

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Eloise Gómez Reyes, Chair
SB 172 (Portantino) – As Amended June 12, 2019

SENATE VOTE: 26-9

SUBJECT: Firearms

SUMMARY: Establishes the “Keep Our Seniors Safe Act” to ensure that residential care facilities for the elderly (RCFEs) that allow residents to possess firearms on the premises meet certain requirements regarding the storage of firearms and ammunition, and adopts changes to broaden criminal storage crimes, add criminal storage offenses to those offenses that can trigger a 10-year firearm ban, and create an exemption to firearm loan requirements for the purposes of preventing suicide. Specifically, **this bill:**

- 1) Creates the “Keep Our Seniors Safe Act” by adopting the following definitions, requirements, prohibitions, and authorizations:
 - a) Defines the following terms:
 - i) “Firearm” to mean a device that is designed to be used as a weapon from which a projectile is expelled through a barrel, as specified;
 - ii) “Ammunition” to mean one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles, not to include blanks;
 - iii) “Deadly weapon” to mean any weapon or destructive device as defined in current state law, as specified;
 - iv) “Handgun” to mean the same as the term is defined in current state law;
 - v) “Antique firearm” to have the same meaning as set forth in current federal law;
 - vi) “Owner” to mean the owner of a firearm or ammunition;
 - vii) “Facility” to mean an RCFE licensed by the Community Care Licensing Division (CCLD) at the California Department of Social Services (CDSS); and,
 - viii) “Authorized intake representative” to mean the facility administrator or, if the licensee is the administrator, an additional designee that the licensee is required to name who may also act as the authorized intake representative.
 - b) Requires CDSS to promulgate regulations that, for RCFEs that allow residents to possess firearms on their premises, prescribe procedures to do all of the following:
 - i) Accept and store a resident’s firearm or ammunition;
 - ii) Retain and store a licensee’s firearm or ammunition;

- iii) Require residents' and licensees' firearms or ammunition to be centrally stored in the facility unloaded and separate from ammunition, in a locked gun safe that meets certain criteria, as specified; and,
 - iv) Require an individual weapons inventory as established by provisions of this bill to be completed and processed for each firearm and ammunition contained in the centrally stored gun safe.
- c) Requires access to the gun safe to be limited to the facility administrator.
- d) Requires any RCFE that allows residents to possess firearms on its premises to prepare an individual weapons inventory for each firearm and type of ammunition that is secured in the centrally stored gun safe described by provisions of this bill.
- e) Requires an individual weapons inventory to include two parts, as follows:
- i) Part I is required to document the enrollment of firearms and ammunition and to include certain information including, among other pieces of information: the name of the owner, identification of the firearm, the owner's applicable permit or registration number, the handwritten date and signature by the owner and the authorized intake representative, as specified; and,
 - ii) Part II is required to document the removal of firearms and ammunition from the RCFE and to include certain information including: the date on which the firearm was removed from the RCFE, contact information and photo identification for the person to whom possession of the firearm or ammunition was transferred, and the handwritten date and signature by the person who took possession of the firearm or ammunition and the authorized intake representative, as specified.
- f) Requires an RCFE to maintain the completed, original individual weapons inventory in a centralized weapons inventory file and in the resident's file and, further, within five days of the owner of the firearm or ammunition signing the inventory, requires the facility administrator to provide a copy to the owner and to the Department of Justice (DOJ), as specified.
- g) Prohibits a licensee from accepting, retaining, or storing any deadly weapons or certain firearms, including, among others, destructive devices and explosives, assault weapons, machine guns, short-barreled rifles or shotguns, certain firearms that have not obtained a unique serial number or other mark of identification from DOJ required by current law, and, as of July 1, 2020, a firearm other than an antique firearm for which the owner is not listed on the firearm registry maintained by the Attorney General (AG), as specified.
- h) Authorizes a licensee to accept, retain, or store a firearm which is exempt from being registered with DOJ because it is registered with the AG if that firearm has been assigned a distinguishing number or mark of identification, as specified.
- i) Prohibits the acceptance or storage of a resident's firearm by an RCFE pursuant to the provisions of this bill or the retention and storage of a licensee's firearm from constituting a loan, sale, receipt, or transfer of a firearm, as specified.

