

Date of Hearing: February 14, 2023
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 29 (Gabriel) – As Introduced December 5, 2022

As Proposed to be Amended in Committee

SUMMARY: Requires the Department of Justice (DOJ) to develop and launch an Internet-based platform to allow California residents to voluntarily add their own name to the California Do Not Sell List for firearms, which prohibits an individual from purchasing a firearm. Specifically, **this bill:**

- 1) Requires DOJ to develop and launch a secure Internet-based platform to allow a person who resides in California to voluntarily add their own name to the California Do Not Sell List, hereafter the registry.
- 2) Requires DOJ, in cooperation with the State Department of Public Health (DPH), and other relevant state agencies, to ensure that the Internet-based platform is easy to find.
- 3) Requires DOJ to ensure that the Internet-based platform does all of the following credibly:
 - a) Verifies the identity of a person who opts to register or requests removal;
 - b) Prevents unauthorized disclosure of a person registering or requesting removal; and,
 - c) Informs the potential registrant of the legal effects of registration or removal.
- 4) Authorizes a person who resides in California, once the Internet-based platform is operative, to request to be added to the California Do Not Sell List.
- 5) Require DOJ, on an ongoing basis, to ensure that registry information is uploaded and reflected in the National Instant Criminal Background Check System (NICS) Index for California.
- 6) Prohibits the use of the registry for any purpose other than to determine eligibility to purchase a firearm.
- 7) Authorizes a person, at the time of registration to voluntarily list up to five electronic email addresses with the registry to be notified that the person has voluntarily added their name to the registry or that the person requested that their name be removed from the registry.
- 8) Requires DOJ to promptly provide notice by electronic mail to the provided electronic email addresses of the fact that the person has requested removal from the registry.

- 9) Authorizes a person to request at any time that any of the electronic mail addresses provided to DOJ at the time of registration be removed from the registry for purposes of contact for request for removal from the registry.
- 10) Requires DOJ to promptly provide notice to the electronic mail address of the fact that the person has requested that the electronic email address not be informed of a request for removal from the registry.
- 11) Provides that registration on the registry renders receipt of a firearm by a registrant unlawful, however, possession after the moment of receipt is not unlawful and the fact of possession may not be relied upon to prove a violation.
- 12) Provides that knowingly transferring a firearm to a person on the registry with knowledge that the person is validly registered on the registry is a misdemeanor.
- 13) Provides that a licensed firearm dealer who knowingly transfers a firearm to a person on the registry with knowledge that the person is validly registered on the registry is punishable as a misdemeanor and by a fine of \$2,000 and may result in a revocation of the dealer's license.
- 14) Authorizes a person, no sooner than seven days after filing a voluntary waiver of firearm rights, to file a request for removal from the registry via the Internet-based platform.
- 15) Requires DOJ, no sooner than 21 days after receiving a request for removal of a voluntary waiver of firearm rights, to remove the person from the National Instant Criminal Background Check System Index for California and any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms in which the person was entered, unless the person is otherwise ineligible to possess a firearm under other statute.
- 16) Provides that the fact that a person has requested to be added to the registry, is on the registry, has requested to be removed from the registry, or has been removed from the registry is confidential with respect to all matters involving health care, employment, education, housing, insurance, government benefits, and contracting.
- 17) Provides that a violation of confidentiality occurs if a person or entity other than a healthcare professional, therapist, or counselor, engaged specified activities inquires as to whether a person has requested to be on the registry, is on the registry, has requested to be removed from the registry, or has been removed from the registry.
- 18) Provides that a violation of confidentiality occurs if a person or entity takes any adverse action based on whether a person has requested to be on the registry, is on the registry, has requested to be removed from the registry, or has been removed from the registry.
- 19) Provides that the person whose confidentiality is violated by an inquiry or adverse action may bring a private civil action for appropriate relief, including reasonable attorney's fees, for each violation that occurs.

- 20) Prohibits requiring a voluntary waiver of firearm rights as a condition for receiving employment, benefits, or services.
- 21) Requires DPH to create and distribute informational materials, including information on how to access the Internet-based platform, to general acute care hospitals and acute psychiatric hospitals, as specified.
- 22) States that a person presenting in a general acute care hospital or any acute psychiatric hospital who is reasonably believed by the treating clinician to be at substantially elevated risk of suicide should generally, as a best practice, be presented with the informational materials created and distributed by DPH.
- 23) States that a suicide hotline maintained or operated by an entity funded in whole or in part by the state should generally, as a best practice, inform callers on how to access the registry.

