
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: SB 257 **Hearing Date:** April 9, 2019
Author: Nielsen
Version: March 25, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Prohibited Persons*

HISTORY

Source: Author

Prior Legislation: SB 580 (Jackson), 2014, failed in Assembly Appropriations

Support: American Academy of Pediatrics; Outdoor Sportsmen's Coalition of California;
Safari Club International and Safari Club International Foundation

Opposition: None known

PURPOSE

The purpose of this bill is to require the Department of Justice (DOJ) to notify local law enforcement if they determine that a person is prohibited from possessing a firearm.

Existing law requires the Attorney General to establish and maintain an online database to be known as the Prohibited Armed Persons File; the purpose of which is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1996, 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. (Pen. Code § 30000, subd. (a).)

Existing law limits access to the information contained in the Prohibited Armed Persons File to certain entities specified by law, through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Pen. Code § 30000, subd. (b).)

Existing law requires that upon entry into the Automated Criminal History System of a disposition for a specified conviction or any firearms possession prohibition identified by the federal National Instant Criminal Background Check System (NICS), the DOJ shall determine if the subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration. (Pen. Code § 30005, subd. (a).)

Existing law requires that upon an entry into any department automated information system that is used for the identification of persons who are prohibited by state or federal law from

acquiring, owning, or possessing firearms, the DOJ shall determine if the subject has an entry in the Consolidated Firearms Information System indicating ownership or possession of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration. (Pen. Code § 30005, subd. (b).)

Existing law establishes the Prohibited Armed Persons File which requires the DOJ, once it has a determination that a subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration, to enter the following information into the file:

- 1) The subject's name;
- 2) The subject's date of birth;
- 3) The subject's physical description;
- 4) Any other identifying information regarding the subject that is deemed necessary by the Attorney General;
- 5) The basis of the firearms possession prohibition; and,
- 6) A description of all firearms owned or possessed by the subject, as reflected by the Consolidated Firearms Information System. (Pen. Code § 30005, subd. (c).)

Existing law requires the Attorney General to provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm. (Pen. Code § 30010.)

Existing law appropriates \$24,000,000 from the Dealers' Record of Sale (DROS) Special Account of the General Fund to the Department of Justice to address the backlog in the Armed Prohibited Persons System (APPS) and the illegal possession of firearms by those prohibited persons. (Pen. Code § 30015, subd. (a).)

Existing law requires the DOJ to submit an annual report to the Joint Legislative Budget Committee from March 1, 2015 until March 1, 2019 with all of the following information:

- 1) The degree to which the backlog in the APPS has been reduced or eliminated;
- 2) The number of agents hired for enforcement of the APPS;
- 3) The number of people cleared from the APPS;
- 4) The number of people added to the APPS;
- 5) The number of people in the APPS before and after the relevant reporting period, including a breakdown of why each person in the APPS is prohibited from possessing a firearm;
- 6) The number of firearms recovered due to enforcement of the APPS;
- 7) The number of contacts made during the APPS enforcement efforts; and,
- 8) Information regarding task forces or collaboration with local law enforcement on reducing the APPS backlog. (Pen. Code § 30015, subs. (b) and (c).)

Existing law requires each state and local agency that employs peace officers to annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year, as specified, with the following information:

- 1) The time, date, and location of the stop;
- 2) The reason for the stop;
- 3) The result of the stop, such as, no action, warning, citation, property seizure, or arrest;

- 4) If a warning or citation was issued, the warning provided or violation cited;
- 5) If an arrest was made, the offense charged;
- 6) The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped; for motor vehicle stops, this only applies to the driver, unless any specified actions apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for him or her.
- 7) Actions taken by the peace officer during the stop, including, but not limited to, the following:
 - a) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided;
 - b) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any; and,
 - c) Whether the peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property. (Pen. Code, § 12525.5, subs. (a) and (b).)

