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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 92                      **Hearing Date:** June 20, 2023  
**Author:** Connolly  
**Version:** March 1, 2023  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Body armor: prohibition*

### HISTORY

**Source:** Author

**Prior Legislation:** N/A

**Support:** California School Employees Association; Peace Officers Research Association of California (PORAC); Women for American Values and Ethics Action Fund

**Opposition:** None known

**Assembly Floor Vote:** 58 - 13

### PURPOSE

***The purpose of this bill is to prohibit an individual from purchasing or possessing body armor if state law prohibits them from possessing a firearm.***

*Existing federal law* prohibits violent felons, as defined, from purchasing, owning or possessing body armor. (18 U.S.C. §931.)

*Existing federal law* defines body armor, for the purposes of the prohibition above, as “any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.” (18 U.S.C. § 921 subd. (a)(35).)

*Existing state law* defines “body vest” and “body shield” in general as “any bullet-resistant material intended to provide ballistic and trauma protection for the wearer or holder.” (Pen. Code, § 16290.)

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

*Existing law* provides that any person convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country, or of other specified offenses, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony. (Pen. Code § 29800, subd. (a)(1).)

*Existing law* provides that individuals convicted of specified misdemeanors are prohibited from owning, purchasing, receiving or possessing a firearm for 10 years, and that violation of this prohibition is a misdemeanor. (Pen. Code, § 29805, subd. (a)(1).)

*Existing law* provides that upon conviction of any offense that renders a person subject to the prohibitions above related to firearms, the person shall relinquish all firearms he or she owns, possesses or has under their custody or control. (Pen. Code, § 29810, subd. (a)(1).)

*Existing law* sets forth specific circumstances under which a violation of the prohibitions above is justified, and under which an individual may petition for relief from these prohibitions. (Pen. Code, §29850 – 29865.)

*Existing law* prohibits a violent felon from possessing body armor unless their livelihood or safety is dependent on its possession, in which case they can petition their chief of police or sheriff to modify or eliminate the prohibition. (Pen. Code, §§ 31360& 17320.)

*Existing law* authorizes a prohibited person whose employment or safety depends on the ability to possess body armor to petition their local chief of police or sheriff for modifications or elimination of the body armor prohibition. (Pen. Code, § 31360, subd. (b).)

*Existing law* requires a chief of police or sheriff modifying or eliminating a body armor prohibition order to consider the following:

- a) Whether the body armor is likely to be used in a safe and lawful manner;
- b) Whether there is a reasonable need for the type of protection under the circumstances; and;
- c) The petitioner's continued employment, the interests of justice, and the totality of the circumstances. (Pen. Code, § 31360, subs. (b)(1) & (2).)

*Existing law* provides that a law enforcement official is not required to grant relief from the prohibition against the possession of body armor by a violent felon. (Pen. Code § 31360, subd. (b)(2).)

*Existing law* provides that any prohibited person authorized to possess body armor must agree to maintain a certified copy of the law enforcement official's permission to possess the body armor. (Pen. Code § 31360, subd. (c).)

*Existing law* provides immunity from false arrest for law enforcement officials who arrest a petitioner that has been authorized to possess body armor, unless the petitioner did not have a certified copy of their permission. (Pen. Code § 31360, subd. (d).)

*Existing law* imposes an enhancement of one, two, or five years for any person who commits a violent felony while wearing a body vest, as defined. (Pen. Code, § 12022.2.)

*This bill* makes it a misdemeanor for any person who is prohibited from possessing a firearm under the laws of this state to purchase, own or possess body armor, unless otherwise authorized.

*This bill* provides that upon advising a person of their firearm prohibition, a court shall also advise them of their body armor prohibition.

*This bill* specifies that a person subject to the body armor prohibition shall relinquish any body armor in their possession in the same manner as outlined for the relevant firearm prohibition.

*This bill* authorizes a person prohibited from possessing body armor under its provisions, and whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, to petition a chief of police or county sheriff for an exception to the prohibition.

*This bill* provides that law enforcement officials who enforce the prohibition established by this bill against a person who has been granted relief from that prohibition shall be immune from any liability for false arrest from enforcement of the prohibition unless the person has a certified copy of their permission granting relief on their person.

## COMMENTS

### 1. Need for This Bill

According to the Author:

Following the horrific shooting in Buffalo, New York last year, the state Legislature there passed restrictions on body armor to keep this military-grade gear out of the hands of violent criminals. Simply put, the widespread availability of military-grade body armor helps mass shooters and criminals kill more people and prolong their rampages. This ongoing and unnecessary epidemic of violence must be stopped, and AB 92 will help protect innocent bystanders and our peace officers.

