
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2222 **Hearing Date:** June 26, 2018
Author: Quirk
Version: May 25, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Crime Prevention and Investigation: Informational Databases: Firearms*

HISTORY

Source: California Chapters of the Brady Campaign to Prevent Gun Violence

Prior Legislation: AB 1060 (Liu), Ch. 715, Stats. of 2005

Support: Bay Area Student Activists; Giffords Law Center to Prevent Gun Violence;
League of Women Voters of California; San Francisco Bay Area Physicians for
Social Responsibility

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to require all law enforcement agencies to report to the Department of Justice (DOJ) information about each firearm reported lost, stolen, or recovered, and requires the DOJ to submit a report to the Legislature outlining law enforcement agency compliance with the new reporting requirement.

Existing law provides that every person who knows or reasonably should have known that their firearm was stolen or lost, must report that information to a local law enforcement agency. (Pen. Code, § 25250.)

Existing law mandates every person reporting a lost or stolen firearm to report the make, model, and serial number of the firearm. (Pen. Code, § 25270.)

Existing law states that each sheriff or police chief executive shall submit descriptions of property which has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, into the appropriate DOJ automated property system for bicycles, vehicles, firearms, or other property. (Pen. Code, § 11108, subd. (a).)

Existing law requires information entered into the DOJ's Automated Firearms System to remain in the system until the firearm has been found, recovered, is no longer observation, or was found to have been entered erroneously. (Pen. Code, § 11108, subd. (b).)

Existing law requires every sheriff or police chief to submit a description of each firearm that has been reported lost or stolen directly into the DOJ Automated Firearms System. (Pen. Code, § 25260.)

Existing law authorizes every local law enforcement agency to enter firearm information, as specified, needed to investigate crimes into the United States Department of Justice, National Integrated Ballistics Information Network. (Pen. Code, § 11108.10.)

Existing law states that a police or sheriff's department shall, and any other law enforcement agencies may, report to the DOJ all available information necessary to identify and trace the history of all recovered firearms that were illegally possessed, used in a crime, or are suspected of having been used in a crime. The DOJ, upon receiving such information, must promptly forward it to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives to the extent practicable. (Pen. Code, § 11108.3.)

Existing law requires a law enforcement agency, upon identifying serialized property and entering it into the DOJ's appropriate automated property system, to notify the owner or person laying claim to the property within fifteen days of making the identification. (Pen. Code, § 11108.5.)

Existing law prohibits a law enforcement agency or court, which has taken custody of a firearm, from returning it to any individual unless the individual presents evidence from the DOJ that they are eligible to possess firearms, or the agency or court is able to verify that the firearm was not listed stolen in the Automated Firearms System. If the firearm has been listed as lost or stolen—the owner shall be notified, as specified. (Pen. Code, § 33855.)

Existing law provides that any person claiming title to a firearm in the custody or control of a law enforcement agency or court, must apply for a determination by the DOJ as to whether the applicant is eligible to possess a firearm, as specified. (Pen. Code, § 33850.)

Existing law requires the DOJ to permanently keep and properly file all information reported to the DOJ pursuant to applicable firearm laws, as specified. (Pen. Code, § 11106.)

This bill requires all law enforcement agencies in the state to input information regarding each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, into the DOJ's Automated Firearms System within three days after being notified.

This bill defines a "law enforcement agency" as "a police or sheriff's department, or any department or agency of the state or any political subdivision thereof that employs any peace officer as defined."

This bill requires firearm information entered into the Automated Firearms System to remain in the system until the reported firearm is found, recovered, no longer under observation, or determined to have been entered erroneously.

This bill states that any costs incurred by the DOJ in the implementation of the Automated Firearms System must be reimbursed by funds other than the fund resulting from fees relating to the sale, lease, or transfer of firearms.

This bill makes conforming cross-referencing changes.

COMMENTS

1. Need for This Bill

According to the author:

AB 2222 will ensure data on every firearm used in a crime and recovered by any law enforcement agency is logged into the Department of Justice's Automated Firearm System. This will help law enforcement and the Department of Justice better recognize patterns in gun trafficking, figure out where guns used in crimes are coming from, and stop criminals from possessing them.

