
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2518 **Hearing Date:** June 18, 2024
Author: Davies
Version: February 13, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: prohibited persons*

HISTORY

Source: Author

Prior Legislation: AB 178 (Ting, Ch. 45, Stats. of 2022)
SB 129 (Skinner, Ch. 69, Stats. of 2021)
SB 73 (Wiener, Ch. 537, Stats. of 2021)
SB 94 (Committee on Public Safety, Ch. 25, Stats. of 2019)
AB 809 (Feuer, Ch. 745, Stats. of 2011)

Support: Arcadia Police Officers' Association; Burbank Police Officers' Association; California Coalition of School Safety Professionals; California District Attorneys Association; California Narcotic Officers' Association; California Police Chiefs Association; California Reserve Peace Officers Association; California State Sheriffs' Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Deputy Sheriffs' Association of Monterey County; Fullerton Police Officers' Association; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Association; Novato Police Officers Association; Palos Verdes Police Officers Association; Peace Officers Research Association of California (PORAC); Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; Santa Ana Police Officers Association; Upland Police Officers Association

Opposition: ACLU California Action; California Attorneys for Criminal Justice; California Public Defenders Association

Assembly Floor Vote: 61 - 0

PURPOSE

The purpose of this bill is to prohibit a juvenile who, on or after January 1, 2014, is adjudged a ward of the juvenile court due to the commission of murder, attempted murder or voluntary manslaughter, from subsequently owning or possessing a firearm for life. The bill also exempts records relating to that firearm prohibition from record destruction requirements.

Existing law prohibits any person who has been convicted of a felony from owning, purchasing, receiving or possessing a firearm, a violation of which is punishable as a felony. (Penal Code, § 29800.)

Existing law provides that persons convicted of specified serious or violent misdemeanors are prohibited from possession of firearms for a period of 10 years and that a violation of that prohibition is punishable as a misdemeanor with imprisonment up to one year or as a state prison felony. (Penal Code, § 29805 (a).)

Existing law includes within the list of misdemeanors triggering a 10 year firearm prohibition the crimes of stalking, sexual battery, assault with a deadly weapon, battery with serious bodily injury, brandishing a firearm of deadly weapon, assault with force likely to produce great bodily injury, battery on a peace officer, corporal injury to spouse, cohabitant or fellow parent, child abuse, elder abuse, unsafe storage of a firearm, and threats of bodily injury or death, among other misdemeanors. (Penal Code, § 29805 (a).)

Existing law requires any person subject to a firearm prohibition based on a conviction of a felony or specified misdemeanor to relinquish any firearms they own, possess or have under their control or custody within 48 hours if the defendant is out of custody or within 14 days if the defendant is in custody. (Penal Code, § 29810 (a).)

Existing law provides that persons with the knowledge that they have an outstanding warrant for any of the specified serious or violent misdemeanors that result in a 10-year prohibition are guilty of a crime if they possess a firearm while the warrant is outstanding. A violation is punishable as a misdemeanor, with imprisonment up to one year, or as a state prison felony. (Penal Code, §§ 29805 (a), 29851.)

Existing law prohibits a person that is subject to specified restraining orders related to domestic violence from possessing or owning a firearm and punishes a violation of the prohibition as a misdemeanor with a maximum sentence of one year in the county jail. (Penal Code, § 29825.)

Existing law contains an exception to the 10-year firearm ban based on a conviction of specified misdemeanors for individuals who took the firearm from someone committing a crime against them and delivered it to law enforcement. (Penal Code, § 29850.)

Existing law authorizes specified peace officers who have been convicted of a specified misdemeanor subject to a 10-year firearm prohibition to petition for relief. In deciding the petition, a court must consider the petitioner's continued employment, the interest of justice, any relevant evidence, whether the petitioner is otherwise not prohibited, and the totality of the circumstances. (Pen. Code, § 29855.)

Existing law permits any person convicted of a specified misdemeanor, before that misdemeanor was added to the list of misdemeanors triggering a 10-year prohibition, to petition for relief. In deciding the petition, a court must ensure the petitioner is not otherwise prohibited, and may consider the interest of justice, any relevant evidence, and the totality of the circumstances. (Pen. Code, § 29860.)

Existing law requires the Attorney General to establish and maintain an online database to be known as the Prohibited Armed Persons File; the purpose of which is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1996, as indicated by a

record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Penal Code § 30000 (a).)

