related to the Fish and Game Code.
- Any firearm used to kill, injure, or capture a person or an animal, in violation of the Public Resource Code.

This bill provides that the unlawful open carrying of any handgun is a nuisance and renders the firearm subject to surrender to law enforcement and subsequent destruction, except with regard to the following firearms:

- Any firearm in the possession of the Department of Fish and Wildlife.
- Any firearm used in violation of the Fish and Game Code or any regulation related to the Fish and Game Code.
- Any firearm used to kill, injure, or capture a person or an animal, in violation of the Public Resource Code.

COMMENTS

1. Need for This Bill

According to the Author:

Longstanding California law has established a precedent- if a gun is carried illegally, that gun cannot remain on the streets. The law states that, if a person carries a concealed firearm illegally, that firearm must be surrendered and destroyed. However current law does not apply equally to other violations such as carrying a loaded firearm in public or openly carrying an unloaded handgun in public. AB 2739 seeks to treat all illegally carried firearms the same way and require all illegal firearms to be surrendered and destroyed. This bill will help increase public safety by cracking

down on irresponsible gun ownership and removing illegally carried weapons from our streets.

2. Firearms as Public Nuisance

Under existing California law, in a criminal setting, a “public nuisance” is defined as “anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway.”¹ In order to be guilty of the crime of creating a public nuisance, it must be proven that the individual maintained or effectuated the public nuisance or willfully failed to perform a legal duty to remove a public nuisance.² However, certain conduct constituting a public nuisance might be specifically prescribed via statute, as is the case with the possession of various weapons, including firearms under specified circumstances. For example, existing law makes it a crime to carry a concealed firearm on your person or in a vehicle (unless you have a valid concealed carry permit). A separate, related provision of existing law specifies that the carrying of a concealed firearm in violation of that law is a public nuisance and renders the firearm in question subject to surrender to law enforcement and subsequent destruction (see Comment 3).³

Existing law also proscribes other conduct related to the public carrying of firearms, including openly carrying an unloaded handgun on the person and carrying a loaded firearm on the person or in a vehicle (again, absent a valid concealed carry permit).⁴ According to the Author, existing law regarding firearms as a public nuisance should apply equally to all violations related to the unlawful public carrying of firearms. Thus, this bill provides that both the unlawful carrying of any loaded firearm and the unlawful open carrying of any unloaded handgun constitute a public nuisance and makes those firearms subject to surrender and destruction upon conviction for the underlying offense. However, it provides exemptions for specified firearms in the possession of the Department of Fish and Wildlife, a firearm used in violation of the Fish and Game Code and a firearm forfeited to the Department of State Parks, as specified.

3. Surrender of Firearms upon Conviction for Specified Offenses

Existing law requires that all firearms that are deemed to be a nuisance under existing law, including those that are deemed to be a nuisance only after a conviction, must be surrendered to law enforcement.⁵ Under prior law, persons convicted of a felony were automatically required to surrender all weapons to law enforcement following their conviction. However, the Legislature modified the statute in 2003 to provide an alternative to automatic surrender, namely, that “[a] firearm is not a nuisance pursuant to this section if the firearm owner disposes of the firearm pursuant to Section 29810,” which specifies the procedure for the relinquishment of a firearm

¹ Penal Code § 370

² Penal Code §372

³ Existing law specifies that several other types of weapons, including certain firearms under certain circumstances, constitute public nuisances. For a nearly exhaustive list, see Penal Code § 18010, which authorizes the Attorney General, a district attorney, or city attorney to bring an action to enjoin specified conduct related to these weapons; another provision, §29300, deems most firearms illegally owned or possessed by juveniles and prohibited persons as a nuisance and subject to surrender and destruction.

⁴ Penal Code §§ 26350, 25850.

