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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

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**Bill No:** AJR 4                      **Hearing Date:** June 11, 2019  
**Author:** Aguiar-Curry  
**Version:** January 17, 2019  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** JK

**Subject:** *Firearms*

## HISTORY

**Source:** Author

**Prior Legislation:** AB 3129 (Rubio), Ch. 883, Stats. 2018  
AB 785 (Jones-Sawyer), Ch. 784, Stats. 2017

**Support:** Bay Area Student Activists; California Chapters of the Brady Campaign to Prevent Gun Violence; Friends Committee on Legislation of California; Giffords Law Center to Prevent Gun Violence; Youth Alive!

**Opposition:** Gun Owner of California. Inc.

**Assembly Floor Vote:** 60 - 14

## PURPOSE

***The purpose of this resolution is to urge Congress to swiftly enact House Resolution 8, the Bipartisan Background Checks Act of 2019, to require background checks for all firearm sales.***

### Existing Federal Law

*Existing law* prohibits any person from “engaging in the business” of dealing in firearms or ammunition in interstate or foreign commerce without a license. (18 U.S.C. § 922 (a)(1).)

*Existing law* prohibits any licensed importer, dealer, manufacturer or collector from transporting in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, with specified exceptions. (18 U.S.C. § 922 subd. (a)(2).)

*Existing law* requires a licensed importer, licensed manufacturer, or licensed dealer in firearms to conduct a background check using the National Instant Criminal Background Check System (NICS) prior to transferring a firearm to an unlicensed individual. (U.S.C. § 922 (t).)

*Existing law* defines the term “dealer” as:

- Any person “engaged in the business” of selling firearms at wholesale or retail;
- Any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or,
- Any person who is a pawnbroker. (18 U.S.C. § 921 (a)(11).)

*Existing law* defines “engaged in the business” of dealing firearms as a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms. (18 U.S.C. § 921 (a)(21)(C).)

*Existing law* prohibits the following person from receiving or possessing firearms:

- A person convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- A fugitive of justice;
- A person who is an unlawful user of, or addicted to any controlled substance;
- A person who has been adjudicated as a mental defective or has been committed to any mental institution;
- A person who is “an illegal alien;”
- A person who has been discharged from the Armed Forces under dishonorable conditions;
- A person who has renounced his or her United States citizenship;
- A person who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; and
- A person who has been convicted of a misdemeanor crime of domestic violence. (18 U.S.C. § 922(g)(1).)

#### **Existing California Law:**

*Existing law* prohibits private party transfers of firearms without conducting a transfer through a licensed firearms dealer. (Pen. Code, § 27545.)

*Existing law* requires that the seller or the transferor or the person loaning the firearm shall deliver the firearm to the licensed dealer who shall retain possession of that firearm. (Pen. Code, § 28050 (b).)

*Existing law* requires a 10-day waiting period prior to the delivery of a firearm. (Pen. Code, § 27540 (a).)

*Existing law* requires that on the date of receipt, a licensed dealer shall report to the Department of Justice (DOJ) the acquisition of any firearm. (Pen. Code, § 26905 (a).)

*Existing law* requires that the DOJ, upon submission of a firearm purchaser’s information, examine their records, as well as their records authorized State Department of State Hospitals

records, in order to determine if the purchaser is a person prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. (Pen. Code, § 28220 (a).)

*Existing law* prohibits, for varying amounts of time ranging from 5 years to a lifetime, the following person from receiving or possessing firearms:

- Anyone convicted of a felony under CA, other state law, or federal law (Pen. Code, § 29800.);
- Anyone convicted of a misdemeanor (Pen. Code, § 29805);
- Anyone who “poses a danger to themselves or others” (W&I Code § 8103.)
- Persons restrained under a protective order or restraining order (Pen. Code, § 29825 (a).);
- Anyone who has a Gun Violence Restraining Order (Pen. Code, § 18100.);
- Anyone who has a felony warrant or a misdemeanor warrant for a crime (Pen. Code, § 29805.);
- Person can ask DOJ to determine firearms eligibility (Pen. Code, § 30105.).

