
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2842 **Hearing Date:** June 11, 2024
Author: Papan
Version: May 30, 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
SB 1061 (Monning, 2020), not heard in Senate Public Safety
AB 232 (Ting, 2014), not heard in Assembly Public Safety
AB 538 (Pan), Ch. 738, Stats. of 2013

Support: Peace Officers Research Association of California (PORAC)

Opposition: None known

Assembly Floor Vote: 65 - 0

PURPOSE

The purpose of this bill is to require law enforcement agencies that contract with a third party for the destruction of firearms to ensure that such contracts prohibit the sale of those firearms or any part or attachment thereof.

Existing law states that when a firearm is taken into custody by a law enforcement officer, the officer shall issue the person who possessed the firearm a receipt describing the firearm, as specified, and listing any serial number or other identification on the firearm. (Pen. Code, §33800.)

Existing law establishes a detailed process governing the return or transfer of a firearm in the custody of a court or law enforcement agency. ((Pen. Code, §§ 33850 – 33895.)

Existing law provides that no law enforcement agency or court shall be required to retain any firearm or related device for more than 180 days after the owner has been notified that the property has been made available for return, and stipulates that an unclaimed firearm may be disposed of after the 180-day period. (Pen. Code, §§ 33875.)

Existing law provides that when any firearm is in the possession of any officer of the state, or of a county, city, or city and county, or of any campus of the University of California or the California State University, and the firearm is an exhibit filed in any criminal action or

proceeding which is no longer needed or is unclaimed or abandoned property, which has been in the possession of the officer for at least 180 days, the firearm shall be sold, or destroyed, as provided. (Pen. Code § 34000, subd. (a).)

Existing law provides that any law enforcement agency that has custody of any firearms or any parts of firearms which are subject to destruction may, in lieu of destroying the weapons, retain and use any of them as may be useful in carrying out the official duties of the agency, including releasing weapons to another law enforcement agency for a similar use or turning over to the criminalistics laboratory of the DOJ or other local law enforcement entity, but must destroy the weapon when it is no longer needed by the agency for use in carrying out its official duties. (Pen. Code § 34005, subds. (b), (c).)

Existing law authorizes a law enforcement agency that has custody of any firearms or any parts of firearms that are subject to destruction to instead obtain a court order directing the release of the firearm to the sheriff, who must record the firearm in the Automated Firearms System (AFS), and may in turn loan out the firearm to the basic training academy so that the firearms may be used for educational purposes. (Pen. Code § 34005, subd. (d).)

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 an officer to whom a weapon is surrendered, except upon receiving a certificate, as specified, stating that the retention of the weapon is necessary or proper to the ends of justice, shall destroy the weapon, and, if applicable, submit proof of its destruction to the court. (Pen. Code § 18005, subd. (a).)

Existing law specifies that if any weapon has been stolen and is thereafter recovered, or is used in a manner as to constitute a nuisance without the prior knowledge of its lawful owner that it would be so used, it shall not be destroyed per the above but rather restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with specified provisions of existing law governing the return or transfer of a firearm in the custody or control of a court or law enforcement agency. (Pen. Code § 18005, subd. (b).)

Existing law specifies that no weapon shall be destroyed per the requirement above unless reasonable notice is given to its lawful owner, if the lawful owner's identity and address can be reasonably ascertained. (Pen. Code § 18005, subd. (c).)

Existing law authorizes the Attorney General, a district attorney, or a city attorney to bring an action to enjoin the manufacture, importation of, keeping for sale of, offering or exposing for sale, giving, lending, or possession of specified weapons, including various types of firearms and firearm precursor parts, and provides that those weapons shall be subject to confiscation and

summary destruction, in the same manner specified in §18005, whenever they are found within the state. (Pen. Code § 18010.)

This bill provides that if a law enforcement agency contracts with a third party for the destruction of firearms or other weapons pursuant existing law, the agency shall ensure that any such contract explicitly prohibits the sale of any firearm or weapon, or any part or attachment thereof.

This bill provides that the above provision is not intended to prohibit the recycling, or sale for the purpose of recycling, of any scrap metal or other material resulting from the destruction of a firearm or other weapon.

Existing law generally prohibits the sale, lease or transfer of firearms unless the person has been issued a license by the California Department of Justice, and establishes various exceptions to this prohibition. (Pen. Code §§26500 – 26625.)

Existing law provides that a license to sell firearms is subject to forfeiture for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Pen. Code §§26800 – 26915.)

Existing law provides that the requirement that the sale, delivery, lease or transfer of a firearm be conducted by a licensed firearms dealer does not apply to the sale, delivery or transfer of a firearm to an authorized representative of a city, city and county, county, or state government, or of the federal government, where the firearm is being acquired for the governmental entity, and the entity is acquiring the firearm as part of an authorized, voluntary program in which the entity is buying or receiving firearms from private individuals (i.e. a gun buyback program). (Pen. Code § 26576, subd. (a).)

