
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 120 **Hearing Date:** April 23, 2019
Author: Stern
Version: April 8, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Prohibited Persons*

HISTORY

Source: Los Angeles City Attorney
Prior Legislation: 347 (Jackson), 2015, vetoed
Support: Bay Area Student Activists
Opposition: American Civil Liberties Union of California; California Public Defenders Association

PURPOSE

The purpose of this legislation is to prohibit a person who is convicted of a misdemeanor violation of carrying a concealed firearm, carrying a loaded firearm, or openly carrying an unloaded handgun, from possessing a firearm for a period of 10 years. The bill would make the violation of that prohibition punishable as either a misdemeanor or as a state prison felony.

Existing law provides that certain people are prohibited from owning or possessing a firearm for life, including: (Penal Code §§ 29800, 23515 and 29805.)

- 1) Anyone convicted of a felony;
- 2) Anyone addicted to a narcotic drug;
- 3) Any juvenile convicted of a violent crime with a gun and tried in adult court;
- 4) Any person convicted of a federal crime that would be a felony in California and sentenced to more than 30 days in prison, or a fine of more than \$1,000; and,
- 5) Anyone convicted of certain violent misdemeanors, e.g., assault with a firearm; inflicting corporal injury on a spouse or significant other, or brandishing a firearm in the presence of a police officer.

Existing law provides that a violation of a lifetime ban on possession of a firearm is a felony. (Penal Code §§ 29800, 23515 and 29805.)

Existing law provides that anyone convicted of numerous misdemeanors involving violence or threats of violence are subject to a ten-year ban on possession of a firearm. Provides that a violation of these provisions is an alternate felony/misdemeanor. (Penal Code § 29805.)

Existing law provides that any person taken into custody, assessed, and admitted to a designated facility due to that person being found to be a danger to themselves or others as a result of a mental disorder, is prohibited from possessing a firearm during treatment and for five years from the date of their discharge. Provides that a violation of these provisions is an alternate felony/misdemeanor. (Welfare and Institutions Code §§ 8100 and 8103(f).)

Existing law provides that persons who are bound by a temporary restraining order or injunction or a protective order issued under the Family Code or the Welfare and Institutions Code, may be prohibited from firearms ownership for the duration of that court order. Provides that the violation of these provisions is a wobbler or a misdemeanor, as specified. (Penal Code § 29825.)

Existing law requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to Department of Justice (DOJ) to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. (Penal Code § 28160-28220.)

Existing law requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is prohibited from purchasing a firearm. (Penal Code § 28220.)

Existing law requires firearms to be centrally registered at time of transfer or sale by way of transfer forms centrally compiled by the DOJ. DOJ is required to keep a registry from data sent to DOJ indicating who owns what firearm by make, model, and serial number and the date thereof. (Penal Code § 11106(a) and (c).)

Existing law requires the Attorney General to establish and maintain an online database to be known as Armed Prohibited Persons System (APPS). The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System (CFIS), and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. The information contained in APPS shall only be available to specified entities through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Penal Code § 30000.)

Existing federal law provides, that certain people are prohibited from owning or possessing a firearm: (18 USC § 922(g).) Any person who:

- 1) Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- 2) Is a fugitive from justice;
- 3) Is an unlawful user of or addicted to any controlled substance, as defined;
- 4) Has been adjudicated as a mental defective or who has been committed to a mental institution;

- 5) Being an alien is illegally or unlawfully in the United States; or except as specified, has been admitted to the United States under a nonimmigrant visa, as defined;
- 6) Has been discharged from the Armed Forces under dishonorable conditions;
- 7) Having been a citizen of the United States, has renounced his citizenship; or
- 8) Is subject to a specified court order.

This bill would prohibit a person who is convicted on or after January 1, 2020, of a misdemeanor violation of carrying a concealed firearm, carrying a loaded firearm, or openly carrying an unloaded handgun, from possessing a firearm for a period of 10 years.

This bill would make the violation of that prohibition punishable as either a misdemeanor or as a state prison felony.

COMMENTS

1. Need for This Bill

According to the author:

Pursuant to existing California law, an adult convicted of an enumerated misdemeanor, as listed in Penal Code Section 29805, is prohibited from firearm possession for a period of 10 years.

This bill would include on the list of enumerated charges misdemeanor convictions for carrying a concealed firearm (Penal Code Section 25400), carrying a loaded firearm in public (Penal Code Section 25850), and openly carrying an unloaded handgun in public (Penal Code Section 26350).

Under current law, persons convicted of these gun-related crimes only become prohibited from firearm possession if they are placed on probation and have an express condition of probation prohibiting firearm ownership or possession (Penal Code Section 29815). Such a prohibition lasts for the length of probation, which is typically two to three years. When probation is terminated, weapons restrictions are lifted.