### 2. Body Armor and Recent Mass Shootings

The term “body armor” is commonly associated with vests and other body-worn garments and accessories that provide protection against ballistic impacts, i.e. bullets and explosives. There are generally two kinds of body armor, soft body armor and hard body armor. Soft body armor is generally composed of ballistic resistant material that is layered so that when a bullet hits it, the fibers absorb and disperse the bullet’s energy without letting it penetrate through to the wearer. Hard body armor, by contrast refers to plates that can be constructed from ceramics, metal, or other rigid material. There are also variants that combine different types of body armor for greater protection against ballistics as well as stabbing weapons.<sup>1</sup>

Although modern body armor, such as Kevlar vests and similar products, has been commercially available for decades, purchases of body armor by civilians have spiked in recent years. According to a recent reporting by NPR, there is growing popularity among people who want a body shield to wear in everyday life, especially with the advent of new types of body armor that

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<sup>1</sup> National Institute of Justice (NIJ). *Selection and Application Guide to Ballistic-Resistant Body Armor: For Law Enforcement, Corrections and Public Safety. NIJ Selection and Application Guide-0101.06.* (hereafter *NIJ Selection Guide*) (Dec. 2014.) <<https://www.ojp.gov/pdffiles1/nij/247281.pdf>

resemble normal clothing and accessories, such as t-shirts and backpacks. One retailer reported a bump in sales of roughly 150% since 2019.<sup>2</sup>

Many attribute the increased sales of body armor to the flock of new customers seeking added protection following the tragic rise in mass shootings across the country. According to the non-partisan research group The Violence Project, over the past forty years at least 21 mass shooters wore body armor, with a majority of those occurring in the past decade. These include many of the most high-profile shootings in recent memory, including the 2012 Sandy Hook shooting and the massacre at a Buffalo supermarket just over a year ago.<sup>3</sup> In the latter incident, a security guard at the supermarket fired at the gunman, but because of the body armor, the shots did not stop him and 10 people were ultimately murdered.<sup>4</sup> Put simply, body armor worn by a mass shooter prolongs these tragic incidents by protecting the perpetrator and giving them time to take more lives before being apprehended.

### 3. Firearm and Body Armor Possession Prohibitions

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>5</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>6</sup> Additionally, a person may be prohibited from possessing a firearm due to a protective order, such as a gun violence restraining order (GVRO), or as a condition of probation. 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>7</sup> Additionally, 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 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>8</sup>

Existing state and federal law also prohibits violent felons from possessing or purchasing body armor.<sup>9</sup> However, both the state and federal restrictions permit prohibited individuals to petition local law enforcement if their employment, livelihood or safety requires them to wear body armor. Besides these basic restrictions, federal and California state law include very few

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<sup>2</sup> NPR. *Sales of body armor are on the rise. Who's buying and why?* (Jun. 14, 2022)

<<https://www.npr.org/2022/06/14/1103935711/body-armor-sales-increase-rise-mass-shootings-bans>

<sup>3</sup> *Id.*; NPR. *Body armor, worn by the Buffalo shooter, faces far fewer regulations than guns.* (20 May 2022) <https://www.npr.org/2022/05/20/1100263364/buffalo-shooter-body-armor-fewer-regulations-than-guns>

<sup>4</sup> Slate. *Why Stopping a "Bad Guy With a Gun" Keeps Getting Harder.* <https://slate.com/news-and-politics/2022/05/mass-shootings-body-armor-rise.html>

<sup>5</sup> 18 U.S.C. § 922(g); Penal Code § 29800

<sup>6</sup> Penal Code §29805

<sup>7</sup> Penal Code §29825.

<sup>8</sup> Welfare and Institutions Code §§ 8100, 8103.

<sup>9</sup> 18 U.S.C. §931(a); Penal Code § 31360

regulations regarding the purchase and use of body armor, and only two other states, New York and Connecticut, have imposed additional restrictions in recent years.<sup>10</sup>

This bill prohibits persons who are already prohibited from possessing a firearm, for any reason, from possessing body armor, and provides that violation of this prohibition is punishable as a misdemeanor. Additionally, the bill requires a court, upon advising a prohibited individual of their firearm prohibition, to also advise them of their body armor prohibition, and requires that person to relinquish any body armor in their possession in the same manner as they would a firearm. Finally, this bill exempts from its prohibition on the possession of body armor any person whose employment, livelihood or safety is dependent on the ability to legally possess and use body armor, provided that person successfully petitions law enforcement pursuant to the process outlined in existing law.