*Existing law* established the Armed Prohibited Persons System (APPS), an online database developed by the DOJ to cross-reference persons who have ownership or possession of a firearm and who falls within a class of persons who are prohibited from owning or possessing a firearm (Pen. Code, § 30000.).

*Existing law* requires the DOJ to participate in the National Instant Criminal Background Check System (NICS), and notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact. (Pen. Code, § 28220 (c).)

*Existing law* requires DOJ to immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in NICS, indicates that the purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period. (Pen. Code, § 28220 (f).)

*Existing law* requires licensed firearms dealers to maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or DOJ employee designated by the Attorney General, upon the presentation of proper identification, a firearm transaction record. (Pen. Code, § 26895.)

*This resolution* urges Congress to swiftly enact legislation that would require background checks for all firearms sales and transfers.

*This resolution* finds that according to the federal Centers for Disease Control and Prevention, nearly 40,000 Americans were killed by firearms last year, including homicides, suicides, and accidental deaths.

*This resolution* finds that incidents of school shootings, mass shootings, ambushes of police officers, and other senseless gun violence have become far too commonplace.

*This resolution* finds that Californians have demanded action to end the tragedy of gun violence that impacts the lives of too many Americans each day.

*This resolution* finds that California has led the way in common sense firearm policy, requiring that all sales and transfers in the state be made through a licensed dealer, thus facilitating a background check of the purchaser or recipient in each such transaction.

*This resolution* finds that when background checks are used, they keep firearms out of the hands of felons, domestic abusers, and the dangerously mentally ill.

*This resolution* finds that loopholes in current federal law allow these individuals to obtain firearms without undergoing a background check.

*This resolution* finds that these lenient federal laws weaken the effectiveness of California's sound firearm policy by allowing restricted persons to purchase firearms out of state and bring them into California.

*This resolution* finds that a group of Democrat and Republican Members of Congress have authored the Bipartisan Background Checks Act of 2019 in the form of House Resolution 8, which will require background checks on all firearm sales.

*This resolution* resolves that the Assembly and the Senate of the State of California, jointly urge Congress to swiftly enact House Resolution 8, the Bipartisan Background Checks Act of 2019, and help reduce the tragedy of gun violence by bringing effective, common sense firearm policy to the whole country.

*This resolution* resolves that the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Minority Leader of the House of Representatives, to the Majority Leader of the Senate, to the Minority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.

## COMMENTS

### 1. Need for This Resolution

According to the author of this resolution:

Federal law requires federally licensed firearms dealers (but not private sellers) to initiate a background check on a prospective purchaser prior to the sale of a firearm. This background check is to determine whether the purchaser falls into one of the federal categories of persons prohibited from purchasing or possessing firearms. This includes felons and certain domestic abusers and people with severe mental illness.

In California, existing law requires a background check through the California Department of Justice and the federal National Instant Criminal Background Check System (NICS) database for any prospective purchaser, or transferee, of a firearm. The list of people prohibited from purchasing a firearm in California is broader than federal law. If the person is prohibited from possessing firearms under state or federal law, DOJ will immediately notify the dealer and local law enforcement.

Unlike federal law, California law requires that background checks are required for private firearms sales, in addition to licensed sales. This means that if neither party to a sale or transfer is a licensed firearms dealer, the transaction must occur through a licensed California dealer. The seller must pass the firearm to the dealer, who will perform the required check and other required laws, and then the dealer may pass the firearm to the purchaser.

AJR 4 makes clear, officially and formally, that California urges Congress to pass H.R. 8, the “Bipartisan Background Checks Act of 2019.” Although federal law requires *licensed* firearm dealers to perform background checks on prospective purchasers, it does not require *unlicensed* sellers to do so. This loophole means that people prohibited from possessing a firearm can easily obtain one by going through a private transaction or transfer. No matter how tight the laws are in California, if the background check loophole exists federally and in other states, people who are prohibited from having guns in California can easily obtain them illegally online or from other states.

