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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 1472                      **Hearing Date:** April 23, 2024  
**Author:** Limón  
**Version:** March 19, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Firearms: California Do Not Sell List*

## HISTORY

**Source:** California State Sheriffs Association & California State Association of Psychiatrists

**Prior Legislation:** AB 29 (Gabriel, 2023), died in Assembly Appropriations  
AB 1927 (Bonta, 2018), vetoed by the Governor

**Support:** Unknown

**Opposition:** None known

## PURPOSE

*The purpose of this bill is to require the Department of Justice (DOJ) to develop and launch a system to allow a California resident to voluntarily add their own name to the California Do Not Sell List, with the goal of preventing a person on that list from being sold or transferred a firearm.*

*Existing law* provides for an automated system for tracking firearms and assault weapon owners who might fall into a prohibited status. The online database, which is known as the Armed Prohibited Persons System (APPS), cross-references all handgun and assault weapon owners across the state against criminal history records to determine whether a person is prohibited from possessing a firearm. (Pen. Code, § 30000, et seq.)

*Existing law* prohibits persons who know or have reasonable cause to believe that the recipient is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code, §§ 27500, 30306; & Welf. & Inst. Code, § 8101.)

*Existing law* provides that persons convicted of felonies and certain violent misdemeanors are prohibited from owning or possessing a firearm. (Pen. Code, §§ 29800 & 29805.)

*Existing law* prohibits a person from possessing or owning a firearm that is subject to specified restraining orders. (Pen. Code, § 29825.)

*Existing law* prohibits a person who has been taken into custody and admitted to a designated facility on a 72-hour hold because that person is a danger to himself, herself, or to others, as

specified, from owning or possessing any firearm for a period of five years after the person is released from the facility. (Welf. & Inst. Code, § 8103, subd. (f)(1).)

*Existing law* states that a person taken into custody on a 72-hour hold may possess a firearm if the superior court has found that the people of the State of California have not met their burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. & Inst. Code, § 8103, subd. (f)(6).)

*Existing law* requires the DOJ, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the submission to the department of a specified fee. (Pen. Code, §§ 28200-28250.)

*Existing law* mandates those dealers notify DOJ that persons in applications actually took possession of their firearms. (Pen. Code, § 28255.)

*Existing law* requires the dealer, if unable to legally deliver a firearm, to return the firearm to the transferor, seller, or person loaning the firearm. (Pen. Code, § 28050, subd. (d).)

*Existing law* requires that in connection with any sale, loan or transfer of a firearm, a licensed dealer must provide the DOJ with specified personal information about the seller and purchaser as well as the name and address of the dealer. This personal information of buyer and seller required to be provided includes the name; address; phone number; date of birth; place of birth; occupation; eye color; hair color; height; weight; race; sex; citizenship status; and a driver's license number; California identification card number; or, military identification number. A copy of the DROS, containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code, §§ 28160, 28210, & 28215.)

*Existing law* provides for the submission of firearm purchaser/transferee information from dealers to the DOJ for the purpose of conducting background checks, and requires the DOJ to participate in the National Instant Criminal Background Check System (NICS). (Penal Code, §§ 28100, 28215, 28220.)

*Existing law* establishes procedures for the transfer of a firearm to a dealer or a third party in order to prevent it from being accessed or used by the transferor or other persons that may gain access to it in the transferor's household to cause significant danger of personal injury to themselves or others. (Penal Code, §§ 27882, 26892.)

*Existing law* prohibits firearm dealers from delivering newly purchased firearms within 10 days of the application to purchase a firearm, as specified. (Penal Code, §26815.)

*This bill* requires the DOJ to develop and launch a system to allow a person who resides in California to voluntarily add their own name to, and subsequently remove their own name from, the California Do Not Sell List.

*This bill* provides that the California Do Not Sell List shall also be referred to as "the registry."

*This bill* specifies that the purpose of the registry is to prevent the sale or transfer of a firearm to a person through a lawful method.

*This bill* requires the DOJ to ensure that the system does all of the following credibly:

- Verifies the identity of a person who opts to register or requests removal
- Prevents unauthorized disclosure of a person registering or requesting removal.
- Informs the potential registrant of the legal effects of registration or removal.

*This bill* requires the DOJ, in implementing the above requirements to utilize, to the extent feasible, existing state and local resources, systems, databases, and staff.

## COMMENTS

### 1. Need for This Bill

According to the Author:

The CDC Morbidity and Mortality Report reports an increase in suicide rates in the past two decades, approaching 50,000 in 2022. With firearms being used in over 50% of suicide deaths, there is a need for preventive measures to help decrease the number of suicides in the state. The creation of a voluntary registration process - Do Not Sell List - raises public awareness and can become a practical tool for individuals to exercise responsible firearm ownership. In doing so, SB 1472 seeks to contribute to a collective effort to mitigate the risk of potential perpetrators accessing firearms.

