

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

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

AB 97 (Rodriguez) – As Introduced January 9, 2023

SUMMARY: Increases the punishment from a misdemeanor to a felony for the crimes of buying, selling, or possessing a firearm with a removed or altered a serial number or possessing a firearm without a valid serial number, and for the crime of failing to obtain a serial number for an assembled firearm.

EXISTING LAW:

- 1) Provides that any person who changes, alters, removes, or obliterates the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice (DOJ), on any pistol, revolver, or any other firearm, without first having secured written permission from the department to make that change, alteration, or removal is guilty of a felony punishable by imprisonment in the county jail. (Pen. Code, § 23900.)
- 2) Provides that any person who buys, sells, receives, or possesses a firearm knowing that the serial number or other mark of identification has been changed, altered, or removed, is guilty of a misdemeanor. (Pen. Code, § 23920.)
- 3) Requires, beginning July 1, 2018, a person manufacturing or assembling a firearm to apply to the Department of Justice (DOJ) for a unique serial number or other mark of identification for that firearm. (Pen. Code, § 29180, subd. (b)(1).)
- 4) Punishes the failure to obtain a serial number from DOJ as a misdemeanor, as specified. (Pen. Code, § 29180, subd. (g).)
- 5) Provides that when the punishment for a felony with a sentence to be served in the county jail is not otherwise prescribed in the underlying offense, then it is punishable by a term of imprisonment in a county jail for 16 months, or two or three years. (Pen. Code, § 1170, subd. (h)(1).)
- 6) Provides that when the punishment for a misdemeanor is not otherwise prescribed by law, then it is punishable by imprisonment in the county jail not exceeding six months, or by a fine of \$1,000, or both. (Pen. Code, § 19.)
- 7) Provides that an act or omission that is punishable in different ways by multiple provisions of law cannot be punished under more than one provision. (Pen. Code, § 654.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “AB 97 is an important public safety measure needed to deter the public from owning unserialized firearms, also known as ghost guns. There are no records of existence for ghost guns – inhibiting law enforcement efforts to trace the firearm to the owner when used in a crime. That and the fact that these deadly weapons do not require a background check make ghost guns popular among criminals.

“In the last several years, the number of ghost guns recovered has increased exponentially. For example, last year, Los Angeles Police Department released a report stating ghost guns contributed to more than 100 violent crimes, including 24 murders, 8 attempted homicides, and dozens of armed robberies and assaults. In the first six months of the year, the Department confiscated 863 ghost guns, nearly 300% over the previous year. Enough is enough. These firearms are being used to kill members of our community, including our law enforcement officers. By passing AB 97, California can send a message to criminals thinking of using one of these deadly weapons.”

- 2) **Need for this Bill:** The stated need for the increased penalties proposed by this bill is the proliferation of ghost guns. However, it should be noted that changing, altering, removing, or obliterating the identification markers on a firearm, whether assigned by the DOJ or placed there by the manufacturer, is already a felony. (See (Pen. Code, § 23900.)

In the event that the firearm is not involved in the commission of a separate crime, a person who removes the identifying markers and then continues to possess that firearm, or transfers it to someone else, could likely only be punished for one of those offenses. The California Supreme Court’s opinion in *People v. Jones* (2012) 54 Cal.4th 350, is instructive on this point. In *Jones*, appellant was convicted of possession of a firearm by a convicted felon, carrying a readily accessible concealed and unregistered firearm, and carrying an unregistered loaded firearm in a public place. The three offenses stemmed from the same incident where the police searched a vehicle driven by appellant and found a loaded gun not registered to him in the door panel. The trial court sentenced appellant to three concurrent terms. (*Id.* at p. 352.) The Supreme Court reversed the sentence. The Supreme Court focused on the language of Penal Code section 654, which proscribes multiple punishment for a single act or omission made punishable by different statutes. The court held that “a single possession or carrying of a single firearm on a single occasion may be punished only once under section 654.” (*Id.* at p. 357.)

However, as the author and sponsor of this bill note, recovery of these firearms is usually in connection with the commission of another crime. Therefore, in the more likely event that the person who possesses a ghost gun used it in the commission of another crime, that person will already face punishment for that other, more serious, crime as well as likely face punishment for a gun-use enhancement. Therefore, the increased felony punishment for the three misdemeanors proposed by this bill (failing to get an identifying number from DOJ when assembling a firearm and being in possession of a ghost gun) is unlikely to send a message to criminals.

- 3) **Harsher Punishment Unlikely to Deter Ghost Gun Possession:** This bill’s author asserts that the penalty increases this bill proposes are needed to deter possession of ghost guns. According to the author, “[C]urrent law does not provide an adequate deterrent for those in

possession [of ghost guns]. We must increase the current punishment to ensure the safety of our communities.” (Press Release, Assemblymember Rodriguez Introduces Critical Legislation to Help Crack Down on the Ongoing ‘Ghost Gun’ Epidemic (Jan. 9, 2023) <<https://a53.asmdc.org/press-releases/20230109-assemblymember-rodriguez-introduces-critical-legislation-help-crack-down>>) [last visited Feb. 2, 2023].)

