
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AJR 5 **Hearing Date:** June 11, 2019
Author: Jones-Sawyer
Version: January 31, 2019
Urgency: No **Fiscal:** No
Consultant: FW

Subject: *Firearm Safety*

HISTORY

Source: Author

Prior Legislation: AB 2526 (Rubio), Ch. 873, Stats. 2018
AB 3129 (Rubio), Ch. 883, Stats. 2018
SB 1100 (Portantino), Ch. 894, Stats. 2018
SB 1346 (Jackson), Ch. 795, Stats. 2018
AB 785 (Jones-Sawyer), Ch. 784, Stats. 2017
SJR 1 (Wolk), Ch. 83, Stats. 2014
AJR 45 (Feuer), Ch. 143, Stats. 2012
SJR 10 (De Leon), Ch. 75, Stats. 2012
SJR 18 (Perata), 2003, failed passage in the Senate Judiciary Committee

Support: Bay Area Student Activists; Brady California United Against Gun Violence;
Consumer Attorneys of California; Giffords Law Center to Prevent Gun Violence;
Mayor of Los Angeles Eric Garcetti; Youth ALIVE!

Opposition: Gun Owners of California, Inc.; National Rifle Association

Assembly Floor Vote: 54 - 21

PURPOSE

The purpose of this resolution is to urge the United States Federal Government to use California as an example of responsible firearm laws and to urge the passage of legislation that would provide universal firearm safety regulation throughout the nation.

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:

- 1) Any person “engaged in the business” of selling firearms at wholesale or retail;
- 2) Any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or,
- 3) 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:

- 1) A person convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- 2) A fugitive of justice;
- 3) A person who is an unlawful user of, or addicted to any controlled substance;
- 4) A person who has been adjudicated as a mental defective or has been committed to any mental institution;
- 5) A person who is “an illegal alien;”
- 6) A person who has been discharged from the Armed Forces under dishonorable conditions;
- 7) A person who has renounced his or her United States citizenship;
- 8) 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
- 9) 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 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:

- 1) Anyone convicted of a felony under CA, other state law, or federal law (Pen. Code, § 29800.);
- 2) Anyone convicted of a misdemeanor (Pen. Code, § 29805);
- 3) Anyone who “poses a danger to themselves or others” (W&I Code § 8103.);
- 4) Persons restrained under a protective order or restraining order (Pen. Code, § 29825 (a).);
- 5) Anyone who has a Gun Violence Restraining Order (Pen. Code, § 18100.);
- 6) Anyone who has a felony warrant or a misdemeanor warrant for a crime (Pen. Code, § 29805.);
- 7) 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 finds that federal law does not require the use of a licensed dealer for firearm transfers, as opposed to California, where, with minimal exceptions, the transfer of firearms between unlicensed individuals must be completed by a licensed dealer and a background check must be submitted.

This resolution finds that federal law does not require a waiting period, but California requires a 10-day waiting period to allow a background check to be completed before a firearm can be transferred or delivered.

This resolution finds that federal law does not limit the purchase of multiple handguns in a single sale, unlike California.

This resolution finds that federal law does not require any licensing or training, yet in California, a firearm safety certificate must be obtained before purchasing or receiving a firearm. In addition, a safe handling demonstration must be performed in the presence of a Department of Justice certified instructor.

This resolution find that federal law exempts firearms and ammunition from the health and safety standards set by the federal Consumer Product Safety Act, differing from the California Penal Code, which prohibits the manufacturing or the importation of unsafe handguns, as defined by law, into California.

This resolution finds that federal funds are prohibited from being used to advocate or promote gun control, limiting research on firearm violence. However, the California Firearm Violence Research Act of 2016 created the Firearm Violence Research Center at the University of California to study the cause and effect of firearm-related violence.

This resolution finds that there are no federal guidelines related to carrying concealed weapons, while California is a “may-issue” state, giving local law enforcement the discretion to refuse concealed weapon licenses. In addition, it is unlawful to carry a loaded firearm in California.

This resolution finds that that the United States Department of Justice recently amended regulations to make bump stocks illegal, following California’s lead on banning multi-burst trigger activators, dating back to 1990, and last amended in 2018. In addition, the California Penal Code restricts the use and possession of firearms defined as assault weapons, and requires them to be registered and permitted for lawful sale and possession.

This resolution finds that in 2017, the national average of gun-related deaths per 100,000 people is 11.7, while California’s average is 7.9.

This resolution finds that data provided by the federal Centers for Disease Control and Prevention (CDC) Fatal Injury Report show that in the early 1990s, California ranked 3rd and 16th in gun homicides and gun deaths per capita, respectively, among all states, but by 2016, improved to 25th in gun homicides per capita with the 8th lowest rate of gun-related deaths nationwide.

This resolution finds that California’s firearm death rate is approximately 36 percent lower than the national rate.

This resolution finds that the CDC Fatal Injury Report notes that over 25 years, California’s firearm death rate has fallen more than twice as much as the national gun death rate over the same timeframe.

