
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 733 **Hearing Date:** June 27, 2023
Author: Mike Fong
Version: May 25, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: sale by government entity*

HISTORY

Source: Prosecutors Alliance California

Prior Legislation: AB 200 (Ting, Ch. 58, Stats. of 2022)
SB 915 (Ch. 145, Stats. of 2022)

Support: Giffords Law Center to Prevent Gun Violence

Opposition: California Association of Highway Patrolmen; California State Sheriffs Association; Peace Officers Research Association of California (PORAC)

Assembly Floor Vote: 55 - 18

PURPOSE

The purpose of this bill is to prohibit governmental agencies within the state from selling firearms, ammunition or body armor, except as specified.

Existing law defines “body armor,” for specified provisions of the Penal Code as any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor. (Pen. Code, § 16288.)

Existing law, as used generally in the firearm-related provisions of the Penal Code, as “a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. (Pen. Code, § 16520, subd. (a).)

Existing law, for the purpose of several specified provisions of the Penal Code, defines “firearm” as including the frame or receiver of the weapon, including a firearm precursor part. (Pen. Code, § 16520, subd. (b).)

Existing law defines “firearm precursor part” as any forging, casting, extrusion, or similar article that has reached a stage where it can be readily assembled or completed to be used as the frame of a functional firearm. (Pen. Code, § 16531.)

Existing law provides that no person shall sell, lease, or transfer firearms unless the person has been issued a license pursuant to existing law, and provides that a violation of this provision is punishable as a misdemeanor. (Pen. Code, § 26500.)

Existing law provides that the above prohibition does not apply to the sale, delivery or transfer of a firearm when made by an authorized law enforcement representative, as specified. (Pen. Code, §26620.)

Existing law provides that firearms owned in violation of specified state laws or that have been used in the commission of a crime, upon conviction of the defendant, are a nuisance and must be surrendered, as specified. (Pen. Code, § 29300.)

Existing law outlines the procedure for surrendering firearms that are nuisances to law enforcement and states that such weapons must be destroyed, as specified. (Pen. Code, §§ 18000, 18005)

Existing law provides that a state officer or employee, or operator lessee, or licensee of any state property, shall not contract for, authorize, or allow the sale of any firearm, firearm precursor part, or ammunition on state property or in the buildings that sit on state property or property otherwise owned, leased, occupied, or operated by the state, except as provided (Pen. Code, §27573.)

Existing law prohibits the sale of firearms, firearm precursor parts, and ammunition on specified public property within the 31st and 32nd District Agricultural Associations, except as provided. (Pen. Code, §§27575, 27575.1.)

Existing law authorizes officers within the state to, among other things, sell a firearm that was used as an exhibit in a criminal action and is no longer needed or is unclaimed or abandoned property, as specified. (Pen. Code, § 34000.)

Existing law authorizes law enforcement to sell a firearm relinquished to them by a person prohibited from owning a firearm due to a conviction. (Pen. Code, § 29810, subd. (a) & (i).)

This bill, for the purpose of its provisions, includes in the definition of “firearm” the frame or receiver of the weapon, including both a completed frame or receiver, or a firearm precursor part.

This bill adopts the Penal Code’s existing definition of body armor, which is any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.

This bill provides that no agency or department of the state or political subdivision thereof shall sell any firearm, ammunition, or body armor.

This bill exempts from the prohibition above, the following:

- The sale of a state-issued firearm by a state or local agencies to a duly retired peace officer, the spouse or domestic partner of a peace officer who has died in the line of duty.
- The sale of a firearm relinquished to an agency by a prohibited person made to a third party on behalf of the owner of the firearm.

This bill repeals a provision of state law authorizing officers within the state to sell a firearm relinquished to them by a person prohibited from owning a firearm due to a conviction.

This bill repeals a provision of state law authorizing officers within the state to sell a firearm that was used as an exhibit in a criminal action and is no longer needed or is unclaimed or abandoned property, as specified.