2. Trace Data for Lost or Stolen Firearms

According to the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Lost and stolen firearms pose a substantial threat to public safety and to law enforcement. Those that steal firearms commit violent crimes with stolen guns, transfer stolen firearms to others who commit crimes, and create an unregulated secondary market for firearms, including a market for those who are prohibited by law from possessing a gun... Lost firearms pose a similar threat. Like stolen firearms, they are most often bought and sold in an unregulated secondary market where law enforcement is unable to trace transactions." (US Bureau of Alcohol, Tobacco, Firearms and Explosives, (2013). *2012 Summary: Firearms Reported Lost and Stolen*.¹

Such lost or stolen firearms may become "crime guns" which are defined as, "any firearm used in a crime or suspected to have been used in a crime. This may include firearms abandoned or otherwise taken into law enforcement custody that are either suspected to have been used in a crime or whose proper disposition can be facilitated through a firearms trace." Upon recovery of a crime gun, law enforcement officers "trace" it, which involves systematically tracking the movement of a recovered firearm back to its importation into, or manufacture in, the United States through the distribution chain and to the point of its first retail sale. (ATF. (2011). *Firearms Tracing Guide: Tracing Firearms to Reduce Violent Crime*.²

From a general perspective, tracing a crime gun back to its origins can help law enforcement identify patterns in the supply of gun trafficking by locating, and investigating, the circumstances surrounding a gun that leaves the legal marketplace and enters the illicit secondary market. (Brady Campaign to Prevent Gun Violence. *The Sources of Crime Guns: How City Officials Can Reduce Gun Deaths & Injuries in Their Communities*.) For individual cases, tracing can help develop potential witnesses, prove ownership, and can generate investigative leads. (ATF. (2011). *Firearms Tracing Guide: Tracing Firearms to Reduce Violent Crime*.³

¹ <<https://www.atf.gov/resource-center/docs/2012-firearms-reported-lost-and-stolenpdf-1/download>> [Mar. 22, 2018].)

² <<https://www.atf.gov/file/58631/download>> [Mar. 23, 2018].)

³ <<https://www.atf.gov/file/58631/download>> [Mar. 23, 2018].)

3. National Firearms Tracing Laws

Federally, the ATF has been delegated as the sole agency authorized to trace firearms, which it administers through its National Tracing Center.⁴

At the federal level, there is no requirement for private citizens or law enforcement agencies to report lost or stolen firearms. (US Bureau of Alcohol, Tobacco, Firearms and Explosives. (2013). *2012 Summary: Firearms Reported Lost and Stolen*.⁵ Conversely, all federal firearms licensees (FFLs) are required to report a theft or loss within 48 hours of discovery. (27 C.F.R. § 478.39a (a) (1).)

The ATF has cited private citizen reporting requirements as an impairment to its ability to effectively trace guns, stating:

“Reporting by law enforcement is voluntary, not mandatory, and thus the statistics in this report likely reveal only a fraction of the problem. Additionally, even where state and local law enforcement are consistently reporting statistics, many states do not require private citizens to report the loss or theft of a firearm to local law enforcement in the first place. As such, many lost and stolen firearms go entirely unreported. Moreover, even if a firearm is reported as lost or stolen, individuals often are unable to report the serial number to law enforcement because they are not required to record the serial number or maintain other records of the firearms they own for identification purposes. As a result, many lost and stolen firearms enter secondary and illicit markets with their status undocumented and undetectable.”

Regarding the more stringent reporting requirements for FFLs, the ATF strikes a different tone, stating:

“ATF’s accounting of firearms lost or stolen from FFLs is more accurate. In 1994, Congress enacted requirements that FFLs report the theft or loss of any firearm from their inventories to both ATF and local police within 48 hours of discovery. This mandatory reporting requirement accounts for lost inventory and allows law enforcement to respond expeditiously to thefts from FFLs. Most often, these reports provide law enforcement with serial numbers and reliable descriptions. This information is closely managed to ensure that whenever law enforcement recovers a firearm lost by or stolen from a federally-licensed dealer, the recovery data is promptly provided to ATF and local authorities. In the case of theft, this information assists in the identification, apprehension, and prosecution of the thieves.”⁶

4. California’s Firearm Tracing Laws

California law closely resembles the federal provisions for FFLs. California law is more comprehensive in that it requires all private citizens to report lost or stolen firearms to the local law enforcement agency in the jurisdiction. (Pen. Code, § 25250.) However, California law requires only sheriffs and police chief executives to forward such information to the state DOJ’s Automated Firearms System. (Pen. Code, § 11108.)

