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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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**Bill No:** AB 2239                      **Hearing Date:** June 8, 2022  
**Author:** Maienschein  
**Version:** May 19, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Firearms: prohibited persons*

## HISTORY

**Source:** City of San Diego

**Prior Legislation:** SB 723 (Jones), Ch. 306, Stats. of 2020  
SB 701 (Jones, 2019), vetoed by the Governor  
AB 1121 (Bauer-Kahan, 2019), died in Assembly Appropriations  
AB 3129 (Rubio), Ch. 883, Stats. of 2018  
AB 785 (Jones-Sawyer), Ch. 784, Stats. of 2017  
AB 1084 (Melendez, 2013), failed in Assembly Public Safety  
SB 580 (Jackson, 2013), died in Assembly Appropriations  
SB 140 (Leno), Ch. 2, Stats. of 2013

**Support:** California District Attorneys Association; California State Sheriffs' Association

**Opposition:** None known

**Assembly Floor Vote:** 76 - 0

## PURPOSE

***The purpose of this bill is to create a 10-year prohibition on the possession of firearms for individuals convicted of child abuse and elder abuse.***

*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. (Pen. Code, § 29805 (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. (Pen. Code, §§ 29805 (a), 29851.)

*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, and threats of bodily injury or death, among other misdemeanors. (Penal Code, § 29805 (a).)

*Existing law* provides that any person who has an outstanding warrant for a felony under the laws of the United States, the State of California, or any other state, government, or country, with knowledge of the warrant, and who possesses any firearm is guilty of a felony with a maximum of three years in the state prison. (Pen. Code, § 29800 (a)(1).)

*Existing law* provides that persons convicted of a felony are subject to a lifetime prohibition on owning or possessing a firearm. (Pen. Code, § 29800 (a)(1).)

*Existing law* specifies that a felon in possession of a firearm is guilty of a felony with a maximum of three years in the state prison. (Pen. Code, § 29800 (a)(1).)

*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. (Pen. Code, § 29825.)

*Existing law* specifies that any person who is convicted, on or after January 1, 2019, of a misdemeanor violation of domestic violence, and who subsequently owns or has possession of a firearm is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year or guilty of a felony punishable in the state prison. (Penal Code, § 29805 (b).)

*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. (Pen. Code § 30000 (a).)

*Existing law* prohibits a person, caring for or having custody of a child, from willfully causing or permitting the child to suffer unjustifiable physical or mental pain, as specified. (Pen. Code, § 273a.)

*Existing law* prohibits a person from willfully causing or permitting an elder or dependent adult to suffer unjustifiable physical or mental pain, as specified. (Pen. Code, § 368.)

*Existing law* defines an “elder” as a person over 65 years old, and a “dependent adult” as a person between 18 and 64 years old who has a specified mental or physical limitation. (Pen. Code, § 368(g) & (h).)

*This bill* provides that any person who is convicted on or after January 1, 2023, of misdemeanor child abuse, as specified, or abuse of an elder or dependent adult, as specified, and who, within 10 years of the conviction owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars, or by both.

## COMMENTS

### 1. Need for This Bill

According to the Author:

The proliferation of gun violence in California is driving ever increasing homicide rates. According to the Public Policy Institute of California, ‘California saw 1,658 homicides in 2019; the number climbed to 2,161 in 2020—an increase of 503 homicides (or 30.3%). Of these deaths, gun homicides jumped by 460 in 2020. In other words, the increase in gun deaths account for 91% of the overall jump in homicides.’ We know there is a strong correlation between domestic violence and subsequent gun violence if the abuser possesses a gun. By removing guns from these households, we can protect our most vulnerable citizens – children and the seniors -- from the escalating violence that occurs when abusers have unfettered access to firearms.

Current law provides that for convictions of, or outstanding warrants for, a misdemeanor violation of any certain enumerated offenses will generally result in a firearm prohibition for ten years. The current list specifies more than forty crimes. Current law recognizes the protection of children and the elderly as more vulnerable classes. However, simple battery upon carries the 10-year firearm prohibition although those victims are not of a specifically protected class such as children and elderly. AB 2239 simply adds the misdemeanor provisions of Penal Code sections 273a and 368 to the list of crimes for which the 10-year ban from owning or possessing firearms applies.

### 2. Firearm Possession Prohibitions in California

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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> 18 U.S.C. § 922(g); Penal Code § 29800

<sup>2</sup> Penal Code §29805

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.<sup>3</sup> Individuals under domestic violence restraining orders are also subject to a prohibition on firearm possession and purchase for the duration of that court order.<sup>4</sup>

This bill builds on California's current firearms prohibitions for individuals convicted of various misdemeanors by prohibiting individuals who are convicted of child abuse or elder abuse from possessing or attempting to purchase a firearm for 10 years after the date of conviction. Consistent with other firearm prohibitions for convicted misdemeanants, this bill also imposes a penalty of up to one year in county jail or incarceration in state prison, or a fine not exceeding \$1,000, or both, for people who violate this prohibition. Thus, this bill establishes a wobbler for a violation of its provisions.

### **3. California's Armed Prohibited Persons System (APPS)**

DOJ developed the Armed Prohibited Persons System (APPS) for tracking handgun and assault weapon owners in California who may pose a threat to public safety.<sup>5</sup> APPS collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. DOJ receives automatic notifications from state and federal criminal history systems to determine if there is a match in the APPS for a current California gun owner. DOJ also receives information from courts, local law enforcement and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, DOJ has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession. Local law enforcement also may request from DOJ the status of an individual, or may request a list of prohibited persons within their jurisdiction, and conduct an investigation of those persons.<sup>6</sup>

The DOJ has long been working to seize the guns and ammunition of persons on the APPS list, but constant flow of new additions to the list coupled with budget and staffing shortfalls has rendered this a Sisyphean effort. For instance, in 2020, 8,370 individuals were removed from the list and 10,762 were added. 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. This bill would invariably add individuals to APPS, requiring additional initial reviews of new matches by DOJ and ultimately requiring additional investigation and seizure operations.

### **4. Argument in Support**

The sponsor, the City of San Diego, states:

Current law provides that for convictions of, or outstanding warrants for, a misdemeanor violation of certain enumerated offenses will generally result in the prohibition from owning or possessing firearms for ten years. The current list

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<sup>3</sup> Welfare and Institutions Code §§ 8100, 8103.

<sup>4</sup> Penal Code §29825.

<sup>5</sup> Penal Code §30000 et. seq.

<sup>6</sup> Penal Code §30010 et. seq.

specifies more than forty crimes including threatening or intimidating public officials and witnesses; assault; battery; stalking; drawing, exhibiting, or using a deadly weapon other than a gun; making threat to commit crime involving death or great bodily injury; and discharging firearm in grossly negligent manner.

Current law recognizes the protection of children and the elderly as more vulnerable classes. However, simple battery carries the ten-year firearm prohibition although those victims are not of a specifically protected class. AB 2239 addresses this anomaly by adding the following crimes to the ten-year firearms ban:

- Child endangerment. Penal Code 273a Defined as willfully exposing a child under the age of 18 to unjustifiable pain, suffering, or danger.
- Elder abuse. Penal Code 368 Defined as inflicting physical or emotional abuse, neglect, or financial exploitation upon a victim who is 65 years of age or older.

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