
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 723 **Hearing Date:** January 14, 2020
Author: Jones
Version: January 7, 2020
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Firearms: Prohibited Persons*

HISTORY

Source: Conference of California Bar Associations

Prior Legislation: SB 701 (Jones), 2019, vetoed

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this bill is to reorganize and clarify the code as it pertains to the penalties for the prohibition on possession of a firearm by a person with an active warrant for specified offenses. Additionally, this bill clarifies that the person with an active warrant for a prohibited offense must have knowledge of the warrant in order to qualify as a person prohibited from possessing a firearm.

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.)

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.)

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.

This bill reorganizes the code to centralize the rules related to possession of a firearm by a person with a warrant for a prohibited offense. The bill clarifies that persons who have knowledge of an existing warrant for a prohibited offense are prohibited from possessing a firearm. The bill also clarifies that the punishments for said prohibitions are a felony for the felony warrants, and a misdemeanor for the specified misdemeanor warrants.

COMMENTS

1. Need for This Bill

According to the author:

Current law, Penal Code §§29800 and 29805, provides that certain persons are prohibited from owning or possessing a firearm, including anyone convicted of a felony or who has an outstanding warrant for a felony or a listed misdemeanor. The provision relating to outstanding warrants was added by a Budget Trailer Bill in June 2017. Because the amended code section is well known and often used, the change was noted by criminal law practitioners. This led to concerns because under the law, a person against whom a warrant was issued, but who had no knowledge of the warrant, would be subject to felony prosecution for possession of their otherwise lawful firearm.

In actuality, this is not the case, because a second section added to the Penal Code through another, late-session Budget Trailer Bill, specified that the prohibition against a person with an outstanding warrant owning or possessing a firearm does

not apply if the person lacked knowledge regarding the outstanding warrant. However, experience shows that few practitioners know of the existence of this exception because it originally was mis-numbered and placed in its own section of the Penal Code, then subsequently re-numbered through the annual Maintenance of the Codes Bill but still separated from the section that prohibits possession. SB 723 will bring clarity to this situation by re-enacting the knowledge requirement in the statutes most directly affected.

SB 723 clarifies that the mere issuance of a warrant does not make a felon out of an otherwise lawful gun owner unless the gun owner knows that the warrant exists. Although there is a provision in the statutes to this effect, it is virtually unknown, even by experienced practitioners, because it was enacted through a series of Budget Trailer Bills and a Maintenance of the Codes bill, without ever being reviewed or considered by the Public Safety Committees of either house. SB 723 consolidates the provisions relating to gun ownership by persons against whom warrants are outstanding in the appropriate code sections, so that all can know what the law really is.

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.

3. This Bill Will Maintains State Prison Felonies for Possession of a Firearm when an Active Warrant for a Prohibited Offense has been Issued and the Person for Whom the Warrant has been Issued Knows of the Warrant

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.

Last year, the California State Legislature passed legislation to reduce the penalties for these provisions to misdemeanors servable in county jail with the passage of SB 701 (Jones). The

governor vetoed this legislation and as a result persons who violate these provisions and are convicted of felonies must serve any time in custody in state prison. The author has proposed this legislation to address the governor's veto of SB 701 (Jones):

I am returning Senate Bill 701 without my signature.

This bill would reorganize statutes governing the prohibition of firearm possession due to an outstanding warrant when the person has knowledge of the warrant. Additionally, this bill would reduce the penalty for violating this prohibition.

Current law requires knowledge that a warrant has been issued before a prohibition on possessing a firearm applies. Further, I believe existing penalties provide the necessary tools to protect public safety and allow for needed discretion to impose appropriate penalties when justified.

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 will potentially send people to state prison who have never been convicted of any crime but possess a firearm when there is a warrant out for their arrest for any felony and have never had an opportunity to defend themselves in court. In 2019, the California State Legislature felt that a misdemeanor was appropriate in these situations when it passed SB 701 (Jones) without a single dissenting vote in all committee hearings and on the floor of both houses.

This bill maintains the state prison felony penalty for possession of a firearm when a person has a felony warrant to address the concerns of the governor.

4. Centralizes Information in the Penal Code

This bill takes information that was in varying code sections and centralizes them into the relevant code sections. The Penal Code is currently drafted so that the ban on possession of a firearm for persons with an outstanding warrant is in no way connected to the section that specifies that the person must have knowledge of the warrant. The current law is drafted in that manner because the original ban on possession was implemented in a budget trailer bill and the knowledge requirement was enacted in a Judiciary Committee omnibus bill.

This bill places the requirement that the person who has an active warrant for their arrest in the same section as the prohibition.

5. Argument in Support

According to the Conference of California Bar Associations.

The Conference of California Bar Associations (CCBA), a voluntary statewide organization of attorney representatives from more than 30 metropolitan, regional and specialty bar associations, strongly supports your SB 723 as it is proposed to be amended and is proud to be the bill’s sponsor. The CCBA is comprised of attorneys from all areas of legal practice who are dedicated to improving the administration of justice in California through the development of practical, problem-solving legislation.

SB 723 will clarify that the prohibition against firearm possession or ownership for a person against whom a warrant has been issued for specified crimes only applies if the person has knowledge of the warrant. Although this currently is the law, the knowledge requirement is physically so far removed from the code section imposing the prohibition that its existence is virtually unknown. This leads to errors in prosecution, confusion, waste of time and resources for all parties, and unnecessary inconvenience.

These problems are the result of a confused, off-the-grid drafting and enactment process. California law has long prohibited persons convicted of specified felonies and misdemeanors from owning, purchasing, or possessing firearms. In 2017, however, a provision was added to a Budget trailer bill to extend the prohibition to persons against whom warrants had been issued for the listed crimes, without regard to whether or not the person was aware of the existence of the warrant, let alone whether the person was actually guilty.

When this problem was pointed out, the proponents of the change added a knowledge requirement via yet another, late-session Budget trailer bill at the end of 2017. But the change was added via a new and seemingly mis-numbered Penal Code section which was isolated from any other Article or Chapter of the Code, making it virtually unfindable. The new statute was re-numbered in 2018 as part of the annual Maintenance of the Codes technical correction bill. However, because neither this correction nor any of the changes is proposed to correct was ever considered by the appropriate policy committees, very few of the attorneys and officers charged with its enforcement ever knew about it.

SB 723 rectifies the problem by consolidating the prohibition against firearm possession or ownership by a person against whom a warrant has been issued for specified crimes with the provision requiring knowledge of the warrant for the prohibition to apply. This is a simply, logical change that will improve the statute for all concerned.

A similar provision was included in last year's SB 701 (Jones), which was vetoed by Governor Newsome because of an unrelated provision in that bill. Even with that provision, SB 701 passed both legislative houses without a dissenting vote.

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