
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 1038 **Hearing Date:** March 19, 2024
Author: Blakespear
Version: March 11, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms*

HISTORY

Source: San Diegans for Gun Violence Prevention; San Diego City Attorney's Office

Prior Legislation: AB 725 (Lowenthal), Ch. 239, Stats. of 2023
AB 1420 (Berman), Ch. 45, Stats. of 2023
AB 228 (Rodriguez), Ch. 138, Stats. of 2022
AB 1191 (McCarty), Ch. 683, Stats. of 2021
SB 894 (Jackson, 2016), vetoed by the Governor
SB 299 (DeSaulnier, 2013), vetoed by the Governor
SB 1366 (DeSaulnier, 2012), vetoed by the Governor
AB 809 (Feuer), Ch. 745, Stats. of 2011

Support: Brady California; Brady Campaign; Gifford's Law Center to Prevent Gun Violence; NeveragainCA; Prosecutors Alliance of California; Women Against Gun Violence' Women for American Values and Ethics

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

PURPOSE

The purpose of this bill is to 1) amend Proposition 63 (2016) to shorten the timeframe in which a gun owner must report a lost or stolen firearm, from 5 days to 48 hours; 2) require the Department of Justice (DOJ) to inspect the 25 firearm dealer locations that are the source of the highest gross number of crime guns in the previous year, as specified; and, 3) require firearm dealers to annually certify their inventory and report specified acquisitions.

Existing law generally prohibits the sale, lease or transfer of firearms unless the person has been issued a license by the California Department of Justice, and establishes various exceptions to this prohibition. (Penal Code §§26500 – 26625)

Existing law provides that a license to sell firearms is subject to forfeiture for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Penal Code §26800(a).)

Existing law provides that the DOJ may assess specified civil fines against a licensee for any breach of a prohibition or requirement that subjects the licensee to forfeiture of their license to sell firearms. (Penal Code §26800(b).)

Existing law requires a firearms dealer or licensee to meet all the following requirements:

- Have a valid federal firearms license;
- Have any regulatory or business license, or licenses, required by local government;
- Have a valid seller's permit issued by the State Board of Equalization;
- Have a certificate of eligibility issued by the DOJ, as specified;
- Have a license issued in a specified format granted by the local licensing authority; and,
- Be recorded in the DOJ's centralized list of licensees. (Pen. Code, § 26700.)

Existing law requires every licensed dealer to keep a register or record of electronic or telephonic transfer in which specified information regarding firearm purchases must be recorded, and to make firearm transaction information available to law enforcement. (Pen. Code §§ 26900, 28100, 28160)

Existing law generally requires a firearms dealer to record and forward certain firearm transaction information, including firearm purchaser information, to the DOJ before completing a sale, lease, or transfer of a firearm. (Pen. Code, §§ 28200 *et seq.*)

Existing law requires DOJ to keep a centralized list of all persons licensed to sell, lease or transfer firearms at retail. (Pen. Code §26715.)

Existing law authorizes the DOJ to inspect firearms dealers every three years, as specified, in order to ensure compliance with certain specified statutes and any other applicable state law, and to requires the DOJ to maintain and make available information concerning those inspections, as specified. (Pen. Code §26720, 26725.)

Existing law requires law enforcement agencies to enter into the DOJ Automated Firearms System (AFS) each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, surrendered or relinquished, as specified. (Pen. Code §§ 11108.2, 25260)

Existing law provides that law enforcement agencies subject to the above requirement shall, and other specified agencies may, report to the DOJ in a manner determined by the Attorney General in consultation with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime (hereinafter, "crime guns"), within 7 calendar days of obtaining the information (Pen. Code § 11108.3(a).)

Existing law provides that information collected pursuant to the above provision shall be maintained by the DOJ for academic and policy purposes, as specified, and requires the DOJ, on

an ongoing basis, to analyze the information collected for patterns and trends relating to crime guns, as specified, including the leading sources and origins of those firearms. (Pen. Code § 11108.3(d), (e).)

