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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 164                      **Hearing Date:** June 18, 2019  
**Author:** Cervantes  
**Version:** May 16, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Firearms: Prohibited Persons*

### HISTORY

**Source:** San Diego District Attorney's Office  
California District Attorney's Office

**Prior Legislation:** AB 746 (Portantino) Ch. 780, Stats. 2018.  
AB 1014 (Skinner) Ch. 872, Stats. of 2014.  
SB 580 (Jackson), 2013, failed passage in Assembly Appropriations.  
AB 837 (Feuer), Ch. 698, Stats. of 2008.

**Support:** American Academy of Pediatrics, California; Bay Area Student Activists; Brady United Against Gun Violence; California Law Enforcement Association of Records Supervisors, CLEARs; California Police Chiefs Association; Change for Justice; Giffords Law Center to Prevent Gun Violence; Los Angeles County Board of Supervisors; Los Angeles County Democratic Party; March for Our Lives CA; Peace Officers Research Association of California (PORAC); Riverside Sheriffs' Association

**Opposition:** None known

**Assembly Floor Vote:** 78 - 0

### PURPOSE

***The purpose of this bill is to prohibit any person subject to a valid restraining order, injunction, or protective order issued out of state from possessing, receiving or purchasing, or attempting to possess, receive or purchase a firearm in this state if the out-of-state order is equivalent in the prohibition against possessing, receiving or purchasing a firearm.***

*Existing law* punishes by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding \$1,000, or by both, a person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so. (Pen. Code, § 29825(a).)

*Existing law* details the types of permanent or temporary restraining orders that will prohibit an individual from possessing or purchasing a firearm:

- 1) A temporary restraining order or injunction issued due to civil harassment (Code Civ. Proc., § 527.6);

- 2) A temporary restraining order or injunction sought by an employer for an employee who has suffered an unlawful violence or credible threat of violence (Code Civ. Proc., § 527.8);
- 3) A temporary restraining order or injunction sought by a school for students who have suffered off-campus credible threats of violence (Code Civ. Proc., § 527.85);
- 4) A protective order issued for domestic violence (Fam. Code, §§ 6320, 6321, and 6322);
- 5) A court order against victim and/or witness intimidation and orders protecting against stalking (Pen. Code, §§ 136.2, and 646.91);
- 6) A protective order in response to elder or dependent adult abuse (Welf. & Inst. Code, § 15657.03); and,
- 7) Juvenile protective orders (Welf. & Inst. Code, § 213.5, 304, 362.4 and 726.5.).

*Existing law* requires the Judicial Council to provide notice on all protective orders that the person subject to the order is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order must notify the person that they are required to relinquish any firearms as specified, and file proof of surrender or sale within a specified time of receipt of the order. (Pen. Code, § 29825 subd. (d).)

*Existing law* prohibits a person subject to a gun violence restraining order from having custody or control of any firearms, ammunition or magazines while the restraining order is in effect. (Pen. Code, § 18205.)

*Existing law* permits a person authorized by the law of this state to seek enforcement of a domestic violence protection order issued by another state if the out-of-state order:

- 1) Identifies the protected individual and the respondent;
- 2) Is currently in effect;
- 3) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state;
- 4) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process; and,
- 5) A foreign protection order valid on its face is prima facie evidence of its validity. (Fam. Code, § 6402.)

*Existing law* permits a law enforcement officer to enforce a valid foreign protection order, as specified, as if it were the order of a tribunal of this state. (Fam. Code, § 6403.)

*Existing law* requires the Attorney General to establish and maintain an online database to be known as Armed & Prohibited Persons System (APPS). The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System (CFIS), 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. (Pen. Code, § 30000.)

*Existing law* requires the Department of Justice (DOJ) to complete an initial review of a match in the daily queue of the Armed Prohibited Persons System within seven days of the match being

placed in the queue. (Pen. Code, § 30020.)

*Existing law* requires that the DOJ participate in the National Instant Criminal Background Check System (NICS), and shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law. (Pen. Code, § 28220, subd. (b).)

*Existing law* states that if the DOJ determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is attempting to purchase more than one handgun in a 30 day period, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact. (Pen. Code, § 28220, subd. (c).)

*Existing law* requires DOJ to immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in NICS, indicates that the purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period. (Pen. Code, § 28220, subd. (f).)

