
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 55 **Hearing Date:** March 26, 2019
Author: Jackson
Version: February 12, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Prohibited Persons*

HISTORY

Source: Author

Prior Legislation: SB 755 (Wolk) Vetoed 2013

Support: Alcohol Justice; Bay Area Student Activists; Brady California United Against Gun Violence; California Chapter of the American College of Emergency Physicians; City Attorney of Los Angeles; Coalition Against Gun Violence; Coalition to Stop Gun Violence; District Attorney of Santa Barbara County; Friends Committee on Legislation of California; Giffords Law Center to Prevent Gun Violence; Los Angeles Board of Supervisors; Prosecutors Against Gun Violence; Riverside Sheriffs' Association

Opposition: American Civil Liberties Union of California; California Public Defenders Association; California Sportsman's Lobby; Outdoor Sportsmen's Coalition of California; Safari Club International

PURPOSE

The purpose of this bill is to add alcohol and drug crimes to the list of misdemeanors that result in a 10-year prohibition on firearms possession.

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;
- 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 add misdemeanor offenses to those for which a conviction results in a 10-year prohibition on possession of a firearm.

This bill specifies that any person who has been convicted of misdemeanor violations of 2 or more of any of the following offenses, or convicted of 2 or more misdemeanor violations of any one of the following offenses, within a 3-year period, and who, within 10 years of the second conviction, owns, purchases, receives, or has in their possession or under custody or control, any firearm, is guilty of a misdemeanor:

- 1) Possession of specified controlled substances with intent to sell.
- 2) Gross vehicular manslaughter, while intoxicated.
- 3) Disorderly conduct, public intoxication.
- 4) Driving under the influence.

This bill provides that any person, subject to the restrictions in this bill, who is prohibited from owning, purchasing, receiving, or having in their custody or control any firearm, who is subsequently convicted of a misdemeanor violation of any other specified firearm possession prohibition during the prohibitory period, and who, within 10-years of the subsequent conviction, owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a misdemeanor.

COMMENTS

1. Need for This Bill

According to the author:

California law seeks to remove firearms from the possession of people likely to misuse them. There are several classes of people from whom firearms are taken including felons, people addicted to narcotics, the mentally ill, and persons subject to a protective order. Included also are people who commit certain misdemeanors.

Recent research evidences a strong correlation between certain alcohol/drug-related misdemeanor convictions and future gun violence. SB 55 adds several crimes this research has shown to be linked to later firearm violence to the list of criminal convictions that result in a 10-year prohibition on firearm ownership. The crimes must be committed twice within a three-year period to invoke the prohibition.

In 2016, the Legislature established the University of California Firearm Violence Research Center (UCFC), located at University of California at Davis. UCFC works with the Violence Prevention Re-search Program (VPRP) which for more than thirty years has conducted firearm research and policy development.

Research by VPRP and others has shown that convictions for some non-violent crimes involving drugs and alcohol correlate strongly to a later conviction for a firearm-related crime -- in some instances a four- or five-times greater chance of a future crime.

In an effort to prevent future gun violence, this bill adds these research-correlated drug and alcohol convictions to the list of 10-year prohibitions. They are:

- 1) Possession with intent to sell synthetic cannabinoid drugs;
- 2) Possession with intent to sell certain tranquilizers;
- 3) Possession with intent to sell ketamine;
- 4) Vehicular manslaughter while intoxicated;
- 5) Public intoxication such that the person “is unable to exercise care for his or her own safety or the safety of others” or such that the person obstructs a public way;
- 6) Driving while under the influence of alcohol; and
- 7) Causing an injury while driving under the influence of alcohol

The prohibition applies when a person commits two of the above offenses (or commits the same offense twice) within a three-year period.

Several studies discussing the relationship between alcohol/drug-related crimes and firearms abuse informed this policy and are listed below with a short explanation of the conclusion drawn by each study.

Firearms, alcohol and crime: convictions for driving under the influence (DUI) and other alcohol-related crimes and risk for future criminal activity among authorized purchasers of handguns, Garen J Wintemute, Mona A Wright, Alvaro Castillo-Carniglia, Aaron Shev, Magdalena Cerdá; *Inj Prev* 2018; 24:68–72. doi:10.1136/injuryprev-2016-042181. Prior alcohol-related convictions were associated with a fourfold to fivefold increase in risk of arrest for a violent or firearm-related crime.