## 2. California Background Checks

Effective July 1, 2017, Proposition 63 required the California Department of Justice (DOJ) to serve as the point of contact for firearm purchaser background checks. Firearms dealers must therefore initiate the background check required by federal law by contacting the California DOJ. Any prospective purchaser, transferee, or borrower of a firearm must submit a Dealer Record of Sale (DROS) form through a licensed dealer to the DOJ. California mandates a ten-day waiting period after the submission of an application to purchase a firearm. The purchaser must present “clear evidence” of their identity and age to the dealer through either a valid California driver’s license or a valid California identification card issued by the Department of Motor Vehicles. Once this information is submitted, DOJ will check available and authorized records, including the federal National Instant Criminal Background Check System (NICS), in order to determine whether the person is prohibited from possessing, receiving, owning, or purchasing a firearm by state or federal law. Note that state files are not always included in the federal database.<sup>1</sup>

In addition to checking the NICS database, DOJ is required to examine its own records. If the person is prohibited from possessing firearms under state or federal law, DOJ must immediately notify the dealer and the local sheriff or chief of police in the city and/or county where the sale was made. If the person is prohibited from possessing firearms, the dealer must make available to the prohibited from owning or possessing a firearm and that the person may obtain from DOJ

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<sup>1</sup> <https://lawcenter.giffords.org/retention-of-sales-background-check-records-in-california/>

the reason for the prohibition. In addition to the ten-day waiting period, DOJ can delay the transaction up to 30 days more if they are unable to find comprehensive required information.<sup>2</sup>

To supplement this background check system, California systematically cross references five databases to find people who legally purchased handguns and registered assault weapons since 1996 with those prohibited from owning or possessing firearms, through a system called the Armed & Prohibited Persons System (APPS).<sup>3</sup>

### 3. Federal Background Checks

The Brady Act requires federally licensed firearms dealers to perform background checks on prospective firearms purchasers to ensure that the firearm transfer would not violate federal, state, or local law. This is implemented through NICS.

NICS is comprised of three separate databases: the National Crime Information Center, the Interstate Identification Index, and the NICS Index. In addition, the Department of Homeland Security's US Immigration and Customs Enforcement databases are searched during a NICS check.

Federal law requires dealers to conduct a Firearms Transaction Record. The firearm transferee must show valid government-issued photo ID and the dealer must record the type of ID, its identification number, and its expiration date on the form. Once the dealer has provided the identifying information, the system is searched to determine whether the purchaser matches any records in the three databases that make up NICS. If no matches are found, the dealer is instructed to proceed with the transfer of the firearm.

If a match is found, a NICS examiner may conduct a more thorough search of the records. If the dealer has not been notified within three business days the sale may proceed by default. Many ineligible people obtain access to firearms because the FBI cannot complete the background check within this time frame.<sup>4</sup>

Under Federal law, any person may sell a firearm to an unlicensed resident of the State where he resides as long as he does not know or have reasonable cause to believe the person is prohibited from receiving or possessing firearms under Federal law. HR 8 (Thompson) 116<sup>th</sup> Congress (2019-2020) would require a background check on every gun sale or transfer, including private party transfers with a few narrowly defined exceptions.

### 4. Mass Shootings in the U.S.

The number of mass shootings has continued to grow in the United States.

A press release by Congressman Mike Thompson (CA-05) regarding HR-8:

“Every year, background checks stop 88,000 gun sales to criminals, domestic abusers, individuals with dangerous mental illnesses or other prohibited purchasers. However, in some states, those same individuals can buy identical guns at a gun show, over the internet

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<sup>2</sup> Ibid

<sup>3</sup> [https://oag.ca.gov/system/files/attachments/press\\_releases/n2521\\_apps\\_fact\\_sheet.pdf](https://oag.ca.gov/system/files/attachments/press_releases/n2521_apps_fact_sheet.pdf)

<sup>4</sup> <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/nics-reporting-procedures/#federal>

or through a newspaper ad without any questions asked. H.R. 8 would close this loophole, greatly reducing the number of places criminals and the dangerously mentally ill can acquire a firearm.”

