

June 2024 Legislation/Litigation Update

July Focus

Jaymes v. Maduros is a new lawsuit challenging the 11% excise tax imposed by AB28. The Firearm Policy Coalition, the California Rifle and Pistol Association, and the National Rifle Association are backing the suit, saying the tax on firearms and ammunition is an infringement on Second Amendment rights of Californians.

Legislation

SB 53, as amended, Portantino. Firearms: storage.

Existing law generally regulates the possession of firearms, including imposing storage requirements to prevent children from gaining access to firearms.

This bill would, beginning on January 1, 2026, prohibit a the owner or other lawfully authorized user of a firearm from keeping or storing a firearm in a residence owned or controlled by that person unless the firearm is stored in a locked box or safe that is listed on the Department of Justice's list of approved firearm safety devices and is properly engaged so that the firearm cannot be accessed by any person other than the owner, as specified. The bill would make a first violation of this offense punishable as an infraction, and a second or subsequent violation punishable as a misdemeanor. The bill would exempt firearms that are permanently inoperable from these provisions. The bill would require the Department of Justice to promptly engage in a public awareness and education campaign to inform residents about these standards for storage of firearms. The bill would additionally prohibit a person convicted under these provisions from owning, purchasing, receiving, or possessing a firearm within one year of the conviction, as specified. The bill would make a violation of this provision punishable as a misdemeanor or felony. By creating a new crime, this bill would impose a state-mandated local program.

Existing law requires a firearm that is sold or transferred by a licensed firearms dealer, including a private transfer through a dealer, and any firearm manufactured in this state, to include or be accompanied by a firearm safety device, as specified.

This bill would instead require, beginning on January 1, 2026, the firearm to include or be accompanied by a lock box or safe, except as specified.

Existing law makes it a misdemeanor or a felony if a person keeps a firearm within any premises that are under the person's custody or control and the person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, and the child obtains access to the firearm and causes injury, other than great bodily injury, or death or great bodily injury to the child or any other person, or carries that firearm off-premises, as defined, to a public place or a school. Existing law exempts a person from the above provisions if the person has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

This bill would remove these exemptions.

Passed By the Senate and ordered to the Assembly. April 29, 2024, referred to Assembly Committee on Public Safety. 6/11/2024 passed by the Committee on Public Safety and re-referred to the Committee on Appropriations.

AB 3064, as introduced, Maienschein. Firearms.

(1) Existing law requires the Department of Justice to compile, publish, and maintain a roster listing all of the firearm safety devices that have been tested by a certified testing laboratory, have been determined to meet the department's standards for firearm safety devices, and therefore may be sold in this state.

This bill would, commencing on January 1, 2026, authorize the department to charge each entity that manufactures or imports into the state for sale any firearm safety device listed on the roster, an annual fee, as specified. The bill would additionally require that any device newly added to the roster have certain information engraved or otherwise permanently affixed to the device. The bill would also require any entity seeking to list a device to comply with specified business standards.

This bill would provide a process by which a device that has been removed from the roster for nonpayment of the fee, to be relisted. The bill would also provide a process for a device model that is identical to a listed model except for certain cosmetic differences to be listed without testing. These processes require the submission of certain statements signed under penalty of perjury.

By expanding the offense of perjury, this bill would impose a state-mandated local program.

This bill would also require the manufacturer of any device listed on the roster that becomes subject to a product recall, as specified, to notify the department, as specified. The bill would authorize the department to remove the device from the roster if the manufacturer fails to provide this notice.

(2) Existing law requires any person, within 60 days of bringing a firearm into the state, to mail or personally deliver to the Department of Justice a report, as prescribed by the department, describing the firearm and providing personal information.

Existing law requires any sale, loan, or transfer of a firearm to be processed through a licensed firearms dealer. Existing law exempts from this requirement the transfer of certain firearms that are curios or relics to a licensed firearm collector. Existing law requires a collector who receives a firearm pursuant to these provisions, within 30 days after taking possession, to mail or personally deliver to the Department of Justice a report, as prescribed by the department, describing the firearm and providing personal information.

This bill would additionally allow the person to electronically submit these reports. The bill would also authorize the department to request photographs of the firearm to determine if it is a prohibited weapon, as specified.

(3) Existing law exempts certain other transactions from the requirement to be processed through a licensed firearms dealer and does not require these transactions to be reported to the Department of Justice, including, without limitation, sales, deliveries, or transfers of

firearms between importers and manufacturers of firearms, transfers of firearms to a gunsmith for repairs, loans of a firearm to a hunter, loans of a firearm to a person attending a police academy, and temporary transfers of a firearm for safekeeping, as specified. Existing law allows a person transferring or receiving a firearm pursuant to one of these provisions or a person moving out of state with a firearm to report that information to the department.