#### 4. Second Amendment Considerations

The Second Amendment to the U.S. Constitution provides, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” In *District of Columbia v. Heller*, the U.S. Supreme Court held that the 2<sup>nd</sup> Amendment protects a personal right to keep and bear arms for lawful purposes.<sup>11</sup> The Court in has recognized that the right to self-defense “is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is ‘the central component’ of the Second Amendment right.”<sup>12</sup>

*Heller* posited that the Second Amendment, like the First and Fourth Amendments, codified a preexisting right, and only declared that it shall not be infringed. (*Heller, supra*, 554 U.S. at 592.) Although *Heller*’s main focus revolved around firearms, it did discuss the meaning of “arms” as used in the Second Amendment. (*Id.* at 581.) When interpreting the meaning of the word “arms” the court stated:

The 18th-century meaning is no different from the meaning today. The 1773 edition of Samuel Johnson’s dictionary defined ‘arms’ as ‘[w]eapons of offence, or armour [sic] of defence [sic].’ [Citations.] Timothy Cunningham’s important 1771 legal dictionary defined ‘arms’ as ‘anything that a man wears for his defence [sic], or takes into his hands, or useth [sic] in wrath to cast at or strike another.’ [Citations].<sup>13</sup>

Since *Heller*, the Supreme Court has not opined as to whether body armor is included in the definition of “arms” under the Second Amendment, and lower courts appear to be split on this issue.<sup>14</sup> However, in its latest landmark Second Amendment decision, the Supreme Court reiterated that that amendment “is neither a regulatory straightjacket nor a regulatory blank

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<sup>10</sup> For an overview of the New York restrictions, see [Body Armor | Department of State \(ny.gov\)](#); an overview of Connecticut’s body armor law can be found here: [Body Armor and Connecticut Law](#)

<sup>11</sup> *District of Columbia v. Heller* (2008) 554 U.S. 570, 630-31.)

<sup>12</sup> *McDonald v. City of Chicago* 561 U.S. 742, 767 (2010).

<sup>13</sup> *Heller* at 581

<sup>14</sup> *United States v. Bonner* (2008) U.S. Dist. LEXIS 80765; [holding that it did not interpret *Heller* to permit felons the ability to possess firearms or body armor.]; *U.S. v. Smith* (2009) U.S. Dist. LEXIS 93948 at 2 [finding implicitly that under *Heller* the Second Amendment protects body armor but extend to felons]; *U.S. v. Davis* 906 F.Supp.2d 545, 552-558; [rejecting a defendant’s contention that the Second Amendment covered body armor].

check” and, “properly interpreted [...] allows a ‘variety’ of gun regulations.”<sup>15</sup> Quoting *Heller*, the Court emphasized:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . . [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.<sup>16</sup>

Although it is likely that, given this opportunity, this Court would classify body armor as ‘arms’ under the Second Amendment, it is also clear that they have respected, and will likely continue to respect, reasonable restrictions on weaponry and related equipment for individuals who have been shown to be a risk to themselves or others, or to public safety generally. Thus, it is unlikely (though always still possible) that this measure runs afoul the Second Amendment.

## 5. Argument in Support

According to the California School Employees Association:

Mass shootings are an epidemic in the United States. According to Every Town for Gun Safety, there have been 290 mass shootings in the U.S. in just the last 13 years, resulting in 1,626 people shot and killed and an additional 1,075 people shot and wounded. In California, 30 mass shootings have occurred in the same time frame resulting in 162 deaths and 76 wounded.

“Body Armor” is defined as a personal protective body covering intended to protect against gunfire, including but not limited to vests carrying steel, ceramic, or polyethylene plates. These protective body coverings allow mass shooters to prolong their violence and destroy more innocent lives. This trend has increased significantly in recent years. The Violence Project, a non-profit that tracks mass shooting trends, found that of the mass shooters who have worn body armor over the past 40 years, a majority of them have happened since 2012. Over the past decade, body armor vests have become an increasingly common tool worn by mass shooters, such as in a Boulder supermarket attack in 2021 that killed ten; the Sutherland Springs church shooting in 2017 that killed 26; the San Bernardino shooting in 2015 that killed 16; and the movie theater shooting in Aurora in 2012 that killed 12.

According to the Public Policy Institute of California, although the State’s mass shooting homicide rate is lower than the national average, mass shooting incidents occur in California every 8.3 days. AB 92 will help protect innocent bystanders and peace officers from future mass shooting events.

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<sup>15</sup> N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2162 (2022)

<sup>16</sup> *Id.* (quoting *Heller* at 626-627, and *McDonald* at 786.)