This bill provides that if DOJ determines that a person prohibited from owning, purchasing, receiving, or possessing a firearm the department shall notify the local law enforcement agency with primary jurisdiction over the area in which the person was last known to reside.

This bill specifies that if a person is prohibited from owning or possessing a firearm because of a mental illness, DOJ shall also notify the county department of mental health in the county in which the person was last known to reside.

COMMENTS

1. Need for This Bill

According to the author:

In recent years, there have been a significant number of violent crimes perpetrated by individuals who are in unlawful possession of firearms. All too often, the offender is later determined to have been planning the offense or acting erratically. The public is left wondering if the aberrant behavior was reported.

This bill requires the Department of Justice (DOJ) to notify local law enforcement if a prohibited person has attempted to purchase a firearm and the agency has primary jurisdiction over the area where the prohibited person was last known to reside. In the event that the reason the person has been prohibited from possessing a firearm is mental illness, the bill would, in addition, require the DOJ to notify the Department of Mental Health in the county in which the prohibited person was last known to reside. It is the author's intent to work with the Attorney General's Office to ensure a more comprehensive notice component, as DOJ works to upgrade the APPS Program.

2. History of Prohibited Persons Enforcement

As originally conceived, local law enforcement was responsible for removing firearms from prohibited persons. DOJ conducted the background checks on individuals who were purchasing firearms and were subject to the mandatory waiting period until that background check was complete. DOJ would notify local law enforcement when a person was determined to be prohibited and possessed a registered firearm. Local law enforcement was responsible for enforcing the law.

At the time, in the 1990s this was a very paper-heavy system. High-speed internet was not common. The notification of local law enforcement was thought to be inefficient and DOJ was given primary responsibility for direct enforcement when it was determined that a person was prohibited and in possession of a firearm.

APPS was then created in 2001 and the numbers of people who were found to be prohibited and in possession of firearms swelled drastically. Since then, the number of prohibited persons has steadily increased as we add more and more people to the list of people who are prohibited from possessing a firearm.

At this point, it may be time to look at modernizing our current system of firearms enforcement to make it more efficient and less costly. One way to accomplish this goal would be to move more responsibility for the enforcement of APPS to the locals in some capacity. This would involve having DOJ notify locals, who are already patrolling an area, when a prohibited person surfaces in the APPS system. Local law enforcement could collect the firearm and notify DOJ, saving their Bureau of Firearms (BOF) the trouble of collecting it.

As with any update of an existing system there will likely be costs involved, however it would probably be amortized over a number of years because we would be allocating less money to deal with the problem of a backlog. The Legislature should consider more participation by local law enforcement in the disarming of prohibited persons.

3. SB 140 and the Most Recent DOJ APPS Report

SB 140 (Leno) Statutes of 2013, appropriated \$24 million from the Dealers Record of Sale (DRoS) Special Account to the DOJ to fund enforcement of illegal gun possession by relieving weapons from prohibited persons. At the time of SB 140's enactment, the Legislature made the following finding and declaration:

“The list of armed prohibited persons in California grows by about 15 to 20 people per day. There are currently more than 19,000 armed prohibited persons in California. Collectively, these individuals are believed to be in possession of over 34,000 handguns and 1,590 assault weapons. Neither the Department of Justice nor local law enforcement has sufficient resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons.”

The 19,000+ cases on the APPS list at the time SB 140 was passed is referred to as the “APPS backlog.” SB 140 required the DOJ to address the backlog and issue an annual report to the legislature for five years in order to provide updates on DOJ's progress in reducing the backlog.

The most recent report was published on March 1, 2019.¹ According to the DOJ report, the original 2013 backlog was 20,721 cases. (*Id.* at 6.) Of those original 20,721 cases, there are still 8,373 in the APPS system, which are listed as “pending.” (*Id.* at 6.) “Pending” cases are those in which a prohibited person is still believed to have a firearm in their possession, but DOJ is either unable to locate the individual or DOJ has exhausted all investigative leads and will not pursue further action unless and until it receives new information. (*Id.* at 21.)