Existing law provides that any weapons acquired pursuant to a program described above shall be destroyed pursuant to existing provisions regarding the destruction of firearms. (Pen. Code § 26576, subd. (b).)

This bill provides that a firearm acquired pursuant to a program described above may, in lieu of destruction, be donated to a public or private nonprofit historical society, museum, or institutional collection, subject to specified provisions of existing law related to firearm transfers to such entities, including that the firearm be deactivated or rendered inoperable before delivery.

This bill defines “deactivated or rendered inoperable” as meaning “to render the firearm permanently inoperable by means including, without limitation, welding of the chamber, cutting of the barrel, chamber or breech, plugging the barrel, or welding the bolt to the chamber.

COMMENTS

1. Need for This Bill

According to the Author:

This bill seeks to close the loophole that allows confiscated weapons to be resurrected in ghost form. There is a gap in our system that has enhanced the proliferation of untraceable firearms or "ghost guns" that allow individuals to bypass

background checks and evade accountability. Law enforcement agencies use 3rd party gun destruction companies to dispose of confiscated weapons. The problem is that these 3rd party companies only destroy a part of the firearms. They resell leftover gun parts as “kits”. Purchasers of the gun "kits" then use 3-D printers to re-create the destroyed piece and combine it with the kits to create ghost guns.

The prevalence of ghost guns are threat to public safety. AB 2842 stops the 3rd party companies from being able to resell gun parts, thereby stopping the supply of parts to create ghost guns.

2. Destruction of Firearms by Law Enforcement Generally

Law enforcement agencies acquire firearms from the communities they serve for a host of reasons and in a variety of ways; they are seized in enforcement actions, relinquished or surrendered by individuals prohibited from possessing them, purchased in gun buyback programs, and sometimes found abandoned. Many jurisdictions, including California (see below), have requirements that firearms acquired in these various ways be destroyed if or when they cannot be returned to a legal owner. However, a recent investigation from the New York Times revealed that in several of these jurisdictions, the guns are not in fact destroyed so as to render them completely inoperable, but rather sent to companies that crush or cut a single piece of the gun that constitutes the “firearm” under federal law and sells the remaining parts as a kit. These kits, which often include barrels, triggers, grips, slides, stocks and springs, can be purchased by individuals across the country and rebuilt into operable firearms. Thus, a firearm seized by a police officer in California and sent to one of these companies for disposal may end up providing parts to a ghost gun built in Florida.¹

These companies operate by taking advantage of a loophole in federal law related to the definition of a “firearm.” Specifically, the federal definition of “firearm” includes the frame or receiver of a gun that provides housing or structure for the rest of the components, and under federal law, every legal frame or receiver must have a unique serial number.² The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) provides guidance depicting acceptable methods for smelting, shredding or crushing the firearm receiver so as to render it legally “destroyed,” and specifies that any method of destruction must render the firearm so that it is not restorable to firing condition and is otherwise reduced to scrap.³ In other words, by destroying the serialized frame or receiver of a firearm but salvaging the remainder of the components, the companies investigated in the New York Times report are technically in compliance with the letter, if not the spirit, of federal law.

The Times investigation also reviewed a contract between a Nevada firearm destruction company called LSC Destruction and Riverside County, California, which stipulated that LSC may sell gun parts to distributors but not to the civilian population. But as the Times notes, distributors often sell to licensed dealers, who sell to the public. LSC’s website also featured a testimonial from an unnamed police official – possibly not linked to Riverside County – saying

¹ “The Guns Were Said to Be Destroyed. Instead, They Were Reborn.” *New York Times*. 10 December 2023. [The Guns Were Said to Be Destroyed. Instead, They Were Reborn. - The New York Times \(nytimes.com\)](https://www.nytimes.com/2023/12/10/us/politics/gun-destruction-kits.html)

² See [27 CFR § 478.92](https://www.ecfr.gov/current/title-27-chapter-I-subchapter-B-section-478.92) for the regulations regarding serialization.

³ [How to Properly Destroy Firearms | Bureau of Alcohol, Tobacco, Firearms and Explosives \(atf.gov\)](https://www.atf.gov/firearms/how-to-properly-destroy-firearms)

that “gun buybacks used to be a big headache before contracting with LSC, but now the politicians are happy, and I’m happy too.”

