
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 701 **Hearing Date:** April 23, 2019
Author: Jones
Version: February 22, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Prohibited Persons*

HISTORY

Source: California Conference of Bar Associations

Prior Legislation: SB 1289 (Comm. on Judiciary), Ch. 92, Stats. of 2018
AB 103 (Budget), Ch. 17, Stats. of 2017

Support: Firearms Policy Coalition

Opposition: Bay Area Student Activists; California Police Chiefs Association

PURPOSE

The purpose of this legislation is to remove the provision of law that provides that if a person has an outstanding warrant for a felony, or an outstanding warrant for a firearm prohibited misdemeanor, that person is prohibited from possessing a firearm while they have the outstanding warrant.

Existing law provides that certain people are prohibited from owning or possessing a firearm for life, including: (Pen. Code, §§ 29800, 23515 and 29805.)

- 1) Anyone convicted of a felony, or with an outstanding warrant for a felony;
- 2) Anyone addicted to a narcotic drug;
- 3) Any juvenile convicted of a violent crime with a gun and tried in adult court;
- 4) Any person convicted of a federal crime that would be a felony in California and sentenced to more than 30 days in prison, or a fine of more than \$1,000;
- 5) Anyone convicted of certain violent misdemeanors, e.g., assault with a firearm; inflicting corporal injury on a spouse or significant other, or brandishing a firearm in the presence of a police officer.

Existing law provides that a violation of a lifetime ban on possession of a firearm is a felony. (Pen. Code, §§ 29800, 23515 and 29805.)

This bill removes the provision that prohibits a person with an outstanding felony warrant from the firearm prohibition.

Existing law provides that anyone convicted of numerous misdemeanors involving violence or threats of violence are subject to a ten-year ban on possession of a firearm. Provides that a violation of these provisions is an alternate felony/misdemeanor. This provision also applies to persons who have outstanding warrants for these misdemeanors. (Pen. Code, § 29805.)

This bill removes the outstanding warrant provision from these specified misdemeanors.

Existing law provides that the prohibitions to possession of a firearm shall not affect a person who otherwise violates those sections if the person did not have knowledge that they had an outstanding warrant. (Pen. Code, § 29581.)

Existing federal law provides, that certain people are prohibited from owning or possessing a firearm: (18 USC § 922(g).) Any person who:

- 1) Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- 2) Is a fugitive from justice;
- 3) Is an unlawful user of or addicted to any controlled substance, as defined;
- 4) Has been adjudicated as a mental defective or who has been committed to a mental institution;
- 5) Being an alien is illegally or unlawfully in the United States; or except as specified, has been admitted to the United States under a nonimmigrant visa, as defined;
- 6) Has been discharged from the Armed Forces under dishonorable conditions;
- 7) Having been a citizen of the United States, has renounced his citizenship; or
- 8) Is subject to a specified court order.

COMMENTS

1. Need for This Bill

According to the author:

Current law provides that defendants convicted of qualifying offenses forfeit any firearms in their possession and are barred from ownership in the future. However, the law (Penal Code §§ 29800 and 29805) extends this prohibition to any person for whom a warrant for a felony or numerous misdemeanors has been issued, without regard to whether or not that person was aware of the existence of the warrant, or whether the accusation on which the warrant is based turns out to be true. This means a person who has been secretly accused of any felony, or of any of numerous misdemeanors, is subject to felony prosecution for owning a legally purchased and properly registered firearm. This is true even if the person is innocent of the underlying charge, never knew that the underlying charge existed, never knew that a warrant had been issued, and never knew that they were subject to the firearms ban. Even if a judge issues then immediately recalls a warrant – for example, if the person was late to court – that person is now a felon if they had previously lawfully purchased a firearm.

SB 701 clarifies that an individual who has been accused of a crime and for whom a warrant has been issued, but who has not been convicted of any offense, may not be prosecuted for otherwise lawful gun ownership. This bill does not prevent courts from ordering defendants to surrender any firearms as a condition of release pending resolution of the case, and maintains pre-existing bans barring fugitives from purchasing firearms.

2. California Law Bans Possession of a Firearm by Persons with Specified Active Warrants

The provision of law requiring persons with active warrants for felonies and specified misdemeanors go on the prohibited persons list was implemented in AB 103 (Budget), Ch. 17, Stats. of 2017. At the time of the implementation of these provisions there was no requirement that the person who was the subject of the active warrant have any knowledge that they actually had an arrest warrant for a prohibiting offense. The following year, SB 1289 (Cmtee. on Judiciary), Ch. 92, Stats. of 2018 added Penal Code § 29851 which specifies the following:

[The warrant prohibitions] do not apply to or affect a person who otherwise violates those sections if the person did not have knowledge of the outstanding warrant.

The provision requiring knowledge is easily overlooked because it was also renumbered from Pen. Code, § 29581 to Pen. Code, § 29851.

If the committee is comfortable with the warrant provision so long as the person with the warrant, the committee should consider putting in a cross-reference to the section where the knowledge requirement is located.

3. This Provision was Never Heard in a Public Safety Policy Committee and Carries a Penalty that can Result in State Prison

As articulated above, this provision was originally implemented in the 2017 budget omnibus bill. Subsequently, the provision meant to correct the fact that no knowledge requirement was attached was implemented in the 2018 Senate Judiciary omnibus bill. Neither bill went through the Senate Public Safety Committee or the Assembly Public Safety Committee.

Under the law if a person has a warrant for their arrest for a felony, or if they have a specified misdemeanor arrest warrant, they face up to 3-years of incarceration in the California State Prison. The imposition of a punishment of up to 3-years in state prison should be reviewed by the policy committee that has oversight over the state prison population. One option the committee has would be to lower the punishment for possessing a firearm if you have an active warrant would be to make that violation a misdemeanor.

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:

- 1) 143% of design bed capacity by June 30, 2014;

- 2) 141.5% of design bed capacity by February 28, 2015; and,
- 3) 137.5% of design bed capacity by February 28, 2016.

The court also ordered California to implement the following population reduction measures in its prisons:

- 1) Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- 2) Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings (BPH) for parole consideration.
- 3) Release inmates who have been granted parole by BPH but have future parole dates.
- 4) Expand the CDCR's medical parole program.
- 5) Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole.
- 6) Increase its use of reentry services and alternative custody programs.

(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).) Following the implementation of these measures along with the passage of Proposition 47, approved by California voters in November 2014, California met the federal court's population cap in December 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*.) The administration's most recent status report states that as "of December 14, 2016, 114,031 inmates were housed in the State's 34 adult institutions" which amounts to approximately 135.3% of design capacity, and 4,704 inmates were housed in out-of-state facilities. (Defendants' December 2016 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).)

This bill adds three misdemeanors to the list of crimes that, if convicted, would prohibit an offender from possessing a firearm for 10-years. Any violation of this prohibition would be punishable by up to 16-months, two, or three-years in state prison.

Although the state is currently in compliance with the court-ordered population cap, creating new enhancements, or expanding upon existing ones, will increase the length of time that an inmate must serve in prison and reverse the progress made in reducing the state prison population. This is contrary to the court's order for a durable solution to prison overcrowding.

The committee should consider whether a misdemeanor is a more appropriate punishment for this offense than an alternate felony/misdemeanor with a state prison felony attached that can result in up to three-years in state prison.