
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 2551 **Hearing Date:** June 8, 2022
Author: McCarty
Version: May 25, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms*

HISTORY

Source: Author

Prior Legislation: AB 3127 (McCarty, 2020), not heard due to COVID-19
SB 257 (Nielsen, 2019), held in Assembly Appropriations
SB 1369 (Runner, 2016), not heard in Senate Public Safety
SB 580 (Jackson, 2013), held in Assembly Appropriations
SB 140 (Leno), Ch. 95, Stats. of 2013

Support: California State Association of Psychiatrists; Neveragain CA

Opposition: None known

Assembly Floor Vote: 63 - 0

PURPOSE

The purpose of this bill is to require the Department of Justice (DOJ) to notify local authorities in the appropriate jurisdiction when a prohibited person attempts to purchase a firearm, ammunition or firearm precursor part.

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 limits access to the information contained in the Prohibited Armed Persons File to certain entities specified by law, through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Pen. Code § 30000 (b).)

Existing law requires that upon entry into the Automated Criminal History System of a disposition for a specified conviction or any firearms possession prohibition identified by the federal National Instant Criminal Background Check System (NICS), the DOJ shall determine if the subject has an entry in the Consolidated Firearms Information System indicating possession

or ownership of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration. (Pen. Code § 30005 (a).)

Existing law requires that upon an entry into any department automated information system that is used for the identification of persons who are prohibited by state or federal law from acquiring, owning, or possessing firearms, the DOJ shall determine if the subject has an entry in the Consolidated Firearms Information System indicating ownership or possession of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration. (Pen. Code § 30005 (b).)

Existing law establishes the Prohibited Armed Persons File (APPF) which requires the DOJ, once it has a determination that a subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration, to enter the following information into the file:

- 1) The subject's name;
- 2) The subject's date of birth;
- 3) The subject's physical description;
- 4) Any other identifying information regarding the subject that is deemed necessary by the Attorney General;
- 5) The basis of the firearms possession prohibition; and,
- 6) A description of all firearms owned or possessed by the subject, as reflected by the Consolidated Firearms Information System. (Pen. Code § 30005 (c).)

Existing law requires the Attorney General to provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm. (Pen. Code § 30010.)

Existing law requires the DOJ to annually report to the Joint Legislative Budget Committee and the fiscal committees of each house of the Legislature all of the following information for the immediately preceding calendar year:

- 1) The total number of individuals in the Armed Prohibited Persons System (APPS) and the number of cases which are active and pending, as specified.
- 2) The number of individuals added to the APPS database
- 3) The number of individuals removed from the APPS database, as specified.
- 4) The degree to which the backlog in the APPS has been reduced or eliminated, as specified.
- 5) The number of individuals in the APPS before and after the relevant reporting period, as specified.
- 6) The number of agents and other staff hired for enforcement of the APPS.
- 7) The number of firearms recovered due to enforcement of the APPS.
- 8) The number of contacts made during the APPS enforcement efforts.
- 9) Information regarding task forces or collaboration with local law enforcement on reducing the APPS file or backlog. (Pen. Code §30012.)

Existing law appropriates \$24,000,000 from the Dealers' Record of Sale (DROS) Special Account of the General Fund to the Department of Justice to address the backlog in the APPS

and the illegal possession of firearms by those prohibited persons. (Pen. Code § 30015, subd. (a).)

Existing law requires the DOJ to participate in NICS, and to notify a dealer and local law enforcement where a sale was made, that the purchaser was prohibited from possessing a firearm. (Pen. Code, § 28220(b).)

Existing law contains various prohibitions on firearm access for persons convicted of specified offenses. (Pen. Code §29800 et. seq. and §29900 et. seq.)

Existing law prohibits specified individuals from owning, possessing, or having under their custody or control, any ammunition or reloaded ammunition. (Pen. Code §30305).

Existing law prohibits specified individuals from owning, possessing, or having under their custody or control, any firearm precursor part. (Pen. Code §30405).

This bill provides that if the DOJ determines that a prohibited person has attempted to acquire a firearm, or has attempted to report their acquisition or ownership of a firearm in order to have it listed in the DOJ's firearm registry, as specified, the DOJ shall notify the local law enforcement agency and if applicable, local mental health authorities, with primary jurisdiction over the area in which the person was last known to reside of the attempt in a manner and format prescribed by the department.