Given that the purpose of California's prohibited person firearms statute is to prevent people from possessing guns whose crimes demonstrate a propensity to commit violence, the inability to act responsibly with firearms, or both, the prohibition created by PC 29815 should be expanded to include the crimes set forth in this bill.

For example, a defendant can reject probation. Therefore, it is entirely feasible that just days after being convicted of possessing a loaded, concealed or openly carried firearm, the convicted person could purchase a new gun or even request to have law enforcement return their crime gun.

Even if probation were imposed, the term during which the misdemeanant would be prohibited from firearms possession would be substantially less than would apply to the misdemeanors currently enumerated in California's prohibited

persons statute—despite the fact that the underlying crimes this bill would cover flout very significant gun violence prevention laws and demonstrate the misdemeanor has not acted responsibly with firearms.

SB 120 (Stern) would add to the prohibited persons list people convicted of misdemeanor cases involving having an unloaded handgun in public, loaded or concealed firearm.

2. Firearms Prohibitions for Specified Misdemeanor Offenses

As detailed above, current state and federal laws prohibit persons who have been convicted of specific crimes from owning or possessing firearms. For example, anyone convicted of any felony offense is prohibited for life from firearms ownership under both federal and state law. (18 U.S.C. § 922(g); Penal Code § 29800.) California goes further and imposes a 10-year firearms prohibition on persons convicted of numerous misdemeanor offenses that involve either violence or the threat of violence. (Penal Code § 29805.) Additionally, anyone who has been found to be a danger to themselves or others due to mental illness is subject to a five-year prohibition (Welfare and Institutions Code §§ 8100, 8103(f)), and people under domestic violence restraining orders are subject to a prohibition for the duration of that court order. (Penal Code § 29825.)

This bill would expand the existing firearms prohibitions by creating a class of misdemeanor offenses related to firearms. Specifically misdemeanor convictions of carrying a concealed firearm, carrying a loaded firearm, and openly carrying a firearm.

3. Armed and Prohibited Persons System (APPS) Mandates on DOJ, Existing and Growing Backlog, and Budget Shortfalls:

The APPS is a database that checks gun sales against records of criminal convictions, mental health holds and domestic violence restraining orders to flag prohibited owners. DOJ cross-references APPS with five other databases including the California Restraining and Protective Order System (CARPOS), a statewide database of individuals subject to a restraining order. New individuals are added to the APPS database on an ongoing basis as the system identifies and matches individuals in California who are prohibited from purchasing or possessing firearms. DOJ is required to complete an initial review of a match in the daily queue of APPS within seven days of the match being placed in the queue. (Pen. Code, § 30020.)

The DOJ has long been working to seize the guns and ammunition of persons on the APPS list. The *San Francisco Chronicle* recently reported that the Department has reduced the backlog of prohibited persons from over 20,000 in 2013 to less than 9,000 today.¹ However, the list is always growing as new individuals are added to APPS for committing qualifying crimes. Thus, the burden on the DOJ to clear the list is evergreen. In addition, the Legislature and voter initiatives have added new categories of individuals who are prohibited from possessing firearms. For example, as of July 1, 2019, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative (Proposition 63 of 2016) requires that DOJ confirm whether an individual seeking to purchase ammunition is authorized to do so, and

¹See APPS 2018 Annual Report to the Legislature, published Mar. 1, 2019; see also Alexei Koseff, *California struggles to seize guns from people who shouldn't have them*, *San Francisco Chronicle*, Feb. 18, 2019, available at <https://www.sfchronicle.com/politics/article/California-struggles-to-seize-guns-from-people-13624039.php>.

in the process, DOJ will likely identify additional cases requiring APPS investigations.

Budget shortfalls make clearing the APPS list difficult, as DOJ has limited resources to investigate and seize firearms from persons on the list. Since the early 2000s, DOJ has requested additional funding to decrease the backlog. The APPS has largely been funded by fees collected when an individual purchases a firearm, which is deposited in the Dealer's Record of Sale (DROS) Special Account. However, the DROS Special Account has experienced operational shortfalls since 2012-13. In 2013, the Legislature appropriated \$24 million with SB 140 (Leno), *Chapter 2, Statutes of 2013*, to aid the DOJ in reducing the backlog to its current levels, but the DOJ has been unable to eliminate it entirely.

DOJ has anticipated that the list will continue to grow as the Legislature adds new categories of persons to the list, and is awaiting the implementation of other mandates. The DOJ has requested \$16.9 million be allocated from the state budget on an ongoing basis to support the existing APPS workload and continue addressing the backlog of cases. The Governor's budget proposal for 2018-19 flagged this funding as a major program change for the DOJ: "*The Budget includes a total of \$16.9 million General Fund for APPS—\$11.3 million to shift the existing APPS program from the Dealers' Record of Sale Account to the General Fund and \$5.6 million General Fund to support increased APPS workload. Shifting these costs to the General Fund provides a more stable fund source for APPS and allows the Dealers' Record of Sale Account to maintain solvency to continue additional Bureau of Firearms workload.*"²

4. The Provisions of This Bill Would Increase the APPS List

This bill would add additional individuals to APPS, increasing the DOJ's workload by requiring additional initial reviews of new matches and, ultimately, requiring additional investigations and operations to seize firearms and ammunition. While the DOJ currently faces operational shortfalls to address the exiting backlog, it appears that 2018-19 budget will better fund DOJ's APPS operations, allowing DOJ to hire additional individuals to work at eliminating the existing and growing backlog.

