
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1673 **Hearing Date:** June 14, 2016
Author: Gipson
Version: May 31, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: Unfinished Frame or Receiver*

HISTORY

Source: Author

Prior Legislation: SB 808 (De León) – 2013, vetoed
AB 809 (Feuer) – Chap. 745, Stats. of 2011
AB 302 (Beall) – Chap. 344, Stats. of 2010
AB 1810 (Feuer) – 2010, failed passage on the Senate floor
AB 161 (Steinberg) – Chap. 754, Stats. of 2003
AB 950 (Brulte) – Chap. 944, Stats. of 2001
AB 2188 (Scott) – Chap. 398, Stats. of 1998

Support: American Academy of Pediatrics; California Chapters of the Brady Campaign; California Civil Liberties Advocacy; City of Carson; City of Santa Monica; Law Center to Prevent Gun Violence

Opposition: California Association of Federal Firearms Licensees; California Rifle and Pistol Association; California Sportsmen's Lobby; Crossroads of the West Gun Shows; Firearms Policy Coalition; Gun Owners of California; National Rifle Association; National Shooting Sports Foundation; Outdoor Sportsmen's Coalition of California; Safari Club International

Assembly Floor Vote: 44 - 33

PURPOSE

The purpose of this bill is to expand the definition of "firearm" to include a frame or receiver blank, casting, or machined body, that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

Existing federal law requires licensed firearms dealers, before they may deliver a firearm to a purchaser, to perform a background check on the purchaser through the federal National Instant Criminal Background Check System ("NICS"). (18 U.S.C §§ 921, et seq.)

Existing federal law requires licensed importers and licensed manufacturers to identify each firearm imported or manufactured by using the serial number engraved or cast on the receiver or

frame of the weapon, in such manner as prescribed by the Attorney General. (18 U.S.C. § 923(i).)

Under existing federal law, the United States Undetectable Firearms Act of 1988 makes it illegal to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that is not as detectable by walk-through metal detection as a security exemplar containing 3.7 oz of steel, or any firearm with major components that do not generate an accurate image before standard airport imaging technology. (18 U.S.C. § 922(p).)

Existing law requires all sales, loans, and transfers of firearms to be processed through or by a state-licensed firearms dealer or a local law enforcement agency. (Penal Code § 27545.)

Existing law defines “firearm” as a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. (Penal Code § 16520.)

Existing law provides that there is a 10-day waiting period when purchasing a firearm through a firearms dealer. During which time, a background check is conducted. (Penal Code §§ 26815 and 27540.)

Existing law requires a person be at least 18 years of age to purchase a rifle or shotgun. To purchase a handgun, a person must be at least 21 years of age. As part of the Dealer Record of Sales (DROS) process, the purchaser must present “clear evidence of identity and age” which is defined as a valid, non-expired California Driver’s License or Identification Card issued by the Department of Motor Vehicles. (Penal Code §§ 27510 and 16400.)

Existing law requires purchasers to present a handgun safety certificate prior to the submission of DROS information for a handgun or provide the dealer with proof of exemption pursuant to California Penal Code Section 31700. Beginning on January 1, 2015, this requirement was extended to all firearms. (Penal Code § 26840.)

Existing law requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to the Department of Justice 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 firearms to be centrally registered at the time of transfer or sale by way of transfer forms centrally compiled by DOJ. The 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 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 because of a prior felony conviction or because they had previously purchased a handgun within the last 30 days, or because they had received inpatient treatment for a mental health disorder, as specified. (Penal Code § 28220.)

Existing law allows the DOJ to require the dealer to charge each firearm purchaser a fee not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. This fee, known as the DROS fee, shall be no more than is necessary to fund specific codified costs. (Penal Code § 28225.)

Under existing law, the DOJ may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations:

- For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to any provision listed in subdivision (a) of Section 16585.
- For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department.
- For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to Sections 26905, 27565, or 28000, or paragraph (1) of subdivision (a) of Section 27560.
- For the actual costs associated with the electronic or telephonic transfer of information pursuant to Section 28215.
- Any costs incurred by the Department of Justice to implement this section shall be reimbursed from fees collected and charged pursuant to this section. No fees shall be charged to the dealer pursuant to Section 28225 for implementing this section. (Penal Code § 28230.)

