
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 785 **Hearing Date:** June 6, 2017
Author: Jones-Sawyer
Version: February 15, 2017
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Possession of Firearms by Convicted Persons*

HISTORY

Source: Law Center to Prevent Gun Violence

Prior Legislation: SB 347 (Jackson) Vetoed 2016
SB 755 (Wolk) Vetoed 2013

Support: Brady Campaign to Prevent Gun Violence, San Fernando Valley Chapter; California Chapters of the Brady Campaign to Prevent Gun Violence; California District Attorneys Association; Coalition Against Gun Violence, Santa Barbara County Coalition; Courage Campaign; Neighbors United to Protect Our Communities; Violence Prevention Coalition; Women Against Gun Violence

Opposition: None known

Assembly Floor Vote: 67 - 0

PURPOSE

The purpose of this bill is to add two hate crimes to the list of misdemeanors that result in a ban on the right to possess a firearm for ten years.

Existing law provides that certain people are prohibited from owning or possessing a firearm for life, including: (Penal Code §§ 29800, 23515 and 29805.)

- Anyone convicted of a felony;
- Anyone addicted to a narcotic drug;
- Any juvenile convicted of a violent crime with a gun and tried in adult court;
- Any person convicted of a federal crime that would be a felony in California and sentenced to more than 30 days in prison, or a fine of more than \$1,000;
- Anyone convicted of certain violent misdemeanors, e.g., assault with a firearm; inflicting corporal injury on a spouse or significant other, or brandishing a firearm in the presence of a police officer.

Existing law provides that a violation of a lifetime ban on possession of a firearm is a felony. (Penal Code §§ 29800, 23515 and 29805.)

Existing law provides that anyone convicted of numerous misdemeanors involving violence or threats of violence are subject to a ten-year ban on possession of a firearm. Provides that a violation of these provisions is an alternate felony/misdemeanor. (Penal Code § 29805.)

Existing law provides that any person taken into custody, assessed, and admitted to a designated facility due to that person being found to be a danger to themselves or others as a result of a mental disorder, is prohibited from possessing a firearm during treatment and for five years from the date of their discharge. Provides that a violation of these provisions is an alternate felony/misdemeanor. (Welfare and Institutions Code, §§ 8100 and 8103(f).)

Existing law provides that persons who are bound by a temporary restraining order or injunction or a protective order issued under the Family Code or the Welfare and Institutions Code, may be prohibited from firearms ownership for the duration of that court order. Provides that the violation of these provisions is a wobbler or a misdemeanor, as specified. (Penal Code, § 29825.)

Existing law requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to Department of Justice (DOJ) to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. (Penal Code, § 28160-28220.)

Existing law requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is prohibited from purchasing a firearm. (Penal Code § 28220.)

Existing law requires firearms to be centrally registered at time of transfer or sale by way of transfer forms centrally compiled by the DOJ. DOJ is required to keep a registry from data sent to DOJ indicating who owns what firearm by make, model, and serial number and the date thereof. (Penal Code § 11106(a) and (c).)

Existing law requires the Attorney General to establish and maintain an online database to be known as Armed Prohibited Persons System (APPS). The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System (CFIS), 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. The information contained in APPS shall only be available to specified entities through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Penal Code § 30000.)

Existing federal law provides, that certain people are prohibited from owning or possessing a firearm: (18 USC § 922(g).) Any person who:

- Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- Is a fugitive from justice;

- Is an unlawful user of or addicted to any controlled substance, as defined;
- Has been adjudicated as a mental defective or who has been committed to a mental institution;
- Being an alien is illegally or unlawfully in the United States; or except as specified, has been admitted to the United States under a nonimmigrant visa, as defined;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Having been a citizen of the United States, has renounced his citizenship;
- Is subject to a specified court order.

This bill adds the misdemeanor to, by force or threat of force, interfere with another person's free exercise of any constitutional right or privilege because of the other person's actual or perceived race, religion, national origin, disability, gender, or sexual orientation to the list of offenses that result in a ban on the right to possess a firearm for ten years.

This bill adds the misdemeanor to knowingly deface, damage, or destroy the property of another person, for the purpose of intimidating or interfering with the exercise of any of those constitutional rights because of those specified characteristics to the list of misdemeanors that can result in a ban on the right to possess a firearm for ten years.

COMMENTS

1. Need for This Bill

According to the author:

Violent extremists and hate groups often use firearms as tools of force and intimidation. Recent mass murders targeting our nation's LGBT, African American, and religious minority communities – shootings at the nightclub in Orlando, an historic church in Charleston, and a Sikh temple in Oak Creek - were among the deadliest hate crimes ever committed in our nation's history. These are just a few of the most horrific examples of a larger, alarming trend.