Existing law provides that a juvenile who was convicted of or alleged to have committed specified offenses and is subsequently adjudged a ward of the juvenile court shall not own, or have in possession or under custody or control, a firearm until the person is 30 years of age or older, a violation of which is punishable as a misdemeanor. (Penal Code § 29820.)

Existing law provides that, except as otherwise provided, any minor who is between 12 years of age and 17 years of age, inclusive, when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court. (Welf. and Institutions Code, §602, subd. (a).)

Existing law provides that any minor who is under 12 years of age when they are alleged to have committed specified serious and violent offenses is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court. (Welf. and Institutions Code, §602, subd. (b).)

Existing law provides that if a person who has been alleged or found to be a ward of the juvenile court satisfactorily completes one of several specified probation terms, the court shall order the juvenile wardship petition dismissed, and shall order sealed all records pertaining to the dismissed petition, as specified. (Welf. and Institutions Code, §786, subd. (a).)

Existing law provides that in the situation above, the court shall direct the appropriate agency or official to seal its records and specify a date by which the sealed records shall be destroyed. If a record contains a sustained petition rendering the person ineligible to own or possess a firearm until 30 years of age, then the date the sealed records shall be destroyed is the date upon which the person turns 33 years of age. (*Ibid.*)

This bill provides that a person who, on or after January 1, 2014, is adjudged a ward of the juvenile court because the person committed murder, attempted murder, or voluntary manslaughter shall not own, possess or have custody or control of a firearm.

This bill provides that if a record related to a juvenile wardship petition contains a sustained petition rendering the person ineligible to own or possess a firearm pursuant to the prohibition above, then the sealed records shall not be destroyed.

COMMENTS

1. Need for This Bill

According to the Author:

Gun Violence is an epidemic that has caused turmoil for both communities and law enforcement agencies for far too long. California has some of the toughest firearm laws on the books in the nation, but common-sense reforms are still needed. We need to ensure the rights of law-abiding

firearm owners are protected while going after the convicted criminals or individuals who use a gun in a commission of a crime.

2. Juvenile Wards of the Court

In California, if a juvenile court finds that a minor has violated any law or ordinance, or engaged in other specified conduct, it may adjudge the minor to be a ward of the court, which means that the court assumes primary responsibility for the control and treatment of a minor, and may limit control of the minor by their parents. In 2018, the Legislature enacted SB 439 (Mitchell, Chapter 1006, Statutes of 2018) which established 12 years of age as the minimum age for which the juvenile court has jurisdiction and may adjudge a person a ward of the court. However, existing law provides an exception to this general minimum age of jurisdiction for a minor under 12 years of age who is alleged to have committed any of the following offenses is within the jurisdiction of the juvenile court: murder; rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; and sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.¹ The purpose of SB 439 was to keep young children out of the juvenile justice system and to employ developmentally appropriate, non-criminal responses to their behavior.

Juvenile courts have an array of options with regard to managing wards of the court, including placing the juvenile on one of several types of probation, placement away from home, and even committing the juvenile to the Office of Youth and Community Restoration (formerly DJJ). A wardship may last for a specified period of probation or until further order of the court. Probation for juveniles who are wards of the court may involve unsupervised probation, where the minor remains at home but must abide by specified conditions, or, if the ward has committed specified offenses, supervised probation involving visitation by a probation officer.

Existing law contains several provisions governing the circumstances in which a person may seek to seal juvenile records, meaning they cannot be accessed again without a court order. These statutes are often unwieldy and apply to several different circumstances depending on the nature of the underlying charges, whether probation or diversion was granted, and whether the juvenile completed probation. Additionally, in some instances, the law grants a person of record the right to file a petition to seal records, and in other cases, the law mandates a court order juvenile records to be sealed.² As a general matter, juvenile court records must be destroyed when the person of record reaches the age of 38 unless good cause is shown for maintaining those records. The person of record may also petition to have records retained by other agencies destroyed, and the request must be granted unless good cause is shown for retention of the records. When records are destroyed pursuant to these provision, the proceedings “shall be deemed never to have occurred.”³

3. Firearm Possession Prohibitions for Criminal Convictions and Effect of This Bill

Existing state and federal law contains a myriad of prohibitions on the possession and attempted purchase of firearms by certain individuals. Under both state and federal law, all felony

¹ Welfare and Institutions Code § 602

² See Welfare and Institutions Code §§781, 786 and 786.6

³ Welfare and Institutions Code §826.

convictions lead to a lifetime prohibition. California law goes further and imposes a 10-year prohibition on the possession and purchase of firearms for individuals convicted of numerous misdemeanor offenses that involve either violence or threat of violence as well as certain firearm-related crimes. Additionally, a person may be prohibited from possessing a firearm due to a protective order or as a condition of probation. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. Individuals under domestic violence restraining orders are also subject to a prohibition on firearm possession and purchase for the duration of that court order.