COMMENTS

1. Need for This Bill

According to the author:

Earlier this year, in the wake of the tragic mass shooting in Monterey Park in my district, it was reported that a local law enforcement agency was attempting to sell surplus firearms in an online auction the same weekend as the shooting. This incident revealed a gap in our current system: there is no state law that prohibits state and local government agencies and departments from selling surplus firearms and related items to members of the public, manufacturers, and others. Government entities should not be putting more guns into circulation on the streets of our communities.

AB 733 will close the gap in current law by prohibiting state and local agencies and departments from selling firearms, firearm parts, ammunition, and body armor. This will ensure that government entities are not playing a role in increasing access to deadly weapons in our communities.

2. Firearm Sales by Law Enforcement

According to recent estimates, there are about 393 million privately owned firearms in the United States, or about 120 guns for every 100 Americans. The United States has the highest rate of guns per person, and is the only country with more guns than people.¹ The COVID-19 pandemic triggered a gun-sale boom in the United States – in 2020, a record-breaking 21 million background checks were run through licensed firearm dealers. In 2021, despite the state’s restrictive and comprehensive gun laws, an estimated 1.1 million guns were sold in California.² In addition to legally purchased firearms, the United States is experiencing the rapidly increasing availability of untraceable ghost guns – many of which are manufactured in the home by unlicensed individuals with easily obtained components. The ubiquity of firearms is no doubt one reason the United States is seeing some of the worst gun violence in the nation’s history, an upward trend that is on track to continue.³

As referenced above, California has some of the strictest, most progressive gun regulations in the nation – gun sales in the state are subject to a host of restrictions, primarily centered on gun

¹ “What studies reveal about gun ownership in the US.” CNN, 2 June 2022. [What studies reveal about gun ownership in the US | CNN](#) ; “Fact Check: Yes, there are more guns than people in the United States.” WUSA 9, 9 June 2022. [Fact check: United States now has more guns than people | wusa9.com](#)

² [Guns in the U.S. – 2021 Second-Highest Year for Gun Sales Since 2000 \(safehome.org\)](#) – However, for perspective, this still represents only .04 guns for every adult aged 21 years or older.

³ “US Gun Policy: Global Comparisons.” Council on Foreign Relations. [U.S. Gun Policy: Global Comparisons | Council on Foreign Relations \(cfr.org\)](#)

dealers, intended to ensure that firearms are only purchased and possessed by law-abiding individuals. However, until very recently, no laws in California restricted the sale of firearms to the public by law enforcement agencies.⁴ This lacuna was recently highlighted after the recent mass shooting in Monterey Park, where 11 people were murdered and 9 others were injured. Shortly after the shooting in Monterey Park, L.A. County officials became aware that the L.A. County Probation Department was preparing to sell firearms from their inventory to the public, and the county's board of supervisors passed a last minute motion to halt the sale of surplus firearms in an online auction.⁵ Although the L.A. County Probation Department ultimately cancelled the auction, the incident raised many questions about the prudence of the state adding firearms back into general circulation.⁶

This bill seeks to address this deficiency in existing law by prohibiting any state or local government agency from selling ammunition, body armor or firearms, which, as defined by the bill, includes completed frames and receivers as well as firearm precursor parts. Recent amendments to the bill included limited exemptions to this prohibition allowing retiring peace officers to purchase their service weapon and spouses of fallen officers to buy the service weapon of their spouse that has died in the line of duty. Another recently added exemption permits "the sale of a firearm relinquished to an agency by a prohibited person made to a third party on behalf of the owner of the firearm." Ostensibly, this exception is intended to allow law enforcement to continue facilitating the transfer of firearms from prohibited persons to eligible designated recipients.

3. Committee Amendments

The Author intends to take several amendments in committee to address concerns expressed by stakeholders.

Public Administrators, Guardians and Conservators

The California State Association of Public Administrators, Public Guardians and Public Conservators has concerns that the bill's provisions prevent them from being able to discharge their duties in resolving property issues associated with a decedent's estate, many of which are required under state law. To address this issue, the Author intends to amend the bill to include the following exemption to the prohibition in the bill:

- To Penal Code §29550(b), add: "The sale of a firearm or body armor by the public administrator, public guardian or public conservator in the performance of their duties as personal representative of a decedent's estate, or in the performance of the duties of a conservator or guardian over a person or their estate, in order to fulfill their obligations under state law."