Between 2010 and 2014, roughly 43,000 hate crimes were committed in the United States involving the use or threatened use of a gun. Since 2014, these incidents have become more numerous and more vicious, with the largest recent increase in California and across the country, occurring in rates of violent hate crimes.

Studies have documented that people who have committed violent crimes in the past, are much more likely to commit subsequent acts of violence. Researchers have also found that Californians with a prior conviction for a violent misdemeanor were 9 times more likely to commit subsequent violent crimes and also 9 times more likely to commit subsequent firearm offenses.

People who have committed violent hate crimes are an even greater risk to public safety because "individuals who commit hate crimes tend to escalate their conduct in order to ensure their message is received by the targeted individual or community." These patterns clearly underscore the need to ensure that individuals who have already escalated their hateful conduct, and who have been duly

convicted of violent hate crimes, are temporarily prevented from possessing or acquiring guns after being convicted.

Under existing law, individuals convicted of violent misdemeanors and misdemeanors that involve the use or threatened use of a firearm, are generally prohibited from possessing or acquiring firearms for 10 years after conviction, unless they successfully petition a court to restore their firearm eligibility.

The problem is, the list of misdemeanors prohibiting individuals from owning or possessing a firearm overlooks Section 422.6, which makes it unlawful to use force or threats of force to 'willfully injure, intimidate, interfere with, oppress, or threaten another person based on that person's race or ethnicity, religion, nationality, disability, gender, or sexual orientation.

Those convicted under this violent hate crime statute are not prohibited from possessing or acquiring guns. The absurd result is that existing California law prohibits people convicted of crimes like assault or battery from owning guns for 10 years unless they were convicted of a hate crime for committing the same acts on the basis of bigotry. These individuals present a unique and growing threat to public safety and are not the 'law-abiding, responsible citizens' that the Supreme Court deemed entitled to exercise the right to bear arms under the Second Amendment.

At least six states (Delaware, Maryland, Massachusetts, Minnesota, New Jersey, and Oregon) have enacted laws to prohibit violent hate crime misdemeanants from possessing and acquiring firearms. As a leader in enacting laws to prevent gun violence, it is time California joins these states.

2. Firearms Prohibitions for Misdemeanor Offenses

As detailed above, current state and federal laws prohibit persons who have been convicted of specific crimes from owning or possessing firearms. For example, anyone convicted of any felony offense is prohibited for life from firearms ownership under both federal and state law. (18 U.S.C. Section 922(g); Penal Code Section 29800.) California goes further and imposes a 10-year firearms prohibition on persons convicted of numerous misdemeanor offenses that involve either violence or the threat of violence. (Penal Code Section 29805.) Additionally, anyone who has been found to be a danger to themselves or others due to mental illness is subject to a five-year prohibition [Welfare and Institutions Code Sections 8100, 8103(f)], and people under domestic violence restraining orders are subject to a prohibition for the duration of that court order. (Penal Code Section 29825.) This bill would expand the number of misdemeanor convictions resulting in a 10-year prohibition by adding two offenses related to misdemeanor hate crimes provisions. In recent years there have been other attempts to expand this list that were vetoed by Governor Brown.

- a) **SB 347:** SB 347 (Jackson), of the 2015-2016 Legislative Session, would have added specified firearms and ammunition related criminal offenses to the list of misdemeanors that result in the defendant being prohibited from possessing a firearm for ten years. These offenses included such things as dealing in handguns without a license, selling any ammunition to a person under 21 years of age, bringing or carrying ammunition onto school grounds, and petty theft if the property taken was a firearm. SB 347 was vetoed

by the governor. The governor issued the following message with his veto: "Each of these bills creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit. Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded. Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective."

- b) **SB 755:** SB 755 (Wolk), of the 2013-2014 Legislative Session, would have added specified offenses to the list of misdemeanors that result in a ten year prohibition on firearms possession, and adds certain misdemeanors related to substance abuse for which a violation of two or more within a three-year period will result in a ten year prohibition on firearms possession. SB 755 was vetoed by the governor. The governor issued the following message with his veto: "This bill adds substance-abuse offenses and court orders to undergo mental health outpatient treatment to criteria that result in a ten year prohibition on firearms possession. I am not persuaded that it is necessary to bar gun ownership on the basis of crimes that are non-felonies, non-violent and do not involve misuse of a firearm."

Unlike the other recent attempts to expand the ten year prohibitions for violating specified misdemeanors, this legislation adds two discreet offenses that are much more closely related to the existing offenses that trigger the existing ten year ban. The existing ban is for misdemeanors involving violence and threats of violence. This bill would trigger the ban for a misdemeanor crime involving violence, threats, or threatening behavior.

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