
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: SB 1160 **Hearing Date:** April 23, 2024
Author: Portantino
Version: April 9, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms*

HISTORY

Source: Author

Prior Legislation: AB 144 (Portantino), Ch. 725, Stats. of 2011

Support: Unknown

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

Analyzed as Proposed to Be Amended

PURPOSE

The purpose of this bill is to make it an aggravated misdemeanor for a person to openly carry an unloaded handgun when the handgun and unexpended ammunition are in immediate possession of the person and the person is not listed with the Department of Justice as the owner of that handgun.

Existing law provides that except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both. (Pen. Code, §19.)

Existing law requires the Department of Justice to keep and properly file a complete record of specified information reported to it regarding concealed carry permits, specified firearm transfers and sales, serialization of firearms and ownership records, and other firearm-related actions (Penal Code §11106(a).)

Existing law requires the Attorney General to permanently keep and properly file and maintain all information reported to the DOJ pursuant to specified firearm provisions and maintain a registry thereof. (Penal Code §11106(b).)

Existing law provides for the dissemination of firearm registry information if specified conditions are met. (Penal Code §11106(c).)

Existing law makes it a crime to carry a loaded firearm on the person or in a vehicle while in any public place in a city, or any prohibited place in an unincorporated area of a county. (Pen. Code, §25850 (a).)

Existing law prescribes different punishments for carrying a loaded firearm in public depending on specified factors and circumstances. Where the person carrying the firearm is not listed with the Department of Justice pursuant to existing law as the recorded owner of the handgun, the crime is punishable as an aggravated misdemeanor or a felony. (Pen. Code, §25850 (c)(6).)

Existing law establishes a process for individuals to obtain a license to carry a concealed firearm upon their person. (Pen. Code, §26150 et. seq.)

Existing law makes it a crime to openly carry an unloaded handgun upon their person outside a vehicle while in or on any of the following:

- A public place or public street in an incorporated city or city and county.
- A public street in a prohibited area of an unincorporated area of a county or city and county.
- A public place in a prohibited area of a county or city and county. (Pen. Code, §26530(a)(1).)

Existing law makes it a crime to openly carry an unloaded handgun inside or on a vehicle, whether or not on the firearm is on their person, while in or on any of the following:

- A public place or public street in an incorporated city or city and county.
- A public street in a prohibited area of an unincorporated area of a county or city and county.
- A public place in a prohibited area of a county or city and county. (Pen. Code, §26530(a)(2).)

Existing law provides that the two open carry crimes above are punishable as a misdemeanor. (Pen. Code, §26530(b)(1).)

Existing law makes the crime of openly carrying an unloaded handgun in a public place or public street in an incorporated city punishable by imprisonment in county jail for up to one year (an aggravated misdemeanor) if the handgun and unexpended ammunition capable of being discharged from the handgun are in immediate possession of that person and the person is not in lawful possession of the handgun. (Pen. Code, § 26350 (b)(2).)

This bill provides that the open carry of an unloaded handgun in a public place or public street in an incorporated city is an aggravated misdemeanor punishable by up to a year in county jail if the handgun and unexpended ammunition capable of being discharged from the handgun are in immediate possession and the person is not listed with the Department of Justice as the owner of that gun.

COMMENTS

1. Need for This Bill

According to the Author:

SB 1160 increases responsible gun ownership and creates parity with current statutes that impose higher penalties for those who illegally carry unregistered handguns and conduct crime.

2. Department of Justice Firearm Databases

Registration of firearms in California functions through a web of interrelated firearm databases managed by the Department of Justice, which is responsible for retaining records related to a range of firearm-related conduct involving firearm dealers and owners, as well as transfers between certain parties. These records pertain to firearms surrendered to or recovered by law enforcement, issuance of concealed carry permits, firearms voluntarily registered by their owners, dealer records of sale (DROS)(including records of private party transfers), importation of firearms by new residents, persons prohibited from purchasing or possessing firearms, and ownership of relics, curios and other now-prohibited weapons, such as assault weapons.¹ The web of databases tracking and storing this information includes roughly 20 systems operated by the DOJ, among the largest and most active of which are the Armed and Prohibited Persons System (APPS), the Automated Firearms System (AFS), the Concealed Carry Weapons system (CCW), the Dealers Record of Sale Entry System (DROS), Assault Weapons Registration (AWR), and the Mental Health Reporting System (MHRP).