Existing law requires the DOJ to prepare and submit a report to the Legislature summarizing the analysis above, and including specified information regarding the quantity of certain firearms recovered by law enforcement, disaggregated as specified. (Pen. Code § 11108.3(f).)

This bill requires the DOJ to inspect the 25 firearm dealer locations that are the source or origin of the highest gross number of firearms as described in the report required above within the previous year.

This bill specifies that it does not require a dealer location to be inspected if an inspection has already been completed by the DOJ within the previous year pursuant to existing law.

Existing law requires every person to report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost. (Pen. Code § 25250(a).)

Existing law requires every person who has reported a lost or stolen firearm per the above to notify the local law enforcement agency to whom the loss or theft was report within 5 days if the firearm is subsequently recovered by the person. (Pen. Code § 25250(b).)

Existing law specifies that a person is not required to report the loss of an antique firearm, as defined. (Pen. Code, §25250(c).)

Existing law exempts peace officers acting within the course and scope of their duties from reporting the theft or loss of a firearm if they reported it to their employing agency. Also exempts members of the U.S. Armed Forces, and other specified persons, if they lost the firearm while engage in their official duties, as well as firearms lost or stolen prior to July 1, 2017. (Pen. Code, § 25255.)

Existing law punishes the failure to report a lost or stolen firearm as an infraction with a fine up to \$100 for a first offense and up to \$1,000 for a second offense, and as a misdemeanor for any subsequent offense. (Pen. Code, § 25265.)

Existing law provides that every person reporting a lost or stolen firearm shall report the make, model and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report. (Pen. Code, § 25270.)

This bill provides that every person shall report the loss or theft of a firearm they own or possess to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within 48 hours of the time they knew or reasonably should have known that the firearm had been lost or stolen.

Existing law provides that, on the date of receipt, a licensee shall report to the DOJ the acquisition by the licensee of any firearm, subject to the following exceptions:

- Specified transactions between dealers when the firearm is not intended as merchandise in the receiving dealers business.
- Acquisitions of firearms by a dealer from a wholesaler.
- Acquisitions by a dealer from a person licensed as a manufacturer or importer to engage in those activities pursuant to federal law.
- Acquisitions by a dealer from a person who resides outside the state who is licensed as a “federal firearms licensee” (FFL) pursuant to federal law.
- Acquisitions of a firearm by a dealer who is also licensed as a secondhand dealer under existing law, as specified.

This bill, commencing on January 1, 2027, repeals the above exemptions for acquisitions of firearms from a wholesaler and acquisitions from parties licensed pursuant to federal law.

This bill requires firearm dealers in California to annually certify their inventory to the Department of Justice and include the make, model and serial number of their entire inventory in the annual certification.

This bill specifies that upon request by a local law enforcement agency, the DOJ shall send a copy of the annual certifications to the agency.

This bill authorizes the Attorney General, a city attorney or county counsel to impose a civil penalty on a person who violates the inventory requirement in the amount of \$3,000 per day for the first violation, \$5,000 per day for a second violation, and \$10,000 per day for a third and subsequent violation.

This bill specifies that any civil penalties collected pursuant to this section shall be paid to the office of the Attorney General, city attorney or county counsel, whichever office brought the action.

COMMENTS

1. Need for This Bill

According to the Author:

Considering there are more guns than people in our country, it is unsurprising that many firearms end up lost, stolen, trafficked, and associated with crimes. Between 2017 and 2021, there were over one million reported gun losses or thefts, and the ATF noted this number significantly underrepresents the actual total.

Currently, Californians have five days to report lost or stolen firearms, which is longer than 13 other states. SB 1038 gives people 48 hours to report the missing firearm. Requiring people report missing firearms helps prevent straw purchases in which someone who can legally purchase a firearm buys it for someone who can't

legally buy it themselves because the person cannot falsely claim its missing down the line without repercussions.

We can also focus on gun dealers that are selling guns that wind up used in crimes. SB 1038 will require dealers to (1) report almost all acquisitions of firearms alongside sales, (2) certify their inventories annually, so when we identify bad actors, we have records to challenge them on, and (3) direct the California Department of Justice to increase scrutiny on bad actors and less on good, law-abiding dealers. For instance, over a 12-year period, one California gun dealer location was associated with 1,652 crime guns. If enacted, SB 1038 would require that location to undergo inspection more frequently to ensure that the dealer is not directly contributing to our crime gun problem. When retailers are held accountable, the flow of new guns into the illicit market often decreases.