Alcohol Use and Firearm Violence, Charles C. Branas, SeungHoon Han, and Douglas J. Wiebe; *Epidemiologic Reviews* Vol. 38, 2016; January 24, 2016 and *Alcohol misuse, firearm violence perpetration, and public policy in the United States*, Garen J. Wintemute, *Prev.Med.* (2015), <http://dx.doi.org/10.1016/j.yjpm.2015.04.015>. Regarding other states’ laws restricting firearm possession to alcohol abusers.

Alcohol criteria endorsement and psychiatric and drug use disorders among DUI offenders: greater severity among women and multiple offenders, McCutcheon, Heath, *Addict Behav* 2009; 34(5): 432-439. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2855219/>. People with multiple

DUIs are significantly more likely to commit violent and non-traffic offenses than people with just one DUI.

Mental disorder and threats made by noninstitutionalized people with weapons in the national Comorbidity Survey replication, Casiano, Belik, Waldmar. *J Nerv Ment Dis* 20008: 196(6): 437-445. Persons who reported threatening others with a firearm were 3 times more likely to report a history of alcohol consumption that met standard criteria for alcohol abuse or dependence.

“Persons convicted of two or more crimes involving drugs or alcohol within a three-year period would be prohibited from firearm purchase for a period of 10 years.” “Consensus Recommendations for Reforms to Federal Gun Policies” from *Reducing Gun Violence in America*, Ed. Webster, D. W. & Vernick, J. S., Johns Hopkins Univ. Press (2013), p. 260.

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 alcohol or drug intoxication 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.

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

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>.

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 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

3. The Provisions of This Bill Would Drastically 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.

Each year in California there are tens of thousands of people convicted of a second offense driving under the influence conviction. According to the most recent report from the Department of Motor Vehicles (DMV) on the California DUI Management Information System³ between the years of 2005 and 2015 an average of 37,255 Californians convicted of second offense DUIs per

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>.)

³ <https://www.dmv.ca.gov/portal/wcm/connect/848b335c-1360-4473-a35d-4da3345c666a/S5-257.pdf?MOD=AJPERES&CVID=>

year. Those numbers do not include combinations of drunk in public offenses, possession for sale offenses, or vehicular manslaughter offenses.

Though evidence does suggest a connection between substance abuse offenses, Legislators must consider the nuts and bolts of the enforcement of existing prohibitions of firearms and how the expansion contemplated by this bill would impact these efforts.

4. Calculation of Offense Timing and Implementation of the Resulting Prohibition

This bill requires that individuals who commit two or more specified offenses within a three-year period are banned from possessing a firearm in California. The bill does not make clear who or how that information will be tracked, the offender will be notified that they are not prohibited, and how that information will be transmitted to DOJ. Additionally, under existing law, offenses such as second-offense DUI is tracked within a ten-year period. It is unclear how the tracking of offenses within three year will be done, and how the prohibitions that result from those offenses will be implemented.

5. Veto Message for SB 755 (Wolk), 2013

In 2013, then Senator Lois Wolk ran a very similar measure through the California Legislature. The bill was enrolled with the Secretary of State. Then Governor Jerry Brown vetoed the bill with the following veto message:

I am returning Senate Bill 755 without my signature.

This bill adds substance-abuse offenses and court orders to undergo mental health outpatient treatment to criteria that result in a 10-year prohibition on firearms possession.

I am not persuaded that it is necessary to bar gun ownership on the basis of crimes that are non-felonies, non-violent and do not involve misuse of a firearm.

6. Argument in Support

According to Brady United Against Gun Violence:

Existing law prohibits persons who have been convicted of certain crimes from possessing firearms for varying lengths of time. Prohibiting high risk individuals from acquisition and possession of firearms is a longstanding and widely accepted approach to firearm violence prevention and is a priority policy goal for Brady California. There is strong evidence that denial of purchases reduces risk for future firearm-related and violent crime by at least 25% among those directly affected.

