
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 3129 **Hearing Date:** June 26, 2018
Author: Rubio
Version: March 19, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Prohibited Persons*

HISTORY

Source: Author

Prior Legislation: AB 785 (Jones-Sawyer), Ch.784, Stats.of 2017
AB 1084 (Melendez), 2013 failed passage Assembly Public Safety
SB 580 (Jackson), 2013, held in Assembly Appropriations
SB 140 (Leno), Ch. 2, Stats. of 2013

Support: Bay Area Student Activists; California Chapters of the Brady Campaign;
California Partnership to End Domestic Violence; California Protective Parents
Association; City of Santa Monica; Crime Victims United of California; Giffords
Law Center; Protective Mothers of Solano County; two private individuals

Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice;
California Public Defenders Association

Assembly Floor Vote: 45 - 16

PURPOSE

The purpose of this bill is to prohibit a person who is convicted on or after January 1, 2019, of specified misdemeanors relating to domestic violence that currently result in a 10-year prohibition against possessing a firearm, from ever possessing a firearm.

Existing law specifies that it is unlawful for any person who has been convicted of a misdemeanor crime of domestic violence, to possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. (18 U.S.C. 922, subd. (g)(9).)

Existing law requires that the Department of Justice (DOJ) participate in the National Instant Criminal Background Check System (NICS), and shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law. (Pen. Code, § 28220, subd. (b).)

Existing law states that if DOJ determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is attempting to purchase more than one handgun in a 30 day period, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact. (Pen. Code, § 28220, subd. (c).)

Existing law requires DOJ to immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in NICS, indicates that the purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period. (Pen. Code, § 28220, subd. (f).)

Existing law provides that persons convicted of specified serious or violent misdemeanors are prohibited from possession firearms for a period of 10 years after a conviction for specified misdemeanors. (Pen. Code, § 29805.)

Existing law includes within the list of misdemeanors triggering a 10 year firearm prohibition the crimes of domestic violence and battery on a spouse, cohabitant, or person whom the defendant currently has, or has previously had, a dating or engagement relationship. (Pen. Code, § 29805.)

Existing law includes within the list of misdemeanors triggering a 10 year firearm prohibition the crimes of stalking, sexual battery, assault with a deadly weapon, battery with serious bodily injury, brandishing a firearm of deadly weapon, assault with force likely to produce great bodily injury, battery on a peace officer, and threats of bodily injury or death. The list includes a number of other misdemeanor crimes as well. (Penal Code, § 29805.)

Existing law punishes a violation of the 10 year prohibition on firearms as a felony with a maximum punishment of three years in the county jail (realignment), or as a misdemeanor with a maximum punishment of one year in the county jail. (Pen. Code, § 29805.)

Existing law provides that any peace officer or person whose employment is dependent on the ability to legally possess a firearm, who is subject to the 10 year prohibition imposed because of a conviction of domestic violence, stalking, or violation of a domestic violence restraining order may petition the court only once for relief from this prohibition. (Pen. Code, § 29855.)

Existing law states that a court, in the case of a peace officer or person whose employment is dependent on the ability to legally possess a firearm, may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate, if the court make the following findings: (Pen. Code, § 29855, subd. (d).)

- 1) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner;
- 2) Finds that the petitioner does not fall within another specified class which is prohibited from possessing firearms; and,

- 3) Finds that the petitioner does not have a previous conviction for the specified violent or serious misdemeanors that trigger a 10 year prohibition, no matter when the prior conviction occurred.

Existing law prohibits a person from possessing or owning a firearm that is subject to specified restraining orders related to domestic violence and punishes a violation of the prohibition as a misdemeanor with a maximum sentence of one year in the county jail. (Pen. Code, § 29825.)

Existing law provides that persons convicted of felonies are prohibited for their lifetimes from owning or possessing a firearm. (Pen. Code, § 29800.)

Existing law punishes a violation of a felon in possession of a firearm as a felony with a maximum of three years in the state prison. (Pen. Code, § 29800.)

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 Armed Prohibited Persons Systems (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. (Pen. 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. (Pen. Code, §§ 27500 and 30306; and Welf. & Inst. Code, § 8101.)

This bill specifies that is unlawful for a person to ever own or possess a firearm, if that person is convicted on or after January 1, 2019, of a misdemeanor violation for either of following offenses:

- 1) Domestic violence; or
- 2) Battery on a spouse, cohabitant, or person whom the defendant currently has, or has previously had, a dating or engagement relationship.

This bill punishes such an offense as a felony with a maximum sentence of three years in state prison or as a misdemeanor with a maximum sentence of one year in the county jail.

COMMENTS

1. Need for This Bill

AB 3129 will better protect victims of domestic violence by imposing a lifetime ban on firearms for individuals with a history of domestic abuse. Current law is inadequate to fully protect our most vulnerable population who are survivors of domestic violence. We are moving to conform with federal law which already imposes a lifetime ban on possession of firearms for individuals convicted of misdemeanor domestic violence in any court.