2. Prop 63 and Lost and Stolen Firearms

Proposition 63, the “Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative,” (also known as the Safety for All Act) was approved by California voters on the November 8, 2016 ballot. This initiative (1) requires individuals to pass a background check and obtain DOJ authorization to purchase ammunition, (2) requires most ammunition sales to be made through licensed ammunition vendors and reported to DOJ, (3) prohibits possession of large-capacity magazines and requires their disposal, (4) prohibits persons convicted of stealing a firearm from possessing firearms, (5) establishes new procedures for enforcing laws prohibiting firearm possession, (6) requires DOJ to provide information about prohibited persons to federal National Instant Criminal Background Check System, and, of most relevance to this bill, (7) requires lost or stolen firearms to be reported to law enforcement within a specified timeframe.¹ Specifically, existing law, enacted by Prop 63, requires lost or stolen firearms be reported to law enforcement in the jurisdiction where the loss or theft occurred within 5 days of the time the owner/person possessing the firearm discovered or reasonably should have discovered the loss or theft.²

The Legislature may not amend the statute enacted by voter initiative without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval."³ Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative. The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power and, hence, to apply a liberal construction to this

¹ California Proposition 63, Ballotpedia. [California Proposition 63, Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban \(2016\) - Ballotpedia](#)

² Penal Code §25250

³ *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; Cal. Const., art. II, § 10, subd. (c.)

power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body.⁴

As to the Legislature's authority to amend Proposition 63, Section 13 of the initiative states:

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a vote of 55 percent of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act.

This bill amends Proposition 63 to shorten the window for reporting lost or stolen firearms to the relevant law enforcement agency, from five days to 48 hours, and as such, is keyed as requiring a vote of 55 percent of the members of the Legislature.

While federal law does not require individual gun owners to report the loss or theft of a firearm to law enforcement, 16 states have mandatory loss and/or theft reporting laws, while three states impose some level of liability for stolen firearms. Of the states that require reporting, 11 require reporting within 72 hours of discovery of the loss or theft, while California is one of only 3 states that allows gun owners 5 days to report.⁵ This bill brings California into alignment with Virginia as the only 2 states that would have a 48-hour reporting requirement, with only Massachusetts, Ohio, Washington D.C., Hawaii, New York, and Rhode Island having stricter requirements.⁶

3. Firearm Dealer Licensing and Inspection by the Department of Justice

Federal law requires firearms dealers to obtain a license (also known as a “federal firearms license,” or “FFL”) through the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The ATF issues various types of FFLs depending on the primary activity engaged in by the licensee: there are separate licenses for firearms dealers, pawnbrokers, collectors, manufacturers, and importers. According to the ATF, as of December 2023, there were 1,761 FFLs issued for firearms dealers and pawnbrokers in California, and a total of 9,673 FFLs in the state.⁷ An FFL is necessary but not sufficient for obtaining a firearms dealer license in California. Additional requirements include any business license required by local government, a seller’s permit issued by the California Department of Tax and Fee Administration, a seller’s license issued by the local licensing authority of a local government, a certificate of eligibility (COE) issued by the DOJ (verifying that a background check has taken place), and being recorded on the DOJ’s centralized list of firearms dealers.⁸ In California, only individuals that have obtained a valid license through the DOJ may lawfully sell, lease or transfer firearms within the state, subject to limited exceptions.⁹

Firearm dealers in California are subject to numerous state and federal laws that they must abide by in order to remain in operation. Such laws specify the manner in which firearm dealers must keep their records, deliver a firearm, secure and store their inventory, obtain security measures, and impose numerous other requirements. Firearm dealers who do not comply with such laws

⁴ *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473.

