
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 669 **Hearing Date:** July 6, 2021
Author: Lackey
Version: May 6, 2021
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Firearms: unsafe handguns*

HISTORY

Source: State Coalition of Probation Organizations (SCOPO)

Prior Legislation: AB 2699 (Santiago), Ch. 289, Stats. of 2020
AB 1794 (Jones-Sawyer), held Sen. Appropriations
AB 1872 (Voepel), Ch. 56, Stats. of 2018
AB 2165 (Bonta), Ch. 640, Stats. of 2016
AB 892 (Achadjian), Ch. 203, Stats. of 2015

Support: AFSCME Local 2703; Association of Orange County Deputy Sheriff's; Association of Probation Supervisors of Los Angeles County; Chief Probation Officers of California; El Dorado County Probation Officers Association; Fraternal Order of Police, Southern California Probation, Lodge# 702; Kern County Probation Officers Association; Los Angeles County Probation Officers Union, AFSCME Local 685; N. California Probation Lodge 19, California Fraternal Order of Police; Riverside Sheriffs' Association; Sacramento County Probation Association; San Joaquin County Probation Officers Association; San Luis Obispo County Probation Peace Officers Association; Solano Probation Peace Officers Association; State Coalition of Probation Organizations; Sutter County Probation Officers Association; Ventura County Professional Peace Officers Association; Yolo County Probation Association

Opposition: Brady Campaign California; Brady - Oakland/Alameda County Chapter; Brady-Orange County; Brady - San Francisco; Coalition Against Gun Violence; Coalition to Stop Gun Violence; March for Our Lives San Diego; Oakland Violence Prevention Coalition; San Diegans for Gun Violence Prevention; Team Enough; Women Against Gun Violence; Youth Alive!

Assembly Floor Vote: 60 - 13

PURPOSE

The purpose of this bill is to exempt the sale or purchase of a handgun, not on the Department of Justice (DOJ) roster of not unsafe handguns, by a county probation department for use by, sold to, or purchased by any sworn member thereof who has satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer

Standards and Training (POST), and who as a condition of carrying that handgun, completes a live-fire qualification prescribed by their employing entity at least once every six months.

Existing law requires that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code § 32000, subd. (a).) Specifies that this section shall not apply to any of the following:

- The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this state;
- The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section;
- Firearms listed as curios or relics, as defined in federal law; and,
- The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 32000, subd. (b).)

Existing law specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

Existing law defines "unsafe handgun" as "any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified." (Pen. Code, § 31910.)

Existing law requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010.)

Existing law requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, §

32015, subd. (a).)

Existing law provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code, § 32015, subd. (b)(1).)

Existing law provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)

Existing law states that a handgun removed from the roster for failing the above re-testing may be reinstated to the roster if all of the following are met:

- The manufacturer petitions the AG for reinstatement of the handgun model;
- The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;
- The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;
- The three handgun samples shall only be tested once. If the sample fails it may not be retested;
- If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;
- Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,
- Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subs. (a)-(g).)

Existing law provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:

- Finish, including, but not limited to bluing, chrome plating or engraving;
- The material from which the grips are made;
- The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm; and,
- Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)

Existing law requires any manufacturer seeking to have a firearm listed as being similar to an already listed firearm to provide the DOJ with the following:

- The model designation of the listed firearm;
- The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns; and,
- Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

This bill would exempt from the not unsafe handgun prohibitions when a handgun not listed on the roster is sold to or purchased by a county probation department for use by, or sold to or purchased by any sworn member thereof who has satisfactorily completed the firearms portion of a training course prescribed by POST pursuant to Section 832 of the Penal Code, and who, as a condition of carrying that handgun, completes a live-fire qualification prescribed by their employing entity at least once every three months.

COMMENTS

1. Need for This Bill

According to the author:

AB 2699 (Santiago) made changes to the non-roster firearm requirements enacted in AB 2165 (Bonta) in 2016. AB 2699 inadvertently affected probation officers who are NOT required to complete the POST basic course as a condition of hire or continued employment. Instead, county Probation training requirements are mandated through Standards and Training for Corrections "STC". The current language prohibits Probation Officers from using non-roster firearms on duty because of the POST basic course requirement and would force Probation Departments to purchase new firearms. It would also have the long-term effect of forcing county probation departments to purchase new firearms anytime a department issued rostered firearm falls off the list and becomes a non-roster firearm.

