
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 857 **Hearing Date:** May 10, 2016
Author: Cooper
Version: May 4, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: Identifying Information*

HISTORY

Source: Author

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

Support: California Chapters of the Brady Campaign to Prevent Gun Violence; California Peace Officers' Association; Coalition Against Gun Violence, a Santa Barbara County Coalition

Opposition: Firearms Policy Coalition; National Rifle Association

Assembly Floor Vote: Not Relevant

PURPOSE

The purpose of this legislation is to require: (1) a person, commencing July 1, 2018, to apply to and obtain from the Department of Justice (DOJ) a unique serial number or other mark of identification prior to manufacturing or assembling a firearm, as specified; and (2) by January 1, 2019, any person who, as of July 1, 2018, owns a firearm that does not bear a serial number assigned to it to obtain a unique serial number or other mark of identification prior to manufacturing or assembling a firearm, as specified.

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 prohibits a person, firm, or corporation licensed to manufacture firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code from manufacturing firearms in California, unless the person, firm or corporation is also licensed under California law. This prohibition does not apply to a person licensed under federal law, who manufactures less than 100 firearms a calendar year. (Penal Code § 29010.)

Existing law makes it illegal to change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol, revolver, or any other firearm, without first having secured written permission from the DOJ to make that change, alteration, or removal. Anyone who is found to have violated this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170. (Penal Code § 23900.)

Existing law allows the DOJ, upon request, to assign a distinguishing number or mark of identification to any firearm whenever the firearm lacks a manufacturer's number or other mark of identification, or whenever the manufacturer's number or other mark of identification, or a distinguishing number or mark assigned by the department has been destroyed or obliterated. (Penal Code § 23910.)

Existing law makes it misdemeanor, with limited enumerated exceptions, for any person to buy, receive, dispose of, sell, offer to sell or have possession any pistol, revolver, or other firearm that has had the name of the maker or model, or the manufacturer's number or other mark of identification changed, altered, removed, or obliterated. (Penal Code §§ 23920 and 23925.)

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 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 firearms to be centrally registered at the time of transfer or sale by way of transfer forms centrally compiled by the 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 defines "manufacturing" or "assembling" a firearm as "to fabricate or construct a firearm, or to fit together the component parts of a firearm to construct a firearm."

This bill, commencing July 1, 2018, requires any person who manufactures or assembles a firearm to:

- Apply to the DOJ for a unique serial number or other mark of identification, as specified;
- Within ten days of manufacturing or assembling the firearm, to engrave or permanently affix the unique serial number or other mark to that firearm, as specified; and
- Notify the DOJ once the serial number or other mark is affixed to the firearm, as specified.

This bill states that by January 1, 2019, any person who, as of July 1, 2018, owns a firearm that does not bear a serial number, as specified, must:

- Apply to the DOJ for a unique serial number or other mark of identification, as specified;
- Within ten days of manufacturing or assembling the firearm, to engrave or permanently affix the unique serial number or other mark to that firearm, as specified; and
- Notify the DOJ once the serial number or other mark is affixed to the firearm, as specified.

This bill specifies, prior to the DOJ providing the person with a unique serial number or other mark, the person must:

- Present proof the applicant is not prohibited by state or federal law.
- Present proof of age and identity. The applicant must be 18 years of age or older to obtain a unique serial number or mark of identification for a firearm that is not a handgun, and must be 21 years of age or older to obtain a unique serial number or mark of identification for a handgun.
- Provide a description of the firearm that he or she owns or intends to manufacture or assemble, in a manner prescribed by the department.
- Have a valid firearm safety certificate or handgun safety certificate.

This bill prohibits the sale or transfer of ownership of a firearm manufactured or assembled pursuant to the provisions of this legislation, but allows for the transfer, surrender, or sale of a firearm to a law enforcement agency, as specified.

This bill exempts the following from the provisions of this legislation:

- A firearm that has a serial number assigned, as specified.
- A firearm made or assembled prior to December 16, 1968, that is not a handgun.
- A firearm which was entered into the centralized registry, as specified, prior to July 1, 2018, as being owned by a specific individual or entity if that firearm has assigned to it a distinguishing number or mark of identification to that firearm by virtue of the department accepting entry of that firearm into the centralized registry.
- An antique firearm, as specified.

This bill provides if the firearm is a handgun, a violation of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment. For all other firearms, a violation of this section is punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment. Each firearm found to be in violation of this section constitutes a distinct and separate offense. This section does not preclude prosecution under any other law providing for a greater penalty.

This bill requires the DOJ to maintain electronic records of all persons that receive a unique serial number or other mark, and notify the DOJ that it has been engraved or affixed to the firearm.

This bill requires DOJ to maintain and make available upon request information concerning both of the following:

- The number of serial numbers issued, as specified.
- The number of arrests for violations of Section 29180.

This bill allows the DOJ to charge a fee for applications to administer the costs of electronic tracking and would authorize the DOJ to use the Dealer Record of Sales (DROS) account to cover actual costs associated with this legislation.

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. 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

SB 1407 would require any person who manufactures or assembles a firearm to first obtain a serial number from the DOJ and demonstrate that he or she is not prohibited from owning firearms. Specifically, any person who manufactures or assembles a firearm will be required to:

- Obtain a unique serial number or other mark from the DOJ prior to making or assembling a firearm;
- Within ten days of making or assembling to engrave or permanently affix the unique serial number or other mark to the firearm; and,
- Notify the DOJ once the serial number or other mark is affixed to the firearm.

Prior to the DOJ providing the person with a unique serial number or other mark, the person must:

- Present proof the applicant is not prohibited by state or federal law.
- Present proof of age and identity. The applicant must be 18 years of age or older to obtain a unique serial number or mark of identification for a firearm that is not a handgun, and must be 21 years of age or older to obtain a unique serial number or mark of identification for a handgun.
- Provide a description of the firearm that he or she owns or intends to manufacture or assemble, in a manner prescribed by the department.
- Have a valid firearm safety certificate or handgun safety certificate.

There are no provisions in existing law that prevent a person from buying an 80% lower receiver¹ and then making it into a fully functional firearm. Because 80% lower receivers are not considered firearms, a person purchasing them does not have to go through a federal firearms dealer, and does not have to undergo a background check. This legislation is intended to close this loophole.

4. Related Legislation

This committee heard and passed (5-2) Senate Bill 1407 (DeLeon) on April 19, 2016, which is virtually identical to this bill.

5. Senate Bill 808 Veto Message

In 2014, the Governor vetoed a virtually identical piece of legislation, SB 808 (De León), stating:

I am returning Senate Bill 808 without my signature.

SB 808 would require individuals who build guns at home to first obtain a serial number and register the weapon with the Department of Justice.

I appreciate the author's concerns about gun violence, but I can't see how adding a serial number to a homemade gun would significantly advance public safety.

-- END --

¹ According to Tactical Machining, "An 80% Receiver is a partially completed piece of material that requires special tooling and skills to be completed and considered a firearm." (<http://www.tacticalmachining.com/80-lower-receiver.html>.)