
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 906 **Hearing Date:** April 26, 2022
Author: Portantino
Version: April 7, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *School safety: mass casualty threats*

HISTORY

Source: Author

Prior Legislation: SB 1169 (Dahle, 2020), not heard in Senate Public Safety
AB 907 (Grayson, 2019), held in Senate Appropriations
SB 1203 (Bates, 2018), held in Assembly Appropriations
AB 1747 (Rodriguez, Ch. 806, Stats. of 2018)
AB 58 (Rodriguez, 2015), held in Senate Appropriations
SB 110 (Fuller, 2015), vetoed
SB 49 (Lieu, 2013), held in Assembly Appropriations.

Support: Consumer Attorneys of California; Democratic Party of the San Fernando Valley;
Office of the Riverside County Superintendent of Schools; Riverside County
Public K-12 School District Superintendents; Women Against Gun Violence

Opposition: *Note: all listed opposition except NRA-ILA and ACLU California Action is based on the prior version of the bill – no updates have been received by Committee.*
ACLU California Action; California Rifle and Pistol Association; California Sportsman’s Lobby; Gun Owners of California; National Rifle Association – Institute for Legislative Action; Outdoor Sportsmen’s Coalition of California; Real Impact; Safari Club International-California Chapters

PURPOSE

The purpose of this bill is to 1) require the California Department of Education (CDE) to develop model content regarding threats of mass casualty incidents for use by local educational agencies, 2) require school officials to report any perceived threat of a mass casualty incident to law enforcement, and 3) require law enforcement or school police to conduct an investigation and threat assessment when such a report is made.

Existing law requires each school district or county office of education to be responsible for the overall development of all comprehensive school safety plans for its schools, and provides that the schoolsite council or a school safety planning committee is responsible for developing the comprehensive school safety plan. (Ed. Code § 32281).

Existing law requires school safety plans to include an (a) assessment of the current status of school crime committed on school campuses and at school-related functions, and (b) identification of appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety, as specified. (Ed. Code § 32282).

Existing law prohibits school employees from conducting a body cavity search of a student, or removing or arranging any or all of the clothing of a student to permit a visual inspection of the underclothing, breast, buttocks, or genitalia of the student. (Ed. Code §49050).

Existing law requires LEAs, at the beginning of the first semester or quarter of the regular school term, to send several specified notifications to parents or guardians. (Ed. Code §48980).

Existing law authorizes the governing board of a school district to establish a security department under the supervision of a chief of security, as specified, and authorizes the employment of personnel in the security department. (Ed. Code § 38000)

Existing law expresses the intent of the Legislature that a school district security department is supplementary to city and county law enforcement agencies and is *not* vested with general police powers. (Ed. Code § 38000)

Existing law provides for the qualification and training of school security officers. (Ed. Code §38001.5)

Existing law provides that no school employee shall conduct a search that involves 1) conducting a body cavity search of a pupil manually or with an instrument or 2) removing or arranging any or all of the clothing of a pupil to permit a visual inspection of the underclothing, breast, buttocks, or genitalia of the pupil. (Ed. Code §49050).

Existing law provides that a pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal determines that the pupil has, among other things, possessed, sold, or otherwise furnished a firearm or other dangerous object, as specified. (Ed. Code §48900).

Existing law establishes several crimes related to certain conduct by specified individuals that takes place on school grounds. (Penal Code § 626 et. seq).

Existing law establishes the Gun-Free School Zone Act of 1995, which governs the possession of firearms in "school zones," and prohibits specific related conduct. (Penal Code §626.9).

Existing law contains several provisions governing the criminal storage of a firearm. (Penal Code §§ 25100 – 25140)

Existing law contains several provisions related to the storage of a firearm where a child obtains access and carries the firearm off-premises, including criminal penalties. (Penal Code §§25200-25225).

Existing law requires the Department of Justice (DOJ) to maintain a registry of specified information related to individuals involved in the sale, transfer, import and prohibited or

regulated possession of firearms. (Penal Code §§11106, 17000, 28050, 28100, 28205, 28215, 30605, 30610).