2. Unsafe Handgun Law

SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

- 1) *Required Safety Device*: The Safe Handgun Law requires a revolver to have a safety device that, either automatically in the case of a double-action firing mechanism or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge or in the case of a pistol have a positive manually operated safety device.
- 2) *Firing Test*: In order to meet the "firing requirements" under the Safe Handgun Law, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The

laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than six malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user. "Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure of a pistol's slide to remain open after a manufacturer approved magazine has been expended.

- 3) *Drop Test*: The Safe Handgun Law provides that at the conclusion of the firing test, the same three manufacturer's handguns must undergo and pass a "drop safety requirement" test. The three handguns are dropped a specified number of times, in specified ways, with a primed case (no powder or projectile) inserted into the handgun, and the primer is examined for indentations after each drop. The handgun passes the test if each of the three test guns does not fire the primer.

SB 489 (Scott), Chapter 500, Statutes of 2003, added to the unsafe handgun law requirements for semiautomatic pistols that became effective in 2006 and 2007. The legislation requires that for a new semiautomatic center-fire pistol firearm to be added to the roster it has to be equipped with a chamber load indicator¹ and a magazine disconnect² (if it has a detachable magazine). The legislation also requires that all semiautomatic rim fire pistols, with a detachable magazine, have a magazine disconnect. All firearms that were on the not unsafe handgun list prior to the effective dates were essentially grandfathered in. Those who supported SB 489 argued:

It is just common sense that handgun should include a chamber load indicator that makes it clear whether the weapon is loaded. Since cheap disposable cameras can clearly count down the number of pictures left, it is inexcusable that handguns do not indicate when a bullet is in the chamber. Magazine safety disconnects would also greatly reduce the number of unintentional accidental shootings by ensuring that when the magazine is removed the gun will not fire.

(http://leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-500/sb_489_cfa_20030630_103204_asm_comm.html.)

AB 1471 (Feuer), Chapter 572, Statutes of 2007, added "microstamping" as a requirement for a firearm to be placed on the not unsafe handgun roster beginning January 1, 2010, "provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions." As discussed above, the Department of Justice issued the certification on May 17, 2013. Like the other provisions, the "microstamping" requirement did not apply to firearms already on the roster. The author of AB 1471 provided the rationale for the additional requirement,

AB 1471 will help law enforcement identify and apprehend armed gang members before they inflict more harm on others, including innocent bystanders. In instances of drive-by shootings, where the only evidence at the crime scene may be a spent cartridge case, law enforcement could quickly obtain a critical lead.

¹ A chamber load indicator is a device that plainly indicates that a cartridge is in the firing chamber. (Penal Code § 16380.)

² A magazine disconnect is a mechanism that prevents a semiautomatic pistol from operating when a detachable magazine is not inserted in the semiautomatic pistol. (Penal Code § 16900.)

(http://leginfo.ca.gov/pub/07-08/bill/asm/ab_1451-1500/ab_1471_cfa_20070625_130933_sen_comm.html.)

3. AB 2699 (Santiago)

AB 2699 (Santiago), Ch. 289, Stats. of 2020 further modified California's rostering of not unsafe handguns by adding additional restrictions and limitations on their acquisition and usage by law enforcement agencies. As a compromise, additional law enforcement entities were added to the list of agencies that could acquire and use non-rostered firearms but additional limitations were placed on all agencies that were authorized to use these handguns. These limitations included that the sale of an un-rostered handgun to an agency is only authorized if the handgun is to be used as a service weapon by a peace officer who has successfully completed the basic course prescribed by POST and who qualifies with the handgun at least every six months.

According to the author and sponsors the negotiations for the additional requirements failed to take into account that probation officers are not POST certified. The training requirements for county probation officers are mandated through Standards and Training for Corrections (STC). Therefore their officers would not be permitted to acquire or use non-roster firearms under the terms negotiated between the sponsors and the opponents of AB 2699 (Santiago) in 2020.