⁵ Penal Code §18000

upon conviction of a felony or specified misdemeanor offense.⁶ Existing law also provides that an officer to whom a weapon is surrendered must destroy that weapon unless retention of that weapon is otherwise requested by a court or district attorney or required under existing law.⁷ However, because firearms are private property, they are afforded certain due process safeguards:

The application [existing law] providing for the confiscation and destruction of firearms used in the commission of a crime, depends on some determination that firearms were actually so used. The nature of the crime charged, or of sentence enhancement charges, must raise the issue of firearm use so that the defendant has a forum in which to litigate it, or to admit it in a guilty plea, in order for the firearm to be properly declared a nuisance under [existing law] [...] Without a hearing or other forum in which it could be determined that the weapons were in fact used in the commission of the crime, their confiscation and destruction would be an unconstitutional deprivation of property without due process of law.⁸

This bill makes firearms that are deemed a nuisance due to specified public carry prohibitions subject to the surrender and destruction requirements in existing law described above.

4. Misdemeanor Diversion

Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

Diversion programs may be pre-plea or post-plea. Pre-plea programs allow a defendant to participate in the program without admitting guilt. In post-plea programs, the defendant must first admit guilt before participating in the program. The main difference between the two types of diversion is that in a pre-plea program, if the defendant does not successfully complete the program, criminal proceedings resume and the defendant has the option to plead guilty or pursue a defense against their case. In a post-plea diversion program, if a defendant does not successfully complete the program, the defendant having already plead guilty, would be sentenced.

Court-initiated misdemeanor diversion was enacted in 2020 to reduce the number of people convicted of low level charges that may have catastrophic societal consequences and reduce court costs.⁹ This diversion program authorizes a judge to divert a misdemeanor defendant, over the objection of the prosecution, except in cases of stalking, domestic violence and any offense requiring sex offender registration. The judge has broad authority to order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the specific situation, however the case may not be diverted for a period exceeding 24 months.

⁶ Penal Code §29300, subd. (c)

⁷ Penal Code §18005.

⁸ (*People v. Beck* (1994) 25 Cal.App.4th 1095, 1103.)

⁹ AB 3234 (Ting, Ch. 334, Stats. of 2020)

Similar to other existing diversion programs, if a defendant successfully completes diversion, the charges would be dismissed; if not, the judge is to hold a hearing to determine whether the defendant has not complied with the terms and conditions of diversion and whether the criminal proceedings should be reinstated. Unlike some of the other existing pre-plea diversion programs such as mental health diversion or military diversion, court-initiated diversion contains no statutory requirements for the defendant to satisfy in order to be eligible other than the crimes that are specifically excluded.¹⁰

According to the Author, a loophole in existing law exists for defendants granted misdemeanor diversion in that firearms carried illegally pursuant to Penal Code §25400 must be surrendered and destroyed, but if a defendant is granted diversion for that offense, no mechanism exists for the court to order the illegally carried firearm to be surrendered, since a conviction has not been entered. Accordingly, this bill provides that the firearm surrender and destruction requirements described above also apply to a weapon when the defendant is granted court-initiated diversion for a crime for which the weapon would be subject to surrender and destruction if the defendant were convicted.

5. Argument in Support

According to the City of San Diego:

California law includes inconsistent restrictions on carrying weapons in public without a valid permit. Specifically, current law deems carrying a concealed firearm a nuisance, requiring the illegally carried firearm to be surrendered and destroyed. However, the same rules do not exist for loaded or unloaded firearms carried in public in violation of the law. AB 2739 will close this loophole and remove guns carried illegally from our streets.

A recently published report provides a sobering profile of gun violence in the San Diego region. Although San Diego ranked lower in gun related deaths per capita than the state and national averages, the report, conducted by Health Assessment and Research for Communities, noted that from 2017 through 2022, there have been 1,310 deaths by firearms in San Diego County, often either due to homicide or suicide. San Diego has taken a leadership role, statewide and nationally in reducing gun violence through programs like the Gun Violence Prevention Unit, organized by our City Attorney and supported by the San Diego Police Department. Additionally, San Diego enacted one of the first “ghost gun” bans in the nation and continues to sponsor and support legislation that reduces the likelihood of gun violence.

San Diego is a leader in gun violence prevention, but more must be done to protect our communities and save lives. AB 2739 is an important measure to keep guns out of the hands of those who clearly should not have them.

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¹⁰ Penal Code § 1001.95, et. seq.