This bill, no later than June 1, 2023, requires CDE, in consultation with relevant LEAs and the DOJ, to assess best practices currently being used and develop model content for use by LEAs related to a threat or perceived threat of an incident of mass casualties at a school.

This bill provides that the model content specified above shall include, at a minimum, content that informs parents or guardians of California's child access prevention laws and laws relating to the safe storage of firearms, as specified.

This bill requires CDE to update the model content on a yearly basis as necessary to reflect any changes in law.

This bill, commencing with the 2023-24 school year, and each school year thereafter, requires an LEA to include in information related to the safe storage of firearms in the existing annual notification sent to parents and guardians.

This bill provides that if a school official is alerted to or observes any threat or perceived threat of an incident of mass casualties at a school, a report of the threat or perceived threat shall be made immediately to law enforcement. The report shall include copies of any documentary or other evidence associated with the threat or perceived threat, and shall be permanently retained by the law enforcement agency to which it is sent.

This bill provides that when two or more school officials jointly have an obligation to report under its provisions, and when there is agreement among them, the report may be made by any of them in a single report. A school official who has knowledge that the designated reporting school official has failed to make the single report shall thereafter make the report.

This bill provides that upon receiving the report described above, the local law enforcement agency or other school site police, with the support of the LEA or school, shall immediately conduct an investigation and assessment of any threat or perceived threat to prevent an incident of mass casualties at the school.

This bill provides that the investigation and assessment shall include, but not be limited to:

- A review of the firearm registry of the DOJ
- Appropriate searches conducted by the local law enforcement agency or the school site police, as appropriate.

This bill provides that the search authorized in the provision above may include either or both of the following:

- A search of the school site.
- A search of the pupil's property located at the school site.

This bill provides that an LEA and school is immune from civil liability for any damages allegedly caused by, arising out of, or relating to the requirements contained therein.

This bill includes definitions of various relevant terms, including:

- “Law enforcement” means any of the following:
 - A peace officer employed or contracted by a school, school district, or local educational agency for school safety purposes.
 - A police or security department of a school, school district, or local educational agency.
 - A local law enforcement agency with geographic jurisdiction over a school.
- “Local educational agency” means a school district, county office of education, or charter school serving students in any of grades 6 to 12 as part of a middle school or high school.
- “Reasonable suspicion” means articulable facts, together with rational inferences from those facts, warranting an objective suspicion.
- “School” means a school of a school district or county office of education or a charter school serving students in any of grades 6 to 12 as part of a middle school or high school.
- “School official” means any individual who has any oversight responsibility of a LEA or a school, or whose official duties bring the individual in contact with students in any of grades 6 to 12 as part of a middle school or high school, on a regular basis. School official includes, but is not limited to, any of the following:
 - An administrator, principal, superintendent, corporate officer, or board member.
 - A teacher.
 - An instructional aide.
 - A teacher’s aide or teacher’s assistant employed by a school.
 - A classified employee of a school.
 - A certificated pupil personnel employee of a school.
 - An employee of a local educational agency whose duties bring the employee into contact with students on a regular basis.
 - An employee of a school district police or security department.
 - A school resource officer.
 - An athletic coach, athletic administrator, or athletic director employed or contracted by a school.
 - A school counselor that provides education counseling.
- “Threat or perceived threat” means any of the following:
 - Any writing or other content of a student that, based on a reasonable suspicion, is homicidal in nature. The content may include depictions of firearms, ammunition, shootings, or targets in association with infliction of physical harm, destruction, or death. The content may be from a social media post, journal, class note, or other media associated with the pupil. Excludes content that is reasonably part of or included in a school-sanctioned activity such as Reserve Officers’ Training Corps (ROTC).
 - Any student behavior that leads to a reasonable suspicion that the student has homicidal thoughts or urges, including the student’s unlawful possession or use of a firearm, or acts described above.
 - Any warning by a parent, student, or other individual that leads to a reasonable suspicion that the student is preparing to commit a homicidal act.

