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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 1999                      **Hearing Date:** June 14, 2016  
**Author:** Achadjian  
**Version:** March 15, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JRD

**Subject:** *Prohibited Armed Persons File: Initial Review*

### HISTORY

Source: Author

Prior Legislation: None known

Support: Unknown

Opposition: None known

Assembly Floor Vote: 78 - 0

### PURPOSE

*The purpose of this bill is to require the Department of Justice (DOJ) to both complete an initial review of a match in the Armed Prohibited Persons System (APPS) within seven days of the match being placed in the queue, and periodically reassess whether the department can complete reviews of APPS matches more efficiently.*

*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 currently known as the APPS, cross-references all handgun and assault weapon owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. (Penal 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. (Penal Code §§ 27500 and 30306; Welfare and Institutions Code § 8101.)

*Existing law* provides that various categories of persons are prohibited from owning or possessing a firearm, including persons convicted of certain violent offenses, and persons who have been adjudicated as having a mental disorder, among others. (Penal Code §§ 29800 to 29825, inclusive, 29900, 29905, 30305; Welfare and Institutions Code §§ 8100 and 8103.)

*Existing law* establishes the Dealer's Record of Sale (DROS) Account, a special fund, which receives various firearm registration fees, and which may be used by the DOJ for firearms related regulatory activities, including enforcement activities related to possession. (Penal Code §§

28225 and 28235.)

*Existing law* establishes the Firearms Safety and Enforcement Special Fund (FSESF), a continuously appropriated fund, for use by the DOJ for specified purposes related to weapons and firearms regulation. Monies in the fund may be used for the following purposes:

- Implementing and enforcing the provisions of the Firearm Safety Certificate program;
- Implementing and enforcing various gun law enforcement programs; and,
- Establishment, maintenance, and upgrading of equipment and services necessary for firearms dealers to comply with the DROS system.

(Penal Code §28300.)

*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. (Penal Code §§ 28200 to 28250.)

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

*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. (Penal Code §§ 28160, 28210, and 28215.)

*Existing law* requires DOJ to report, until March 1, 2019, on the following APPS statistics:

- The degree to which the backlog in APPS has been reduced or eliminated;
- The number of agents hired for enforcement of APPS;
- The number of people cleared from APPS;
- The number of people added to APPS;
- The number of people in APPS before and after the relevant reporting period, including a breakdown of why each person in APPS is prohibited from possessing a firearm;
- The number of firearms recovered due to enforcement of APPS;
- The number of contacts made during the APPS enforcement efforts; and
- Information regarding task forces or collaboration with local law enforcement on reducing the APPS backlog.

(Penal Code § 30015(b) and (c).)

*This bill* requires DOJ 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.

*This bill* requires DOJ to periodically reassess whether the department can complete reviews of APPS matches within the daily queue more efficiently.

*This bill* defines “match” as “an entry into the Automated Criminal History System, or into any department automated information system, of the name and other information of an individual who may be prohibited from acquiring, owning, or possessing a firearm, matched with a corresponding record of ownership or possession of a firearm by that individual, as specified.”

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

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.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 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* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 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). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;

- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Legislation

According to the author:

In 2013, the State Auditor (State Audit Report 2013-103) uncovered that the Department of Justice had a backlog of more than 1,200 matches in their daily queue which contains the daily events from courts and mental health facilities that may trigger a prohibition for an individual to own a firearm.

As part of their findings, the State Auditor's office recommended that the Department establish a goal of no more than 400 to 600 cases in the daily queue. However, since the initial audit, the Justice's daily queue has grown to over 3,600 cases. The Department of Justice has cited new reporting laws and the need to redirect staff to another Bureau of Firearms priority, which has a statutory deadline, as the reason for this backlog.

The State Auditor has recommended a statutory deadline of seven days on the initial processing of matches in the APPS database to encourage the Department to avoid redirecting APPS unit staff (SAR 2015-504). The longer it takes to review an individual's records, the longer a potentially armed prohibited person keeps their firearms, which increase the risk to public safety.

AB 1999 fulfills the recommendations of the State Auditor in requiring the Department of Justice to review an initial match in the Armed Prohibited Persons daily queue within 7 days and periodically reassess whether the Department can complete those reviews more efficiently.

### 2. Armed Prohibited Persons List

On March 13, 2013, the Joint Legislative Audit Committee approved a request for an audit of the California Department of Justice's Armed Prohibited Persons Program. (<http://legaudit.assembly.ca.gov/sites/legaudit.assembly.ca.gov/files/March%202013%20Vote%20Tally.pdf>.) The focus of the audit was on "the reporting and identification of persons with mental illness who are prohibited from owning or possessing a firearm." (*Armed Persons with Mental Illness*, California State Auditor (2013) Report 2013-103.) This audit revealed:

Justice has faced obstacles throughout the three-year period we reviewed—2010 through 2012—in meeting its workload demands for both the daily and the historical review queues of prohibited persons in the APPS database. During this time, Justice focused staff efforts on addressing a rise in background checks that state law requires when

someone attempts to purchase a firearm, which resulted in the APPS unit experiencing a daily backlog that at times exceeded its internal goal of having no more than 1,200 matches pending for initial review at any one time. Although, on average, the APPS unit reviewed its daily APPS database workload within a time frame of five days, a few potential armed prohibited person cases waited more than three years before the APPS unit made a final determination about the person's prohibited status. Further, the APPS unit has also experienced delays in processing a historical backlog of firearms owners—nearly 380,000 as of July 2013—who remain to be reviewed from more than six years ago when it implemented the APPS database. (<http://www.auditor.ca.gov/pdfs/reports/2013-103.pdf>.)

On July 9, 2015, the State Auditor issued a follow-up report that found:

. . . [I]n our previous report we noted that Justice had backlogs in its two processing queues: a daily queue and a historical queue. During late 2012 and early 2013, Justice had a backlog of more than 1,200 matches pending initial review in its daily queue—the queue that contains the daily events from courts and mental health facilities that indicate a match and may trigger a prohibition for an individual to own a firearm. Because a backlog in this queue means that Justice is not reviewing these daily events promptly, we recommended that Justice establish a goal of no more than 400 to 600 cases in the daily queue. However, during this follow-up audit, we found that Justice's daily queue during the first quarter of 2015 was over 3,600 cases; this is six times higher than its revised goal of no more than 600 cases. Just as it did during the previous audit, Justice continues to cite its need to redirect staff to another Bureau of Firearms (bureau) priority, which has a statutory deadline, as the reason for this backlog. We believe that, if Justice had a statutory deadline on the initial processing of the matches in the APPS database, it would encourage Justice to avoid redirecting APPS unit staff. The chief of the bureau believes that seven days would be a reasonable time frame to complete an initial review of matches. (<http://www.auditor.ca.gov/reports/2015-504/summary.html>.)

The report recommended that the legislature require DOJ to complete an initial review of cases in the daily queue within seven days. (*Id.*) This legislation would simply implement this recommendation.

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