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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 347                      **Hearing Date:** April 14, 2015  
**Author:** Jackson  
**Version:** February 24, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** JRD

*Subject: Firearms: Prohibited Persons*

## HISTORY

Source: Author

Prior Legislation: SB 755 (Wolk)—2013, vetoed  
SB 819 (Leno) – Chap. 743, Stats. 2011  
AB 302 (Beall) – Chap. 344, Stats. 2010  
AB 161 (Steinberg) – Chap. 754, Stats. 2003  
AB 950 (Brulte) – Chap. 944, Stats. 2001

Support: California Chapters of the Brady Campaign to Prevent Gun Violence; Friends Committee on Legislation in California; Law Center to Prevent Gun Violence; City of Santa Barbara; Physicians for Social Responsibility, Sacramento Chapter; San Francisco Bay Area Physicians for Social Responsibility; Youth ALIVE; 2 Individuals

Opposition: The California Sportsman Lobby; Gun Owners of California; Safari Club International; Outdoor Sportsmen’s Coalition of California

## PURPOSE

*The purpose of this bill is to add specified offenses to the list of misdemeanors that result in a 10-year prohibition on firearms possession.*

*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 law* provides that the Prohibited Armed Persons File database shall function as follows:

- Upon entry into the Automated Criminal History System of a disposition for a conviction of any felony, a conviction for any firearms-prohibiting charge specified in Chapter 2 (commencing with Section 29800), a conviction for an offense described in Chapter 3 (commencing with Section 29900), a firearms prohibition pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, or any firearms possession prohibition identified by the federal National Instant Criminal Background Check System, DOJ shall determine if the subject has an entry in CFIS indicating possession or ownership of a firearm on or after January 1, 1991 or an assault weapon registration, or a .50 BMG rifle registration;
- Upon an entry into any department automated information system that is used for the identification of persons who are prohibited by state or federal law from acquiring, owning, or possessing firearms, the department shall determine if the subject has an entry in CFIS indicating ownership or possession of a firearm on or after January 1, 1991, or an assault weapon registration, or a .50 BMG rifle registration;
- If the department determines that, pursuant to subdivision (a) or (b), the subject has an entry in the CFIS indicating possession or ownership of a firearm on or after January 1, 1991 or an assault weapon registration, or a .50 BMG rifle registration, the following information shall be entered into APPS:
  - The subject's name;
  - The subject's date of birth;
  - The subject's physical description;
  - Any other identifying information regarding the subject that is deemed necessary by the Attorney General;
  - The basis of the firearms possession prohibition; and,
  - A description of all firearms owned or possessed by the subject, as reflected by the Consolidated Firearms Information System.

(Penal Code § 30000.)

*Current federal law* provides that certain people are prohibited from owning or possessing a firearm:

Any person who:

- Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- Is a fugitive from justice;
- Is an unlawful user of or addicted to any controlled substance, as defined;
- Has been adjudicated as a mental defective or who has been committed to a mental institution;
- 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;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Having been a citizen of the United States, has renounced his citizenship;
- Is subject to a court order that —
  - was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
  - restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
    - includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
    - by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- Has been convicted in any court of a misdemeanor crime of domestic violence.

(18 USC § 922(g).)

*Current California law* provides that certain people are prohibited from owning or possessing a firearm, including:

### **Lifetime Ban**

- Anyone convicted of a felony;
- Anyone addicted to a narcotic drug;
- Any juvenile convicted of a violent crime with a gun and tried in adult court;
- 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;
- 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.

(Penal Code §§ 29800, 23515 and 29805.)

*Existing law* provides that a violation of these provisions is a felony. (*Id.*)

### **Ten Year Ban**

Anyone convicted of numerous misdemeanors involving violence or threats of violence. (Penal Code § 29805.)

*Existing law* provides that a violation of these provisions is a wobbler, as specified. (*Id.*)

### **Five Year Ban**

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. (Welfare and Institutions Code §§ 8100 and 8103(f).)

*Existing law* provides that a violation of these provisions is a wobbler, as specified. (*Id.*)

### **Temporary Bans**

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. (Penal Code § 29825.)

*Existing law* provides that the violation of these provisions is a wobbler or a misdemeanor, as specified. (*Id.*)

*This bill* would add the following misdemeanor offenses to those for which a conviction results in a 10-year prohibition on possession of a firearm:

- Theft of a firearm (Penal Code § 490.2);
- Receipt of stolen property, if the property is a firearm (Penal Code § 496);
- Sale of a firearm without a license (Penal Code § 26500);
- Sale of ammunition to an underage person (Penal Code § 30300);
- Possession of ammunition by a person prohibited from possessing a firearm (Penal Code § 30305);
- Sale or supplying ammunition to a person prohibited from possessing a firearm (Penal Code § 30306);
- Bringing ammunition on school grounds (Penal Code § 30310);
- Carrying a concealed firearm where the person has been convicted of a drug offense or of a crime against a person or property (Penal Code § 25400(c)(5));
- Carrying a concealed firearm where the firearm was loaded and not registered to the person in possession (Penal Code § 25400(c)(6));
- Carrying a loaded firearm in public where the person has been convicted of a drug offense or of a crime against a person or property (Penal Code § 25850(c)(5)); and

- Carrying a loaded firearm in public where the firearm was not registered to the person in possession. (Penal Code § 25850(c)(6).)

### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity."( Defendants' February 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).

While significant gains have been made in reducing the prison population, the state now 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 Bill

According to the author:

Firearms laws are a critical component of the state's responsibility to ensure public safety. According to FBI statistics, in 2013 there were a total of 1,745 murders in California and 1,224 of those were firearm related. In order to prevent gun violence we have adopted policies to prohibit the purchase of guns by persons believed to be high-risk for future criminal activity.

Federal law makes it unlawful to purchase or possess firearms by people who fall within certain categories such as convicted felons, domestic abusers, and people with specific kinds of mental health histories. California law also imposes prohibitions that can last for various lengths of time including a lifetime ban. Anyone convicted of numerous misdemeanors involving violence or threats of violence is prohibited from owning or possessing a firearm for 10 years.

In 2001, California was the first in the nation to create the Armed Prohibited Persons System (APPS) as a response to high-profile murder cases involving people prohibited from owning firearms. The Department of Justice (DOJ) operates the APPS, which cross-references the database of criminal convictions and other prohibited persons with the state's firearms registration database known as Automated Firearms System (AFS). The end result is a database of persons who lawfully purchased/acquired firearms and assault weapons and subsequently became prohibited as a result of a criminal conviction, restraining order, felony arrest warrant, and/or a mental health assessment/adjudication.

Still, many individuals with a history of criminal activity legally purchase firearms every year. It is well established that persons with a history of even a single prior arrest are, as a group, substantially more likely than persons with no such history to engage in criminal behavior in the future.

### 2. Firearms Prohibitions for 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.)

According to a study published in the Journal of American Medical Association:

Handgun purchasers with only 1 prior misdemeanor conviction and no convictions for offenses involving firearms or violence were nearly 5 times as likely as those with no prior criminal history to be charged with new offenses involving firearms or violence.

(Wintemute GJ. *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm Related Criminal Activity Among Authorized Purchasers of Handguns*. Journal of the American Medical Association 1998; 280: 2083-2087.)

According to the author:

[S]tudies demonstrate the need to strengthen our firearms regulations. In particular, certain firearm-related misdemeanors should have been originally included in the 10-year ban on firearm purchases.

To this end, this bill would expand the number of misdemeanor convictions resulting in a 10-year prohibition by adding a number of firearm related misdemeanors, including the sale of a firearm without a license, sale of ammunition to an underage person, and carrying a concealed firearm where the firearm was loaded and not registered to the person in possession.

SHOULD THE NUMBER OF MISDEMEANOR CONVICTIONS RESULTING IN A 10-YEAR FIREARM PROHIBITION BE EXPANDED?

### **3. Proposed Amendments**

The bill will be amended to add a misdemeanor conviction of Penal Code section 29805 (prohibited person in possession of a firearm) to the list of misdemeanors that result in a 10-year prohibition on firearms possession.

### **4. Argument in Support**

The California Chapters of the Brady Campaign to Prevent Gun Violence states,

Under existing law, convicted felons are subject to a permanent firearm prohibition and persons who has been convicted of certain specified violent misdemeanors are prohibited from possessing or purchasing a firearm within 10 years of the conviction, yet many criminals are still able to legally purchase firearms in California. SB 347 adds a number of firearm and ammunition-related offenses to the list of misdemeanor convictions that carry a 10 year firearm prohibition. These offenses include selling or furnishing ammunition to a person prohibited from possessing ammunition, including minors, and the possession of ammunition by a prohibited person. Dealing in firearms without a license and carrying a loaded or concealed weapon in certain cases, as well as other offenses, would also cause the 10 year firearm prohibition.

Public safety would be furthered by the addition of the temporary firearm prohibitions under SB 347 as research shows that handgun purchasers with prior misdemeanor convictions are at increased risk of future criminal activity, including violent crimes. Specifically, a person in California convicted of one nonviolent firearm offense is over 7 times more likely to commit another nonviolent firearm offense, over 4 times more likely to commit a violent offense, and over five times more likely to commit a Violent Crime Index Offense (murder or non-negligent manslaughter, forcible rape, robbery, or aggravated assault).<sup>1</sup> A temporary firearm prohibition for these at risk individuals would make them unable to pass a background check when attempting to purchase a firearm and place them in the Armed and Prohibited Persons System if they already possess a gun.

## 5. Argument in Opposition

The Outdoor Sportsmen's Coalition of California (OSCC) states:

The existing provision of state law that mandates a ten year prohibition on the possession of firearms for committing various misdemeanors (29085 pc) has thus far been limited to misdemeanors that are of a violent nature against another person.

SB 347 would abandon this principle by including a number of misdemeanors that do not themselves constitute violence against others.

Hunters are all firearms owners. The loss of lawful firearms possession as proposed in SB 347 also means the loss of hunting for ten years.

The offenses of concern to OSCC are not the kind of violations that should result in the loss of firearms possession for ten years. Existing penalties are sufficient.

Accordingly, the Outdoor Sportsmen's Coalition of California is opposed to the enactment of the bill.

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<sup>1</sup> Wintemute GJ. *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*. Journal of the American Medical Association 1998; 280: 2083-2087.