As is the case with most other provisions of California criminal law, the rules are different with regard to juvenile offenders. Under existing law, a juvenile who has been convicted of one of several drug-related offenses *or* has been alleged to have committed one of several enumerated serious, violent and firearm-related offenses, and is subsequently adjudged a ward of the court is prohibited from owning or possessing a firearm until they are 30 years old.⁴ A violation of this prohibition is punishable as a misdemeanor. This bill modifies that prohibition to a lifetime ban for an individual who, on or after January 1, 2014, is adjudged a ward of the juvenile court because they committed murder, attempted murder or voluntary manslaughter. Additionally, whereas existing law would see them destroyed, this bill requires the preservation of sealed records related to petitions rendering persons subject to this lifetime prohibition. The Committee should consider the fundamental question at issue in this bill and raised by several of the groups in opposition: Is a lifetime ban on firearms an appropriate collateral consequence for conduct during one's youth, even if the crime is egregious, or is a ban until the age of 30 (i.e. existing law) sufficient?

4. Argument in Support

According to the California Police Chiefs Association:

I write to inform you of our support of AB 2518, which would apply existing statutory penalties for those adults convicted of heinous crimes such as murder, attempted murder and manslaughter and make them applicable to juveniles convicted of those same offenses thereby prohibiting them from owning or possessing a firearm for the rest of their life. According to the Monterey Herald in 2014, while walking to work, 28-year-old man Andre Jacob was murdered by known gang members. One of his assailants was a juvenile, who due to our state's penalty structure, upon his release from prison, will be able to once again be able to purchase a firearm, despite his violent past and conviction. More recently, in December 2023, a Fresno County 14-year-old killed his parents and attempted to kill his younger sister as well. If and when he is convicted of these crimes, at the age of 30 and upon release, he will be able to purchase a firearm. Existing law ensures any juvenile, upon their 30th birthday and regardless of crime committed, may walk-in to any firearm store and legally purchase a firearm. AB 2518 would ensure violent criminals, regardless of

⁴ For the full list of offenses for which a juvenile is subject to this prohibition, see Welfare and Institutions Code § 707, subd. (b), and Penal Code §29820, subd. (a).

age, who commit murder, attempted murder or manslaughter are ineligible to own or possess a firearm upon their release from prison.

5. Argument in Opposition

According to the California Public Defenders Association:

We recognize the terrible tragedies that result from gun violence, but this bill does nothing to address those issues. Moreover, because the primary purpose is rehabilitation, youth in juvenile court, are not accorded the same right to jury trial that individuals charged with the same offenses in adult proceedings have. In some jurisdictions, prosecutors routinely overcharge murder, attempted murder and voluntary manslaughter that will later be proven at a jury trial to be an assault in the case of an attempted murder or even an involuntary manslaughter. Minors are not accorded this same right. Minors have the right to a bench trial or trial in front of a judge. In other words, based on exactly the same facts minors are more likely to have sustained adjudications for these charges than an adult facing the same charges with the right to a jury trial. This is a crucial difference.

California has over the last decade realized that youthful indiscretions and mistakes should not have eternal consequences. Youth who are adjudicated in juvenile court must have an opportunity to move past their juvenile records rather than face lifelong collateral consequences. Among many other laws, we have increased the ability to seal juvenile records, elevated the opportunity for courts to dismiss strike allegations for offenses committed as youth, and provided special youthful offender parole processes for the serious offenses that are prosecuted in adult court. These and other laws recognize that youthful mistakes do not and should not forever define or limit a young person's life. A ban on possession or use of a firearm until the age of 30 is certainly a sufficient collateral consequence. Any illegal use or possession of a firearm after age 30 is still punishable as a crime, but the punishment should not be made harsher because of youthful mistakes. Perhaps, most crucially AB 2518 by eliminating record sealing could foreclose youth in these categories from employment, housing and educational opportunities.

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