
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 97 **Hearing Date:** June 20, 2023
Author: Rodriguez
Version: March 8, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: unserialized firearms*

HISTORY

Source: Author

Prior Legislation: AB 2418 (Kalra, Ch. 787, Stats. of 2022)
AB 1621 (Gipson, Ch. 76, Stats. of 2022)
AB 2156 (Wicks, Ch. 142, Stats. of 2022)
AB 1688 (Fong, 2021), not heard in Assembly Public Safety
AB 857 (Cooper, Ch. 60, Stats. of 2016)
AB 1084 (Melendez, 2013) failed in Assembly Public Safety
SB 644 (Canella, 2013) held in Senate Appropriations

Support: California Federation of Teachers; California School Employees Association;
City of Alameda; Los Angeles County District Attorney's Office; Los Angeles
County Professional Peace Officers Association

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to require the Department of Justice to collect and report data on arrests and prosecutions of specified misdemeanor offenses related to unserialized firearms.

Existing law 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, subd. (a).)

Existing law provides that, commencing January 1, 2024, any person who knowingly possesses any firearm that does not have a valid state or federal serial number or mark of identification is guilty of a misdemeanor. (Pen. Code, § 23920, subd. (b).)

Existing law requires a person manufacturing or assembling a firearm, prior to manufacturing or assembling that firearm, to apply to the DOJ for a unique serial number or other mark of identification for that firearm, and when that serial number is received, to affix it to the firearm within 10 days of the firearm's manufacture or assembly (Pen. Code, § 29180, subd. (b)(1), (2).)

Existing law prohibits a person, corporation or firm that is not a federally licensed firearms manufacturer to sell or transfer ownership of a manufactured or assembled firearm under specified circumstances. (Pen. Code, § 29180, subd. (d).)

Existing law prohibits a person, corporation or firm from knowingly allowing, facilitating, aiding or abetting the manufacture or assembly of a firearm by a person who is prohibited by law from possessing a firearm. (Pen. Code, § 29180, subd. (e).)

Existing law prohibits a person, corporation or firm from knowingly manufacturing or assembling, or knowingly allowing, facilitating, aiding or abetting the manufacture or assembly of a firearm that is not imprinted with a valid serial number. (Pen. Code, § 29180, subd. (f).)

Existing law provides that violation of Penal Code §29180 is punishable as a misdemeanor. (Pen. Code, § 29180, subd. (g).)

Existing law establishes the Justice Data Accountability and Transparency Act (JDATA), which generally requires state and local prosecution offices to collect and transmit data regarding criminal cases to the Department of Justice, which is required to aggregate, verify and publish the data. (Pen. Code, § 13370, *et seq.*)

Existing law declares the intent of the Legislature to create a workable system of criminal justice data transparency whereby law enforcement prosecution agencies will gather complete, accurate, and timely data in a uniform format, and make that data available to the public in a modern, open, electronic format that is machine-readable and readily accessible through an application program interface. (Pen. Code, § 13370, subd. (a)(1).)

Existing law sets forth a legislative finding that it is an important state interest to implement a data collection, aggregation, and publishing process for criminal prosecutions to promote criminal justice data transparency. This data would be comprised of publishable statistics and other data from statewide prosecution offices. (Pen. Code, § 13370, subd. (a)(1).)

Existing law requires every state and local prosecutor office that prosecutes misdemeanors and felonies, beginning on March 1, 2027, to collect data, as specified, for cases in which a decision to reject charges or to initiate criminal proceedings by way of complaint or indictment has been made by that agency. (Pen. Code, § 13370, subd. (d)(1).)

Existing law requires prosecuting agencies, beginning on June 1, 2027, to begin transmitting required data to DOJ. (Pen. Code, § 13370, subd. (d)(2).)

Existing law requires DOJ, beginning June 1, 2027, to begin collecting data elements from all agencies statewide, as specified. (Pen. Code, § 13370, subd. (d)(3).)

Existing law requires DOJ to aggregate data elements for all agencies in order to publish the data from those agencies by June 1, 2028. (Pen. Code, § 13370, subd. (d)(3).)

Existing law provides that it shall be an express exception to any sealing of a case or expungement of a case, whether by court order or by operation of law, or any rule of confidentiality or rule otherwise prohibiting disclosure provided by law that all data shall be provided by the prosecuting agencies to the DOJ. (Pen. Code, § 13370, subd. (d)(4).)

