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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** SB 172                      **Hearing Date:** April 2, 2019  
**Author:** Portantino  
**Version:** March 25, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Firearms*

### HISTORY

**Source:** Author

**Prior Legislation:** AB 2029 (Connelly), Ch. 956/1991  
AB 491 (Keely), Ch. 460/1997  
SB 9 (Soto), Ch. 126/2001  
AB 1060 (Liu), Ch. 715/2006  
SB 363 (Wright), Ch. 758/2013  
AB 231 (Ting), Ch. 730/2013  
AB 500 (Ammiano), Ch. 737/2013  
SB 108 (Yee) of 2013-2014– died in Assembly Public Safety  
AB 1511 (Santiago), Ch. 41/2016  
SB 1332 (Mendoza) of 2015-2016 – vetoed.  
SB 299 (Mendoza) of 2017 – died in Senate Appropriations  
AB 2817 (Santiago) of 2018 – Died in Assembly Appropriations  
AB 276 (Friedman) (2019)

**Support:** Bay Area Student Activists; Consumer Advocates for RCFE Reform; County of Los Angeles; Drain the NRA

**Opposition:** California Sportsman’s Lobby; Outdoor Sportsmen’s Coalition of California; Safari Club International; Safari Club International Foundation

### PURPOSE

*The purpose of this bill is to enact provisions in the Penal Code related to firearm storage. Specifically this bill does the following: 1) broadens the application of criminal storage crimes; 2) adds criminal storage offenses to those offenses that can trigger a 10-year gun ban; 3) creates an exemption to firearm loan requirements for the purposes of preventing suicide; and 4) mandates rules related to firearm storage and reporting for residential care facilities for the elderly.*

*Existing law* provides that a person is guilty of criminal storage of a firearm if the person keeps a loaded firearm within a premises with knowledge that a child is likely to gain access to the firearm. (Cal. Pen. Code, § 25100.)

*This bill* makes the crime of criminal storage applicable to the storage of an unloaded firearm.

*Existing law* makes it a crime to keep a handgun within a premises with knowledge that a child or person prohibited from possessing a firearm is likely to gain access if the child or prohibited person obtains access to the handgun and carries it off premises. (Cal. Pen. Code, § 25200.)

*This bill* makes the crime of criminal storage of a firearm where a child obtains access and carries the firearm off premises applicable to all firearms, not just handguns.

*Existing law* makes it a crime for an owner or legal occupant of a residence to store a firearm in that residence if the person knows another person residing in that residence is prohibited from possessing a firearm unless the firearm is secured. (Cal. Pen. Code, § 25135.)

*This bill* adds the following offenses to the 10-year prohibition on possessing firearms that can trigger a misdemeanor if the offender is found to possess a firearm:

- 1) Criminal storage of a firearm, a misdemeanor.
- 2) Criminal storage of a firearm where a child obtains access and carries the firearm off premises, a misdemeanor.
- 3) Criminal storage of a firearm when the occupant knows or should know that another person residing in the residence is a prohibited person, a misdemeanor.

*Existing law* provides that the loan of a firearm to another person must be conducted through a licensed firearms dealer. (Cal. Pen. Code, § 28050.)

*This bill* permits the temporary transfer of a firearm without a firearms 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.

- 1) The transferee may not use the firearm for any purpose, and the firearm must be unloaded and secured as specified in the bill.
- 2) The duration of the loan is limited to the amount of time reasonably necessary to prevent the harm.
- 3) If the transferor is, or becomes a prohibited person, the transferee shall deliver the firearm to a law enforcement agency without delay.

*Existing law* provides that the California Residential Care Facilities for the Elderly Act (RCFE Act) provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services. (Cal. Health & Saf. Code, § 1569, et seq.)

*This bill* enacts the "Keep Our Seniors Safe Act" which requires the following:

- 1) Requires the State Department of Social Services, Community Care Licensing Division, to promulgate regulations that require facilities to store firearms and ammunition in a central location in a locked gun safe within the facility.
- 2) Requires facilities to prepare and maintain a weapons inventory for each firearm and type of ammunition stored within the facility and submit the inventories to the Department of Justice (DOJ), and makes it a misdemeanor to intentionally falsely report.
- 3) Requires the facility to post the most current annual certification in a prominent location within the facility.

## COMMENTS

### 1. Need for This Bill

According to the author:

SB 172 updates and modernizes California's firearms storage laws while recognizing recent court rulings and the unintended effect of the otherwise salutary that gun loans be processed through state licensed gun dealers. It also deals at the request of the stakeholders firearms in residential care facilities.

In 1991 California enacted one of the first Child Accident Prevention Laws [CAP] in the United States. See: AB 2029 (Connelly), Ch. 956/ 1991. That bill was supported by the NRA and CRPA.

