
.SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1511 **Hearing Date:** May 10, 2016
Author: Santiago
Version: May 4, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: Lending*

HISTORY

Source: Author

Prior Legislation: None known

Support: Coalition Against Gun Violence, a Santa Barbara County Coalition; Everytown for Gun Safety; Law Center to Prevent Gun Violence; Moms Demand Action for Gun Sense in America

Opposition: California Sportsman’s Lobby; California State Sheriffs’ Association; Firearms Policy Coalition; Safari Club International; Outdoor Sportsmen’s Coalition of California

Assembly Floor Vote: Not Relevant

PURPOSE

The purpose of this bill is to modify firearm loan provisions relating to (1) infrequent loans to persons known to each other, and (2) loans to a licensed hunter.

Current federal law requires licensed firearms dealers, before they may deliver a firearm to a purchaser, to perform a background check on the purchaser through the federal National Instant Criminal Background Check System (“NICS”). (18 U.S.C §§ 921, et seq.)

Existing law requires that, except as specified, all sales, loans, and transfers of firearms to be processed through or by a state-licensed firearms dealer or a local law enforcement agency. (Penal Code § 27545.)

Existing law provides that there is a 10-day waiting period when purchasing a firearm through a firearms dealer. During which time, a background check is conducted and, if the firearm is a handgun, a handgun safety certificate is required prior to delivery of the firearm. (Penal Code §§ 26815, 26840(b) and 27540.)

Existing law creates numerous exceptions to a variety of different and specified firearms transfer requirements, including penal code section 27545, for loans of firearms under a variety of different circumstances. The general categories of these exceptions are:

- For target shooting at target facility. (Penal Code § 26545.)
- To entertainment production. (Penal Code § 26580.)
- Several exceptions relating to law enforcement officers and government agencies (Penal Code §§ 2660, et seq.)
- For infrequent loan of non-handgun; curio or relic (Penal Code § 27966) [commencing January 1, 2014]
- To a consultant-evaluator. (Penal Code § 27005.)
- To minors. (Penal Code § 27505.)
- Infrequent loans to persons known to each other. (Penal Code § 27880.)
- Where the firearm stays within the presence of the owner. (Penal Code § 27885.)
- To a licensed hunter. (Penal Code § 27950.)

Existing law that provides for infrequent loans to person known to each other, as specified in penal code section 27880, allows for the loan of a firearm between persons known to each other, if the following requirements are met:

- The loan is infrequent, as defined in Section 16730;
- The loan is for any lawful purpose;
- The loan does not exceed 30 days in duration; and
- Until January 1, 2015, if the firearm is a handgun, the individual being loaned the firearm shall have a valid handgun safety certificate. Commencing January 1, 2015, for any firearm, the individual being loaned the firearm shall have a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used.

Existing law provides for the loan of a firearm, other than a handgun, to a licensed hunter for use by that hunter for a period of time not to exceed the duration of the hunting season for which the firearm is to be used. (Penal Code § 27950.)

This bill would limit the infrequent loan provisions to a loan to “a spouse, registered domestic partner, or any of the following relations, whether by consanguinity, adoption, or steprelation: (1) Parent. (2) Child. (3) Sibling. (4) Grandparent. (5) Grandchild.”

This bill would limit the licensed hunter loan provision to only allow for a loan to a “person personally known to the transferor if that person has a California hunting license and only possesses the firearm while engaged in hunting.”

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Effect of This Legislation

This legislation would modify firearm loan provisions relating to (1) infrequent loans to persons known to each other, and (2) loans to a licensed hunter.

The provisions of current law which allow for firearms to be infrequently loaned to a person known to the owner, authorizes a firearm to be loaned between persons who are personally known to each other, if all of the following requirements are satisfied:

- The loan is infrequent, meaning, for handguns, less than six transactions per calendar year and for firearms other than handguns, occasional and without regularity.
- The loan is for any lawful purpose.
- The loan does not exceed 30 days in duration.
- If the firearm is a handgun, the individual being loaned the handgun shall have a valid handgun safety certificate.

(Penal Code § 27880.)

This legislation would delete the requirement that the person be personally know to the owner of the firearm, and would instead require that the loan be made to a specified family member.

Existing law provides for the loan of a firearm, other than a handgun, to a licensed hunter for the duration of the hunting season for which the firearm is to be used. This legislation limits this loan provision to a person who is personally known to the owner of the firearm and would only allow that person to possess the firearm while engaged in hunting.

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