COMMENTS

Note: This analysis only covers provisions of this bill within the Committee's jurisdiction. For an analysis of other issues, see the analysis prepared by the Senate Education Committee

1. Need for This Bill

According to the author:

While California has adopted strenuous firearm storage safety laws in recent years, increased measures are needed to ensure that parents are aware of safe storage regulations that protect their children and their peers. Warning signs frequently forecast subsequent school tragedies, and local educators should be able to investigate perceived threats to their students' safety. Prioritizing the safety of students by increasing transparency, ensuring safe at-home storage, and empowering educators and law enforcement to investigate threats is crucial to keeping California students safe.

SB 906 would require the State Department of Education, in consultation with the Department of Justice, to develop model content for use by local educational agencies related to a threat or perceived threat of an incident of mass casualties at a school. SB 906 would also require local educational agencies to include information related to the safe storage of firearms in the annual notification provided to the parents or guardians of a pupil.

If a school official is alerted to or observes any threat or perceived threat of an incident of mass-casualties at a school, SB 906 would require a report of the threat or perceived threat to be immediately made to law enforcement and the Department of Justice. SB 906 would require a school or local educational agency, in consultation with law enforcement, to conduct immediately an investigation and threat assessment.

2. School Shootings and Threats in the United States

Tragically, school shootings and gun-related incidents have become increasingly common in the United States. Since 2020 alone, there have been 64 school shootings across the country (seven of which occurred in California), resulting in 33 deaths and 86 injuries.¹ The incidence of school shooting threats is even higher – in September 2021, a record 151 K-12 school shooting threats were made across the country, up from a three-year average of 29 for the month. Half of those threats came via social media and 28% were made by someone who had access to a firearm.² According to a recent Los Angeles Times editorial:

Before a mass shooting, communication of intent to do harm is common, and about half of all mass shooters do so. The professionals who evaluate what is known as “leakage” try to separate the signal from the noise, the real threat from the hoax.

¹ This is according to a list of school shootings in the United States compiled by Wikipedia.

https://en.wikipedia.org/wiki/List_of_school_shootings_in_the_United_States

² “The rise in school shooting threats is alarming – and a cry for help.” *Los Angeles Times Editorial Board*. 5 November 2021. <https://www.latimes.com/opinion/story/2021-11-05/record-school-shooting-threats-guns>

They look for red flags such as mentions of a specific date and time, weapon, location and targets, and motive for the attack.

School leaders found themselves asking: Is it better to overreact than not react at all? This is the impossible situation they are facing with increasing regularity. Closing schools for a hoax unnecessarily spreads fear and curtails valuable instructional time. Not closing risks the deadly consequences of ignoring the warning signs of danger, which law enforcement has done all too frequently in the past. [...] Weighing how to respond to threats is getting harder because threats of violence are rising at the same time schools are dealing with an unprecedented number of shootings.” [...]

National and state guidelines exist for many aspects of public education, but there’s no standardized playbook for dealing with online threats. Because all schooling and policing is local, communities are left to figure it out for themselves, in many cases without the tools or critical infrastructure necessary to do so effectively. Relatively few local police departments can trace an anonymous message to its source and fewer still offer viable alternatives to arrest.³

The issue of school threats and student access to firearms has drawn even more attention in the wake of a recent mass shooting in Oxford Township, Michigan, where 15-year-old Ethan Crumbley killed 4 fellow students, and injured 8 other people. Investigators discovered that prior to the shooting, Crumbley had begun displaying violent tendencies and signs of mental instability that went unaddressed by his parents.⁴ The morning of the shooting, a teacher found a drawing on Crumbley’s desk depicting a gun and a person bleeding, with the words “the thoughts won’t stop. Help me” written next to the drawings. Crumbley’s parents were summoned to the school for a meeting with school officials, but left shortly thereafter, leaving their son at the school. The gun used in the shooting had been in Crumbley’s backpack the entire time.⁵

