
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2519 **Hearing Date:** June 18, 2024
Author: Maienschein
Version: February 13, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Misdemeanor offenses: deferral of sentencing: firearms prohibition*

HISTORY

Source: Author

Prior Legislation: AB 732 (Mike Fong, Ch. 240, Stats. of 2023)
AB 455 (Quirk Silva, Ch. 236, Stats. of 2023)
AB 2239 (Maienschein, Ch. 143, Stats. of 2022)
AB 2551 (McCarty, Ch. 100, Stats. of 2022)

Support: California District Attorneys Association; California Police Chiefs Association; City of San Diego; Los Angeles Unified School District; Peace Officers Research Association of California

Opposition: California Attorneys for Criminal Justice

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to prohibit a defendant charged with specified offenses for which they receive diversion from possessing a firearm until the successful completion of that term of diversion.

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 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 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, subd. (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 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, subd. (a).)

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. (c).)

Existing law provides that if it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to

determine whether the criminal proceedings should be reinstated. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings. (Pen. Code, § 1001.95, subd. (d).)

Existing law provides that a defendant may not be offered diversion for: any for which a person would be required to register as a sex offender, any offense involving domestic violence, as specified, and stalking. (Pen. Code, § 1001.95, subd. (e).)

This bill provides that a defendant who is granted diversion pursuant to the above for an offense for which they would receive a 10-year ban on firearm possession under existing law shall be prohibited from possessing a firearm until they successfully complete diversion.

COMMENTS

1. Need for This Bill

According to the Author:

Under current law, there are numerous misdemeanor criminal offenses that prohibit a defendant, if convicted, from possessing a firearm for up to 10 years. These crimes include threatening or intimidating public officials, assault, stalking, child endangerment and elder abuse. However, a defendant who is charged with one of these offenses but granted misdemeanor diversion is not subject to any firearm prohibitions even though the offenses they are charged with would warrant a prohibition if convicted. AB 2519 prohibits defendants granted misdemeanor diversion from possessing a firearm until they have successfully completed diversion. This would apply if the defendant is being diverted for a crime that would otherwise require a 10-year ban on possessing a firearm if convicted.

2. Court-Initiated 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.¹ 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. 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.

3. Firearm Possession Prohibitions for Criminal Convictions

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 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.

The Author argues that a loophole exists in existing law:

A defendant who is convicted of a misdemeanor offense listed in Penal Code §29805 is prohibited from possessing a firearm for a period of 10 years. However, defendants who are charged with a violation of a misdemeanor offense listed in PEN §29805 and are granted diversion do not currently have to comply with any firearm prohibitions. This can result in firearms remaining in the possession of potentially dangerous individuals before they have completed diversion.

Accordingly, this bill prohibits defendants who are granted diversion for crimes for which a conviction would result in a 10-year firearm ban from possessing a firearm until they have successfully completed diversion. As one opposition group points out, the bill does not prescribe

¹ AB 3234 (Ting), Ch. 334, Stats. of 2020, codified at Penal Code §1001.95 et. seq.

a penalty for a violation of this prohibition, raising several questions. Is a violation of the prohibition intended to be a misdemeanor, an infraction, or simply a condition of diversion the violation of which results in the reinstatement of proceedings for the original diverted offense?² Is a violation of the prohibition grounds for a 10-year firearm ban?

4. Firearm Relinquishment Requirements

Existing California law requires any person convicted of a felony or specified misdemeanor rendering them subject to the 10-year firearm ban to relinquish all firearms under their possession. This requirement is a result of Proposition 63, which was passed by the voters and included a raft of firearm-related reform provisions which went into effect in 2018. The relinquishment provisions of Prop 63 also set forth specific procedures to be followed by a person who has been convicted in order to legally relinquish firearms.