- j) Requires any RCFE that permits residents to possess firearms on its premises to disclose and demonstrate all of the following upon the request of CDSS:
 - i) The firearms and ammunition are stored in compliance with storage requirements;
 - ii) Stored firearms and ammunition are inaccessible to residents with dementia;
 - iii) The RCFE maintains an inventory of firearms and ammunition held in the facility; and,
 - iv) The RCFE maintains a log to document when a firearm is placed in storage and when it is removed from storage.
 - k) States that the provisions of the “Keep Our Seniors Safe Act” does not require an RCFE to accept, store, or retain firearms or ammunition.
- 2) Makes changes to Penal Code that:
- a) Broaden criminal storage crimes;
 - b) Add criminal storage offenses to those offenses that can trigger a 10-year firearm ban; and,
 - c) Create an exemption to firearm loan requirements for the purposes of preventing suicide.

EXISTING LAW:

- 1) Establishes the “California Community Care Facilities Act” to provide for the licensure and regulation of community care facilities. (Health and Safety Code [HSC] Section 1500 *et seq.*)
- 2) Defines “community care facility” to mean any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, individuals with physical disabilities or mental impairments and abused or neglected children. Includes within this definition, among a number of other facilities: adult day programs, foster family homes, small family homes, full-service adoption agencies, short-term residential therapeutic programs, and crisis nurseries. (HSC 1502(a))
- 3) Establishes the “California Residential Care Facilities for the Elderly Act” to provide for the licensure and regulation of RCFEs as a separate category within the existing licensing structure of the CDSS. (Health and Safety Code [HSC] 1569 *et seq.*)
- 4) Defines “residential care facility for the elderly” to mean a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. (HSC 1569.2(p)(1))
- 5) Requires, in state regulations pertaining to the licensure of community care facilities, the following regarding the storage of firearms and ammunition in RCFEs:

- a) Disinfectants, cleaning solutions, poisons, firearms and other items which could pose a danger if readily available to clients to be stored where inaccessible to clients and to not be stored in food storage areas or storage areas used for or by clients;
- b) Storage areas for poisons, firearms, and other dangerous weapons to be locked or, in lieu of locked storage for firearms, the licensee to use trigger locks or remove the firing pin and store and lock the firing pin separately from firearms; and,
- c) Ammunition to be stored and locked separately from firearms. (Title 22 of California Code of Regulations [CCR], Section 87309)

FISCAL EFFECT: According to the Senate Appropriations Committee on May 13, 2019, this bill may result in the following costs:

- CDSS: One-time costs of \$298,000 in year one of implementation and \$274,000 in year two for a two-year contract to provide training for all field staff for compliance with this measure, 1.0 limited term staff to develop and promulgate regulations, and 1.0 permanent field staff member to complete facility inspections for firearm safety. (General Fund)
- Department of Justice (DOJ): Ongoing annual costs of \$74,000 (not including benefits or operating expenses and equipment) for 1.0 permanent Research Data Specialist (RDS) I and unknown costs in overtime to update the Automated Criminal History System (ACHS). See Staff Comments. (Special Fund*)
- Courts: Unknown, potentially-significant workload cost pressures to the courts to adjudicate charges brought against defendants who violate the Keep Our Seniors Safe Act. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. For example, the governor's proposed 2019-20 budget seeks to appropriate \$52.5 million from the General Fund to backfill continued reduction in fine and penalty revenue for trial court operations. (General Fund**)

*Firearms Safety and Enforcement Special Fund

**Trial Court Trust Fund

COMMENTS:

Community care licensing and RCFEs: CCLD within CDSS is charged with licensing and regulating a variety of community care facilities, defined in the California Health and Safety Code as “any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children” (HSC 1502). Community care facilities include an array of programs and settings, such as foster family agencies, foster family homes, adult day programs, social rehabilitation facilities, transitional shelters, group homes, runaway and homeless youth shelters, and others. CCLD also licenses and regulates facilities such as child care centers and RCFEs. There were approximately 72,000 CCLD-licensed facilities with the total capacity to serve almost 1.4 million Californians as of June 29, 2018. These include 7,252 RCFEs with capacity to serve a total of 153,195 individuals.