Senate Bill 55 places a ten-year firearm prohibition on those who have been convicted of two or more drug or alcohol related misdemeanor offenses within a three-year period. These convictions include driving under the influence of alcohol (DUI), public intoxication that is unsafe, vehicular manslaughter while intoxicated, or possession with intent to sell certain controlled substances. Under the bill, a person who commits another of these misdemeanors during the initial prohibition period will be subject to a new ten-year prohibition. Finally, SB 55

adds to the list of misdemeanor crimes that carry a 10-year firearm prohibition any violation of the prohibition.

There is compelling evidence that both acute alcohol intoxication and a history of abuse or dependence are associated with a substantially increased risk of violence in the future. Recent research by the Violence Prevention Research Program (VPRP), home of the new University of California Firearm Violence Research Center, shows that of firearm purchasers with prior DUI convictions, nearly a third (32.8%) were arrested after purchase for a firearm related or violent crime. In fact, they were 4 to 5 times as likely as purchasers with no prior criminal record to be arrested for such a crime. Other research from VPRP found that firearm owners were more likely than non-firearm owners to have more than five drinks on one occasion, to drink and drive, and to have more than 60 drinks in one month. Further, it was found that heavy alcohol use was most common among firearm owners who engaged in behaviors such as carrying a firearm for protection against other people and keeping a firearm at home that was both loaded and not locked away.

In light of the research findings and correlation between alcohol related offenses and firearm related crime, it stands to reason that a temporary firearm prohibition accompanying these alcohol convictions would add significantly to public safety. These people are already engaged in risky behavior – two times within three years. Adding firearms to the mix elevates the risk. The combination of alcohol abuse and firearms in situations of domestic violence or high suicide risk is particularly dangerous.

The Brady Campaign believes that a key strategy for reducing firearm injury and death is to keep firearms out of the hands of individuals who, based on their condition or past behavior, are determined to be at risk of future acts of violence. Alcohol misuse has long been recognized as a major risk factor for all forms of violence and we applaud you for introducing this measure.

7. Argument in Opposition

According to the ACLU of California:

Current law subjects people with misdemeanors involving violence or threats of violence to a 10-year prohibition (current Pen. Code § 29805) and prohibits gun possession for those who are addicted to narcotics (Pen. Code § 29800).

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 (Welf. & Inst. Code §§ 8100, 8103(f)). This bill would expand the existing firearms prohibitions by creating a new class of non-violent misdemeanor offenses related to alcohol or drugs, including public intoxication, driving under the influence, and possession with intent to sell certain controlled substances, that would result in a 10-year firearms prohibition if a person had two or more convictions within a three-year period.

To the extent that misuse of alcohol and drugs have been correlated with an increased risk of gun-related violence, the most effective way to address that risk is to treat the root causes of the behaviors, including substance use and mental health issues, unemployment, and other social or economic stressors. Criminalizing actions that are legal for those who have not had prior involvement with the justice system will expose people subjected to this law to even more incarceration, and will ultimately do more harm than good.

Those who are convicted of the offenses included in SB 55 already face significant jail time and fines for the offense itself. The criminal justice consequences of this bill that could follow them for a decade will not only worsen our state's over-incarceration problem but will also have a disproportionate impact on communities of color. Even though Black and white people use drugs at similar rates,⁴ Black people are far more likely to be arrested for drug-related misdemeanors, public intoxication, and driving under the influence.⁵

The ACLU of California does not oppose gun control measures that regulate the acquisition, use, or possession of guns, so long as those regulations further the interests of public health, safety, or welfare, and are consistent with civil liberties principles like equal protection. Unfortunately, SB 55 fails to strike this balance. For these reasons, the ACLU of California respectfully opposes this bill.

-- END --

⁴ Substance Abuse and Mental Health Services Administration, *Results from the 2014 National Survey on Drug Use and Health: Detailed Tables*, (2015), Table 1.19B. At: <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs2014/NSDUH-DetTabs2014.pdf>

⁵ California Department of Justice, *Crime in California* (2017). At: <https://openjustice.doj.ca.gov/downloads/pdfs/cd17.pdf>