Under existing law, the Attorney General shall establish and maintain an online database to be known as the Prohibited Armed Persons File. 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, 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. (Penal Code § 30000.)

This bill expands the definition of "firearm" to include a frame or receiver blank, casting, or machined body, that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

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 Legislation

According to the author:

AB 1673 will expand the definition of a firearm, to include 'unfinished frames and receivers,' which will close a dangerous loophole that allows anyone to sell, trade and manufacture in partial-completion the only part of a firearm that is subject to

serial-number identification and registration. The change will treat unfinished receivers and frames the same way a finished receiver is treated, and require background checks in order to be sold, prohibit them from the possession of the mentally ill and convicted felons, and require mandatory serial number application. This expanded definition will not affect the activities of gun manufacturers or home firearm-crafting enthusiasts. Gun manufacturers and home firearm-crafting enthusiasts will however be required to register their firearms as they manufacture them.

2. Recent Events

According to a July 15, 2013, briefing prepared by the Minority Staff of the Committee on Energy and Commerce, United States House of Representatives:

On June 7, 2013, John Zawahri, 23, killed five people and injured several more during a shooting rampage that lasted approximately 13 minutes in Santa Monica, California. He first shot and killed his father, Samir Zawahri, and brother, Christopher, at their home. He then pulled over and carjacked Laurie Sisk, forcing her to drive at gunpoint to Santa Monica College. Zawahri shot at numerous cars, pedestrians, and a bus en route, killing the college's groundskeeper, Carlos Franco, and his daughter, Marcela. Upon arriving at the campus, he then fatally shot another woman, Margarita Gomez. He then entered the school library, where he attempted to kill several library patrons who were hiding in a safe room. Police, who had been alerted to the shooting and to Zawahri's location by numerous 911 calls, exchanged gunfire in the library with the shooter and pronounced him dead at the scene. According to authorities, Zawahri fired approximately 100 rounds in total.

Zawahri had a history of mental illness. In 2006, a teacher at his high school discovered Zawahri researching assault weapons online. School officials contacted the police and he was subsequently admitted to the psychiatric ward at the University of California, Los Angeles Medical Center. Zawahri attempted to buy a weapon in 2011, but a background check conducted by the California Department of Justice found him ineligible and denied the purchase. The reasons for this denial have not been publicly released.

Zawahri used a modified AR-15 rifle in the shooting and also carried a .44-caliber handgun. He possessed more than 1,300 rounds of ammunition. The AR-15 rifle is the same type of gun used in the mass shootings that occurred in Aurora, Colorado, and Newtown, Connecticut. The AR-15 firearm held 30 rounds. California state law bans the sale of AR-15 rifles with a magazine capacity greater than ten rounds. Authorities believe that Zawahri assembled his AR-15 rifle using parts he bought in pieces from a number of different sources, including an 80% completed lower receiver. Police found a drill press at Zawahri's home, a tool that can make holes in the lower receiver to complete the weapon. (*Citations Omitted.*)

The manufacturing and selling of illegal guns continues to be an issue in California:

Manufacturing and selling illegal guns -- including so-called "ghost guns" -- is the most common type of investigation the Sacramento Bureau of Alcohol Tobacco and Firearms deals with.

“Ghost guns” are missing a serial number and have been manufactured with parts likely bought online.

“In this office we find quite a few of them and we have made a number of cases over the last few years of people that are selling these firearms for profit, and I would expect that we continue to make those types of cases,” said ATF spokesman Graham Barlowe.

Last October, two brothers were indicted for illegally manufacturing and selling guns in Sacramento. Agents seized 345 guns as part of that investigation.

Daniel Crowninshield, who is also known as “Dr. Death,” was also indicted last year for manufacturing unlicensed firearms, using computer-controlled machines at a North Sacramento metal shop.

In Elk Grove, machinist Richard Gray usually restores cars at his shop, but said he has had people bring in parts claiming they need a broken gun fixed.

“But (I) then started realizing that wasn’t exactly what they were doing. What they were really doing was trying to create a gun that didn’t have any serial numbers on it,” Gray said.

Now, Gray said he won’t accept any type of firearm.

“We just tell them straight up that we’re not in that kind of business.”