Specifically, upon conviction, a judge must instruct the defendant of the prohibition against possessing firearms and ammunition and provide the defendant with a Prohibited Persons Relinquishment Form, which is developed by DOJ.³ Existing law then requires the judge to assign a probation officer to the case to ensure that all firearms have been properly relinquished and verify that the firearms have in fact been relinquished prior to the final disposition of the defendant's case, and issue a report to that effect. Under existing law, defendants who are out of custody must relinquish their firearms within 48 hours of the conviction, and in-custody defendants must relinquish firearms within 14 days via a designee.⁴ A separate provision of existing law deals with the specific procedures law enforcement must follow when they receive a firearm via the relinquishment process, including how they must return the firearm to the owner should they become eligible to possess it.⁵

This bill prohibits individuals granted diversion from possessing firearms during their term of diversion, but does not specify how individuals subject to that prohibition should temporarily relinquish their firearms. The Author and Committee may wish to consider amending the bill to clarify whether the process outline above should be followed in cases to which this bill applies, or whether a separate process is necessary.

5. Related Legislation

The Author of this measure is also the author of AB 2739, which, at the time this analysis was finalized, was set for hearing in this Committee on June 11. AB 2739 requires 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. The bills do not conflict because AB 2739 applies to cases where the firearm in question is subject to surrender to law enforcement and subsequent destruction, whereas this bill applies to firearms which may be relinquished only temporarily.

² If nothing is indicated in the statute, it would likely default to a misdemeanor. See Penal Code § 17.

³ See the form here: [bof1022.pdf \(ca.gov\)](#) ; the defendant can designate a law enforcement or a third party to take control of the firearms in their possession. See PC §29810(a)(3).

⁴ See Penal Code §29810.

⁵ Penal Code §33800 et. seq.

6. Argument in Support

According to the California Police Chiefs Association:

AB 2519 represents a strong step forward in promoting effective and equitable criminal justice practices, particularly in the realm of diversion programs. As law enforcement professionals committed to ensuring the safety and well-being of all Californians, we believe this bill represents a thoughtful and balanced approach to misdemeanor diversion and firearm possession. California's pretrial diversion allows individuals to avoid both jail time and a criminal record by undergoing treatment and education, often focusing on drug use and mental health. To ensure the safety of victims and of communities at large, it is critical that those convicted of specified offenses complete diversion programs before being allowed to repossess a firearm. AB 2519 will ensure that this is the case.

7. Argument in Opposition

According to the California Attorneys for Criminal Justice:

This bill prohibits a person from owning a firearm if they enter judicial diversion if the underlying offense would be prohibiting upon conviction. This bill does not specify what the penalty would be, but Penal Code statutory construction suggests that it would be punishable as a misdemeanor. In essence, this bill prohibits someone from owning a gun for an offense they have never been convicted of or admitted to and for which they could face up to six months in jail. Remember that section 1001.95 does not require or involve a plea of guilty or no contest. Due to the favorable terms of judicial diversion, many defendants accept it even in cases where the evidence against them is tenuous and defensible. Prohibiting defendants in diversion from possessing firearms and subjecting them to criminal liability is anathema to the goal and purpose of judicial diversion.

In addition to the foregoing, the mandate of this bill to prohibit defendants enrolled in 1001.95 diversion from owning or possessing firearms usurps the role of the judiciary and abrogates their discretion. Under current law, a judge has the discretion to prohibit a defendant from possessing firearms as a condition of judicial diversion. A judge is well positioned, upon considering the criminal complaint and various factors offered by the People and the defense, to determine whether, and in which cases, a firearm prohibition may be appropriate for a defendant in judicial diversion. A final consideration is the broad range of misdemeanor offenses enumerated in section 29805 which are prohibiting, many of which have nothing to do with firearms. To prohibit a defendant who enters judicial diversion from owning firearms in all cases wherein they are charged with an enumerated offense is unwarranted and serves no function to protect the public. Moreover, a court may, on its own motion or at the request of the prosecution, impose a firearm prohibition as a condition of continued release on bond when appropriate before judicial diversion even commences.

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