3. Child Access Prevention and Firearm Safe Storage Laws

Many gun-related incidents at schools, including the Oxford, Michigan shooting, involve students obtaining access to firearms kept in their homes. According to the author, “in approximately 68% of the firearm-related incidents that occur in schools, the firearm was taken from the student’s home, friend or relative.” And California is not immune, despite our relatively strict gun laws. Indeed, just over a month ago, on March 17, 2022, a 12-year-old at a middle school in Riverside, California accidentally fired a gun while showing it off to friends. A subsequent search of the child’s home resulted in the discovery of additional firearms.⁶

California generally has robust laws imposing criminal liability on individuals who leave firearms accessible to unsupervised minors in various circumstances. Specifically, existing law

³ *Ibid.*

⁴ “Parents of Michigan school shooting suspect bought him a gun despite animal abuse, disturbing texts and other red flags, prosecutor says.” *USA Today*. 23 December 2021. <https://www.usatoday.com/story/news/nation/2021/12/23/oxford-school-shooting-prosecutor-disclose-details-about-parents/9011812002/>

⁵ “Read the Prosecutor’s Account of Events Before the Michigan School Shooting.” *New York Times*. 3 December 2021. <https://www.nytimes.com/2021/12/03/us/michigan-prosecutor-crumbley-charges.html>

⁶ “Police: student brings gun onto campus, accidentally fires it.” *Spectrum News 1*. 17 March, 2022. <https://spectrumnews1.com/ca/la-west/public-safety/2022/03/18/police--student-brings-gun-onto-campus--accidentally-fires-it>

makes it a crime to negligently store or leave a firearm on premises within the person's custody or control in a location where the person knows, or reasonably should know, that a child under 18 is likely to gain access to the firearm without the permission of the child's parent or legal guardian.⁷ Existing law imposes steeper penalties in situations where a minor gains access to or uses an unsafely stored firearm, including when a child gains access to a firearm and takes it to a school.⁸ This bill requires CDE to develop model content related to a threat or perceived threat of an incident of mass casualties, and specifies that that model content must include content informs parents or guardians of California's child access prevention and safe storage laws. This bill explicitly includes the laws mentioned above as those required to be included in the model content developed by CDE.

4. Department of Justice Firearms Registry

Existing law requires the DOJ to maintain a registry of specified information related to individuals involved in the sale, transfer, import and prohibited or regulated possession of firearms.⁹ The DOJ requires registration of firearms under specific circumstances, primarily when the firearm is sold or transferred, or brought into the state by a new resident. Additionally, all firearm purchases and transfers, with few exceptions, must be done through a licensed dealer. The database containing this information is central to the enforcement of various firearm laws, especially those related to the possession of firearms by prohibited individuals. This bill does not alter the structure, content, or information required under firearm registration laws. This bill does require law enforcement to conduct an investigation and threat assessment of any threat or perceived threat of a mass casualty incident, and as part of that investigation, requires "a review of the firearm registry of the Department of Justice."

5. "Threat or Perceived Threat"

This bill provides that a school official who is alerted to or observes a threat or perceived threat of an incident of mass casualties must immediately make a report of that threat to law enforcement. The bill defines "threat or perceived threat" as 1) any writing or other content of a pupil that is homicidal in nature, 2) any pupil behavior that leads to a reasonable suspicion that the pupil has homicidal thoughts or urges, or 3) any warning by a parent, pupil or other individual that leads to a reasonable suspicion that a pupil is preparing to commit a homicidal act.

While the bill does indicate certain conduct that may constitute a threat or perceived threat, the definition remains broad enough to apply to behavior that may not warrant immediate law enforcement involvement. According to ACLU California Action, a group opposed to the measure, "this broad language will inevitably mean that schools and educators have to subjectively determine when something is a threat and when it is not," and add that "young people – and many adults – often talk about violence, create content that depicts violence, or express violent urges while having no intent to commit a violent act."¹⁰ Additionally, the definition of "threat or perceived threat," and its focus on recognizing homicidal behavior, is

⁷ Penal Code §25100 establishes the crimes of "criminal storage of a firearm" in the first, second and third degrees. These elements constitute criminal storage of a firearm in the 3rd degree, but are common to the other two degrees of that crime.

⁸ Penal Code §§25200, 25200(b).

⁹ Penal Code §11106.