He’s a supporter for stricter legislation on assembling guns, but thinks it’ll make illegal gun manufacturers more desperate.

“They’re gonna go someplace else. They’re gonna get the parts and bring them in here by hook or crook,” he said.

There are several websites dedicated to selling parts to build any firearm.

“We do have cases ongoing at this time, and as I said, I would expect that we’ll have cases, we’ll be opening cases in the months and year following until, really until there’s a change in the way that we see this problem,” Barlowe said.

(Dana Griffin, *ATF: 'Ghost guns' a growing trend in Sacramento area*, August 6, 2015, <http://www.kcra.com/news/atf-ghost-guns-a-growing-trend-in-sacramento-area/34586452>.)

In 2016, the federal grand jury returned an indictment against Craig Mason, of Auburn, charging him with unlawful dealing and manufacturing firearms:

According to court documents, Mason and others involved in the scheme sold the parts necessary to assemble a firearm. Mason operated a workshop on his property that he used to manufacture firearms by converting AR-15-style blanks into lower receivers.

A “blank” is a metal casting that is not considered a firearm by ATF. It is converted into a “lower receiver” by using a drill press or automated machine to create the precise shape and space necessary for the lower receiver to accept the parts that will allow the firing of a projectile. These parts (e.g., the hammer, bolt or breechlock, and firing mechanism) are the internal mechanical parts that combine with a trigger, firing pin, and other parts to form a functioning firearm. Once the blank is converted to a lower receiver, it is considered firearm by statute, even if there is no barrel, handle, or trigger, etc., and it is subject to regulation.

On April 23, 2013, Mason manufactured two AR-15-style lower receivers for an ATF confidential informant. Despite being told that the confidential informant had been to prison and therefore prohibited from possessing a firearm, Mason created the firearms and sold his services to the confidential informant.

([https://www.atf.gov/news/pr/auburn-man-indicted-illegally-manufacturing-firearms.](https://www.atf.gov/news/pr/auburn-man-indicted-illegally-manufacturing-firearms))

3. Effect of This Legislation

This legislation makes “the frame or receiver of the weapon or a frame or receiver ‘blank,’ ‘casting’ or ‘machined body’ that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion” a firearm in California. Items that fall under this new definition of firearms would be treated like other firearms in California. Specifically, to purchase one, a person would have to go through a dealer, have a background check and would be subject to a 10-day wait. Additionally, a prohibited person would not be allowed to possess them.

4. Constitutionality: Vagueness Concern

This legislation expands the definition of “firearm” to include “the frame or receiver of the weapon or a frame or receiver ‘blank,’ ‘casting’ or ‘machined body’ that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.” While this legislation is less vague than the previous version that defined a firearm as a “weapon, or the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver,” this legislation is still arguably vague.

The Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution, each guarantee that no person shall be deprived of life, liberty, or property without due process of law. This constitutional command requires “a reasonable degree of certainty in legislation, especially in the criminal law” “[A] penal statute [must] define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”

It is established that in order for a criminal statute to satisfy the dictates of due process, two requirements must be met. First, the provision must be definite enough to provide a standard of conduct for those whose activities are proscribed. Because we assume that individuals are free to choose between lawful and unlawful conduct, “we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is

prohibited, so that he [or she] may act accordingly. Vague laws trap the innocent by not providing fair warning.”

Second, the statute must provide definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement.” (*People v. Heitzman*, 9 Cal. 4th 189, 199-200 (Cal. 1994) [citations omitted].)

Members may wish to consider whether an ordinary person would be able to identify a firearm as defined by this legislation, so as to know whether he or she is breaking the law. Specifically, would a person of ordinary intelligence would be able to recognize a “frame or receiver of the weapon or a frame or receiver ‘blank,’ ‘casting’ or ‘machined body’ that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.”

5. Argument in Support

According to the California Chapters of the Brady Campaign:

A priority policy objective for the California Brady Campaign is to ensure that every firearm owner has passed a background check and that all firearm transfers include a thorough background check, 10-day waiting period, and a record of the transaction that includes the serial number of the firearm. There have been numerous studies indicating that these requirements are good strategies for reducing gun violence and clearly, they further our core goal of keeping weapons out of dangerous hands. Although existing California law requires background checks and the retention of transfer records, people have found that they can avoid these requirements and other California gun laws by creating and marketing partially complete or “80 percent” lower receivers or frames. According to media reports and law enforcement, there is a growing number of firearms assembled from partially complete receivers and frames and these firearms are increasingly used in crime. AB 1673 will address this problem.

