
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2176 **Hearing Date:** May 15, 2018
Author: Jones-Sawyer
Version: February 12, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms*

HISTORY

Source: California Law Revision Commission

Prior Legislation: AB 1798 (Public Safety), Ch. 103, Stats. 2014
AB 307 (Campos), Ch. 291, Stats. 2013
AB 383 (Wagner), Ch. 76, Stats. 2013
SB 1171 (Harman), Ch. 162, Stats. 2012
SB 1115 (Public Safety), Ch. 178, Stats. 2010
SB 1080 (Public Safety), Ch. 711, Stats. 2010

Support: California Sportsman's Lobby; Outdoor Sportsmen's Coalition of California;
Safari Club International; Safari Club International Foundation

Opposition: None known

Assembly Floor Vote: 68 - 0

PURPOSE

The purpose of this bill is to (1) impose receipt requirements for deadly weapons taken by officers, (2) extend civil liability to persons authorizing a minor's acquisition of tear gas by accompaniment, and (3) make various technical, non-substantive changes to provisions of law related to deadly weapons.

Existing law states that, upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt which would include:

- A description of the firearm or other deadly weapon listing any identification or serial number; and
- A notice of where the firearm or other deadly weapon can be recovered, the time limit for such recovery, and the date after which it could be recovered. (Pen. Code, § 18255, subds. (a)-(c).)

Existing law requires any peace officer who takes custody of a firearm or deadly weapon from an incident involving domestic violence, to deliver it within 24 hours to the city police department or county sheriff's office. (Pen. Code, §18260.)

Existing law imposes procedural notification requirements on local law enforcement agencies upon receiving a return-of-firearm petition. (Pen. Code, § 18405.)

This bill provides that a receipt given by an officer who takes custody of a firearm or other deadly weapon shall include the name and residential mailing address of the person who possessed the firearm or other deadly weapon.

Existing law makes it a misdemeanor for any manufacturer, importer, or distributor of imitation firearms to fail to comply with any applicable federal law or regulation governing toy or imitation firearms. (Pen. Code, § 20155.)

Existing law allows a minor 16 years of age or older to purchase and possess tear gas weapons if accompanied by, or given written consent by, a parent or guardian. (Pen. Code, § 22815, subd. (a).)

Existing law authorizes persons to sell or furnish tear gas and tear gas weapons to minors who have attained 16 years of age and are accompanied by, or obtained written consent of, a parent or guardian. (Pen. Code, §22815, subd. (b).)

Existing law imposes joint and several liability on those who gave written consent for a minor to acquire tear gas, for any civil liability arising out of the minor's use of that tear gas. (Pen. Code, § 22815, subd. (c).)

Existing law requires each lead law enforcement agency investigating an incident to report any information which reasonably supports a conclusion that:

- A child 18 years of age or younger suffered an unintentional or self-inflicted gunshot wound by a firearm sold, transferred, or manufactured in California; or
- Whether the child died, suffered serious injury, or was treated by a medical professional for an injury resulting from that incident. (Pen. Code, § 23685)

This bill extends civil liability to a person who authorizes a minor's acquisition of tear gas by accompanying said minor at the time of acquirement.

Existing law provides a defense for the offense of carrying a loaded firearm in a public place for an individual who:

- Reasonably believes that any individual or property is in immediate, grave danger, and that carrying the weapon is necessary for its preservation; or
- Reasonably believes that individual is in grave danger posed by another person against whom a restraining order has been issued finding that the person poses a threat to the life or safety of the possessor of the firearm. States that, "It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to a defendant charged with violating Section 25400 or committing another similar offense." (Pen. Code, § 26045, subds. (a) & (b).)

Existing law imposes specific requirements on firearms dealers when storing firearms during nonbusiness hours, as specified. (Pen. Code, § 26890.)

Existing law states that a firearm safety certificate test must be administered by a certified instructor. Further provides that if a test taker is unable to read, the examination should then be administered orally; and, if the test taker is unable to read English or Spanish, states that the test may be applied orally. (Pen. Code, § 31640.)

Existing law exempts certain persons from firearm safety certificate requirements, as specified. Among those included are, “a secured creditor or agent or employee thereof when the firearms are possessed as collateral for, or as a result of, or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.” (Pen. Code, §31700.)

Existing law requires any firearm capable of being concealed upon the person to be tested by an independent certified laboratory to ensure it is not an unsafe handgun. States that, “The department may charge any laboratory that is seeking certification to test any pistol, revolver, or other firearm capable of being concealed upon the person pursuant to Sections 31900 to 32110, inclusive, a fee not exceeding the costs of certification.” (Pen. Code, § 32010.)