This bill provides that if a prohibited person attempts to purchase or otherwise acquire ammunition, the DOJ shall notify the local law enforcement agency with primary jurisdiction in which the person was last known to reside of the attempt.

This bill specifies that a local law enforcement agency that receives a notification regarding an attempted ammunition purchase by a prohibited person may investigate whether the person is in unlawful possession of a firearm. However, the law enforcement agency shall not contact the person until it has attempted to confirm that the person is in fact prohibited from possessing ammunition and that the person did in fact attempt to make the purchase.

This bill provides that the notification requirement regarding an attempted ammunition purchase by a prohibited person does not apply if the sale or other transfer is not approved only because the address in the Automated Firearms System does not match the address on the person's identification, if there is a matching file with the same name, date of birth, and identification number.

This bill provides that if a prohibited person attempts to purchase or otherwise acquire a firearm precursor part, the DOJ shall notify the local law enforcement agency with primary jurisdiction in which the person was last known to reside of the attempt.

This bill specifies that a local law enforcement agency that receives a notification regarding an attempted purchase of a firearm precursor part by a prohibited person may investigate whether the person is in unlawful possession of a firearm. However, the law enforcement agency shall not contact the person until it has attempted to confirm that the person is in fact prohibited from possessing a firearm precursor part and that the person did in fact attempt to make the purchase.

This bill provides that the notification requirement regarding an attempted firearm precursor part purchase by a prohibited person does not apply if the sale or other transfer is not approved only because the address in the Automated Firearms System does not match the address on the person's identification, if there is a matching file with the same name, date of birth, and identification number.

This bill specifies that the notification provisions related to ammunition and firearm precursor parts do not authorize a law enforcement agency to conduct a search without a warrant.

COMMENTS

1. Need for This Bill

According to the Author:

“In 2006, California became the first state in the nation to establish an automated system for monitoring known firearm owners who fall into a prohibited status. This system, known as the Armed and Prohibited Persons System (APPS), cross-references purchasers against other records for individuals who are prohibited from possessing firearms. The California Department of Justice (DOJ) utilizes this database to seek out and remove firearms and ammunitions from those who are prohibited from possessing them for the purpose of preventing and reducing incidents of violent crime. Some of those that are prohibited from possessing firearms include those with criminal convictions, mental health holds, and individuals with domestic violence restraining orders. Under existing law, 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.

While APPS remains a vital tool in reducing incidents of gun violence, the system is plagued with a backlog of pending cases. For pending cases, the DOJ is either unable to clear the case because all investigative leads have been exhausted or they are unable to locate the individuals.

SB 1235 (De León, 2016) expanded the responsibility of the DOJ in their efforts to disarm prohibited persons by requiring vendors to obtain a state license to sell ammunition, log information about ammunition transactions to the DOJ, and screen the ammunition purchaser for any prohibitions at the point of sale.

With these extended responsibilities, collaboration between local law enforcement and the DOJ is one of the most powerful tools to reduce the number of pending APPS cases. Local agencies offer speed and efficiency during investigations due to their ability to immediately respond to lost or stolen firearm reports. Furthermore, local agencies are often familiar with the prohibited APPS individuals or their family members. However, under existing law, the DOJ is under no obligation to contact the law enforcement agency with jurisdiction over the last known address of the individual that attempted to make the purchase. Instead, only law enforcement in the area where the individual attempted to make the purchase, rather than the jurisdiction where the individual lives, is notified.

AB 2551 addresses the lack of coordination between DOJ and relevant law enforcement agencies. [...] In order to prevent gun violence, AB 2551 will play a vital role in keep deadly weapons out of the hands of those most likely to perpetuate gun violence in our communities.”

2. Background – Prohibited Persons Enforcement

Prior to 2001, the removal of firearms from prohibited persons was primarily the responsibility of local law enforcement agencies. DOJ conducted background checks on firearm purchasers, who were subject to a 10-day waiting period, and would notify local law enforcement when a person was identified as prohibited and possessed a registered firearm. Local law enforcement would then confiscate any unlawfully possessed firearms. In the 1990s, this system was deemed inefficient, as it relied heavily on paper records and slow internet and telephonic communication speeds. Consequently, the DOJ was given primary responsibility for direct enforcement of prohibited persons laws.