This bill would require a report submitted pursuant to this provision to be submitted electronically and would prescribe the information to be included in the report. The bill would require the department to establish a fee for submission of this information, as specified. The bill would also authorize the department to request photographs of the firearm to determine if it is a prohibited weapon, as specified. The bill would make the filing of any false information pursuant to this provision a crime punishable as a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

This bill would also require the department, upon receipt of this information, to examine specified records to determine if the transferee is prohibited from possessing a firearm.

The bill would make other conforming changes.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Passed by the Assembly and ordered to the Senate. Passed by the Senate Committee on Public Safety and re-referred to Committee on Appropriations.

SB 1253, as introduced, Gonzalez. Firearms: firearm safety certificates.

Existing law requires any person who purchases or receives a firearm to possess a firearm safety certificate. Existing law also prohibits a person from selling or transferring a firearm to any person who does not possess a firearm safety certificate.

This bill would require any person moving into the state with a firearm to obtain a firearm safety certificate within 120 days after arriving in the state and make a violation of this provision a misdemeanor.

May 21, passed by the Senate and ordered to the Assembly. Passed by the Assembly Committee on Public Safety and re-referred to the Committee on Appropriations.

SB 1002, as introduced, Blakespear. Firearms: prohibited persons.

Existing law prohibits a person who has been taken into custody, assessed, and admitted to a designated facility, or who has been certified for intensive treatment after having been admitted to a designated facility, because the person is a danger to themselves or others as a result of a mental health disorder, from owning a firearm for a period of 5 years after the person is released

from the facility, or for the remainder of their life if the person has previously been taken into custody, assessed, and admitted one or more times within a period of one year preceding the most recent admittance. Existing law requires the facility to submit a report to the Department of Justice containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility. Existing law allows a person who is prohibited from owning a firearm pursuant to these provisions to request the court for a hearing to reinstate the person's right to own a firearm, and requires the facility to provide a person subject to the prohibition with the "Patient Notification of Firearm Prohibition and Right to Hearing Form" informing the person of the firearm prohibition and their right to request a hearing.

This bill would, among other things, instead require the 5-year prohibition to commence on the date that the facility makes the above-described report to the Department of Justice, and would require the Department of Justice to, within 7 days of receipt of the report from the facility, notify a person subject to the above-described provisions of the firearm prohibition and their right to request a hearing to reinstate their right to own a firearm. The bill would require a person subject to the firearms prohibition to relinquish any firearm, ammunition, or firearm magazine they own, possess, or control within 72 hours of discharge from a facility, as specified, and would require the "Patient Notification of Firearm Prohibition and Right to Hearing Form" to include information on the relinquishment requirement.

Existing law also prohibits a person who has been found not guilty by reason of insanity of specified crimes and a person who has been placed under conservatorship by a court because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism from purchasing or receiving, or attempting to purchase or receive, or having possession, custody, or control of any firearm or any other deadly weapon.

This bill would require the court to inform the above-described persons, and their conservator, if applicable, of how the person may relinquish any firearm, ammunition, or firearm magazine in the person's possession, custody, or control according to local procedure, and the process for submitting a receipt to the court to show proof of relinquishment.

May 23, passed by the Senate and ordered to the Assembly. June 3 referred to the Committee on Public Safety.

SB 1019, as introduced, Blakespear. Firearms: destruction.

Existing law requires the destruction of certain firearms, in the possession of a law enforcement agency, that have been confiscated, seized, abandoned, unclaimed, or surrendered.

This bill would specify that destruction of a firearm means destroying the firearm in its entirety by smelting, shredding, crushing, or cutting all parts of the firearm, including any attachments. The bill would also require every law enforcement agency, as defined, to develop and maintain a written policy regarding the destruction of firearms and shall make that policy available on its internet website.

By requiring local law enforcement agencies to follow specified requirements for destruction and to create and maintain a written policy on firearm destruction, this bill would impose a state-mandated local program.

May 23, passed by the Senate and ordered to the Assembly. Passed by the Committee on Public Safety and re-referred to the Committee on Appropriations.

AB 2842, as introduced, Papan. Firearms.

Existing law requires that a weapon acquired by a specified governmental entity under specified circumstances, including as part of a “gun-buyback” program, be destroyed.