Existing law specifies which particular data elements must be collected, transmitted and published for each case, and grants the DOJ discretion to resolve ambiguities consistent with the purposes of JDATA, including the development of uniform definitions for the data elements and the determination off the form and format in which data elements shall be captured and transmitted. (Pen. Code, § 13370, subd. (e).)

This bill requires DOJ to collect and report the following data on arrests made by law enforcement agencies for specified offenses related to firearms without a valid state or federal serial number:

- The number of misdemeanor arrests for buying, selling, receiving or possessing a firearm with a removed or altered serial number, or for possessing a firearm without a serial number.
- The number of misdemeanor arrests for failing to obtain a valid serial number for a manufactured or assembled firearm and for the unlawful transfer of a manufactured or assembled firearm.
- The disposition of arrests pursuant to the violations above, including information about whether an arrestee was booked, cited or released from custody.

This bill requires the DOJ, commencing on January 1, 2029 to collect and report the disposition of prosecutions for the above violations reported to the DOJ pursuant to JDATA, including, but not limited to, whether the charges were dismissed, the defendant was acquitted or convicted, or whether the charges were resolved on other grounds, including as the result of a plea bargain.

This bill requires DOJ to issue a report to the Legislature by January 1, 2025, and annually thereafter, that includes the data collected, except for data regarding the disposition of prosecutions reported to DOJ pursuant to JDATA, until other specified data is reported by DOJ pursuant to that law.

This bill provides that its provisions shall sunset on January 1, 2033.

COMMENTS

1. Need for This Bill

According to the Author:

AB 97 is an important public safety measure for the Legislature to gain a comprehensive picture of the proliferation of ghost guns in California and how criminals are being prosecuted. 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 allow criminal to avoid a background check make ghost guns popular among criminals.

In the last several years, the number of ghost guns recovered has increased. In 2021, 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, the Legislature can get a clear picture of how many ghost guns law enforcement recovers annually to inform future policy

2. The Proliferation of Ghost Guns

In the United States, traditional firearms are produced by licensed manufacturers and sold through licensed gun dealers. Federal law requires all guns manufactured in the United States and imported from abroad to have serial numbers, typically displayed on the back of the frame. By contrast, “ghost guns” are manufactured in parts which can be acquired without a background check and can easily be assembled by an unlicensed buyer. Ghost guns are designed to avoid regulation by being sold in DIY kits containing their component parts, which, individually, are unregulated, but when assembled form a fully functional firearm. Ghost guns are also unserialized, meaning they cannot be traced by law enforcement. According to recent reporting by the New York Times:

The criminal underground has long relied on stolen weapons with filed-off serial numbers, but ghost guns represent a digital-age upgrade, and they are especially prevalent in coastal blue states with strict firearm laws. Nowhere is that truer than in California, where their proliferation has reached epidemic proportions [...] Over the past 18 months, the officials said, ghost guns accounted for 25 to 50 percent of firearms recovered at crime scenes. The vast majority of suspects caught with them were legally prohibited from having guns.¹

Advances in home firearm manufacturing technology and the general untraceability of ghost guns have made them the weapon of choice for those seeking to commit crime, and California remains at the epicenter of the ghost gun crisis: in Los Angeles alone, the LAPD recovered 1,921 ghost guns in 2021, more than double the amount recovered in 2020. Police in San Francisco seized 1,089 illegal firearms, about 20% of which were ghost guns, whereas just five years prior, ghost guns comprised less than 1% of firearm seizures.² In 2022, DOJ agents recovered 54 ghost guns as part of the Armed Prohibited Persons System Program, representing a 575% increase since 2018, when only 8 ghost guns were seized.³

On June 30, 2022, Governor Newsom signed AB 1621 (Gipson, Ch. 76, Stats. of 2022), a comprehensive measure aimed at curbing the ghost gun epidemic. AB 1621 enacted a host of reforms, most of which went into effect immediately (others take effect Jan 1, 2023) and which, taken together, render the sale, transfer and manufacture of both completed and unfinished frames and receivers (another way of referring to firearm precursor parts) subject to the same rules as fully assembled firearms. Among the changes enacted by AB 1621 is a prohibition, commencing Jan 1, 2024, of the knowing possession of any firearm that does not have a valid

¹ Thrush, Glenn. “Ghost Guns’: Firearm Kits Bought Online Fuel Epidemic of Violence.” Originally published 14 November 2021; updated 26 January 2022. <https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html>