The lower receiver is that part of a long gun that contains the trigger, firing pin, and ammunition feeding mechanisms. Lower receivers are treated the same as a long gun and are currently legally available, provided that the purchaser passes a background check, the lower receiver has a serial number, and a record of the purchase is created. Similarly, a frame for a pistol is treated as a handgun and has a serial number. However, partially complete or “80 percent” lower receivers and frames are not considered to be firearms, but with a few simple modifications, they can become fully functional. A person with a drill press can easily drill the necessary holes to complete the receiver or frame and advances in 3D printing technology are increasing the availability of unfinished lower receivers and frames. Firearms assembled from these partially complete lower receivers and frames are untraceable for law enforcement.

AB 1673 will deal with this problem by expanding the definition of “firearm” to include a frame or receiver blank, casting, or machined body, that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. The Brady Campaign supports this change and believes that

weapons assembled from unfinished lower receivers and frames should be subject to the full extent of the law. Determining at what point a piece of metal or other material should be considered a firearm is difficult to establish, but the expanded definition is a good approach.

The shooter in the 2013 Santa Monica shooting, in which six people were killed, was prohibited from purchasing firearms. Instead, he machined himself an AR-15-type semiautomatic rifle from an aluminum partial lower receiver. This is an example of why it is essential that guns assembled from partial lower receivers and frames be regulated. AB 1673 will help keep weapons out of the hands of those considered at risk of violence, such as criminals, children, and persons with severe mental illness.

6. Argument in Opposition

According to the Firearms Policy Coalition:

We specialize in firearms policy and have no idea what the new definition means

Put simply, AB 1673 would change the definition of a firearm to include things that are not firearms.

In the interest of clarity, and because the best comedy requires no punch line, we offer here the entire substance of AB 1673 (amending § 16520(b) of the Penal Code):

“weapon, or a frame or receiver blank, casting, or machined body, that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.”

Clearly identifiable to whom?

This baffling new definition will result in untold thousands of arrests and incarcerations as “firearm” becomes defined by a strange mish-mash of words, disconnected from any known understanding or reality of what has been understood as working definitions of “firearm” for centuries. Maybe roadside analysis between peace officers and motorists would be able to hash out the “I’ll know it when I see it” approach to writing criminal law.

Have a piece of metal or plastic—GO TO JAIL

It is difficult to imagine the enforcement of hundreds of firearms laws and criminal enhancements that will be impacted by AB1673. A sample of the hundreds of new crimes this bill creates includes;

- Possession of a “blank” in a “gun free zone”
- Unloaded open carry of a “casting”
- Unlawful concealed carry of a “machined body”
- Unlawful transfer of a “...receiver blank, casting, or machined body, that is designed and clearly identifiable as a component of a functional weapon...”

- Brandishing a “receiver blank”
- Failure to wait 10 days to “cool off” after acquiring a “machined body”

Persons could end up in the Un-Armed Prohibited Person System?

Should the non-firearm firearm owner ever be found or thought to be prohibited from firearm possession, the person would be placed into the DOJ’s failed Armed Prohibited Persons System so DOJ agents or local law enforcement could confiscate the non-firearm firearm.

Implementation Nightmare

The DOJ will have to update every regulation, every form, every database and every storefront interface to accept the new definition of firearms-- which is challenging given that the new definition targets things that are clearly not firearms at all.

In order to comply with AB 1673, non-firearm firearms would need to be taken to and transferred through a licensed (real) firearms dealer. These “clearly identifiable” pieces of plastic, wood, aluminum, iron, or steel would then need to be entered into the DOJ Dealer’s Record of Sale Entry System (DROS DES) in order to provide the DOJ with the information required to register the non-firearm with the state.

The law is sacred and it affects real people in real communities. The Legislature is entrusted with passing laws that the governed can comply with and the executive can enforce. With that in mind, AB 1673 is simply not ready for serious consideration.

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