This bill would require a law enforcement agency that contracts with a third party for the destruction of firearms or weapons to ensure that the contract for those services prohibits the sale of any parts of, or attachments to, the firearm or other weapon, as specified.

The bill would also exempt from the destruction requirement, any firearm obtained through a “gun-buyback” program that is donated to a historical society, museum, or institutional collection, as specified.

May 9, passed by the Assembly and ordered to the Senate. Passed by the Committee on Public Safety and re-referred to the Committee on Appropriations.

SB 902, as introduced, Roth. Firearms: public safety.

Existing law, subject to exceptions, provides that any person who has been convicted of certain misdemeanors may not, within 10 years of the conviction, own, purchase, receive, possess or have under their custody or control, any firearm and makes a violation of that prohibition a crime.

Existing law, with certain exceptions, makes it a crime to maliciously and intentionally maim, mutilate, torture, wound, or kill a living animal.

This bill would provide that any person convicted of a misdemeanor violation of the above-described crimes, on or after January 1, 2025, may not, within 10 years of the conviction, access a firearm as described above, and makes a violation of that prohibition a crime. Because a violation of these provisions would be a crime, and because this bill would expand the application of the crime to a larger class of potential offenders, this bill would impose a state-mandated local program.

May 21, passed by the Senate and ordered to the Assembly. Passed by the Committee on Public Safety and re-referred to Committee on Appropriations.

AB 2739, as introduced, Maienschein. Firearms.

(1) Existing law requires any weapon that was carried unlawfully for specified crimes to be surrendered to specified law enforcement entities. Existing law requires weapons surrendered pursuant to these provisions to be destroyed by the law enforcement entity.

This bill would additionally require a weapon carried unlawfully for those crimes to be surrendered to law enforcement if the defendant is granted diversion for the underlying crime.

(2) Existing law prohibits the carrying of a concealed firearm, as specified and except as exempted. Under existing law, a handgun carried in violation of this provision is a nuisance and is subject to forfeiture and destruction, as specified.

Existing law also prohibits carrying a loaded firearm in public, as specified and except as exempted, and openly carrying an unloaded handgun in public, as specified and except as exempted.

This bill would deem any firearm carried in violation of either of these provisions to be a nuisance and subject to forfeiture and destruction, as specified.

May 13, passed by the Assembly and ordered to the Senate. Passed by the Senate Committee on Public Safety and re-referred to the Committee on Appropriations.

AB 1252, as amended, Wicks. Office of Gun Violence Prevention.

Under existing law, the Department of Justice is responsible for carrying out several functions related to the sale, delivery, and transfer of firearms, including maintaining a centralized list of all persons licensed to sell firearms and inspecting firearms.

This bill would establish, within the Department of Justice, the Office of Gun Violence Prevention. This bill would further establish, within the Department of Justice, a Commission to End Gun Violence. This bill would require the commission, within one year of its creation, to issue a public report discussing the implementation, coordination, and effectiveness of gun violence prevention laws and programs, as specified.

Passed by the Assembly. May 1, referred to Senate Public Safety Committee.

For information on bills in the California legislature:

<https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

Litigation

Cargill v Garland

This was a challenge to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) “re-defining” bump-stocks to be equivalent to machine guns, and therefor subject to the same federal regulations. The court ruled that the ATF did not have authority to ban bump-stocks by changing a definition and that such a ban must be passed by Congress. NOTE: this was not a ruling based in the second amendment—the court held that the ATF violated the Administrative Procedures Act by regulating bump-stocks without a legal basis. The court indicated that if Congress passes a bump-stock ban and the president signs it, it might be legal.

United States v Rahimi

This was a challenge to whether a gun violence restraining order (Red Flag Order) could restrict an individual’s second amendment rights if they had not been convicted of a crime. In an eight to one decision the court upheld the government’s ability to temporarily restrict gun rights if a court order finds the individual “poses a credible threat to the physical safety of a protected person”. Language in the opinion may alter the application of the legal tests laid out in NYSRPA v Bruen and Heller v District of Columbia.

Van Der Stok v Garland is a challenge to the ATF rules change regarding frames and receivers, filed by the Firearm Policy Coalition. The 5th Circuit Court of Appeals ruled against the ATF rule change in February, saying they had overstepped their statutory authority. The government petitioned the Supreme Court arguing that the 5th circuit wrongly ruled in FPC's favor. The Supreme Court has granted certiorari and will hear the government's appeal during this session.