This bill deletes and replaces erroneous references.

This bill revises statutory language to remove ambiguities.

This bill makes other technical, non-substantive changes.

COMMENTS

1. Need for This Bill

According to the author:

In 2010, the Legislature enacted SB 1080 (Committee on Public Safety), and SB 1115 (Committee on Public Safety), effecting a nonsubstantive reorganization of statutes governing control of deadly weapons, and implementing a Law Revision Commission recommendation on Nonsubstantive Reorganization of Deadly Weapon Statutes, 38 Cal. L. Revision Comm’n Reports 217 (2009).

In 2011, the Legislature enacted AB 1402 (Committee on Public Safety) effecting clean-up legislation relating to the 2010 reorganization, and implementing part of a follow-up Commission recommendation on Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation, 41 Cal. L. Revision Comm’n Reports 135 (2011).

In 2012, the Legislature enacted SB 1171 (Harman), Sections 12, 13, 14, 203, and 207 of which effected further clean-up legislation relating to the 2010 reorganization, and implemented another part of the Commission recommendation on Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation, 41 Cal. L. Revision Comm’n Reports 135 (2011).

In 2013, the Legislature enacted AB 383 (Wagner), Sections 145.5, 145.7, 147.3, 147.5, and 153.5 of which effected further clean-up legislation relating to the 2010 reorganization, and implemented another part of the Commission recommendation on Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation, 41 Cal. L. Revision Comm'n Reports 135 (2011).

In 2013, the Legislature enacted AB 307 (Campos), Section 2 of which effected further clean-up legislation relating to the 2010 reorganization, and implemented another part of the Commission recommendation on Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation, 41 Cal. L. Revision Comm'n Reports 135 (2011).

In 2014, the Legislature enacted AB 1798 (Committee on Public Safety), which made minor improvements in the deadly weapons statutes, and implemented a third Commission recommendation on Deadly Weapons: Minor Clean-Up Issues, 43 Cal. L. Revision Comm'n Reports 63 (2013).

2. Background on Revisions to the Firearms Codes by the Law Revision Commission

In 2006, the Governor signed ACR 73 (McCarthy), Chapter 128, Statutes of 2007, asking the California Law Revision Commission (CLRC) to revise various Penal Code provisions relating to firearms. The CLRC is required to prepare and submit recommended legislation by July 1, 2009. ACR 73 focused on CLRC's revisions that accomplished the following objectives:

“Reduce the length and complexity of current sections; avoid unnecessary use of cross-references; neither expand nor contract the scope of criminal liability under current provisions; in the event that the commission’s draft changes the scope of criminal liability under the current provisions, this shall be made explicit in the commission’s draft or any commentary related to the draft; to the extent compatible with these objectives, use common definitions of terms, and; organize existing provisions in such a way that similar provisions are located in close proximity to each other.”

In vetoing SB 1140 (Scott), of the 2003-04 Legislative Session, relating to the criminal storage of firearms around children, the Governor stated, "Before a government exercises its power to take away ones liberty, it should be clear to every person what actions will cause them to forfeit their freedom. Instead of adding to the lengthy and complex area of firearm laws, a reorganization of the current laws should be undertaken to ensure that statutes that impose criminal penalties are easily understandable."

The author of ACR 73 stated, "In particular, the laws relating to the transfers of firearms are lengthy, with numerous cross-references, highly fact-specific exemptions, and complex provisions. For example, Penal Code section 12078 is 5,880 words long and occupies 11 pages if printed in a 12-point font with conventional margins. The section has cross-references to many scattered sections of other firearms provisions, some of them hundreds of sections away. The firearms laws occupy over 100 pages of an un-annotated version of the Penal Code when printed in dual column in tiny print. These areas of the law are not for legal experts only. Firearms owners, licensed dealers, and law enforcement need to be able to interpret these provisions in order to comply with the law and avoid criminal liability. Ambiguity and confusion do not promote the public policy goals that those laws were designed to accomplish. ACR 73 is designed to task the CLRC, a neutral body of legal experts, with the task of seeing if they can

simplify and reorganize these laws. It also includes a statement of legislative intent that when the Commission's work is complete that it will be tasked with addressing other portions of the firearms laws."

According to the California Law Revision Commission:

In 2006, the Legislature directed the Law Revision Commission to conduct a study and recommend nonsubstantive changes to the statutes relating to control of deadly weapons to simplify and provide better organization to this area of law. [ACR 73 (McCarthy), Chapter 128, Statutes of 2007.] The Commission was expressly directed not to make any change that would affect the existing scope of criminal liability.