² “Ghost Guns Recoveries and Shootings.” Published by Everytown for Gun Safety. Last Updated 8 April 2022. [Ghost Guns Recoveries and Shootings | Everytown Research & Policy](#)

³ [California Department of Justice Releases 2022 Armed and Prohibited Persons System Program Annual Report | State of California - Department of Justice - Office of the Attorney General](#)

state or federal serial number or mark of identification.⁴ AB 1621 also modified existing rules and restrictions regarding the serialization of manufactured and assembled firearms. Specifically, AB 1621 prohibited the sale or transfer of manufactured or assembled firearms by entities that are not federally licensed and prohibited any person or entity from knowingly manufacturing or assembly, or aiding and abetting the manufacture or assembly of a firearm that is not properly serialized.⁵

3. Crime Data in California

The California Attorney General has the duty to collect, analyze, and report statistical data, which provide valid measures of crime and the criminal justice process to government and the citizens of California.⁶ DOJ's Criminal Justice Statistics Center (CJSC) collects, analyzes, and develops statistical reports and information that provide valid measures of crime and the criminal justice process in California, as required by the Penal Code. The goal of the CJSC is to provide accurate, complete, and timely criminal statistical information to the public, local government, criminal justice administrators and planners, the Legislature, the Attorney General, the Governor, state agencies, federal agencies, and criminal justice researchers through a variety of publications and services. To provide these services and publications, the CJSC collects and compiles data from more than 1,000 city, county, and state criminal justice agencies in California.

California has long been a national leader on criminal justice reform and innovation, but only in the last several years has the state refocused its attention to aggregating and publishing crime data for the purposes of self-assessment and transparency. Recent efforts to modernize statewide systems of data collection and representation began in earnest with the DOJ's creation of the OpenJustice portal in 2015, and the Legislature's passage of the OpenJustice Data Act of 2016 (AB 2524, Irwin, Ch. 418, Stats. of 2016).⁷ These reforms leveraged statistical data maintained by the DOJ and other public datasets to create a dynamic, user-friendly dashboard that presented crime statistics in a more digestible format.⁸ In 2022, the Legislature passed AB 2418 (Kalra, Ch. 787, Stats. of 2022), also known as the Justice Data Accountability and Transparency Act (JDATA), which created a new framework for data collection and reporting by California's criminal prosecution agencies. Under that measure, prosecuting agencies statewide are required to collect and report over 50 distinct data elements for each criminal case that is initiated, which the DOJ will aggregate and publish by 2028.

This bill builds on California's recent efforts to enhance data collection and reporting. The bill requires DOJ to collect and report data on offenses related to firearms without a valid state or federal serial number, specifically, the number of arrests for buying, selling, or possessing a firearm with a removed or altered serial number or possessing a firearm without a valid serial number; and the number of arrests for failing to obtain a valid serial number for a manufactured or assembled firearm. The DOJ would also have to report the disposition of arrests for specified offenses related to firearms without a valid serial number, including information about whether an arrestee was booked, cited, or released from custody.

⁴ Penal Code §23920(b). A similar prohibition is operative in existing law in PC §23920(a).

⁵ Penal Code §29180(d), (f).

⁶ The DOJ's existing data-related requirements can be found at Penal Code §§13010 et seq.

⁷ Existing law prior to these actions required DOJ to collect and present crime statistics from local jurisdictions to the Legislature (see Penal Code §§ 13010 et. seq), but many believed that differences in local data reporting and the static, point-in-time publication process rendered that framework inadequate.

⁸ The portal can be accessed here: <https://openjustice.doj.ca.gov/>

Additionally, the DOJ would be required to report data collected and reported by local prosecuting agencies pursuant to JDATA on the disposition of prosecutions for offenses related to unserialized firearms. The information must include data on whether charges were dismissed, whether the defendant was acquitted or convicted, or whether the charges were resolved on other grounds, including as a result of plea bargaining.

4. Argument in Support

According to the City of Alameda:

Despite the progress California has made towards enacting common-sense gun laws and policy, our nation continues to endure senseless acts of gun violence. In the last several years, the number of ghost guns recovered has drastically increased. In 2021, Los Angeles Police Department (LAPD) released a report asserting that 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, LAPD confiscated 863 ghost guns, close to a 300% increase over the previous year.

AB 97 will provide California lawmakers with data on the proliferation of ghost guns in California and how those in possession of ghost guns are being prosecuted. Currently there are no records of existence for ghost guns and the guns are acquired without a background check, making it impossible to trace the firearm to the owner when used in a crime.

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