In addition to the 8,373 pending cases, there are 538 cases from the original 2013 backlog which have yet to be fully investigated. DOJ explains in its report that “[t]he primary reason for the existence of those 538 cases is due to them being located in rural areas, far away from large population concentrations, and long distances from BOF offices.” (*Id.* at 6.) The BOF currently has two regional offices, one in Sacramento and the other in San Diego. In addition, the BOF has four field offices, located in San Francisco, Fresno, Los Angeles, and Riverside.

DOJ cites several reasons for the persistence of the APPS cases and makes corresponding recommendations. (*Id.* at 17 - 18.) First, DOJ states that greater efforts must be made by courts, local law enforcement, probation and parole to confiscate firearms at the time of prohibition rather than going through the process of trying to locate a person and their firearm(s) some amount of time after they have become prohibited. Second, DOJ cites the attrition rate of special agents “primarily due to lagging salaries and incentives with comparable law enforcement agencies and the reduced pension tier relative to the Public Employees’ Pension Reform Act of 2013 (PEPRA).” (*Id.*) Third, DOJ recommends improved coordination and cooperation between the Department and local law enforcement agencies, specifically that local law enforcement agencies enforce the Bureau’s high recordkeeping standards to ensure that the data in APPS is as current as possible. (*Id.*) Finally, DOJ suggests replacing and modernizing the APPS database. (*Id.*)

4. Armed and Prohibited Persons System (APPS) Mandates on DOJ, Existing and Growing Backlog, and Budget Shortfalls:

The APPS is a database that checks gun sales against records of criminal convictions, mental health holds and domestic violence restraining orders to flag prohibited owners. DOJ cross-references APPS with five other databases including the California Restraining and Protective Order System (CARPOS), a statewide database of individuals subject to a restraining order. New individuals are added to the APPS database on an ongoing basis as the system identifies and matches individuals in California who are prohibited from purchasing or possessing firearms. DOJ is required to complete an initial review of a match in the daily queue of APPS within seven days of the match being placed in the queue. (Pen. Code, § 30020.)

The DOJ has long been working to seize the guns and ammunition of persons on the APPS list. The *San Francisco Chronicle* recently reported that the Department has reduced the backlog of prohibited persons from over 20,000 in 2013 to less than 9,000 today.² However, the list is always growing as new individuals are added to APPS for committing qualifying crimes. Thus, the burden on the DOJ to clear the list is evergreen. In addition, the Legislature and voter

¹ APPS 2018 Annual Report to the Legislature, available at <https://oag.ca.gov/system/files/attachments/press-docs/apps-2018.finaldocx.pdf>, [as of March 4, 2019].

²See APPS 2018 Annual Report to the Legislature, published Mar. 1, 2019; see also Alexei Koseff, *California struggles to seize guns from people who shouldn’t have them*, *San Francisco Chronicle*, Feb. 18, 2019, available at <https://www.sfchronicle.com/politics/article/California-struggles-to-seize-guns-from-people-13624039.php>.

initiatives have added new categories of individuals who are prohibited from possessing firearms. For example, as of July 1, 2019, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative (Proposition 63 of 2016) requires that DOJ confirm whether an individual seeking to purchase ammunition is authorized to do so, and in the process, DOJ will likely identify additional cases requiring APPS investigations.

Budget shortfalls make clearing the APPS list difficult, as DOJ has limited resources to investigate and seize firearms from persons on the list. Since the early 2000s, DOJ has requested additional funding to decrease the backlog. The APPS has largely been funded by fees collected when an individual purchases a firearm, which is deposited in the Dealer's Record of Sale (DROS) Special Account. However, the DROS Special Account has experienced operational shortfalls since 2012-13. In 2013, the Legislature appropriated \$24 million with SB 140 (Leno), *Chapter 2, Statutes of 2013*, to aid the DOJ in reducing the backlog to its current levels, but the DOJ has been unable to eliminate it entirely.