⁵ “Reporting Lost and Stolen Firearms.” Giffords Law Center. [Reporting Lost & Stolen Guns | Giffords](#)

⁶ *Ibid.*

⁷ “Complete Federal Firearms Listings.” Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). [Complete Federal Firearms Listings | Bureau of Alcohol, Tobacco, Firearms and Explosives \(atf.gov\)](#)

⁸ Penal Code §26700

⁹ Penal Code §26500; see Penal Code §§27850 et. seq. for exceptions related to private party transfer.

have been linked to a greater likelihood that firearms from their inventory will be recovered in a crime. A recent report from Brady United Against Gun Violence cites data from the ATF highlighting that when ATF inspected the 1% of gun dealers that supplied almost 60% of crime guns nationwide, it found that 75% of these dealers had violated federal law, including significant recordkeeping violations and participation in sales to potential gun traffickers and prohibited persons. In comparison, when ATF inspected a random sample of dealers, the number that were found to be noncompliant dropped to 37%.¹⁰ Additionally, a recent report published by the California DOJ reviewing crime gun¹¹ data gathered by the department between 2010 and 2022 revealed that of the approximately 545,946 crime guns with identifiable serial numbers recovered by California law enforcement agencies during that period, 76,135 could be associated with 1,929 distinct California firearms licensees. The report also showed that 82 dealers were associated with roughly half of all crime guns, and one specific dealer could be associated with 1,652 crime guns.¹²

Existing law, effective January 1, 2024 and enacted by recent legislation¹³, requires the DOJ to conduct inspections of licensed firearms dealers at least once every three years to ensure compliance with any and all existing requirements to which they are subject. Moreover, dealer inspections must include an audit of dealer records that includes a sampling of at least 25% but no more than 50% of each record type. This bill requires that the DOJ inspect the 25 dealer locations that are the source or origin of the highest gross number of crime guns within the previous year, as assessed by DOJ. To prevent duplication of efforts, the bill includes an exemption to this requirement for inspections of dealer locations that have already been completed by the DOJ within the previous year.

4. Dealer Inventory Certification and Purchase Reporting

Existing law requires the Department of Justice to maintain certain data regarding firearm dealers, owners and transfers between certain parties, such as firearms surrendered to or recovered by law enforcement, issuance of concealed carry permits, dealer records of sale (DROS), importation of firearms by new residents, and ownership of relics, curios and other now-prohibited weapons.¹⁴ With regard to dealers specifically, existing law requires the reporting of all firearm purchases, sales and transfers conducted via licensed dealer to the DOJ. For each transaction, existing law requires dealers to collect and report to DOJ over 40 discrete pieces of data, including information regarding the seller, the purchaser/transferor/transferee and the firearm(s) being transferred.¹⁵ Additionally, under existing law, licensed dealers are required to report to the DOJ any firearm they acquire from a non-licensed private party intended to be merchandise in the dealer's inventory. However, several transfers are exempt from this

¹⁰ Brady United Against Gun Violence. *A California Case Study: Government Agencies Should Screen Firearms Vendors*. <<https://s3.amazonaws.com/brady-static/Procurement-CA-v5.pdf>

¹¹ A "crime gun" is defined as a firearm that was recovered by a law enforcement agency after it was (1) used in a crime, (2) suspected to have been used in a crime, or (3) illegally possessed.

¹² "Crime Guns in California: Mandated Reporting Statistics AB 1191 Legislative Report." California Department of Justice. 30 June 2023. [AB 1191 Crime Gun Report.pdf](#)

¹³ AB 1420 (Berman), Ch. 45, Stats. of 2023, AB 228 (Rodriguez), Ch. 138, Stats. of 2022

¹⁴ Penal Code §§ 11106, 11108.2, 11108.3, 28100 et. seq, 17000, 27560, 27565, 28000, 30900.

¹⁵ Penal Code §28160; For additional information on DOJ's various firearms databases and how they interact, see the department's 2022 Armed and Prohibited Persons Report, particularly p. 43. [Armed and Prohibited Persons System Report 2022 \(ca.gov\)](#)

requirement, include acquisitions from wholesalers, licensed manufacturers or importers, and licensed FFLs from other states.¹⁶

Whereas existing law only requires dealer reporting to DOJ in specific circumstances – primarily triggered by the acquisition, sale or transfer of firearms – this bill requires firearm dealers in California to annually certify their entire inventory to the DOJ, including the make, model and serial number of each firearm. The bill authorizes local law enforcement agencies to request and receive a copy of these certifications, and authorizes the Attorney General, a city attorney or county counsel to impose a specified civil penalty for violations of this requirement.

