
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1501 **Hearing Date:** July 2, 2019
Author: Low
Version: June 10, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Forensic Ballistic and Firearms Procedures*

HISTORY

Source: Santa Clara District Attorney's Office

Prior Legislation: AB 2781 (Low), 2018, held in Senate Appropriations
AB 2222 (Quirk), Ch. 864, Stats of 2018
AB 2733 (Harper), 2018 failed in Assembly Public Safety
SB 248 (Padilla), Ch. 639, Stats. of 2007

Support: Brady California United Against Gun Violence

Opposition: California Association of Crime Laboratory Directors; California State Sheriffs' Association

Assembly Floor Vote: 66 - 0

PURPOSE

The purpose of this bill is to require law enforcement agencies to obtain ballistic images from firearms and cartridge cases obtained by the agency and submit those images to the National Integrated Ballistic Information Network (NIBIN) or a comparable automated ballistic identification system used by the agency.

Existing law allows local law enforcement agencies to enter into the United States Department of Justice, National Integrated Ballistic Information Network (NIBIN) information to ensure that representative samples of fired bullets and cartridge cases collected at crime scenes, from test-fires of firearms recovered at crime scenes, and other firearm information needed to investigate crimes, are recorded into the NIBIN in accordance with specified protocols. (Pen. Code, § 11108.10, subd. (a).)

Existing law requires the Attorney General, in cooperation with the law enforcement agencies that choose to do so, to develop a protocol to allow local law enforcement agencies to enter information to NIBIN. (Pen. Code, § 11108.10, subd. (b).)

Existing law requires each sheriff or police chief executive to submit descriptions of serialized property, or non-serialized property that has been uniquely inscribed, which has been reported stolen, lost, found, recovered or under observation, directly into the appropriate DOJ automated

property system for firearms, stolen bicycles, stolen vehicles, or other property, as the case may be. (Pen. Code, § 11108, subd. (a).)

Existing law states information about a firearm entered into the automated system for firearms shall remain in the system until the reported firearm has been found, recovered, is no longer under observation, or the record is determined to have been entered in error. (Pen. Code, § 11108, subd. (b).)

Existing law provides that in addition to the requirements of existing law that apply to a local law enforcement agency's duty to report to DOJ the recovery of a firearm, a police or sheriff's department shall, and any other law enforcement agency or agent may, report to the department in a manner determined by the AG in consultation with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. (Pen. Code, § 11108.3, subd. (a).)

Existing law states that when the DOJ receives information from a local law enforcement agency pursuant to existing law, it shall promptly forward this information to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives to the extent practicable. (Pen. Code, § 11108.3, subd. (b).)

Existing law provides that a law enforcement agency shall enter into the DOJ Automated Firearms System each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, within seven calendar days after being notified. (Pen. Code, § 11108.2, subd. (a).)

This bill provides that if a law enforcement agency seizes or recovers an operable firearm that was unlawfully possessed, used for any unlawful purpose, recovered from the scene of a crime, is reasonably believed to have been used or associated with the commission of a crime, or is acquired by the agency as an abandoned or discarded firearm, the agency shall test fire the firearm as soon as practicable and submit the ballistic images to NIBIN or a similar automated ballistic identification system used by that agency to determine whether the firearm is associated with, or related to, a crime, criminal event, or individual associated with or related to a crime.

This bill states that if a law enforcement agency recovers any cartridge case at a crime scene or has reason to believe that a recovered cartridge case is related to the commission of a crime, or the unlawful discharge of a firearm, that agency shall, as soon as practicable, submit, or cause to be submitted, the ballistic image to NIBIN or a similar automated ballistic identification system used by that agency.

This bill provides that a law enforcement agency that does not have the capability to test fire a firearm or to obtain or submit ballistic images shall comply with this section by contracting or otherwise having an agreement with another law enforcement agency or crime lab in the state that has the appropriate capability and access to process any firearms or cartridge cases the agency seizes or recovers, as required by this section.

This bill requires that the Department of Justice (DOJ) develop and promulgate a protocol for implementation of this bill.

This bill defines “law enforcement agency” as the police department of any city or sheriff’s department of any county, the Department of the California Highway Patrol, and the University of California or the California State University Police Departments.

COMMENTS

1. Need for This Bill

According to the author:

Gun violence continues to plague California, with guns used in thousands of violent crimes each year. This bill would harness the power of existing technology and systems to quickly solve gun crimes and identify crime gun shooters.