DOJ has anticipated that the list will continue to grow as the Legislature adds new categories of persons to the list, and is awaiting the implementation of other mandates. The DOJ has requested \$16.9 million be allocated from the state budget on an ongoing basis to support the existing APPS workload and continue addressing the backlog of cases. The Governor's budget proposal for 2018-19 flagged this funding as a major program change for the DOJ: "*The Budget includes a total of \$16.9 million General Fund for APPS—\$11.3 million to shift the existing APPS program from the Dealers' Record of Sale Account to the General Fund and \$5.6 million General Fund to support increased APPS workload. Shifting these costs to the General Fund provides a more stable fund source for APPS and allows the Dealers' Record of Sale Account to maintain solvency to continue additional Bureau of Firearms workload.*"³

5. DOJ Cooperation with Local Law Enforcement on APPS Cases

DOJ does involve local law enforcement in some capacities when it comes to firearms enforcement. The DOJ stated the following in its most recent report:

"The Department takes pride in its collaborative efforts with its local law enforcement partners. Since the inception of SB 140 (2013), the BOF continues to work with allied law enforcement agencies in an effort to reduce APPS numbers. Experience has shown the most efficient and effective way of working APPS cases in a specific region or jurisdiction is by working collaboratively with local law enforcement agencies. While working jointly with local law enforcement agencies, cases are investigated and processed more efficiently, lost and stolen firearm reports are immediately handled by local law enforcement agencies, cases crossing local jurisdiction boundaries are further pursued by the Bureau, and local law enforcement agencies are often familiar with prohibited APPS individuals or their family members, making it easier to track down these individuals. When local law enforcement agencies pursue APPS cases independently, there can be a lack of consistency in working investigations until all leads are exhausted and

³The Legislative Analysis Office (LAO) has recommended an alternative to the Governor's proposal to help the DROS Special Account avoid insolvency. LAO recommends providing \$16.9 million from the General Fund to support existing and increased APPS workload, and approving 26 new positions requested to continue addressing the backlog. LAO notes that this funding will provide DOJ with the level of funding necessary for which there is "workload justification." (*The 2019-20 Budget: Analysis of Governor's Criminal Justice Proposals*, Legislative Analysis Office, Feb. 2019, available at <https://lao.ca.gov/Publications/Report/3940>.)

often times local law enforcement agencies will not pursue investigative leads outside their normal jurisdiction, causing the case to remain unresolved. This is a problem that needs to be resolved.” (*Id.* at 15.)

According to the report, existing collaborative efforts with local law enforcement include the establishment of a joint task force in Contra Costa, a joint operation with the Los Angeles County Sheriff’s Department, and APPS sweeps with local law enforcement agencies in Los Angeles, Ventura, and Santa Cruz counties. (*Id.* at 15-16.)

The purpose of this bill is to require DOJ to inform local law enforcement of prohibited persons in their jurisdiction so that they could take action independent of the DOF. Presumably the author should also require local law enforcement to inform DOF when they recover a prohibited firearm so that there are not two concurrent operations to remove the same firearm.

6. Argument in Support

According to the American Academy of Pediatrics:

As stated in American Academy of Pediatrics policy, “the most effective measure to prevent suicide, homicide, and unintentional firearm-related injuries to children and adolescents is the absence of guns from homes and communities.” This is especially true when it concerns guns held in the possession of those far more likely to be violent or volatile than the general population, such as felons and people deemed by a court to be a danger to themselves or others. However, there is no requirement that law enforcement or mental health services be notified when people who are prohibited by law from owning a gun attempt to acquire one, even though this act represents an attempted crime in and of itself and a possible signal of a dangerous mental health crisis.

AB 257 (Nielsen) would remedy this situation by requiring the Department of Justice to notify local law enforcement and, when applicable, county mental health agencies when someone who is prohibited from owning a firearm attempts to acquire one, in contravention of the law. This would allow law enforcement and mental health agencies to react appropriately to potentially dangerous situations before they worsen-or cost lives.

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