Additionally, the bill removes the reporting exemptions listed above for dealer acquisitions from wholesalers, manufacturers, importers and out-of-state FFLs. Under this bill, all of those acquisitions are required to be reported to the DOJ. Given the extent of the records already required by DOJ from dealers, and the recordkeeping and retention already necessary to run a firearm dealership, the annual certification and increased reporting of firearm acquisitions should not impose a significant burden on firearm licensees, provided the DOJ does not need create an entirely new database with requirements and processes distinct from existing systems, such as DROS, the California Firearms Application Reporting System (CFARS), and the Automated Firearms System (AFS)(for additional information, see footnote 15.)

5. Related Legislation – SB 965 (Min)

SB 965 (Min), which, at the time this analysis was finalized, was set for hearing in this committee on March 12, requires DOJ to submit a report to the Legislature including, in relevant part, information about dealer inspections and DOJ staffing related to those inspections.

6. Argument in Support

According to NeverAgainCA, writing in support of the bill:

In the United States, there are more firearms than people and more dealers than all McDonalds, Burger King, Subway, and Wendy’s restaurants combined. Because we have so many guns in our country, the problem of unaccounted firearms is a significant concern. The Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) found over one million gun losses or thefts were reported from 2017 to 2021. This number significantly underrepresents the actual number of missing firearms, as only an estimated 75% of private individuals report firearm thefts.

Moreover, we know that certain dealers have higher associations with crime guns than others. According to the DOJ, from 2010 to 2022, law enforcement recovered 545,946 crime guns in California. Over half of the nearly 80,000 crime guns traced came from only 82 dealer locations, with a single location accounting for 1,652 crime guns. Evidence shows that a dealer’s sales practices correlate with the number of crime guns traced back to them. We must direct our limited resources to increase scrutiny of dealers who sell higher numbers of guns that end up used in crimes.

¹⁶ Penal Code §26905.

SB 1038 proposes practical solutions to this issue:

- **Reducing the reporting time:** The bill reduces an individual's time to report lost or stolen firearms from five days to 48 hours, aligning with the existing requirement for licensed firearms dealers.
- **Annual inventory certification:** It requires licensed firearm dealers to certify their inventory to the CA DOJ annually and allows local law enforcement to hold them accountable if they do not, improving accountability.
- **DOJ inspections:** The bill mandates the DOJ to inspect the top 25 dealer locations listed on the annual AB 1191 Crime Gun Report within one calendar year of the report's release.
- **Reporting acquisitions:** It requires licensed firearm dealers to report acquisitions from manufacturers and wholesalers to the DOJ beginning on January 1, 2027. These measures will significantly enhance our ability to track firearms, prevent them from falling into the wrong hands, and ultimately, make our communities safer.

7. Argument in Opposition

According to Gun Owners of California, writing in opposition:

Without question, no one will argue that it's important to inform law enforcement when a firearm is missing or stolen; the issue with this proposal, however, is that the reporting time frame is exceedingly restrictive and thus places lawful individuals at risk of unknowingly breaking the law. The original five-day mandate drew concern from law enforcement and the courts because the enforcement provisions are primarily focused on the law abiding and thus places an unrealistic burden on gun owners. The bill would essentially force them to routinely take inventory of their belongings - which are required to be under lock and key. It could be weeks before someone knows whether a secured firearm has been stolen; this bill shifts the focus from the criminal and places it on the responsible, lawful person.

Further, the requirement for a dealer to annually certify their inventory is unnecessarily onerous. Under current California law, dealers are already inspected biannually by DOJ - with additional inspections by the Bureau of Alcohol, Tobacco, Firearms and Explosives – each of which include a complete inventory of guns. Thus, this provision is redundant and appears punitive.

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