*Existing law* prohibits persons from supplying or providing a person with firearms or ammunition if there is reasonable cause to believe that the recipient is prohibited from having firearms and ammunition. (Pen. Code, §§ 27500 and 30305, 30306; and Welf. & Inst. Code, § 8101.)

*Existing law* prohibits, beginning July 1, 2019, a licensed ammunition vendor from selling or transferring ammunition until first conducting a background check to verify that the person receiving the ammunition is legally eligible. (Pen. Code, § 30306.)

*Existing federal law* requires all jurisdictions in the United States to give full faith and credit to protection orders issued by other jurisdictions under the federal Violence Against Women Act (VAWA). (18 U.S.C. 2265.)

*Existing federal law* specifies that it is unlawful for any person who has been convicted of a misdemeanor crime of domestic violence, to possess any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. (18 U.S.C. 922, subd. (g)(9).)

*This bill* prohibits any person subject to a valid restraining order, injunction, or protective order issued out of state from possessing, receiving or purchasing, or attempting to possess, receive or purchase a firearm in this state if the out-of-state order is equivalent in the prohibition against possessing, receiving or purchasing a firearm.

*This bill* would require the Attorney General to undertake the actions necessary to implement this provision to the extent the Legislature appropriates funds for this purpose.

## COMMENTS

### 1. Need for This Bill

According to the author:

A loophole in existing law prohibits California courts from enforcing firearms prohibitions that are part of judicial orders intended to prevent domestic violence, like restraining orders, issued in other states. California courts may only enforce such orders issued within our state. This loophole can leave survivors of domestic violence in California vulnerable and unprotected. Indeed, there have been cases of individuals who are subject to other states' court orders who come to California, obtain a firearm, and then use it to threaten a survivor of domestic violence.

Assembly Bill 164 will close this loophole, and help protect survivors, by allowing California courts to enforce firearms prohibitions that are part of court orders issued in other states.

### 2. Recognition and Enforcement of Out of State Restraining Orders

California law provides that when a court issues a temporary or permanent restraining order as specified in Penal Code Section 29825 against an individual, that person will be prohibited from purchasing or possessing a firearm. This bill would allow a law enforcement official or court in California to enforce an equivalent restraining order issued by another state, if that order also contains a prohibition on possessing or purchasing a firearm. This state, by way of the Fair Faith and Credit Clause and Family Code Section 6403, currently recognizes a domestic violence protective order issued by another state.

However, California law does not permit a law enforcement official or court to recognize a firearm prohibition issued by another state for domestic violence or any other reason, including for civil harassment, elder abuse, and school or workplace violence. Thus, under current law, California officials cannot enforce a valid prohibition on the possession or purchase of a firearm issued by another state. This bill would prevent a person from skirting a valid firearm prohibition issued by another state simply by traveling or relocating to California.

### 3. Notice and Enforcement Provisions Added in the Assembly

Current law requires the Judicial Council to provide notice on all protective orders that the person subject to the order is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. (Pen. Code, § 29825 subd. (d).) The order must notify the person that he or she is required to relinquish any firearms as specified, and file proof of surrender or sale within a specified time of receipt of the order.

As introduced in the Assembly, AB 164 specified a requirement that Judicial Council provide such notice to a person is limited only to orders issued within the state. Practically, this would have made it impossible and unrealistic for Judicial Council to provide notice to a person in another state that an equivalent protective order issued by that state restricts that person's right to purchase or possess a firearm in California, or to notify any person traveling to or relocating to

California that such order applies. As amended in Assembly Public Safety, the bill addresses this issue by ensuring that a qualifying order issued by another state also include a prohibition on firearm possession or purchase. Because a person subject to a valid out-of-state order prohibiting firearm possession and purchase is on notice that he or she is prohibited from possessing or purchasing a firearm generally, that person should reasonably expect to be prohibited from possessing or purchasing a firearm in California.

Additionally, in the Assembly Appropriations Committee amendments were taken to make sure that the provisions of the bill are only enforceable, and the Attorney General may only undertake the actions necessary to implement this provision to the extent the Legislature appropriates funds for this purpose.