May v Bonta is a challenge to SB2 changes to CCW regulations. SB2 made much of the state into "sensitive places" where concealed carry of firearms would be illegal, even with a CCW permit. The training and application process to obtain and renew a CCW became for difficult and expensive. On December 24 (yes, Christmas Eve) a motions panel of the Ninth Circuit Court of Appeals stayed a lower court order that prevented the "sensitive places" rules from going into effect January 1. On January 6 the merits panel of the Ninth Circuit dissolved the stay; this reinstated the district court ruling declaring that the "sensitive places" part of SB2 unconstitutional. The "sensitive places" provisions of SB2 have not taken effect due to the district court's order, although the other provisions are in effect while being challenged.

A hearing on May v Bonta was held April 11, 2024, in front of a three judge panel of the Ninth Circuit. We are waiting for a decision.

Duncan v Bonta is the challenge to the "High-Capacity Magazine" ban, which Judge Roger Benitez found unconstitutional in 2017. In 2018 a three-judge panel of the Ninth Circuit Court of Appeals upheld Judge Benitez's ruling. The Ninth Circuit, responding to a petition from the state, then vacated the ruling of the three-judge panel and reheard the case En Banc, meaning an eleven-judge panel. The En Banc ruling reversed Judge Benitez's ruling. The case was appealed to the Supreme Court, which agreed to hear the case, vacated the Ninth Circuit ruling, and remanded the case back to the Ninth Circuit to reconsider the case in light of the Bruen decision. NYSRPA v Bruen is a Supreme Court decision that includes clear direction to inferior courts on how to handle second amendment cases. The Ninth Circuit in turn remanded the case back to Judge Benitez. Judge Benitez has again found the "High Capacity Magazine" ban unconstitutional, and issued an injunction against the state enforcing Penal Code Section 31320. Judge Benitez stayed his order for ten days to allow the state to appeal back to the Ninth Circuit Court of Appeals, which the Attorney General did. The Ninth Circuit assigned the petition for a stay to the 11-judge panel that previously heard the case, rather than the normal process of sending it to a three-judge "motions panel", and the 11-judge panel granted the stay on Judge Benitez' ruling. A hearing on the merits by the same 11-judge "En Banc" panel was held March 19, 2024. We are waiting for a decision.

Jr. Shooting Sports Magazine v Bonta challenges the California ban on marketing or advertising firearms and firearm related products to youth. The district court denied the petition for a Preliminary Injunction against enforcing this. The denial was appealed to the Ninth Circuit Court of Appeals, where a three-judge panel reversed the district court denial of an injunction. The state then petitioned for an En Banc review of the three-judge panel's decision. On February 20, the petition for an En Banc review was denied, and the case will be returned to the district court to reconsider the Preliminary Injunction.

Rhode v Bonta challenges the ammunition background check and importation rules. The district court, Judge Benitez of the Southern District of California, ruled on January 30 that these regulations are unconstitutional and issued a permanent injunction against the state enforcing them. Judge Benitez did not stay his ruling, and there was a brief period when ammunition could be ordered from out of state and shipped straight to the consumer. The Ninth Circuit Court of Appeals did stay the injunction on February 5, and the regulations immediately went back into effect. The case is now pending appeal to the Ninth Circuit.

Boland V Bonta, a challenge to the California Unsafe Handguns Act (AKA Pistol Roster) has been vacated and pended to *Duncan v Bonta*, which is the challenge to the “large capacity magazine” ban. *Miller v Bonta*, a challenge to the Assault Weapons Ban, had previously been pended to *Duncan v Bonta*. It appears the eleven judge En Banc panel will decide all three for the Ninth Circuit Court of Appeals.

A federal district court judge, the Honorable Josephine Staton of the Central District of California, has ruled the Assault Weapon Control Act constitutional and granted the state’s motion for summary judgement in **Rupp v Bonta**, which is a parallel case to **Miller V Bonta**. The judge held that the assault weapon ban did not infringe, because the second amendment only applies to “a well regulated militia.” This case had been previously decided by the district court, and that decision was upheld by the Ninth Circuit. It was on appeal to the Supreme Court at the time of the Bruen decision and was vacated and remanded back to the Ninth Circuit who remanded back to Judge Staton for reconsideration.

Nguyen v Bonta, is a challenge to California’s one gun per thirty days purchase rationing. Judge William Q. Hayes of the US district court for California’s southern district granted the plaintiff’s motion for summary judgment, declaring the one in thirty limit unconstitutional. The order has been stayed pending appeal. Oral arguments are scheduled August 14.

Respectfully submitted,

David Smith