¹⁰ See ACLU California Action – Letter of Opposition to SB 906 as amended 4/7/22, dated April 19, 2022, p.1.

somewhat inconsistent with other provisions in the bill aimed at preventing “mass casualty incidents.” Of course, preventing homicides at schools is no less important than preventing mass casualty incidents, but evidence that a student has homicidal thoughts may not necessarily and directly indicate a threat of a mass casualty incident. The Author and Committee may wish to consider how revisions to the definitions of “reasonable suspicion” and “threat or perceived threat” may address these issues.

6. Fourth Amendment Considerations

The Fourth Amendment to the United States Constitution provides that “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Interpreting this amendment in the context of student searches at public schools, the Supreme Court held in *New Jersey v. T.L.O* (1985), 469 U.S. 325, that the Fourth Amendment’s prohibition on unreasonable searches and seizures applies to searches conducted by public school officials and that students have legitimate expectations of privacy. However, the Court also reasoned that “striking the balance between schoolchildren’s legitimate expectations of privacy and the school’s equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject.”¹¹ The concluded that school officials do not need to obtain a warrant before searching a student and are not subject to the requirement that searches be based on probable cause, but can be held to the lower standard of “reasonable suspicion.” That is, whether the search was justified at its inception and whether it was reasonably related in scope to the circumstances that justified the interference in the first place.¹²

This bill requires school officials to report threats and perceived threats of mass casualty incidents to law enforcement, and provides that any “threat or perceived threat” be based on a reasonable suspicion that a student has homicidal thoughts or urges, has produced content that is homicidal in nature, or is preparing to commit a homicidal act. This bill also requires law enforcement, upon receiving a report of a threat or perceived threat, to conduct “appropriate searches,” which may include a search of the schoolsite and a search of the student’s property located at the school site. Given the limited scope of the searches authorized by the bill, which do not include a search of the student’s person, and the bill’s use of the term “reasonable suspicion” consistent with case law, it is likely that these search provisions do not run afoul of the Fourth Amendment.

It is worth clarifying, however, that although the bill employs the term “reasonable suspicion,” which is a well-known standard in Fourth Amendment jurisprudence, the term as used in the bill does not describe the standard of proof needed to conduct a search of the schoolsite and the student’s belongings. Rather, it describes the requisite level of certainty a school official must possess regarding a threat or perceived threat to trigger the bill’s reporting requirement.

¹¹ *New Jersey v. T.L.O* (1985), 469 U.S. 325, 326.

¹² *Id.*

7. Argument in Support

According to the Office of the Riverside County Superintendent of Schools, which was opposed to the prior version of the bill:

We have always shared and supported the author's goal to ensure that schools are safe and gun-free for students, staff and the community. The amendments adopted on April 7 resolve the concerns we had with the bill as introduced, which we believe would have placed school personnel in roles that are inconsistent with their status as educators and providing support to educational programs. We support SB 906 because it will help to ensure that schools are a safe place to learn for students, as well as a safe place for school personnel, parents, and members of the community.

8. Argument in Opposition

The National Rifle Association – Institute for Legislative Action has indicated to Committee that it remains opposed to this bill. According to that organization:

SB 906 provides language that could protect local educational agencies and schools if gun owner information is negligently handled or willfully abused. SB 906 provides that "local educational agency and school is immune from civil liability for any damages allegedly caused by, arising out of, or relating to" the administration of the SB 906 gun ownership data collection scheme.

Moreover, SB 906 encourages school officials to take action against student who may display an interest in firearm and martial materials. School officials are prompted to create a report of a "threat or perceived threat" which is then sent law enforcement and the California Department of Justice. The legislation defines "threat or perceived threat" as content that is "homicidal in nature" which may include,

depictions of firearms, ammunition, shootings, or targets in association with infliction of physical harm, destruction, or death. The content may be from a social media post, journal, class note, or other media associated with the pupil.

This would appear to implicate a broad set of content that a student may engage with at or outside of school. Such content could include popular periodicals like the American Rifleman or Guns & Ammo, as they discuss lawful self-defense involving firearms. Content involving current military actions or military history could also be implicated.

-- END --