3. Existing California Law Regarding Destruction of Firearms and Effect of This Bill

As mentioned above, law enforcement agencies routinely acquire and retain possession of firearms in the course of their investigatory duties, and must follow a specific process for their disposal set forth in California law. Generally, law enforcement agencies are not required to retain possession of seized or recovered firearms, ammunition feeding devices, or ammunition for more than 180 days after the owner (if one can be identified) has been notified, and may dispose of the firearm, feeding device, or ammunition once the 180-day period has expired.⁴ Moreover, existing law requires that firearms in the possession of law enforcement for at least 180 days and that were exhibits in criminal actions but no longer needed, or were unclaimed or abandoned, must be destroyed. Although exemptions exist for use of those weapons by law enforcement agencies for a limited time to carry out the duties of the agency, and for specified training purposes, the firearms must be destroyed when they are no longer needed.⁵ Additionally, existing law requires that specified prohibited firearms and crime guns (i.e. guns defined as a “nuisance”) be surrendered to a law enforcement agency, which in turn must destroy the weapon unless a court certifies that retention of the weapon is “necessary or proper to the end of justice.”⁶

This bill requires a law enforcement agency that contracts with a third party for the destruction of firearms or other weapons, to ensure that said contract explicitly prohibits the sale of any firearm or weapon, or any part or attachment thereof. The bill clarifies that it is not intended to prohibit the recycling, or sale for the purpose of recycling, of any scrap metal or other material resulting from the destruction of a firearm or other weapon. Additionally, the bill provides that guns acquired by law enforcement pursuant to a gun buyback program are not required to be destroyed if they are instead donated to a public or nonprofit historical society, museum, or institutional collection, subject to specified provisions of existing law related to firearm transfers to such entities, provided that the firearms are rendered permanently inoperable prior to delivery.

4. Related Legislation

SB 1019 (Blakespear) also relates to the destruction of firearms by law enforcement and at the time this analysis was finalized was pending referral in the Assembly. While this bill and SB 1019 seek to tackle the same problem, they take different approaches. Specifically, SB 1019 requires law enforcement agencies to develop and maintain a written policy on the destruction of firearms including policies for identifying firearms and other weapons required to be destroyed, keeping records of those firearms and other weapons, including entry into the DOJ’s Automated Firearms System, and the destruction and disposal of those firearms and other weapons. In addition, SB 1019, for the purposes of the destruction requirements in existing law, defines “destroy” as destroying a firearm in its entirety by smelting, shredding, crushing, or cutting, including all parts, such as the frame or receiver, barrel, bolt, and grip of a firearm, and any attachments.” Although they take different approaches to address a similar problem, the bills are

⁴ Penal Code § 33875; The 9th Circuit Court of Appeals ruled in *Wright v. Beck* 981 F.3d 719 (2020) that law enforcement may not destroy seized firearms without providing notice to the owner. [Wright v. Beck, No. 19-55084 \(9th Cir. 2020\) :: Justia](#)

⁵ Penal Code §§34000, 34005.

⁶ Penal Code §§18000, 18005(a).

not inconsistent – SB 1019 effectively prevents the sale of a firearm by a contracted third-party destruction company via its definition of the term “destroy,” but does not explicitly prohibit said sale. Moreover, SB 1019 does not expressly specify the scrap or other material resulting from the destruction of a firearm may not be sold or recycled, whereas this bill does include such a provision. Thus, the enactment of both measures is unlikely to create a conflict in the law, though chaptering amendments will need to be adopted at some point prior to signage, should they both reach the Governor’s desk.

5. Prior Legislation

Last year, AB 733 (Mike Fong, 2023) would have prohibited any state or local government agency or department from selling any firearm, ammunition or body armor, with limited exceptions, but was vetoed by the Governor. The bill was introduced in part in response to a situation in Los Angeles County in the wake of the mass shooting in Monterey Park, CA. Shortly after the shooting in Monterey Park, L.A. County officials became aware that the L.A. County Probation Department was preparing to sell firearms from their inventory to the public, and the county’s board of supervisors passed a last minute motion to halt the sale of surplus firearms in an online auction.⁷ Although the L.A. County Probation Department ultimately cancelled the auction, the incident raised many questions about the prudence of the state adding firearms back into general circulation.⁸ Governor Newsom vetoed AB 733 citing cost concerns:

While I applaud the author for efforts to curb gun violence, I am concerned about the cost implications of this legislation. Law enforcement agencies, both local and state, oftentimes sell their firearms to a dealer when they upgrade. I am concerned that this bill, which limits these sales to a dealer who contractually agrees to resell only to a law enforcement agency, will restrict the ability to trade in these firearms and will cost law enforcement agencies across the state millions of dollars at a time when resources are limited, and staffing is low.

-- END --

⁷ “LA County supervisors move to stop ‘insensitive’ sale of guns by Probation Department.” LA Daily News. 25 January 2023. [LA County supervisors move to stop ‘insensitive’ sale of guns by Probation Department – Daily News](#)

⁸ “Editorial: What were L.A. probation officials thinking? Public agencies should not profit from firearm sales.” LA Times. 24 January 2023. <https://www.latimes.com/opinion/story/2023-01-24/l-a-probation-firearm-auction-semiautomatic>