### 2. Waiting Period and Protective Transfers

In addition to the myriad crimes penalizing the improper and criminal use or transfer of firearms, California law contains various provisions intended to limit the potential violence a firearm owner or prospective buyer with nefarious intent may cause before the conduct occurs. Under existing law, when a person attempts to purchase a firearm from a licensed dealer, the dealer must furnish the DOJ with various information about the purchaser.<sup>1</sup> The DOJ then checks the purchaser information against federal and state databases to ensure that the prospective purchaser is authorized to purchase and possess a firearm. The dealer may not deliver the firearm if a background check shows that the recipient is prohibited from possessing firearms, or the dealer is notified by the DOJ that the transaction may not proceed.<sup>2</sup>

The firearm purchase/transfer process also includes a 10-day waiting period that restricts a licensed dealer from delivering or transferring a firearm to a person within 10 days of the application to purchase the firearm, the submission of any correction to the application, or the submission of any fee required, after notice from DOJ that the required fee has not been transmitted.<sup>3</sup> Even though the required background checks can usually be completed within a few days, licensed dealers must wait the full 10 days before transferring possession of the

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<sup>1</sup> Penal Code §§28160, 28205

<sup>2</sup> Penal Code §§27540, 28050.

<sup>3</sup> Penal Code §§ 26815, 27540, 28220

firearm to the purchaser. This 10-day period is referred to as a “cooling off” period, and in large part are intended to prevent acts of violence or suicide attempts. In 2016, the Ninth Circuit Court of Appeals upheld the constitutionality of California’s 10-day waiting period, holding that the waiting period did not violate plaintiffs’ Second Amendment rights, and constituted a “reasonable precaution for the purchase of a second or third weapon, as well as for a first purchase.”<sup>4</sup>

In 2019, the Legislature added a preventative feature to California firearm law via SB 172 (Portantino, Ch. 840, Stats. of 2019), which permitted the temporary transfer of a firearm without a dealer’s participation to a person who is 18 years of age or older for safekeeping to prevent it from being used to attempt suicide by the transferor or another person that may gain access to it in the transferor’s household.<sup>5</sup> Last year, another protective firearm transfer provision was added to California law via SB 368 (Portantino, Ch. 251, Stats. of 2023), which required firearm dealers to accept a firearm for storage if 1) the firearm is voluntarily and temporarily transferred to the licensee to prevent significant danger of personal injury to the transferor or others, 2) the licensee does not use the firearm for any purpose except storage, and 3) the duration of the transfer is limited to the amount of time reasonably necessary to prevent the harm.<sup>6</sup>

This bill proposes a prophylactic measure related to waiting periods and protective transfers and similarly aimed at reducing suicides by providing self-aware prospective gun owners an avenue for restricting their own access to new firearms.

### 3. Department of Justice Firearm Databases

Firearm tracking and registration in California functions through a web of interrelated firearm databases managed by the DOJ, 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, 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.<sup>7</sup> 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).

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<sup>4</sup> *Silvester v. Harris* (2016), 843 F.3d 816

<sup>5</sup> Penal Code §27882. SB 172 also placed several restrictions on the protective transfer authorized under its provisions, namely, that the transferee may not use the firearm for any purpose, the firearm must be unloaded and safely secure, the duration of the transfer is limited to the amount of time reasonably necessary to prevent the harm, and that the transferee must deliver the firearm to law enforcement if the transferor becomes a prohibited person.

<sup>6</sup> Penal Code §26892. SB 368 also established a procedure for instances in which the dealer cannot legally return the firearm to the person delivering the gun for storage.

<sup>7</sup> 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 \(ca.gov\)](https://www.cdpr.ca.gov/Programs/OPA/Pages/NR20230001.aspx)

The DOJ has perennially bemoaned the state of its system of firearm databases and recommended that the Legislature take steps to consolidate and update them. In the latest Armed and Prohibited Persons System report, DOJ once again stated the problem:

This network of systems is incredibly complex and cumbersome to operate and navigate. Despite this monumental challenge, DOJ has been able to meet most legislative reporting mandates using these outdated databases. These databases are not flexible and were not designed to be adaptable to meet additional demands. DOJ has been able to partially adapt and circumvent issues despite using technology that is not equipped with automated processes to meet the specified conditions. Consequently, most, if not all queries must be pulled and cross-checked manually from database to database, hindering efficiency and introducing increased opportunities for error. Working to modify or maintain these legacy systems is no longer cost-effective or a technologically viable option as the databases have become outdated and no longer meet the demands of the Legislature and DOJ.<sup>8</sup>