In June 2009, the Commission submitted its recommendation on *Nonsubstantive Reorganization of Deadly Weapons Statutes* ('Deadly Weapons Recommendation') to the Legislature. In 2010, the recommendation was enacted, reorganizing the deadly weapons statutes into a new Part 6 of the Penal Code, structuring the provisions in a more user-friendly form and making conforming revisions to the law.

During the course of the study, the Commission found a number of minor issues that could not be addressed without potentially effecting a substantive change. Consistent with the Commission's limited mandate, the Commission did not address any of these minor issues in its Deadly Weapons Recommendation. Instead, these minor issues were listed in Appendix B of the Deadly Weapons Recommendation and set aside for possible future work.

In the Deadly Weapons Recommendation, the Commission requested authority to study these clean-up issues. The Legislature granted the Commission authority to study and make recommendations on issues identified in Appendix B.

Pursuant to that authority, the Law Revision Commission now recommends minor clean-up amendments to address some of the issues identified in Appendix B of the Deadly Weapons Recommendation. This recommendation also includes a few minor improvements that were not identified in Appendix B. They are proposed pursuant to the Commission's general authority to recommend minor technical and substantive reforms." (*Deadly Weapons: Minor Clean-Up Issues (Part 2)*, 44 Cal. L. Revision Comm'n Reports 471 (2015).)

3. AB 2176's Proposed Changes:

This bill would implement some of the Law Revision Commission's suggested technical and substantive changes. *Deadly Weapons: Minor Clean-Up Issues (Part 2)*, 44 Cal. L. Revision Comm'n Reports 471 (2015). Substantively, this bill would make minor changes affecting seizures of firearms or other deadly weapons and liability for a minor's use of tear gas. The other changes are minor structural and grammatical revisions:

- Current law for seizure of a weapon at a domestic violence incident requires a law enforcement agency to send notice to the owner of a seized weapon upon a petition for forfeiture of the weapon being filed in court. The notice must be sent to the owner's last known address. However, there is no statutory language requiring an officer to record the

weapon owner's residential mailing address. This would amend that gap by requiring the officer who took the weapon to write down the owner's residential mailing address when giving a receipt for the seized weapon.

- California law makes it a misdemeanor for an imitation firearm not to comply with “any applicable federal law or regulation governing the marking of a toy, look-alike, or imitation firearm, as defined by federal law or regulation.” (Pen. Code, § 20155.) On this matter the Law Revision Commission wrote, “The governing federal statute defines the term ‘look-alike firearm,’ but does not define the term ‘imitation firearm.’ California law defines ‘imitation firearm,’ but does not define ‘look-alike firearm.’ While the state and federal definitions are largely the same, the federal definition of ‘look-alike firearm’ is slightly narrower than the state definition of ‘imitation firearm.’ The federal definition excludes BB guns and certain types of replicas. The state definition includes them. This could lead to confusion as to the scope of the rule in Section 20155.

“The purpose of Section 20155 is to provide a state penalty for a violation of federal law. This means that the provision only has effect if federal law has been violated. Consequently, the narrower federal definition should be controlling — conduct involving an object that is excluded from the federal definition can never be a violation of the federal statute. The Commission recommends that Section 20155 be revised to make clear that the federal terminology is controlling.” *Deadly Weapons: Minor Clean-Up Issues (Part 2)*, 44 Cal. L. Revision Comm’n Reports 471 (2015).

- Current California law allows a minor over 16 years old to acquire tear gas if the minor's parent or guardian either accompanies them or gives written consent. The law imposes civil liability only on the person who gave written consent, not one who accompanied the minor. This bill would amend the law to extend liability to both situations and would make slight grammatical changes.
- One part of the bill deals with inconsistent terminology used in relation to firearm safety tests. Currently, the word “test” is used 17 out of 18 times and in one instance “examination” is used. The same issue exists for the words “administered” and “applied.” Nothing points to any substantive reason for these deviations, so the Law Revision Commission proposed this clean-up to promote uniform terminology.
- Another portion of the bill would make clarifying revisions to two existing statutes, making them easier to understand. The two statutes, dealing with firearm testing laboratories and reporting requirements for children injured by firearms, are worded in an unnecessarily convoluted manner.

Finally, the bill would also correct some evident drafting errors. These include duplicative language, erroneous cross-references, and a misplacement of the term “or” instead of “and.”