This resolution finds that California’s firearm death rate is approximately 36 percent lower than the national rate.

This resolution finds that in 2017, the last year of measured data, Californians were 21 percent less likely to be murdered with a firearm, 33 percent less likely to die in an accidental shooting, and 45 percent less likely to die by firearm suicide than the national average.

This resolution finds that California was the first state to enact a gun violence restraining order, known in most states as an extreme risk protection order, which allows an immediate family

member to file a petition to the court to request that firearms and ammunition belonging to the subject of the petition be removed and to temporarily prevent the individual subject from owning or possessing a firearm or ammunition.

This resolution finds that California, along with six other states, prevents the purchase and possession of firearms by individuals convicted of a hate crime.

This resolution finds the annual national cost of gun violence equates to \$229,000,000,000, or \$700 per American. In California alone, the economic cost of gun violence is \$18,300,000,000 per year.

This resolution finds that a nationwide study released by the Federal Bureau of Investigation in June 2018 found that between 2000 and 2013, 75 percent of firearms used in an active shooting, known as a “mass shooting,” were legally obtained.

This resolution finds the health and safety of the people of our nation should be the number one priority of any federal administration, state and local lawmakers, and all other local officials.

This resolution resolves that the California Legislature urges the Federal government to use California as an example for firearm safety and for stronger firearm laws to protect all citizens.

This resolution resolves that the Legislature urge the federal government to pass legislation that would provide universal firearm safety regulation throughout this nation, and be it further.

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, the Minority Leader of the House of Representatives, the Majority Leader of the United States Senate, the Minority Leader of the United States 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:

In the early 1990s, California had the 3rd highest gun homicide rate and the 16th most gun deaths. By 2016, California was ranked 25th in gun homicides per capita with the 8th lowest rate of gun-related deaths. This marked improvement was only possible because of the concerted efforts made by this Legislature to address gun violence in our communities through common sense firearm legislation. While balancing public safety and the second amendment, California has proven that stronger firearm safety laws can lead to a reduced rate of gun violence. It is in the best interest of the public that we enact universal firearm safety standards through strong and sensible laws nationwide. For this reason, AJR 5 urges the federal government to use California as a model for reasonable firearm safety.

2. California Gun Regulation vs. United States Federal Gun Regulation

California has a widely accepted reputation for having the strictest gun laws in the nation and was the first state to ban assault rifles in 1989. In a multitude of areas California laws have gone above and beyond federal laws when it comes to guns.

California requires background checks for gun sales and requires all sales to be funneled through a licensed dealer. Online ammunition sales must go through a licensed seller and in July of 2019 ammunition purchases will also require a background check. Federal law requires no background checks for ammunition and does not require a background check when purchasing from a gun show or private transfer.

In California there is a ten day waiting period between order and delivery meanwhile federal law has no waiting period mandate. In California, you may purchase one handgun every thirty days with limited exceptions meanwhile there are no successive gun purchase limits.

With limited exceptions, California prevents a person from possessing, transporting, distributing, manufacturing, and selling an assault weapon. In addition, California has also banned many features such as quick loading magazines and flash suppressors which can be used to build an assault weapon. The Public Safety and Recreational Firearms Use Protection Act federally banned assault weapons as well as large capacity ammunition for ten years, from 1994-2004. During this period, mass shooting fatalities were 70% less likely.¹ However under former President George W. Bush this ban was not renewed. Currently, the federal government has no comprehensive assault weapon ban currently on the books however S.66 by Senator Dianne Feinstein [D-CA] has been introduced to ban assault weapons nationally similar to California.

There is evidence to the value of these reforms have been beneficial as California has the seventh lowest gun death total of the fifty states. California's leadership in regards to gun and firearm laws have given California a reputation as the most progressive state in gun policy and an A grade from the Gifford's Law Center.

3. Mass Shootings in the U.S.

The number of mass shootings has continued to grow in the United States. 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.² 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.³

4. Related Legislation

AJR 4 (Aguiar-Curry) would urge Congress to swiftly enact House Resolution 8, the Bipartisan Background Checks Act of 2019, to require background checks for all firearm sales.

¹ <https://insights.ovid.com/crossref?an=01586154-201901000-00002>

² <https://www.motherjones.com/politics/2012/07/mass-shootings-map/>

³ <https://www.theguardian.com/us-news/2017/oct/03/las-vegas-shooting-girlfriend-marilou-danley-person-of-interest-sheriff>

5. Argument in Support

According to Brady United Against Gun Violence:

California has the strongest firearm laws in the nation and they are making a difference. From 1993 to 2017, California's firearm mortality rate declined by **55 percent**—almost four times the decrease in the rest of the nation. Many of California's most important firearm laws went into effect in the early 1990s. As California continued to enact strong firearm laws, its firearm death rate continued to decline. California has done the best job in the country of enacting laws that make it harder for people who are a danger to themselves and others to acquire dangerous firearms. These laws have helped reduce both firearm homicides and firearm suicides, and have enabled law enforcement to combat gun trafficking and seize illegally owned firearms.

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