The function of most of these systems is self-explanatory, but perhaps the largest and certainly the most pertinent to this bill is the Automated Firearms System, or AFS. The AFS was created in 1980 to identify lost or stolen firearms and connect firearms with persons, and tracks serial numbers of every firearm owned by government agencies, handled by law enforcement (seized, destroyed, held in evidence, reported stolen, recovered), voluntarily recorded in AFS, required to be registered with the DOJ (i.e. assault weapons or imported weapons), or handled by a firearms dealer through transactions, as well as concealed carry permit records.² California is one of only a few states that has authorized state law enforcement to maintain a central database of gun and ammunition sale records to be accessed by courts and law enforcement personnel for public safety purposes. As of January 1, 2024, the APPS system (a database separate from but that shares information with AFS) contained 3,466,823 armed and not prohibited individuals (i.e. registered firearm owners. However, this does not reflect existing firearm owners who acquired new firearms, and it is unclear exactly how many firearms are listed in AFS.³

¹ Penal Code §§ 11106, 11108.2, 11108.3, 28100 et. seq, 17000, 27560, 27565, 28000, 30900. For a relational diagram of DOJ's Firearms Databases and Applications, see the Departments 2023 Armed and Prohibited Persons Report, p. 54. [Armed and Prohibited Persons System Report 2023 \(ca.gov\)](#)

² The AFS is codified at Penal Code § 11106. Prior to 2014, most entries in AFS were handguns. Now, all newly acquired firearms, both handguns and long guns, are entered into AFS. See the DOJ AFS page for more info: [Automated Firearms System Personal Information Update | State of California - Department of Justice - Office of the Attorney General](#)

³ 2023 Armed and Prohibited Persons Report, p. 20

3. Prohibition on Openly Carrying a Handgun in a Public Place

California law generally prohibits people from carrying loaded firearms in public, regardless of whether they are concealed, but provides an exception for qualified residents of smaller counties, to whom the sheriff of that county or a chief of policy may issue licenses to carry loaded, exposed handguns.⁴ A violation of the prohibition on the open or concealed carry of loaded firearms is punishable as either a felony, a wobbler or a misdemeanor depending on the circumstances; however, where the defendant is not listed in DOJ's Automated Firearms Database as the owner of the handgun, it is punishable as a wobbler.⁵

Existing law also prohibits people from openly carrying unloaded handguns on their person or in a vehicle while in various specified public locations, which is generally punishable as a standard misdemeanor (maximum 6 months in jail). However, where the handgun is possessed in a public place or on a public street in an incorporated city, compatible ammunition is in the 'immediate possession' of that person, and the person is not in lawful possession of the handgun, existing law imposes the penalty of aggravated misdemeanor, which is punishable by up to a year in county jail.⁶ Additionally, under the recently enacted SB 368 (Portantino, Ch. 251, Stats. of 2023), someone convicted of openly carrying an unloaded handgun is subject to a 10-year ban on the purchase and possession of firearms.⁷

In addition to situations where the offender is not in lawful possession of the handgun, this bill extends the aggravated misdemeanor penalty for openly carrying an unloaded handgun to situations where the person is not listed with the DOJ in the Automated Firearms System as the owner of that gun, even if the person lawfully possesses it. Put another way, the bill makes it a misdemeanor punishable by up to a year in county jail to openly carry an unloaded handgun in a public place or public street in an incorporated city if the person carrying the handgun is not its registered owner, but is otherwise lawfully possessing that handgun. Practically speaking, situations that may be subject to the bill are rare – it is unusual that someone would be in lawful possession of a handgun but *not* be the firearms registered owner. These include situations where an individual was temporarily loaned the firearm by the registered owner⁸, new residents prior to 1998⁹, and potential clerical errors.¹⁰ The Author and Committee may wish to consider whether increasing the penalty for these rare cases is actually necessary, and whether to amend the bill to exempt individuals who are only not listed as the owner of the firearm due to a clerical error that is not their fault. Nevertheless, in any event, this bill brings existing law regarding open carry of an unloaded firearm into closer conformity with existing law related to openly carrying loaded firearms.

⁴ Penal Code §§ 25850, 26150, 26155; though there is no license that such a license has been issued. See *Baird v. Bonta* (2023) 81 F.4th 1036

⁵ Penal Code §25850 (c).

⁶ Penal Code § 26350 (a), (b).

⁷ Penal Code §29805 (f).

⁸ Pursuant to a protective transfer or a transfer for safekeeping due to the owner's prohibited status, for instance.

⁹ New residents prior to 1998 were not required to register their handguns with the DOJ. See Penal Code §17000

¹⁰ A situation where a person is in fact the owner of the handgun, but due to an administrative error at DOJ, the registration – whether received from the dealer at time of purchase or from the purchaser – was not properly entered into AFS. These processes are largely automated, so situations like this would be exceedingly rare.