However, increased criminal penalties for ghost gun possession are unlikely to have the desired impact. According to the U.S. Department of Justice, “Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not ‘chasten’ individuals convicted of crimes, and prisons may exacerbate recidivism.” (National Institute of Justice, U.S. Department of Justice, Five Things About Deterrence (June 5, 2016) <<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>> [last visited Feb. 2, 2023]) Moreover, as previously noted, ghost guns are typically recovered in connection to other crimes for which their use subjects the defendant to a gun-use enhancement. As such, increasing the penalty for ghost gun possession is unlikely to deter criminal conduct or reduce the prevalence of ghost guns in our communities.

- 4) **Argument in Support:** According to the *California Police Chiefs Association*, “Gun violence has spiked across the state, homicide rates keep climbing, and officers continue to pull more and more illegal firearms off our streets. In 2021, Los Angeles Police Department cited a 400% increase in ghost gun seizures. Just last month, an East Palo Alto officer was shot and injured by a suspect with a fully automatic ghost gun. Despite this violence, possession of a ghost gun is often only chargeable as a misdemeanor. Given the gravity of issue, and potential harm caused by these illegal weapons, it is important our penalties match the threat. From our standpoint, it is completely clear that our laws are not deterring the massive proliferation of weapons – this is the problem AB 97 seeks to fix.

“By increasing the penalty for possessing an unserialized firearm, or one with the removed serial number, the Legislature can directly aid law enforcement in going after the violent individuals causing so much harm to our communities – for there is no reason for someone to remove a serial number on a gun if they intend to use it for lawful purposes.

“Our laws are not strong enough, and it is hurting our ability to protect our communities. For that reason, we stand in very strong support of AB 97.”

- 5) **Argument in Opposition:** According to the *California Public Defenders Association*, “AB 97 would increase the penalty for possession of a firearm without a serial number or with an altered serial number from a misdemeanor to a felony.

“While eliminating so called “ghost guns” is a worthy endeavor, imprisoning more Californians is not the solution. We have already seen what mass incarceration has done to black and brown Californians and their families. Resources were diverted to imprison people, while California schools, health care and housing went wanting for adequate funding.

“Adopting a public health approach to the pandemic of guns in our state would be more cost effective and humane. California has reduced smoking by a combination of taxes on cigarettes, bans on smoking in public spaces and education. Such a multi-pronged strategy should be employed to reduce the number of ghost guns in California.

“Also, the Legislature should consider allowing individuals to bring public nuisance lawsuits against individuals and companies who manufacture ghost guns or ghost gun manufacturing equipment. Serious financial penalties are more likely to deter these individuals and their companies than criminal penalties against the unwitting individual who possesses such a weapon.

“AB 97 is not needed. There are already sufficient penalties for any individual who commits a crime while armed with any kind of firearm or using a firearm. These penalties range from an addition year in county jail or state prison to 25 years to life in state prison depending on the seriousness of the offense.”

6) Related Legislation:

- a) AB 27 (Ta), exempts specified firearm enhancements from the requirement that a court dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety. AB 27 is currently pending in this committee.
- b) AB 328 (Essayli), prohibits the court from dismissing an enhancement for personal use of a firearm in the commission of certain violent crimes, except when the person did not personally use or discharge the firearm or when the firearm was unloaded. AB 328 is pending referral by the Assembly Rules Committee.

7) Prior Legislation:

- a) AB 1869 (Rodriguez), of the 2021-2022 Legislative Session, is substantially similar to this bill. The bill failed passage in this committee.
- b) AB 1621 (Gipson), Chapter 76, Statutes of 2022, redefines one of the definitions of “firearm” as including a precursor part, redefines “firearm precursor part” and prohibits a person from possessing or manufacturing a firearm precursor part without authorization
- c) AB 1688 (Fong), of the 2021-2022 Legislative Session, would have removed the requirement that a firearm be microstamped with an array of characters in order to be listed on the DOJ roster of “not unsafe” handguns approved for sale. The hearing on AB 1688 in this Committee was cancelled at the request of the author.
- d) AB 2156 (Wicks), Chapter 142, Statutes of 2022, reduces the number firearms that a person, firm, or corporation may manufacture without having a state firearms manufacturing license from 49 to three.
- e) AB 857 (Cooper), Chapter 60, Statutes of 2016, requires a person to apply to and obtain from the DOJ a unique serial number or other mark of identification prior to manufacturing or assembling a firearm.
- f) AB 1084 (Melendez), of the 2013-2014 Legislative Session, would have increased the penalties for numerous offenses related to the illegal possession of firearms, and would have required that many related sentences be served in the state prison rather than county

jail under realignment. AB 1084 failed passage in this committee.

- g) SB 644 (Canella), of the 2013-2014 Legislative Session, would have, in pertinent part, raised the sentence for a subsequent conviction of possession of a firearm by a convicted felon from a term of 16 months, 2 years or 3 years to a term of 4, 5, or 6 years. SB 644 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California Peace Officers Association
California Police Chiefs Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles County Sheriff's Department
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
National Rifle Association - Institute for Legislative Action

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