#### **4. Effect of This Bill**

This bill requires the DOJ to develop and launch a new firearm system, known as the Voluntary Do Not Sell List (hereinafter, “the registry”), which would allow a California resident to add their own name to, and subsequently remove their own name from, a registry of individuals to whom the sale or transfer of a firearm should not be completed. Further, the bill mandates that the DOJ ensure that the registry and related IT systems are capable of 1) verifying the identity of a person who opts to register or requests removal; 2) preventing unauthorized disclosure of the identity of individuals registering or requesting removal; and 3) informing potential registrants of the legal effects of registration or removal. Finally, the bill specifies that in implementing this registry, the DOJ shall utilize existing state and local resources, systems, databases and staff to the extent feasible.

However, the provisions described above reflect the full extent of the bill’s language, nearly verbatim, with no additional guidance for DOJ regarding the structure of the registry or a process for implementing it, or requirements for dealers regarding how consequences for transferring firearm to a registrant. The brevity and vagueness of this language gives rise to numerous questions about how DOJ is intended to fulfill its legislative mandate, as Comment 5 discusses further. The Author and Committee may wish to consider adding additional guidance for DOJ, prospective registrants and firearm dealers with regard to the registry as well as a timeline for the implementation for this registry. Currently, the effective date of the bill is January 1, 2025 – is the intention to have the registry fully established by that date? Additionally, the Author and Committee should consider whether it is wise, given the current status of DOJ’s network of firearm databases, to add yet another database to the system.

#### **5. Prior Legislation**

The Legislature’s first foray into exploring voluntary firearm prohibitions was in 2018 with AB 1927 (Bonta, 2018), which would have required the DOJ to study options and recommend an approach for allowing a person to register themselves on a list or database that prohibits them from being able to purchase a firearm. That bill was vetoed by then-Governor Brown, who acknowledged that while the bill covers an interesting area of inquiry, “the Department of Justice

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<sup>8</sup> *Armed and Prohibited Persons Report, 2023*, pp. 44-45.

is currently implementing a number of large scale changes to our gun laws, and I think that any information regarding a system for self-exclusion from gun purchases can be obtained through existing means. The Legislature's standing committees, as well as California's Violence Prevention Research Center are existing avenues through which this inquiry can be conducted.”<sup>9</sup>

Last year, AB 29 (Gabriel) contained provisions that were substantially similar to this bill regarding a Do Not Sell List, but also included provisions providing greater guidance to DOJ regarding implementation of the list, criminalizing the transfer of a firearm to someone on the list, and requiring the Department of Public Health to create and distribute informational materials about the list. Presumably, many of those provisions (especially those involving DOJ) were omitted from this bill for cost-related reasons. From a policy standpoint, however, those provisions may provide much-needed guidance to DOJ in implementing the bill and remedying the vagueness mentioned in the previous comment. In particular, the Author and Committee may wish to consider amending the bill to specify how the registry is intended to interact with other databases and processes, such as the National Instant Criminal Background Check System (NICS) and the DROS system, and how the DOJ and prospective registrants are authorized to interact regarding personal identifying and contact information. Additionally, the Author and Committee may wish to amend this bill to include a provision from AB 29 which would have specified the time that must elapse, if any, before a registrant can remove themselves from the registry, and provided a mechanism for that removal.<sup>10</sup>

## 6. Argument in Support

According to the bill's co-sponsor, the California State Association of Psychiatrists:

There is strong evidence that access to firearms, whether from household availability or a new purchase, is associated with an increased risk of suicide. According to the Centers for Disease Control and Prevention, suicides make up 52% of all firearm deaths in California, and more than one-third of all suicides in California are by firearm. In 2019, there were 1,586 firearm suicide deaths in California, including 54 children and teens. This decision could be preventable. A recent study found that close to a third of the general population and more than 40% of those with previously diagnosed mental health concerns would add their name to a Do Not Sell List if they had the option.

SB 1472 will address mental health as it pertains to our gun violence epidemic by creating a platform to allow California residents to voluntarily and confidentially add their own name to the California Do Not Sell List for firearms, which prohibits an individual from purchasing a firearm. This bill provides those battling suicidal thoughts and struggling with severe mental health issues an option to protect themselves by temporarily limiting their access to purchase firearms during a time of crisis. We know suicide can be an impulsive decision that most survivors regret. Guns are lethal and, unfortunately, rarely allow for second chances. This bill takes action on the data that shows a correlation between mental illness, suicidal thoughts, and gun purchases.

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<sup>9</sup> AB 1927 Veto Message, Governor Edmund G. Brown, Jr., 26 September 2018.

<sup>10</sup> AB 29 specified that 7 days must elapse before a person on the registry may file a request for removal.