The original statute applied to storage of loaded firearms and the consequences of when one was shot or it was exhibited in public. [See current Penal Code § 25100] The original statute provided exemptions from the prohibition based on safe storage rules being followed. See current Penal Code § 25105. The original statute [AB 2029] defined a Minor as someone under 14.

In 1997 the statute [now Penal Code § 25100] was changed to raise the age to 16 years of age. AB 491 (Keely), Ch. 460/ 1997. It also provided that child carries, rather than exhibits, the firearm to a public place. AB 491 also created a discrete crime [now Penal Code § 25200] that a person who keeps a handgun within any premises that are under his or her custody or control and he or she knows or reasonably should know that a child under the age of 16 years is likely to gain access to that firearm without the permission of the child's parent or legal guardian and the child obtains access to that firearm and carries it off-premises is guilty of a misdemeanor.

In 2001 legislation was enacted [SB 9 (Soto), Ch. 126/2001] to define as a Minor someone under 18. In addition, SB 9 amended the code section added by AB 491 which created the discrete crime that a person who keeps a handgun within any premises that are under his or her custody or control and he or she knows or reasonably should know that a child under the age of 16 years is likely to gain access to that firearm without the permission of the child's parent or legal guardian and the child obtains access to that firearm and carries it off-premises is guilty of a misdemeanor to carrying any firearm to any school. [Currently Penal Code § 25200(b).] In 2006, AB 1060 (Liu), Ch. 715/2006 made minor cleanup changes to what is now Section 25200.

In 2013 legislation was enacted to do the following:

- Amended Sections 25100 and 25200 to extend the requirements of safe storage to situations where prohibited persons [which could include Minors as to handguns because of federal law] were involved. See: SB 363 (Wright), Ch. 758/2013.

- Amended Section 25100 to create a crime of criminal storage of a firearm where a Minor was involved but no injury occurred or where the gun did not go off premises. AB 231 (Ting), Ch. 730/2013.
- Created Penal Code § 25135 which required that all firearm owners who reside with a prohibited person to keep their firearms safely secured whenever they are not at home. AB 500 (Ammiano), Ch. 737/2013

AB 500 in certain ways as to storage immunized from a supplying conviction which is generally a felony. Many people are prohibited by either federal or state law, or both, from owning firearms for a variety of reasons. Then as now California law makes it a crime for any person to sell, supply, deliver, or give possession or control of a firearm to anyone whom the person knows or has cause to believe is prohibited from possessing a firearm. (Penal Code § 27500, emphasis added.)

## 2. Firearms Storage Requirements and California Criminal Storage Offenses

California law provides that, except as specified, a person commits the crime of “*criminal storage of a firearm of the first degree*” if all of the following conditions are satisfied:

- The person keeps any loaded firearm within any premises that are under the person’s custody or control.
- The person knows or reasonably should know that a child, or prohibited person, is likely to gain access to the firearm without the permission of the child’s parent or legal guardian.
- The child obtains access to the firearm and thereby causes death or great bodily injury to the child or any other person. (Cal. Pen. Code, § 25100.)

Criminal storage of a firearm in the first degree is punishable as a felony by imprisonment in a county jail for 16 months, or two or three years, by a fine not exceeding \$10,000, or both; or as a misdemeanor by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$1,000, or by both that imprisonment and fine. (Cal. Pen. Code § 25110(a).)

Current law provides that, except as specified, a person commits the crime of “*criminal storage of a firearm of the second degree*” if all of the following conditions are satisfied:

- The person keeps any loaded firearm within any premises that are under the person’s custody or control.
- The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian.
- The child obtains access to the firearm and thereby causes injury, other than great bodily injury, to the child or any other person, or carries the firearm and draws or exhibits the firearm, as specified. (Cal. Pen. Code § 25100(b).)

Criminal storage of a firearm in the second degree is punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$1,000, or both. (Cal. Pen. Code § 25110(b).)

California law requires that all firearm owners who reside with a prohibited person keep their firearms safely secured whenever they are not home. (Cal. Pen. Code, § 25135.)

Current law provides that, if all of the following conditions are satisfied, a person shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$1,000, or both:

- The person keeps a pistol, revolver, or other firearm capable of being concealed upon the person, loaded or unloaded, within any premises that are under the person's custody or control.
- The person knows or reasonably should know that a child, or prohibited person, is likely to gain access to that firearm without the permission of the child's parent or legal guardian.
- The child, or prohibited person, obtains access to that firearm and thereafter carries that firearm off-premises. (Cal. Pen. Code § 25200(a).)

Current law provides that, if all of the following conditions are satisfied, a person shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$5,000, or both:

- The person keeps any firearm within any premises that are under the person's custody or control.
- The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian.
- The child obtains access to the firearm and thereafter carries that firearm off-premises to any public or private preschool, elementary school, middle school, high school, or to any school-sponsored event, activity, or performance, whether occurring on school grounds or elsewhere. (Cal. Pen. Code § 25200(b).)