⁴ Last year, AB 200 (Ting, Ch. 58, Stats. of 2022) required law enforcement to destroy surrendered firearms, including firearms collected through gun buybacks, subject to various exceptions. The bill did not specify what law enforcement may do with surplus firearms.

⁵ "LA County supervisors move to stop 'insensitive' sale of guns by Probation Department." LA Daily News. 25 January 2023. [LA County supervisors move to stop 'insensitive' sale of guns by Probation Department – Daily News](#)

⁶ "Editorial: What were L.A. probation officials thinking? Public agencies should not profit from firearm sales." LA Times. 24 January 2023. <https://www.latimes.com/opinion/story/2023-01-24/l-a-probation-firearm-auction-semiautomatic>

Law Enforcement

The Peace Officers Research Association of California (PORAC) has request amendments addressing various issues. First, they would like to exempt law enforcement sales of firearms back to the original seller of the firearm, essentially permitting agencies to receive refunds for weapons that are returned to the original seller. Second, they would like to exempt sales between law enforcement agencies, where, for instance, one agency has a surplus of a particular piece of equipment that a different agency is lacking. And finally, they are requesting a ‘museum exemption,’ which would allow agencies to sell firearms, ammunition or body armor of historical significance to a duly accredited museum. At the time this analysis was finalized, an agreement regarding these amendments had not been reached, but the Author is continuing to work with PORAC to address these issues.

4. Related Legislation

AB 732 (Fong), among other things, makes a conforming change to this bill prohibiting law enforcement agencies from selling firearms that were relinquished to them due to a criminal conviction prohibiting the owner from possessing firearms.

AB 377 (Skinner) addresses an issue related to this bill: the illegal sale of certain firearms by law enforcement officers in their personal capacity. Under existing law, law enforcement officers of certain agencies may purchase firearms in their personal capacity that other members of the public may not because they are not on a roster of firearms deemed “not unsafe” by California’s Department of Justice. Recent years have seen a rise in cases of police officers purchasing non-roster firearms and reselling them illegally.⁷ SB 377, in part, prohibits officers from purchasing non-roster firearms in their personal capacity.

5. Argument in Support

According to Giffords Law Center to Prevent Gun Violence:

Earlier this year, in the wake of the tragic mass shooting in Monterey Park, it was reported that a local law enforcement agency in Los Angeles County was attempting to sell surplus firearms in an online auction the same weekend as the shooting. The Los Angeles County Board of Supervisors took swift action to block the sale of these firearms. This dangerous practice is not limited to Los Angeles County. A local law enforcement agency in Santa Barbara County has reportedly sold firearms back to manufacturers, allowing these deadly weapons to re-enter circulation and potentially be sold to members of the public.

Government entities should not be putting more guns into circulation on the streets of our communities. This practice undercuts the work that state and local leaders are doing to combat violence, including programs like gun buybacks. AB 733 will close the gap in current law by prohibiting state and local agencies from selling firearms, firearm parts, ammunition, and body armor. This will ensure that government entities are not playing a role in increasing access to deadly weapons in our communities.

⁷ See this committee’s analysis of SB 377 (Skinner) for a longer discussion of this issue.

6. Argument in Opposition

According to the California State Sheriff's Association:

Law enforcement agencies, when they update or change the firearms they issue, often sell or exchange those firearms to and/or through licensed dealers. This is a routine practice that allows peace officers to have the appropriate tools to do their jobs while allowing the employing agencies to be protective of public funds. This bill effectively requires law enforcement agencies to hold on to outdated technology or destroy firearms and forego responsible economic practices.

Existing law already restricts government's ability to sell crime guns and AB 733 is an unnecessary restriction on law enforcement agencies' authority to be frugal with public resources.

-- END --