EXISTING LAW:

- 1) Provides for an automated system for tracking firearms and assault weapon owners who might fall into a prohibited status. The online database, which is known as the Armed Prohibited Persons System (APPS), cross-references all handgun and assault weapon owners across the state against criminal history records to determine whether a person is prohibited from possessing a firearm. (Pen. Code, § 30000, et seq.)
- 2) Prohibits persons who know or have reasonable cause to believe that the recipient is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code, §§ 27500, 30306; & Welf. & Inst. Code, § 8101.)
- 3) Provides that persons convicted of felonies and certain violent misdemeanors are prohibited from owning or possessing a firearm. (Pen. Code, §§ 29800 & 29805.)
- 4) Prohibits a person from possessing or owning a firearm that is subject to specified restraining orders. (Pen. Code, § 29825.)
- 5) Prohibits a person who has been taken into custody and admitted to a designated facility on a 72-hour hold because that person is a danger to himself, herself, or to others, as specified, from owning or possessing any firearm for a period of five years after the person is released from the facility. (Welf. & Inst. Code, § 8103, subd. (f)(1).)
- 6) States that a person taken into custody on a 72-hour hold may possess a firearm if the superior court has found that the people of the State of California have not met their burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. & Inst. Code, § 8103, subd. (f)(6).)
- 7) Requires the DOJ, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the

submission to the department of a specified fee. (Pen. Code, §§ 28200-28250.)

- 8) Mandates those dealers notify DOJ that persons in applications actually took possession of their firearms. (Pen. Code, § 28255.)
- 9) Requires the dealer, if unable to legally deliver a firearm, to return the firearm to the transferor, seller, or person loaning the firearm. (Pen. Code, § 28050, subd. (d).)
- 10) Requires that in connection with any sale, loan or transfer of a firearm, a licensed dealer must provide the DOJ with specified personal information about the seller and purchaser as well as the name and address of the dealer. This personal information of buyer and seller required to be provided includes the name; address; phone number; date of birth; place of birth; occupation; eye color; hair color; height; weight; race; sex; citizenship status; and a driver's license number; California identification card number; or, military identification number. A copy of the DROS, containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code, §§ 28160, 28210, & 28215.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “According to the Centers for Disease Control and Prevention, 1,586 people died by gun suicide in California in 2019; additionally, more than one-third of all suicides in California are by firearm. Suicide has surpassed homicides as the most prevalent cause of death resulting from the misuse of a firearm in the state.

“This bill provides those battling suicidal thoughts an option to protect themselves by temporarily limiting their access to purchase firearms during a time of crisis. We know suicide can be an impulsive decision that most survivors regret. Guns are lethal and, unfortunately, rarely allow for second chances. This bill takes action on the data that shows a correlation between mental illness, suicidal thoughts, and gun purchases.”

- 2) **Individuals Prohibited from Possessing Firearms in California:** California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while a conviction of specified misdemeanors result in a 10-year prohibition. A person may be prohibited from possessing a firearm due to a protective order or as a condition of probation. Another prohibition is based on the mental health of the individual. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100, subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103, subd. (f).) For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is likely to use firearms or other deadly weapons in a safe

and lawful manner. (Welf. & Inst. Code, §§ 8100, subd. (b)(1) and 8103, subd. (f).)

DOJ developed the Armed Prohibited Persons System (APPS) for tracking handgun and assault weapon owners in California who may pose a threat to public safety. (Pen. Code, § 30000 et seq.) APPS collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. DOJ receives automatic notifications from state and federal criminal history systems to determine if there is a match in the APPS for a current California gun owner. DOJ also receives information from courts, local law enforcement and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, DOJ has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession. Local law enforcement also may request from DOJ the status of an individual, or may request a list of prohibited persons within their jurisdiction, and conduct an investigation of those persons. (Pen. Code, § 30010.) Since the development of APPS, California has added long-gun transactions to the list of registered firearms and has added restraining orders to the list of prohibiting events. (<http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/sb-140-supp-budget-report.pdf>) These additional requirements have contributed to a backlog in processing APPS matches.

This bill would make an individual ineligible to purchase a firearm if they choose to include themselves on the Do Not Sell List. This bill would not include such individuals in the APPS database.

- 3) **Suicide and Firearms:** The fact that a person possesses a firearm increases their risk of suicide. Suicide attempts that involve the use of a gun are more likely to result in death. There is strong evidence that access to firearms, whether from household availability or a new purchase, is associated with increased risk of suicide. The risk of suicide by guns is far higher in states with high rates of gun ownership than in those with low ownership rates. The increased risk of suicide applies not only to the gun owner but to others living in a household with guns. (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3518361/>)

Fifty-two percent of gun deaths in California are suicides, which accounts for roughly 1,500 gun violence deaths each year. This is the 44th-highest rate in the nation. On average, more Californians die every year from suicide by firearm than from homicide by firearm. (<https://maps.everytownresearch.org/wp-content/uploads/2020/04/Every-State-Fact-Sheet-2.0-042720-California.pdf>)

- 4) **Use of Voluntary Do Not Sell Lists to Reduce Gun Suicide:** Law Professor Frederick Vars wrote an article entitled “Self Defense Against Gun Violence” in October 2015 about the potential policy benefits of providing individuals an opportunity to voluntarily add their own name to the list of those already prohibited from purchasing a firearm. Professor Vars listed three ways that such a policy might reduce the numbers of suicide by firearms.

The first and most direct pathway is by preventing the purchase of a firearm for quick use in a suicide attempt. . . ., research shows that waiting periods reduce gun prevalence, and that lower gun prevalence reduces suicides. This will reduce the chances that there will be a gun in the home should suicidal thoughts arise in the future.