Firearms produce unique markings on expended shell casings after the gun is fired. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) maintains a database of thousands of images of expended shell casings, called National Integrated Ballistics Information Network (NIBIN). When guns and casings are quickly and uniformly submitted for NIBIN comparison, multiple shooting events can be linked to one another, creating an important lead in a shooting investigation.

Current law permits California law enforcement to submit ballistic information to the ATF database, but does not require the submission, thereby causing significant delay, backlog and under-utilization of this important law enforcement tool.

Gun violence remains a serious concern for law enforcement across California, with low clearance rates for gun-related assaults, robberies and homicides. Existing technology can quickly link shootings to one another, allowing police to identify and incapacitate a shooter, preventing future victimization. Unfortunately, law enforcement has not consistently used the NIBIN technology for all eligible guns and casings. When the system is used reliably, jurisdictions across the country find previously unknown related shooting cases and are able to solve major crime sprees while identifying prolific offenders.

In states that mandate NIBIN submission, like New Jersey and Delaware, turnaround time is so quick for ballistics evidence that investigators use the information as critical leads in active shooting investigations. Without a mandate, many jurisdictions are not reliably or rapidly inputting casing evidence that would solve a crime in a neighboring jurisdiction, thereby hampering investigators’ ability to solve their own shootings. Gun violence often involves multiple counties and criminals take guns between counties to commit shootings. By mandating all California agencies to quickly submit their evidence, investigators can be assured that evidence from a neighboring jurisdiction will be input and all California guns will contribute to solving shootings across county lines.

AB 1501 requires submission of all ballistic images from firearms and cartridge casings into the National Integrated Ballistics Information Network (NIBIN) or a comparable automated ballistics information system to help solve gun crimes. This law would dramatically increase law enforcement's ability to stop future violent acts by swiftly identifying shooters using an existing evidence-based solution. Requiring the Department of Justice to promulgate a protocol for this program insures that best practices can guide proper implementation.

2. National Integrated Ballistic Information Network (NIBIN)

The NIBIN Program is part of the Firearms Programs Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In 1999, ATF established the National Integrated Ballistic Information Network (NIBIN) to provide federal, state, and local partner agencies with an automated ballistic imaging network. NIBIN is the only national network that allows for the capture and comparison of ballistic evidence. NIBIN provides investigators the ability to compare their ballistics evidence against evidence from other violent crimes on a national, regional and local level, thus generating investigative links.¹

Since the program's inception in 1999, NIBIN partners have captured approximately 2.8 million images of ballistic evidence and confirmed more than 74,000 NIBIN hits.

NIBIN is the only interstate automated ballistic imaging network in operation in the United States and is available to most major population centers in the United States. Prior to the NIBIN Program, firearms examiners performed this process manually which was extremely labor intensive. To use NIBIN, firearms examiners or technicians enter cartridge casing evidence into the Integrated Ballistic Identification System (IBIS). These images are correlated against the database. Law enforcement can search against evidence from their jurisdiction, neighboring ones, and others across the country.²

The ATF states that for NIBIN to be most effective, it requires adherence to four steps:

- 1) ***Comprehensive Collection and Entry:*** Partner agencies must collect and submit all evidence suitable for entry into NIBIN, regardless of crime. Evidence includes both cartridge cases recovered from crime scenes and test fires from recovered crime guns.
- 2) ***Timely Turnaround:*** Violent crime investigations can go cold very quickly, so the goal is to enter the evidence into the network as quickly as possible in order to identify potential NIBIN Leads, and subsequently providing this relevant and actionable intelligence to the investigators.
- 3) ***Investigative Follow-Up and Prosecution:*** Linking otherwise unassociated crimes gives investigators a better chance to identify and arrest shooters before they reoffend.
- 4) ***Feedback Loop:*** Without feedback, NIBIN partners cannot know how their efforts are making the community safer, which is necessary for sustained success.³

¹ (<https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-integrated-ballistic-information-network>)

² (<https://www.atf.gov/firearms/national-integrated-ballistic-information-network-nibin>)

³ (<https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-integrated-ballistic-information-network>)

3. Santa Clara County NIBIN Statistics

The Santa Clara District Attorney's Office implemented a Gun Related Intelligence Program in the Fall of 2017. The program relies on the introduction of evidence into the NIBIN system to generate investigative leads in cases that involve firearms. According to the Santa Clara District Attorney's Office, since implementing the Gun Related Intelligence Program in the fall of 2017, the Santa Clara County Crime Laboratory has identified 118 associated ballistic events covering 41 separate cases. Associations are grouped by gun and assigned a case number, and are investigative leads requiring confirmation by a trained expert firearms examiner in order to be relied on for arrests. Use of the Gun Related Intelligence Programs has resulted in new investigative leads and previously unknown associations due to the NIBIN work this year.