2. Individuals Prohibited from Possessing Firearms in California

California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while a conviction of specified misdemeanors result in a 10-year prohibition. A person may be prohibited from possessing a firearm due to a protective order or as a condition of probation. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100, subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103, subd. (f).) For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is likely to use firearms or other deadly weapons in a safe and lawful manner. (Welf. & Inst. Code, §§ 8100, subd. (b)(1) and 8103, subd. (f).)

DOJ developed the Armed Prohibited Persons System (APPS) for tracking handgun and assault weapon owners in California who may pose a threat to public safety. (Pen. Code, § 30000 et seq.) APPS collects information about 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. DOJ receives automatic notifications from state and federal criminal history systems to determine if there is a match in the APPS for a current California gun owner. DOJ also receives information from courts, local law enforcement and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, DOJ has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession. Local law enforcement also may request from DOJ the status of an individual, or may request a list of prohibited persons within their jurisdiction, and conduct an investigation of those persons. (Pen. Code, § 30010.) Since the development of APPS, California has added long-gun transactions to the list of registered firearms and has added restraining orders to the list of prohibiting events.¹

3. Firearms and Domestic Violence in California

Current law prohibits a person from possessing firearms for a period of 10 years after a conviction specified misdemeanors. (Pen. Code, § 29805.) Current law includes within the list of misdemeanors triggering a 10 year firearm prohibition the crimes of domestic violence and battery on a spouse, cohabitant, or person whom the defendant currently has, or has previously had, a dating or engagement relationship. (Pen. Code, § 29805.)

Existing law also prohibits a person from possessing or owning a firearm that is subject to specified restraining orders related to domestic violence and punishes a violation of the prohibition as a misdemeanor with a maximum sentence of one year in the county jail. (Pen. Code, § 29825.)

¹ (<http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/sb-140-supp-budget-report.pdf>)

4. California Is a Point of Contact State for the National Instant Criminal Background Check System (NICS) and Enforces Federal Prohibitions on Firearm Purchase

California law requires any prospective purchaser of (or transferee or person being loaned) a firearm to submit an application to purchase the firearm (also known as a “Dealer Record of Sale” or “DROS” form) through a licensed dealer to DOJ. The dealer must submit firearm purchaser information to DOJ on the date of the application through electronic transfer, unless DOJ makes an exception allowing a different format. The purchaser must present “clear evidence” of his or her identity and age to the dealer (either a valid California driver’s license or a valid California identification card issued by the Department of Motor Vehicles). Dealers must obtain the purchaser’s name, date of birth, and driver’s license or identification number electronically from the magnetic strip on the license or ID card. This information cannot be supplied by any other means except as authorized by DOJ. Once this information is submitted, DOJ will check available and authorized records, including the federal NICS database, in order to determine whether the person is prohibited from possessing, receiving, owning, or purchasing a firearm by state or federal law.²

California is a state that acts as a “Point of Contact” for all firearm transactions. Prior to passage of Proposition 63 in 2016, California authorized, but did not require, the DOJ to act as a point of contact for firearm background checks. Effective July 1, 2017, Proposition 63 required the California DOJ to continue to serve as the point of contact for firearm purchaser background checks. Firearms dealers must therefore initiate the background check required by federal law by contacting the California DOJ.³ When California DOJ runs the background check they also check whether the person is federally eligible to purchase a firearm. Federal law prohibits possession of a firearm for life by an individual convicted of a misdemeanor crime of domestic violence. (18 U.S.C. 922, subd. (g)(9).) California DOJ will flag a misdemeanor domestic violence conviction as a federal prohibition on purchase of a firearm, regardless of when the conviction took take.

Those point of contact requirements are codified in Pen. Code, § 28220, which requires that California DOJ to participate in the National Instant Criminal Background Check System (NICS), and notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

In addition to checking the federal NICS database, DOJ is required to examine its own records, as well as those records that it is authorized to request from the State Department of State Hospitals. If the person is prohibited from possessing firearms under state or federal law, DOJ must immediately notify the dealer and the local sheriff or chief of police in the city and/or county where the sale was made. Licensed dealers are prohibited from delivering a firearm to a purchaser or transferee if the dealer has been notified by DOJ that the person is prohibited from possessing firearms. If the person is prohibited from possessing firearms, the dealer must make available to the prohibited person a DOJ “Prohibited Notice and Transfer” form, stating that the person is prohibited from owning or possessing a firearm and that the person may obtain from DOJ the reason for the prohibition. (*Id.*)

² (<http://lawcenter.giffords.org/background-checks-in-california/>)

³ (<http://lawcenter.giffords.org/background-checks-in-california/>)

5. Effect of This Bill

The list of serious and violent misdemeanors, conviction of which triggers a 10 year prohibition on owning or possessing a firearm, contains over 30 offenses. That list of misdemeanors includes the crimes of stalking, assault with a deadly weapon, battery with serious bodily injury, brandishing a firearm of deadly weapon, assault with force likely to produce great bodily injury, battery on a peace officer, sexual battery, and threats of bodily injury or death. (Penal Code, § 29805.)