Second, introducing and advertising a voluntary do not purchase program may reduce gun access even among people who do not participate. Suicide prevention efforts already advise putting firearms out of reach of people at high risk. Launching a new federal program to reduce suicide by voluntarily curbing access to firearms will help disseminate well-established findings showing the benefits of getting existing firearms out of the house. Some people and their families may decide to remove or lock up firearms even if they do not opt for a voluntary do not purchase program.

Third, providing a relatively easy avenue for people concerned about suicide to reduce their own risk of self harm may help alleviate the despair and anxiety that pushes them toward suicide in the first place. It should be noted that an individual who has volunteered for do not purchase program may be less likely to purchase a firearm at all, even during non-suicidal periods. Voluntary do not purchase programs would “enhance patients’ self-efficacy and can help to create a sense that suicidal urges can be mastered,” which in turn “may help [patients] feel less vulnerable and less at the mercy of their suicidal thoughts.” In short, allowing people to protect themselves in this way may give them back a sense of control over their lives. Relatedly, hopelessness is a significant risk factor for suicide. Providing an opportunity for distressed individuals to take one concrete step to prevent suicide may itself mitigate feelings of hopelessness. This could reduce non-firearm suicides as well.

(Vars, *Self-Defense Against Gun Suicide*, 56 B.C.L.Rev. 1465, 1469-71)

This bill would establish a protocol for a voluntary do not sell list.

- 5) **Effectiveness of Voluntary Do Not Sell Lists:** Whether voluntary do not sell lists will reduce gun suicide rates is an open question. Proponents point out that a study found that surveyed persons receiving care at an inpatient facility or one of two outpatient clinics and found that 46% of the 200 responses said they would put their names on the list. (<https://onlinelibrary.wiley.com/doi/abs/10.1111/sltb.12302>) Since 2018, three states have created voluntary do not sell lists—Utah, Virginia, and Washington. How many people have added their names to the lists in those three states is unclear, but a local news report from roughly one year ago found that “41 people in three states across the country have voluntarily banned themselves from buying guns...” (<https://fox47.com/news/local/banning-yourself-from-buying-guns-can-a-suicide-prevention-method-happen-in-wisconsin>)

Notably, both Alabama and the three states that have enacted do not sell lists are distinct from California in at least one way: they lack a mandatory waiting period for the delivery of a purchased firearm. In California, there is a 10-day mandatory waiting period before a firearm can be legally delivered to the purchaser. (See Pen. Code, §§ 28200-28250.) Whether mandatory waiting periods in other states would have affected the results of the study or the number of people who have signed up for existing do not sell lists is unclear.

Regardless, proponents appear to believe that do not sell lists are worthwhile policies regardless of mandatory waiting periods. According to Professor Vars:

[T]here is an important reason to think [voluntary do not sell lists] will actually be more effective in reducing suicides than an actual waiting period... Having added one's name to NICS, people will be less likely to make the effort to remove it... Actual waiting periods, in contrast, impose only a delay.

(Vars, *supra*, at 1476-77)

The success of the proposed California Do Not Sell List will likely depend at least in part on encouraging people to use the list and convincing likely participants that a 10-day waiting period is insufficient protection against the threat of suicide.

- 6) **Argument in Support:** According to *California State Association of Psychiatrists*, the sponsor of this bill: “There is strong evidence that access to firearms, whether from household availability or a new purchase, is associated with an increased risk of suicide. According to the Centers for Disease Control and Prevention, suicides make up 52% of all firearm deaths in California, and more than one-third of all suicides in California are by firearm. In 2019, there were 1,586 firearm suicide deaths in California, including 54 children and teens.

“This decision could be preventable. A recent study found that close to a third of the general population and more than 40% of those with previously diagnosed mental health concerns would add their name to a Do Not Sell List if they had the option.

“AB 29 will address mental health as it pertains to our gun violence epidemic by creating a platform to allow California residents to voluntarily and confidentially add their own name to the California Do Not Sell List for firearms, which prohibits an individual from purchasing a firearm.

“This bill provides those battling suicidal thoughts and struggling with severe mental health issues an option to protect themselves by temporarily limiting their access to purchase firearms during a time of crisis. We know suicide can be an impulsive decision that most survivors regret. Guns are lethal and, unfortunately, rarely allow for second chances. This bill takes action on the data that shows a correlation between mental illness, suicidal thoughts, and gun purchases.”

- 7) **Argument in Opposition:** None submitted.
- 8) **Prior Legislation:** AB 1927 (R. Bonta), of the 2017-2018 Legislative Session, would have required the DOJ to develop and launch an Internet-based platform to allow California residents to voluntarily add their name to the California Do Not Sell List for firearms, which would have prohibited an individual from purchasing a firearm. The governor vetoed a substantially amended version of the bill.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Psychiatrists (CSAP) (Sponsor)

Brady Campaign California
Everytown for Gun Safety Action Fund
Prosecutors Alliance California

Opposition

None

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