5. This Bill Carries State Prison Penalties

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

The court also ordered California to implement the following population reduction measures in its prisons:

²The Legislative Analysis Office (LAO) has recommended an alternative to the Governor's proposal to help the DROS Special Account avoid insolvency. LAO recommends providing \$16.9 million from the General Fund to support existing and increased APPS workload, and approving 26 new positions requested to continue addressing the backlog. LAO notes that this funding will provide DOJ with the level of funding necessary for which there is "workload justification." (*The 2019-20 Budget: Analysis of Governor's Criminal Justice Proposals*, Legislative Analysis Office, Feb. 2019, available at <https://lao.ca.gov/Publications/Report/3940>.)

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings (BPH) for parole consideration.
- Release inmates who have been granted parole by BPH but have future parole dates.
- Expand the CDCR's medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole.
- Increase its use of reentry services and alternative custody programs.

(Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).) Following the implementation of these measures along with the passage of Proposition 47, approved by California voters in November 2014, California met the federal court's population cap in December 2015. (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown*.) The administration's most recent status report states that as "of December 14, 2016, 114,031 inmates were housed in the State's 34 adult institutions" which amounts to approximately 135.3% of design capacity, and 4,704 inmates were housed in out-of-state facilities. (Defendants' December 2016 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).

This bill adds three misdemeanors to the list of crimes that, if convicted, would prohibit an offender from possessing a firearm for 10-years. Any violation of this prohibition would be punishable by up to 16-months, two, or three-years in state prison.

Although the state is currently in compliance with the court-ordered population cap, creating new enhancements, or expanding upon existing ones, will increase the length of time that an inmate must serve in prison and reverse the progress made in reducing the state prison population. This is contrary to the court's order for a durable solution to prison overcrowding.

6. Veto Message for 347 (Jackson), 2015

SB 347 (Jackson) from 2015 would have added to the list of prohibited misdemeanors:

- 1) Petty theft of a firearm;
- 2) Carrying ammunition onto school grounds; and
- 3) Receiving stolen property consisting of a firearm.

Governor Brown vetoed the bill with the following message:

[This bill] creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.

Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.

Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective.

7. Argument in Support

According to the Los Angeles City Attorney:

Under current law, persons convicted of these gun-related crimes only become prohibited from firearm possession if they are placed on probation and have an express condition of probation prohibiting firearm ownership or possession (Penal Code Section 29815). Such a prohibition lasts for the length of probation, which is typically two to three years. When probation is terminated, weapons restrictions are lifted.

Given that the purpose of California's prohibited person firearm statute is to prevent people from possessing guns whose crimes demonstrate a propensity to commit violence, the inability to act responsibly with firearms, or both, the prohibition created by PC 29805 should be expanded to include the crimes set forth in this bill.

8. Argument in Opposition

According to the ACLU of California:

The American Civil Liberties Union of California regrets that we must respectfully oppose your SB 120, which would subject people convicted of specified nonviolent misdemeanors to incarceration in state prison if they come into possession of a firearm within ten years of their conviction, unless the bill is amended so that the penalty for violating the prohibition is limited to a misdemeanor.

Preventing gun violence is of the utmost importance, and the ACLU of California does not oppose reasonable measures that regulate the acquisition, use, or possession of guns, so long as those regulations contribute to public safety and welfare, and do not encroach unnecessarily on civil liberties. Unfortunately, SB 120 would do more harm than good, exposing a specific category of people –

those with certain nonviolent gun-related misdemeanor convictions – to time in state prison for possessing a gun.

The criminal justice consequences of this bill will not only worsen our state's over-incarceration problem, but will also have a disproportionate impact on communities of color. Racial disparities pervade the criminal justice system, and crimes related to firearms are no different. In 2017 in California, nearly one-fourth of all people arrested for felony weapons offenses were Black and nearly half were Latino,³ even though Black people make up only 6.5 percent of the state population and Latinos only 39 percent.⁴

There is no evidence that this bill would improve public safety or welfare, but, as written, would impose unnecessarily harsh penalties on people who have never been convicted of a felony or any violence. For these reasons, the ACLU of California respectfully opposes this bill, unless it is amended to no longer authorize a felony conviction with state prison time as a consequence for violating this prohibition.

-- END --

³ California Department of Justice, *Crime in California* (2017).

⁴ United States Census Bureau, *Quick Facts California* (2010).