This bill would single out misdemeanor domestic violence and misdemeanor battery on a spouse, cohabitant, or person whom the defendant currently has, or has previously had, a dating or engagement relationship, as the two misdemeanor offenses on that list worthy of a lifetime ban on firearm possession. Current law provides that if an incident of domestic violence is serious enough to warrant a felony conviction, the person convicted of such a charge is subject to a lifetime ban. This bill deals with misdemeanor convictions for domestic violence. The fact that it is a misdemeanor conviction reflects that while the behavior is criminal, it falls on the lower end of the spectrum of domestic violence. Current law provides a more temporary firearm prohibition (10 years) for misdemeanors to reflect that a misdemeanor conviction reflects a lower level of criminality than a felony conviction. Current law further limits the misdemeanor prohibition to a limited number of misdemeanors that are more serious or violent.

6. Argument in Support

According to the California Chapters of the Brady Campaign:

The California Chapters of the Brady Campaign to Prevent Gun Violence is a grassroots organization working to reduce firearm crime, injury, and death. There are 28 Brady Chapters throughout the state, many of whose members have lost a loved one to gunfire. In furtherance of our goal to reduce firearm violence in our homes and communities, the California Brady Campaign supports AB 3129, introduced by Assemblywoman Blanca Rubio.

The numbers are grim. In America, a woman is shot and killed by a current or former partner every 16 hours. Three women are killed by their boyfriends or husbands every day. Women in the United States are 11 times more likely to be murdered with a gun compared to those living in other high-income nations. An analysis of FBI data shows that 54 percent of mass shooting events from 2009 to 2016 were related to domestic or family violence. 422 people were killed. Furthermore, to maintain control, abusers frequently remind their partners that they are armed. An analysis of domestic violence reports in 2016 showed that about 4.5 million American women reported that an intimate partner had threatened them with a gun.

Federal law prohibits the possession of firearms by those with a misdemeanor domestic violence conviction. Existing law prohibits a person who has been convicted of a felony from possessing a firearm. A violation of this prohibition is a felony. Existing state law also prohibits a person who has been convicted of a specified misdemeanor from possessing a firearm for a period of 10 years. A violation of this prohibition may be punished as either a misdemeanor or a felony. AB 3129 will impose a lifetime firearm prohibition on a person convicted of a

domestic violence-related misdemeanor after January 1, 2019. The bill will continue to make a violation of a misdemeanor domestic violence firearm prohibition punishable as either a misdemeanor or as a felony.

Studies show that past violent criminal behavior is a predictor of subsequent acts of violence. In fact, research has found that Californians with a prior conviction for a violent misdemeanor are 9 times as likely to commit subsequent violent crimes and also 9 times as likely to commit subsequent firearm offences. Moreover, if a gun is present in the home when a domestic violence incident takes place, the risk of homicide increases by 500%. It is essential that domestic abusers not be allowed access to firearms. AB 3129 will better protect victims of domestic violence by imposing a lifetime firearm prohibition on offenders under California law, thereby enabling better enforcement of the federal ban. Additionally, a state lifetime prohibition would protect California from any weakening of the federal firearm prohibition.

7. Argument in Opposition

According to the California Attorneys for Criminal Justice:

This bill would deign to impose a lifetime disenfranchisement on the exercise of the right to keep and bear arms upon persons who suffer misdemeanor convictions of either Penal Code Section 243 or Section 273.5. Unlike pre-existing lifetime federal prohibitions against the possession of firearms and ammunition by such misdemeanants, AB 3129 affords no protection to persons who were convicted without the benefit of jury, counsel or knowing and intelligent waiver of the right to jury and/or counsel. In this sense, AB 3129 is reminiscent of the pre-*Gideon v. Wainwright* (1963) 372 U.S. 335 era when states were free to ignore a citizen's 6th Amendment rights. Those days are passed. Recognizing this failure to provide basic protection against the arbitrary disenfranchisement of a core right, AB 3129 is reckless in the extreme and it is also completely unnecessary.

Federal prohibitions already apply to such persons and they are stringently enforced. "The federal ban on firearms possession applies to any person with a prior misdemeanor conviction for the "use...of physical force" against a domestic relation. (see 18 U.S.C. § 921(a)(33)(A).) That language, naturally read, encompasses acts of force undertaken recklessly—i.e., with conscious disregard of a substantial risk of harm. And the state-law backdrop to that provision, which included misdemeanor assault statutes covering reckless conduct in a significant majority of jurisdictions, indicates that Congress meant just what it said.

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