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 *New York State Rifle and Pistol Association v. Bruen* (2022), 142 S.Ct. 2111, the Supreme Court of the United States considered the constitutionality of a New York State law requiring applicants for a license to carry a concealed pistol on their person to show “proper cause,” or a special need distinguishable from the general public, as well as good moral character, when applying for license. In a 6-3 decision along ideological lines, the Supreme Court ruled that the New York law’s “proper cause” requirement was an unconstitutional violation of the Second Amendment, holding that the “Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home,” effectively establishing a constitutional right to publicly carry a firearm under the Second Amendment.¹¹

Moreover, the *Bruen* decision abrogated the existing two-part test courts had been using since the Court’s 2008 decision in *District of Columbia v. Heller* (2008) 554 U.S. 570 and established a new test for determining whether a law comports with the Second Amendment’s right to bear arms. Step one of that new test involves asking whether the Second Amendment’s plain text covers the individual conduct at issue.¹² Next, in defense of a law regulating firearms, the government must show more than that the regulation promotes an important governmental interest – rather, the law must be “consistent with this Nation’s historical tradition of firearm regulation.”¹³ Under the *Bruen* decision, “how and why the regulations burden a law-abiding citizen’s right to armed self-defense” matters, and further, “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘central’ considerations when engaging in an analogical inquiry.”¹⁴

In September 2023, a three-judge panel of the 9th Circuit Court of Appeals delivered a decision putting California’s ban on openly carrying a handgun in legal jeopardy. In *Baird v. Bonta* (2023) 81 F.4th 1036, the court ruled that a lower court abused its discretion and applied the incorrect standard in declining to halt state enforcement of the open carry laws via preliminary injunction while their constitutionality is being challenged. The 9th Circuit panel remanded the case to the lower court, directing the judge to consider the likelihood that the plaintiffs would prevail in their claim that the open carry bans are unconstitutional. According to the panel’s opinion, if the lower court determines that the licensing laws impact 2nd Amendment rights, it must apply the *Bruen* test, and in applying the *Bruen* test, must require that California show a “distinctly similar” historical law to its current open carry laws in order for the latter to be constitutional today. This is arguably an even stricter historical analogue standard than the Supreme Court articulated in *Bruen*.¹⁵ Thus, while California’s open carry laws remain in effect today, their future is uncertain.

5. Related Legislation

AB 2739 (Maienschein), currently pending in the Assembly Appropriations Committee, provides that any unloaded openly carried handgun is a public nuisance and shall be surrendered to law enforcement, subject to limited exceptions. The bill passed out of Assembly Public Safety Committee on a vote of 7-0.

¹¹ *Bruen*, 142 S. Ct. at 2122.

¹² *Id* at 2129-2130.

¹³ *Id.* at p. 2132-2133.

¹⁴ *Ibid.*

¹⁵ *Baird v. Bonta* (2023) 81 F.4th 1036, 1047. [Gun owners win new bid to challenge California’s open-carry restrictions | Reuters](#)

6. Committee Amendments

The Author has agreed to adopt amendments in committee per the following:

- As there is no registration requirement, per se, in existing law, and AFS is often populated with owner information via an array of actions (purchases/transfers, voluntary registration, new residents, etc), the amendments remove the word “registered” for the purpose of accuracy.
- The amendments rectify an improper cross-reference.

7. Argument in Opposition

According to the California Rifle and Pistol Association:

This legislation will do more damage to this state as it will negatively impact Californians in every walk of life. A law abiding citizen has the right to purchase a firearm which is unloaded at the time of purchase. The author defines in this bill that transporting an unloaded firearm is now guilty of a crime. This negatively impacts hunters, competitive shooters, firearms collectors and other lawful activities. The negative impact of previous legislation on what is already been ruled by the Judicial system as unconstitutional multiple times such as ammunition requirements (Rhode v. Bonta), the handgun roster (Boland v. Bonta), magazine restrictions (Duncan v. Bonta) and others has led to the belief that this legislature is hostile toward the next generation who want to serve this state and this country. Students who seek a career in the military, agriculture, forestry, law enforcement or earn competitive scholarships to attend major universities have already been negatively impacted.

Californians who seek to provide food for their families through hunting programs are being negatively impacted by a wide range of restrictions placed by the legislature by bills such as SB1160. Passing this bill will further reduce the number of Californians purchasing equipment, licenses and tags that are a major contributor in conserving our wildlife for all our citizens. The loss of revenues in this area will reduce funding for our natural resource agencies at a time of severe budget deficits. Firearms owners come from every stratum of our society and take part in competitive shooting sports that lead to gold medals in the Olympics, National and International competitions. Many firearms owners have inherited, purchased, won at a non-profit fundraiser that supports wildlife conservation or acquired at auction. This bill would make the act of transportation to these activities a crime.

The author perceives that this legislation will somehow reduce gun violence but nowhere has he to date provided such evidence. CRPA would suggest the author and legislator focus on reducing the number of known criminals violating current laws by owning firearms on the Armed Prohibited Persons Database and not penalizing law abiding citizens.

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