⁴ (ATF. (2016). *Fact Sheet – National Tracing Center*. <<https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>> [Mar. 23, 2018].)

⁵ <<https://www.atf.gov/resource-center/docs/2012-firearms-reported-lost-and-stolenpdf-1/download>> [Mar. 22, 2018].)

⁶ (ATF. (2011). *Firearms Tracing Guide: Tracing Firearms to Reduce Violent Crime*. <<https://www.atf.gov/file/58631/download>> [Mar. 23, 2018].)

This bill would extend the local law enforcement agency reporting requirement to include *all* peace officers within the state, including the Department of Highway Patrol, University of California and California State University Police Departments, and other police departments, as specified. The end result would be a more comprehensive tracing scheme for law enforcement to utilize when tracing a crime gun.

5. Argument in Support

According to the California Chapters of the Brady Campaign:

The California Chapters of the Brady Campaign to Prevent Gun Violence is a grassroots organization working to reduce firearm crime, injury, and death. There are 28 Brady Chapters throughout the state, many of whose members have lost a loved one to gunfire. In furtherance of our goal to reduce firearm violence in our communities, the California Brady Campaign is pleased to sponsor and support Assembly Bill 2222.

Existing law requires police and sheriffs' departments to submit the description of firearms that have been reported stolen, lost, found, recovered, or under observation directly into the California Department of Justice's (Cal DOJ) Automated Firearms System (AFS). Existing law also requires police and sheriffs' departments to report to Cal DOJ all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. This bill will extend these requirements to *all* law enforcement agencies, as defined, and will require that the information be submitted *within seven calendar days*. Under existing law, Cal DOJ must promptly forward this information to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

In 2012, the International Association of Chiefs of Police adopted a resolution titled *Regional Crime Gun Processing Protocols*, which recommends the "timely and comprehensive tracing of all crime guns through ATF and eTrace". The resolution finds that technology tools such as eTrace can help police develop and share information about the identity of armed criminals across wide geographic regions and can provide law enforcement with timely and actionable information to help identify and apprehend armed criminals before they do more harm. In addition to providing leads in individual criminal investigations, trace data can help law enforcement spot suspicious patterns in the supply of crime guns and identify corrupt dealers engaged in illegal sales or gun trafficking. For example, in 2000, one single gun store—out of more than tens of thousands nationwide—was the source of almost half the crime guns recovered in Oakland. These "bad apple" firearm dealers need to be identified, then reformed or shut down. Clearly, tracing is an important investigative tool for law enforcement but an effective tracing program in California requires that all recovered guns be entered into the system.

Consistent entry of recovered guns into AFS will also improve the data and efficiency of California's Armed and Prohibited Persons System (APPS) program. APPS crosschecks firearm records (AFS) with prohibited person databases to identify individuals who are armed and prohibited. Cal DOJ expends significant resources to disarm these persons before they do harm. Unfortunately, it is not uncommon for Cal DOJ to conduct an APPS search and find that local law enforcement had already recovered the gun but never entered the information into AFS. This results in a waste of time and money and impedes bringing down the APPS backlog.

Additionally, beginning July 1, 2019, California will conduct background checks on ammunition purchasers by crosschecking AFS with APPS. If the ammunition purchaser has a registered firearm and is not listed in APPS, then the sale may immediately proceed. This process relies on accurate databases; a law enforcement officer's failure to enter a recovered gun into AFS could cause an erroneous sale of ammunition.

AB 2222 seeks to facilitate consistent and prompt submission of firearm information into AFS, which will improve Cal DOJ's databases and systems and ensure that all recovered firearms are entered into eTrace.

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