#### **4. Armed and Prohibited Persons System (APPS) Mandates on DOJ, Existing and Growing Backlog, and Budget Shortfalls**

The APPS is a database that checks gun sales against records of criminal convictions, mental health holds and domestic violence restraining orders to flag prohibited owners. DOJ cross-references APPS with five other databases including the California Restraining and Protective Order System (CARPOS), a statewide database of individuals subject to a restraining order. New individuals are added to the APPS database on an ongoing basis as the system identifies and matches individuals in California who are prohibited from purchasing or possessing firearms. DOJ is required to complete an initial review of a match in the daily queue of APPS within seven days of the match being placed in the queue. (Pen. Code, § 30020.)

The DOJ has long been working to seize the guns and ammunition of persons on the APPS list. The *San Francisco Chronicle* recently reported that the Department has reduced the backlog of prohibited persons from over 20,000 in 2013 to less than 9,000 today.<sup>1</sup> However, the list is always growing as new individuals are added to APPS for committing qualifying crimes. Thus, the burden on the DOJ to clear the list is evergreen. In addition, the Legislature and voter initiatives have added new categories of individuals who are prohibited from possessing firearms. For example, as of July 1, 2019, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative (Proposition 63 of 2016) requires that DOJ confirm whether an individual seeking to purchase ammunition is authorized to do so, and in the process, DOJ will likely identify additional cases requiring APPS investigations.

Budget shortfalls make clearing the APPS list difficult, as DOJ has limited resources to investigate and seize firearms from persons on the list. Since the early 2000s, DOJ has requested additional funding to decrease the backlog. The APPS has largely been funded by fees collected when an individual purchases a firearm, which is deposited in the Dealer's Record of Sale (DROS) Special Account. However, the DROS Special Account has experienced operational shortfalls since 2012-13. In 2013, the Legislature appropriated \$24 million with SB 140 (Leno), *Chapter 2, Statutes of 2013*, to aid the DOJ in reducing the backlog to its current levels, but the DOJ has been unable to eliminate it entirely.

DOJ has anticipated that the list will continue to grow as the Legislature adds new categories of persons to the list, and is awaiting the implementation of other mandates. The DOJ has requested

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<sup>1</sup>See APPS 2018 Annual Report to the Legislature, published Mar. 1, 2019; see also Alexei Koseff, *California struggles to seize guns from people who shouldn't have them*, *San Francisco Chronicle*, Feb. 18, 2019, available at <https://www.sfchronicle.com/politics/article/California-struggles-to-seize-guns-from-people-13624039.php>.

\$16.9 million be allocated from the state budget on an ongoing basis to support the existing APPS workload and continue addressing the backlog of cases. The Governor’s budget proposal for 2018-19 flagged this funding as a major program change for the DOJ: “*The Budget includes a total of \$16.9 million General Fund for APPS—\$11.3 million to shift the existing APPS program from the Dealers’ Record of Sale Account to the General Fund and \$5.6 million General Fund to support increased APPS workload. Shifting these costs to the General Fund provides a more stable fund source for APPS and allows the Dealers’ Record of Sale Account to maintain solvency to continue additional Bureau of Firearms workload.*”<sup>2</sup>

This bill would add additional individuals to APPS, increasing the DOJ’s workload by requiring additional initial reviews of new matches and, ultimately, requiring additional investigations and operations to seize firearms and ammunition. While the DOJ currently faces operational shortfalls to address the exiting backlog, it appears that 2018-19 budget will better fund DOJ’s APPS operations, allowing DOJ to hire additional individuals to work at eliminating the existing and growing backlog, and which arguably will accommodate any additions to APPS by virtue of this bill.

## 5. Argument in Support

According to the San Diego County District Attorney:

Persons prohibited from purchasing, receiving, owning or possessing firearms as a result of equivalent restraining orders, criminal protective orders and similar court orders issued in other jurisdictions are not included in PC 29825. This loophole leaves many domestic violence victims unprotected.... California should acknowledge the lawful decisions made by outside jurisdictions when it comes to preventing, protecting and intervening in matters that can potentially lead to harm.

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<sup>2</sup>The Legislative Analysis Office (LAO) has recommended an alternative to the Governor’s proposal to help the DROS Special Account avoid insolvency. LAO recommends providing \$16.9 million from the General Fund to support existing and increased APPS workload, and approving 26 new positions requested to continue addressing the backlog. LAO notes that this funding will provide DOJ with the level of funding necessary for which there is “workload justification.” (*The 2019-20 Budget: Analysis of Governor’s Criminal Justice Proposals*, Legislative Analysis Office, Feb. 2019, available at <https://lao.ca.gov/Publications/Report/3940>.)