In 2001, SB 950 (Brulte, Ch. 944, Stats. of 2001) created the Armed Prohibited Persons System (APPS) in response to several high-profile murder cases involving people prohibited from owning firearms. After APPS was eventually implemented in 2006, the number of individuals found to be prohibited from possessing – and in possession – of a firearm increased dramatically, and in the years since has increased at a steady and considerable rate. In 2008, there were 10,266 individuals on the APPS list, and in 2021, the list comprised 23,598 individuals.

With recent advances in law enforcement and telecommunications technology, it may be time to modernize our current system of firearms enforcement to make it more efficient and less costly. One way to accomplish this would be to shift more responsibility for prohibited persons enforcement to local law enforcement agencies, which carry out patrols and interact with more individuals on a regular basis than the DOJ’s Bureau of Firearms. This bill takes a step in this direction, and follows in the footsteps of other bills that have attempted to enact similar changes, such as SB 257 (Nielsen, 2019) and AB 3127 (McCarty, 2020), both of which failed in the Assembly Appropriations Committee.

3. SB 140 and the APPS Backlog

SB 140 (Leno, Ch. 2, Stats of 2013) appropriated \$24 million from the Dealers Record of Sale (DROS) Special Account to the DOJ to fund enforcement of illegal gun possession by prohibited persons. SB 140 included the following finding and declaration:

The list of armed prohibited persons in California grows by about 15 to 20 people per day. There are currently more than 19,000 armed prohibited persons in California. Collectively, these individuals are believed to be in possession of over 34,000 handguns and 1,590 assault weapons. Neither the Department of Justice nor local law enforcement has sufficient resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons.

The 19,000+ cases on the APPS list at the time SB 140 was passed is referred to as the “APPS backlog.” SB 140 required the DOJ to address the backlog and issue an annual report to the legislature for five years in order to provide updates on DOJ’s progress in reducing the backlog. In 2019, at the expiration of that 5-year reporting requirement, SB 94 (Committee on Budget, Ch. 25, Stats. of 2019) provided updated requirements regarding the mandated reporting of

APPS database statistics. SB 94 defined “backlog,” for the purposes of the APPS as “the number of cases for which the Department of Justice” did not initiate an investigation within six months of the case being added to the APPS database or for which it has not completed investigatory work within six months of initiating an investigation on the case.”

The most recent APPS report was published on March 30, 2022.¹ According to the report, as of January 1, 2022 the APPS database contained 3,199,394 individuals, of which 24,509 were prohibited from owning or possessing firearms. The latter figure is further categorized into “active” cases, of which there were 10,033, and “pending” cases, of which there were 14,476.² Despite the DOJ’s persistent enforcement efforts, these figures represent a growing backlog – in its 2019 APPS report, the DOJ indicated that it had 7,747 active cases and 14,677 pending cases.³

DOJ cites several reasons for the persistence of the APPS cases and makes corresponding recommendations. First, DOJ states that greater efforts must be made by courts, local law enforcement, probation and parole to confiscate firearms at the time of prohibition rather than going through the process of trying to locate a person and their firearm(s) some amount of time after they have become prohibited. Second, DOJ cites the attrition rate of special agents “primarily due to lagging salaries and incentives with comparable law enforcement agencies and the reduced pension tier relative to the Public Employees’ Pension Reform Act of 2013 (PEPRA).” Third, DOJ recommends improved coordination and cooperation between the Department and local law enforcement agencies, specifically that local law enforcement agencies enforce the Bureau’s high recordkeeping standards to ensure that the data in APPS is as current as possible. Finally, DOJ suggests replacing and modernizing the APPS database.⁴

4. DOJ Cooperation with Local Law Enforcement on APPS Cases

The DOJ’s APPS reports perennially emphasize the importance of collaboration with local law enforcement agencies in clearing APPS cases. From its 2018 report:

The Department takes pride in its collaborative efforts with its local law enforcement partners. Since the inception of SB 140 (2013), the BOF continues to work with allied law enforcement agencies in an effort to reduce APPS numbers. Experience has shown the most efficient and effective way of working APPS cases in a specific region or jurisdiction is by working collaboratively with local law enforcement agencies. While working jointly with local law enforcement agencies, cases are investigated and processed more efficiently, lost and stolen firearm reports are immediately handled by local law enforcement agencies, cases crossing local jurisdiction boundaries are further pursued by the Bureau, and local law enforcement agencies are often familiar with prohibited APPS individuals or their family members, making it easier to track down these individuals. When local law enforcement agencies pursue APPS cases independently, there can be a lack of

¹ “Armed and Prohibited Persons Systems Report 2021: Annual Report to the Legislature, SB 94 Legislative Report, Calendar Year 2021.” Available at <https://oag.ca.gov/system/files/attachments/press-docs/APPS%20Report%202021.pdf>

² *Id.* at 13. Active cases are those for which the DOJ has not yet begun investigations or is in the process of investigating, while pending cases are those for which the DOJ has exhausted all leads or determined that the person is not within their jurisdiction.

³ 2019 APPS Report, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/apps-2019.pdf>

⁴ 2021 APPS Report, pp. 33-35

consistency in working investigations until all leads are exhausted and often times local law enforcement agencies will not pursue investigative leads outside their normal jurisdiction, causing the case to remain unresolved. This is a problem that needs to be resolved.

The 2021 APPS report highlights various successful efforts involving collaboration with local agencies, including large-scale regional sweeps that boosted case closures, funding of 10 county sheriff's offices through the DOJ's Gun Violence Reduction Program, and the creation of several joint task forces with local agencies in Contra Costa and Los Angeles Counties. According to the report, much of the success is due to a combination of increased manpower, improved data reporting and communication, and the elimination of duplicative efforts.

The purpose of this bill is to require the DOJ to notify local law enforcement agencies of prohibited persons within their jurisdiction so these agencies are able to take action independent of the DOJ's Bureau of Firearms. This notification requirement is triggered when a prohibited person in the APPS attempts to purchase a firearm, firearm precursor part or ammunition. In the case of attempted ammunition or precursor part purchases, the bill also authorizes local law enforcement agencies that receive a notification from the DOJ to investigate the potential unlawful possession of ammunition or a precursor part, but requires that the agency confirm that the person is in fact prohibited from possession in APPS and did in fact make the reported purchase.

By requiring the DOJ to notify local law enforcement agencies when a purchase of prohibited items is being attempted, this bill appears to improve the ability of law enforcement to enforce prohibited persons laws. However, under this bill, the flow of information is only one-way; the Author may wish to consider amending the bill to require local law enforcement agencies to inform the DOJ when they recover a prohibited firearm so that the APPS can be updated in an efficient manner, and redundant enforcement efforts are not undertaken.

5. Argument in Support

According to the California State Association of Psychiatrists:

In 2006, California became the first state in the nation to implement an automated system for monitoring known firearm owners who fall into a prohibited status. The system is known as the Armed and Prohibited Persons System (APPS) and is used to seek out and remove firearms and ammunition from those who are prohibited from possessing them. While APPS remains a vital tool in reducing incidents of gun violence, the system is plagued with a backlog of pending cases. According to the DOJ's 2020 report, there are currently 23,598 armed and prohibited individuals in APPS. Of those, 9,083 are active cases – an increase of 1,336 over the previous year – and 14,515 are pending.

For pending cases, the DOJ is either unable to clear the case because all investigative leads have been exhausted or they are unable to locate the individuals. collaboration between local law enforcement and the DOJ is one of the most powerful tools to reduce the number of pending APPS cases. Local agencies offer speed and efficiency during investigations due to their ability to immediately respond to lost or stolen firearm reports. Currently, the DOJ is under no obligation to notify the local law

enforcement agencies strategically positioned to investigate firearm purchases quickly.

AB 2551 would require the DOJ to notify local law enforcement with primary jurisdiction over the area in which a person prohibited from possessing firearms/ammunition was last known to reside and notify the county mental health department if the person who is prohibited from owning or possessing a firearm is prohibited for reasons related to mental health. These added measures would help to prevent gun violence by keeping firearms out of the hands of people who are prohibited from owning them.

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