Current law provides that a handgun a child gains access to and carries off-premises in violation of this section shall be deemed "used in the commission of any misdemeanor as provided in this code or any felony" for the purpose of the authority to confiscate firearms and other deadly weapons as a nuisance. (Cal. Pen. Code § 25200(c).)

Current law provides that the penalties listed above do not apply if any of the following are true:

- The child obtains the firearm as a result of an illegal entry into any premises by any person.
- The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.
- The firearm is locked with a locking device, as defined, which has rendered the firearm inoperable.
- The firearm is carried on the person within close enough range that the individual can readily retrieve and use the firearm as if carried on the person.
- The person is a peace officer or a member of the Armed Forces or National Guard and the child obtains the firearm during, or incidental to, the performance of the person's duties.
- The child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person.

- The person who keeps a firearm has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises. (Cal. Pen. Code § 25205.)

Current law requires licensed firearms dealers to post within the licensed premises a specified notice disclosing the duty imposed by this chapter upon any person who keeps any firearm. (Cal. Pen. Code § 25225.)

### 3. 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 criminal storage offenses that would result in a 10-year firearms prohibition if a person were convicted of two or more of them within a three-year period.

### 4. 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.<sup>1</sup> 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

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<sup>1</sup>See 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.*"<sup>2</sup>

## 5. Effect of This Bill on Criminal Storage Offenses

This bill would make several changes to California's criminal storage laws. Specifically, this bill:

- 1) Specifies that the crime of criminal storage of a firearm can be an unloaded firearm.
- 2) Expands the crime of storing a handgun where a child or prohibited person obtains access to include all firearms, not just handguns.
- 3) Adds the following offenses to the 10-year prohibition on possessing firearms that can trigger a misdemeanor if the offender is found to possess a firearm:
  - a) Criminal storage of a firearm, a misdemeanor.
  - b) Criminal storage of a firearm where a child obtains access and carries the firearm off premises, a misdemeanor.
  - c) Criminal storage of a firearm when the occupant knows or should know that another person residing in the residence is a prohibited person, a misdemeanor.

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<sup>2</sup>The 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>.)

## 6. Firearms Loans for the Purpose of Suicide Prevention

California has rather detailed requirements for the loan of a firearm. The general rule in California is that the loan of a firearm must be conducted through a licensed firearm dealer. (Cal. Pen. Code, § 28050.) California has this rule so that the loan is tracked and can the dealer can help make sure that the persons transferring the firearm are authorized to possess it. There are however, a number of exceptions to the general rule requiring transfer through a licensed dealer.

This bill creates another exception to the general rule. This bill will permit the temporary transfer of a firearm without a firearms 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. The provisions of the bill place a number of restrictions on this temporary transfer. Namely the following:

- 1) The transferee may not use the firearm for any purpose, and the firearm must be unloaded and secured as specified in the bill.
- 2) The duration of the loan is limited to the amount of time reasonably necessary to prevent the harm.
- 3) If the transferor is, or becomes a prohibited person, the transferee shall deliver the firearm to a law enforcement agency without delay.

## 7. Residential Care Facilities for the Elderly

This bill enacts the "Keep Our Seniors Safe Act." The purpose of these provisions of the bill are to require that residential care facilities for the elderly adopt rules for the storage, tracking, and reporting of firearms in their facilities. The requirements of the bill are quite extensive. As most residential care facilities do not permit the possession of firearms on their premises, perhaps the author should consider amending the bill to limit the applicability of these provisions to any facilities that actually permit firearms on their premises.

## 8. Argument in Support

According to Bay Area Student Activists:

Currently, the crime of "criminal storage of a firearm" is committed when an individual keeps a *loaded* firearm within a premises, while knowing that a child is likely to gain access to that firearm. Additionally, it is a crime to keep a *handgun* (not applicable to long guns), whether loaded or not, in a premises if a child or person prohibited from possessing a firearm is likely to gain access to that firearm and *does* obtain access to the firearm and carries it off the premises. Finally, it is a crime to knowingly store an unsecured firearm in one's home if another person in that home is prohibited from possessing a firearm.

## 9. Argument in Opposition

According to the Outdoor Sportsman's Lobby:

The bill would impose a ten-year prohibition on owning, purchasing, receiving, possessing, or having under their custody or control, any firearm by persons convicted of a misdemeanor violation of specified criminal storage firearm laws.

CSL's member sportsmen, and no doubt most other owners of firearms, are very careful to store their firearms in a safe and responsible manner in compliance with good firearm safety practices and the laws of California. A ten-year prohibition on firearms ownership and possession as proposed is considered by CSL to be excessive and not in keeping with the principle of imposing a penalty that is commensurate with the severity of the violation.

**-- END --**