According to a 2018 Mother Jones study, more than three quarters of the guns possessed by mass shooters in the past 35 years obtained their guns legally.<sup>5</sup> The deadliest mass shooting in U.S. history occurred on October 1, 2017 in Las Vegas, when a single shooter left 58 dead after firing on a crowd of concertgoers from his hotel window. In the shooter’s hotel room was twenty four firearms, a large quantity of ammunition, and numerous high capacity magazines, all purchased legally in Nevada, California, Texas, and Utah.<sup>6</sup>

## 5. House Resolution 8

HR 8 (Thompson) 116<sup>th</sup> Congress (2019-2020) would require a background check for every gun sale or transfer with limited exceptions including gifts to family members, hunting, target shooting, and self-defense.

## 6. Related Legislation

AJR 5 (Jones-Sawyer) would resolve to urge that the federal government to use California as an example for firearm safety and for stronger firearm laws and to pass legislation that would provide universal firearm safety regulation throughout the United States. AJR 5 is pending in the Assembly Public Safety Committee.

## 7. Argument in Support

According to Giffords Law Center to Prevent Gun Violence:

This Resolution would call upon the US Congress to swiftly enact House Resolution 8, the Bipartisan Background Checks Act of 2019. This federal legislation seeks to close one of them most glaring and dangerous gaps in federal gun laws by requiring purchasers to pass a background check before taking ownership of a weapon designed to take human life.

This gap exists because current federal law only requires people to undergo a background check if they are acquiring a firearm from a licensed gun dealer. In most states, this means that a person with a significant history of criminal violence, domestic abuse, or severely impairing mental illness would still be able to acquire unlimited quantities of nearly any type of firearm from a stranger at a yard sale, at a gun show, or through an online classified ad, with no background check and no questions asked.

A 2017 study estimated that 22% of US gun owners acquired their most recent firearm without a background check. Unsurprisingly, this was a particularly attractive source of weapons for people who could not legally acquire weapons.

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<sup>5</sup> <https://www.motherjones.com/politics/2012/07/mass-shootings-map/>

<sup>6</sup> <https://www.theguardian.com/us-news/2017/oct/03/las-vegas-shooting-girlfriend-marilou-danley-person-of-interest-sheriff>

About 80% of all firearms acquired for criminal purposes are obtained from unlicensed sellers.

Background checks impose almost no burden on law-abiding gun purchasers and help to keep guns from falling into the hands of people with known histories of violence, domestic abuse, and other risky behaviors. While federal background checks legislation will not prevent every shooting tragedy, it is a logical and responsible first step toward national gun safety reform and a future in which Americans in every state and community can feel safe and free from the scourge of violence.

## **8. Argument in Opposition**

According to Gun Owners of California:

Our organization has a history of fighting for effective crime control and opposing ineffective gun control for over 42 years, and the safety of all Californians is at the very foundation of our mission. We do not believe, however, that AJR 4 will further protect the citizens of our state. Given recent tragedies – both in California and across the nation – background checks for all gun sales have proven to be a thoroughly unsuccessful tool in curbing such horrific violence. We have universal background checks here in California, which failed to stop the November 7, 2018, Borderline Bar & Grill shooting, the December 2, 2015, San Bernardino shooting, and the May 23, 2014, Santa Barbara attack. And, just last week, 45-year-old Gary Martin shot and killed five people at the Henry Pratt Company despite Illinois’ universal background checks, red flag laws, 72-hour waiting period, and gun licensing requirements.

While universal background checks may sound like a good idea in theory, they fall far short of their intended goal, which is to keep firearms out of the hands of dangerous individuals. Our current laws are not working, because penalizing the lawful for the misdeeds of the unlawful will never have its anticipated resolution. It’s important to note that our state already has many of the gun control proposals currently being pushed in Congress (waiting periods, firearm registration, increased minimum age for long gun purchases, ban on “assault weapons”) – yet from 2014 -2016 we experienced an 18% increase in firearm related homicides, according to the Department of Corrections and Rehabilitation (see AB 18/Levine).

It has been our consistent goal to work toward common sense solutions regarding the issue of crime and firearm ownership; this can be done, however, without sacrificing our Constitutional rights and the ability of the law abiding to protect their families. I would welcome the opportunity to discuss this with you at your convenience.

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