According to the opponents to this legislation, AB 2699 closed a loophole by mandating full POST training for law enforcement officers who seek to purchase off-roster firearms. They feel that this bill will undo the negotiations of AB 2699.

4. Failure to Pay a Fee may Result in a Weapon Being Deemed "Unsafe"

DOJ deems some weapons to be "unsafe" because a particular gun manufacturer has not paid the appropriate fees and/or submitted the proper paperwork. The weapons themselves may be "safe" under the standards listed above, and perfectly capable of passing all three firing tests, but they are deemed "unsafe" for purposes of categorization. Many law enforcement agencies still use these weapons and there are numerous exemptions to the "unsafe" handgun law that allows those agencies to continue to use and possess them. This bill will add additional agencies to the exemptions list in order to avoid the cost of replacing firearms that are technically considered "unsafe" despite being capable of complying with the firing tests.

5. Argument in Support

According to the Chief Probation Officers of California:

Penal Code 32000 was amended in 2020 and included language which codifies existing statutory requirements for peace officers to complete the POST prescribed firearms training in order to use firearms pursuant to this section. Under existing law, this training requirement is met through completing the PC 832 firearms training course *or* through the basic academy which incorporates the PC 832 module.

Inadvertent changes were made to the training requirements by now requiring the completion of the POST basic academy versus the existing and longstanding requirements that the firearms training could also be met by completing the PC

832 firearms module. It is important to highlight that probation departments complete the same POST required firearms training as other peace officers, but do so via the PC 832 course, rather than basic academy. Additionally, some probation departments are certified presenters of the POST PC 832 course.

AB 669 restores the ability for probation departments to continue to meet the requirements for use of non-roster firearms through PC 832 courses as has been the practice and statutory requirements prior to the changes last year.

According to the State Coalition of Probation Organizations:

AB 669 would reinstate for county probation departments the prior requirements under AB 2165 (Bonta) which were inadvertently affected by AB 2699 (Santiago) by removing the “POST basic course” requirement for county probation departments thus preventing the need for county probation departments to replace non-roster firearms that have been in use for several years.

AB 669 will exempt sales to or purchases by county probation departments and sworn member thereof who have completed the firearms portion of the training course prescribed by POST pursuant to Section 832, and who, as a condition of carrying that handgun, completes a live-fire qualification prescribed by their employing entity at least once every three months.

6. Argument in Opposition

The Brady Campaign to Prevent Gun Violence (Brady) works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America’s gun violence epidemic. Brady California is a grassroots organization working to reduce firearm crime, injury, and death. There are Brady Chapters throughout California. Many chapter members have had loved ones taken from them by gunfire. In furtherance of our goal to reduce firearm violence across the state, Brady and Brady California oppose AB 669, because it unnecessarily expands exemptions to the Unsafe Handguns Act (UHA). There is no reasonable need to allow probation officers to possess unsafe handguns without completion of the entire Police Officer Standards and Training (POST) Basic Course. The potential implications are harmful to the citizens of California and to law enforcement.

Federal law does not impose design safety standards on domestically manufactured firearms. To the contrary, the federal Consumer Product Safety Act *exempts* firearms from meeting even minimal standards. This effectively creates a protected market for “junk guns” that often jam, misfire, or malfunction due to poor construction or design. In the last 50 years, more Americans have died in gun-related incidents than in all wars in U.S. history; in the same time period, more Americans have died in unintentional shootings than in American wars. Every year, there are at least 450 to 500 unintentional firearm fatalities -- most committed with handguns. It is well understood that many handguns are needlessly dangerous and could be made safer. In 1999, California filled gaps in federal product safety law by enacting the Unsafe Handgun Act. The UHA

requires that all newly developed handgun models meet basic reliability and safety standards in order to be certified for sale or manufacture, or placed on-roster by the California Department of Justice. Currently there are over 800 guns on-roster and available for sale in California. The standards mandated for a firearm to be on-roster are similar to measures enacted to regulate thousands of other consumer products since the Consumer Product Safety Act of 1972. The UHA mandates that:

- All newly developed pistols must pass a firing test to confirm the guns can be fired multiple times without malfunctioning and a drop safety test to confirm the firearms can be dropped without discharging.
- All newly developed pistols must have a chamber load indicator to signify when the firearms are loaded⁹ and a magazine disconnect mechanism to prevent the guns from firing when a detachable magazine is removed.
- All new semiautomatic pistol models must incorporate microstamping technology, which imprints a microscopic array of characters unique to each firearm and ammunition cartridge casings when the weapons are fired.

These standards are feasible, affordable, and necessary. They were developed to save lives, and they have done just that by preventing accidental discharges and unintentional shootings. By 2014, California's rate of unintentional shootings had declined to about one-quarter of the rate in the rest of the country. Even when trafficking of unsafe handguns from less regulated states inflated the number of unsafe handguns in California, the UHA and other regulations kept the state's rate of unintentional firearm deaths per 100,000 far below the rate in the rest of the country.

Law enforcement officers who have completed the entire Basic Police Officer Standards and Training Course have long been exempt from the restrictions in the Unsafe Handgun Act.

However, in recent years, the list of exempt agencies had grown without any mandate for such training. Last year, AB 2699 closed this loophole by explicitly mandating full POST training for all law enforcement officers who seek to purchase off-roster firearms (i.e. firearms that have not been certified for sale or manufacture by the California DOJ under the UHA). AB 669 would reinstate the loophole that AB 2699 had closed by carving out an exemption from the UHA for county probation officers, allowing them to complete only the firearms portion of POST training.

Notably, county probation officers are not seeking this carve-out because they *need* to carry an off-roster gun for any substantive reason or are unable to complete full POST training. Instead, they simply *prefer* models of handguns that are not one of the more than 800 on-roster models available and also *prefer* not to undergo full POST training. Brady and Brady California oppose AB 669 because it seeks to undo AB 2699 by arbitrarily exempting county probation departments and their officers from the full POST training that both protects law enforcement and mitigates risks to the public and that other law enforcement officers must complete.

AB 669's provision to require probation officers to complete only the firearms portion of the training course in order to be exempt from the UHA -- rather than the full POST training mandated by AB 2699 -- will likely inject more unsafe handguns into the state, presenting a grave danger to the people of California. As

AB 2699 recognized, it is essential that law enforcement officers complete the entire POST training to fully understand how to handle dangerous firearms. There have been many instances of well-trained sworn officers unintentionally firing their service weapons. Without that mandated extensive training and periodic re-training, those newly entitled to own unsafe handguns will be a greater risk to themselves and others.

By allowing more officers to have access to unsafe handguns because of a preference not to use one of the more than 800 on-roster guns, AB 669 likely also will lead to more dangerous weapons in the hands of those who should not have them, through unregulated sales and stolen handguns. California law enforcement officers have already been found guilty of trafficking off-roster handguns to civilians.¹⁵ Enforcement of the prohibition on these gun sales may be lax and law enforcement may be reluctant to arrest other current or retired state employees who sell these handguns to civilians who are prohibited from owning them.

California law already presents a major carve out for law enforcement access to many types of firearms; there is no need to expand existing UHA exemptions by allowing county probation officers to avoid the proper training necessary to safely handle these dangerous weapons. Brady and Brady California believe it is past time to do away with UHA exemptions altogether and hope that California law enforcement leaders take the opportunity to be leaders in promoting public safety by exercising their purchasing power to purchase on-roster guns. However, while these UHA exemptions exist, it is imperative that the state have a comprehensive and consistent system in place as to what training is required to be eligible to purchase off roster firearms. The California State Legislature should not establish a precedent to allow county probation officers -- unlike all other law enforcement officials in the state -- to use unsafe handguns without extensive training and regular recertification that save lives and money.

AB 669 is an unnecessary and dangerous expansion of the UHA exemptions that ignores the effectiveness of the complete POST Training that helps ensure responsible handling of unsafe firearms.

-- END --