4. NIBIN Use in California

Santa Clara District Attorney's Crime Laboratory is one of approximately 20 agencies in California that are participating in NIBIN. Among the law enforcement entities utilizing NIBIN, in addition to the Santa Clara District Attorney, are the San Diego Sheriff's Department, San Diego Police Department Crime Laboratory, Los Angeles County Scientific Services Bureau Firearms Identification Section/Los Angeles Police Department Scientific Investigation Division, Firearms Analysis Unit, Santa Ana Police Department Forensic Services, San Mateo County Sheriff's Forensic Laboratory, Sacramento California Police Department, Alameda County Sheriff's Crime Laboratory, Oakland Police Department Criminalistics Division, Contra Costa County Office of the Sheriff, San Joaquin County Sheriff's Office.⁴

Optimally, each agency would have its own IBIS terminal. However, the terminals cost approximately \$250,000 per terminal. At the terminal site, any firearms that are available (e.g., a firearm recovered from a crime scene) must be test fired to obtain casings with the ballistic markings. Images of the casings from the crime scene and/or fired from the gun are then entered into NIBIN. A significant amount of law enforcement time is required to enter the data into the system.

This bill would require every a firearm that was unlawfully possessed, used for any unlawful purpose, recovered from the scene of a crime, is reasonably believed to have been used or associated with the commission of a crime, to be test fired and submitted the ballistic images to NIBIN. This bill would also require every cartridge case or fired bullet recovered from a crime scene to submit the ballistic image to NIBIN. The bill permits counties to contract with one another for this purpose.

5. Argument in Support

According to *Brady United Against Gun Violence – California*:

In 2012, the International Association of Chiefs of Police adopted a resolution titled *Regional Crime Gun Processing Protocols*, which recommends the 'timely processing of crime gun test fires and ballistics evidence through NIBIN'. The resolution finds that ballistic evidence from a crime gun can be used to link a firearm to prior crimes and to link two or more crimes together, and can provide law enforcement agencies with timely and actionable information to help identify

⁴ (<https://www.atf.gov/firearms/nibin-interactive-map>)

and apprehend armed suspects before they do more harm.

Existing California law permits local law enforcement agencies to enter images of ballistic evidence associated with crime scenes into NIBIN. Additionally, SB 248, enacted in 2007, required the Attorney General to develop a protocol for the submission of ballistic evidence. That protocol was never established. AB 1501 will *require* law enforcement agencies, as defined, to submit ballistic images of recovered cartridge cases found at a crime scene or associated with a crime to NIBIN or a similar automated ballistic identification system used by an agency. The agencies shall also have a recovered firearm that was unlawfully possessed, associated with a crime, or abandoned test-fired and submit the ballistic images to NIBIN or a comparable system used by an agency. Further, the bill requires, once again, the Department of Justice to develop a protocol for the submission of ballistic evidence.

“Brady California’s objective is consistent and timely entry of ballistic evidence images into NIBIN by law enforcement so that more gun crimes can be solved, both nationally and within California. AB 1501 will move California closer to this goal. NIBIN’s success at increasing public safety depends on comprehensive collection and entry of ballistic evidence nationwide and our state, the largest in the nation, must do its part.

6. Argument in Opposition

According to the *California State Sheriffs’ Association*:

This bill represents a costly, unfunded mandate that will potentially prioritize the analysis and examination of certain types of evidence at the expense of others. AB 1501 contains no funding for the very burdensome requirement to test fire firearms that are unlawfully possessed, used for any unlawful purpose, recovered from a crime scene, or otherwise acquired by an agency.

Additionally, we are concerned about the precedent of legislative mandates governing the nature in which law enforcement investigations are undertaken. Many types of evidence and information are routinely gathered during the course of an investigation, and trained investigators should have the discretion to process that evidence in the context of the individual situation and with the benefit of experience, expertise, and training that is the cornerstone of the law enforcement profession.

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