RCFEs – often referred to as assisted living facilities – are housing arrangements for individuals who are at least 60 years old that provide room, board, housekeeping, supervision, and personal care assistance with activities of daily living. Levels and intensity of care and supervision can vary according to a resident’s needs. As of January 1, 2019, CCLD is required to conduct annual unannounced inspections of all RCFEs (in addition to investigations in response to complaints).

Requirements regarding storage of firearms and ammunition at RCFEs: State regulations regarding the licensure of community care facilities (22 CCR 87309) require firearms to be stored where inaccessible to clients either in locked storage areas or, in lieu of locked storage, regulations require the licensee to use trigger locks or remove the firing pin and store and lock the firing pin separately from firearms. Ammunition is required to be stored and locked separately from firearms.

It appears that the regulations only apply to a licensee’s firearms. CDSS is currently in the process of updating regulations so that they apply to residents as well as licensees. It is unclear how many RCFEs licensed in California currently permit residents to store firearms or ammunition on premises.

Need for this bill: According to the author, “The Health & Safety Code (H&SC) does not stipulate accountability, disclosure, or safe storage requirements for guns, other dangerous weapons or ammunition retained in an assisted living facility. An estimated 70% of RCFE residents have a cognitive impairment (mild to severe) due to Alzheimer’s Disease or related dementias; dementia is a primary reason families seek an assisted living placement for their family member. Behaviors associated with dementia included disorientation, confusion, changes in mood or personality and impaired judgment. These behaviors, coupled with unsecured weapons and ammunition *pose unreasonable risk* of harm to residents, and 3rd parties visiting or working in an RCFE.

“This bill will assure weapons are uniformly and safely secured inside RCFEs, and will reduce the likelihood of a tragic firearms event within an RCFE. We have worked closely with the stakeholders on this issue, and are in contact with DSS to see what if any additional provisions they may want or need.”

Arguments in support: Writing in support of this bill, Brady California United Against Gun Violence states that, “The bill will require the facility to maintain an individual weapons inventory for each firearm and type of ammunition stored within the facility and submit the inventories to the Department of Justice. These requirements will help ensure the safety of residents, visitors, and employees in the facility and make certain that all firearms are tracked.”

Arguments in opposition: Writing in opposition to this bill, the National Rifle Association states that, “[This bill] imposes a new section to the California Residential Care Facilities for the Elderly Act, imposing onerous requirements for the storage of firearms and ammunition... This legislation appears to be more of a disincentive for facilities that currently offer such a service to continue to do so.”

Staff comments: In addition to establishing the “Keep Our Seniors Safe Act,” this bill makes a number of changes to the Penal Code having to do with the storage of firearms. These changes fall within the jurisdiction of the Assembly Public Safety Committee, which heard this bill on June 25, 2019, and provided an analysis of those components at that time. The licensing and

regulation of RCFEs fall within the jurisdiction of this Committee, and therefore this analysis is restricted to the elements of the bill pertaining to firearm and ammunition storage in RCFEs.

Double referral: This bill passed out of the Assembly Public Safety Committee on June 25, 2019, with a 5-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

211 California
211 LA County
Bay Area Student Activists
Brady California United Against Gun Violence
California Academy of Family Physicians
County of Los Angeles Board of Supervisors
Drain The NRA

Opposition

California Sportsman's Lobby, Inc.
Gun Owners of California, Inc.
National Rifle Association - Institute For Legislative Action
Outdoor Sportsmen's Coalition of California
Safari Club International - California Chapters

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