
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2781 **Hearing Date:** June 26, 2018
Author: Low
Version: May 25, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Forensic Ballistic and Firearms Procedures*

HISTORY

Source: Santa Clara District Attorney's Office

Prior Legislation: SB 248 (Padilla), Ch. 639, Stats. of 2007

Support: Bay Area Student Activists; California Chapters of the Brady Campaign; Coalition Against Gun Violence; County of Santa Clara; Peace Officers Research Association of California (PORAC)

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

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to require law enforcement agencies to obtain ballistic images from firearms, cartridge cases, and bullets obtained by the agencies in connection with criminal investigations, as specified, and submit those images to the National Integrated Ballistic Identification Network (NIBIN) or a similar automated ballistic identification system.

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).)

This bill specifies that if a law enforcement agency seizes or recovers 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, or is acquired by the agency as an abandoned or discarded firearm, the agency shall test fire the firearm, or cause the firearm to be test fired, as soon as practicable and submit the ballistic images to NIBIN to determine whether the firearm is associated with, or related to, a crime, criminal event, or individual associated with or related to, a crime, or criminal event.

This bill requires 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, or associated with, 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.

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

This bill defines "law enforcement agency" for purposes of this bill as "a police or sheriff's department, or any department or agency of the state or any political subdivision thereof that employs any peace officer, including, but not limited to, the Department of the California Highway Patrol, the Department of Fish and Wildlife, the University of California or the California State University Police Departments, and the police department of any school district, community college district, park district, transit district, railroad, and harbor, port, airport, or housing authority."

COMMENTS

1. Need for This Bill

According to the author of this bill:

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 from 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 2781 requires submission of all ballistic images from firearms and cartridge casings into the National Integrated Ballistics Information Network (NIBIN) 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

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

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>)

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 fire the firearm and submit 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 mandates in this bill will require significant resources.

5. Argument in Support

According to the Santa Clara County District Attorney:

When a gun is fired it leaves unique markings on the expended shell casings that can be compared in a massive national database. Current technology allows investigators to link shootings to one another, but NIBIN's effectiveness has been hampered by delay in submitting evidence for analysis. This delay can impede investigations while shooters remain outstanding and continue coming gun crimes.

The passage of this bill also will help keep our communities safer. When we solve gun crimes quickly by matching expended shell casings from shootings with the same gun, we not only hold the shooter accountable, but we stop the serial use of the same gun for multiple gun crimes in our neighborhoods. This bill closes an efficiency gap in California, by requiring that all eligible crime guns and expended casings from crime scenes are processed quickly and uniformly. This is an incredible tool for law enforcement. Requiring all California law enforcement

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

agencies to submit this evidence will hugely improve all jurisdictions' ability to solve shootings and bring shooters to justice.

6. Argument in Opposition

According to the California Association of Crime Laboratory Directors:

NIBIN is a national database of digital images of spent bullets and cartridge cases that were found at crime scenes or test-fired from confiscated weapons. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) manages the system and provides the equipment to crime labs around the country. In California, Penal Code § 11108 requires police and sheriffs' departments to submit recovered firearm information directly into the Automated Firearm System (AFS).

We acknowledge that the NIBIN can be a useful investigatory tool for forensic labs to help their law enforcement partners link crimes and identify suspects, while understanding patterns of firearm sharing and trafficking. However, AB 2781 overlooks the reality that most crime laboratories, especially in rural areas, do not have access to NIBIN because it's cost prohibitive. If a crime laboratory does not have the resources to procure the technology contemplated by this bill, they should not be held to the requirement set out in this proposal.

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