
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1695 **Hearing Date:** June 14, 2016
Author: Bonta
Version: May 31, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: False Reports of Stolen Firearms*

HISTORY

Source: Author

Prior Legislation: None known

Support: California Chapters of the Brady Campaign to Prevent Gun Violence; California Police Chiefs Association; Law Center to Prevent Gun Violence; City of Oakland; American Academy of Pediatrics; California Chapter of the American College of Emergency Physicians

Opposition: The California Sportsman's Lobby, Inc; Firearms Policy Coalition; National Rifle Association; National Shooting Sports Foundation, Inc.; Outdoor Sportsmen's Coalition of California; Safari Club International

Assembly Floor Vote: 51 - 28

PURPOSE

The purpose of this bill is to: 1) make it a misdemeanor to falsely report that a firearm has been stolen, as specified; and, 2) add misdemeanor falsely reporting that a firearm has been stolen to offenses for which a conviction results in a 10-year prohibition on possession of a firearm.

Lost or Stolen Firearms

Existing law provides that persons licensed to make, import, collect, or deal in firearms are required to report the loss or theft of firearms they possess, to a law enforcement agency. For example, Penal Code section 26885 requires licensed dealers to report losses within 48 hours and Penal Code section 29115(a) requires licensed firearms manufacturers – whether of handguns or long guns – to report the loss or theft of firearms within 48 hours to specified law enforcement agencies.

Existing law requires handguns to be centrally registered at time of transfer or sale due to various transfer forms centrally compiled by the Department of Justice (DOJ). DOJ is required to keep a registry from data sent to DOJ indicating who owns what handgun by make, model, and serial number and the date thereof. (Penal Code § 11106(a) and (c).) After 2017, this registry will include data on ownership of long guns, as well as handguns. (Chap. 745, Stats. of 2011.) Law

enforcement agencies must promptly report to DOJ all reports they receive of lost, stolen, and found property. (Penal Code §§ 11107, 11108.) DOJ must keep a centralized and computerized list of all lost, stolen, and found serialized property reported to it. (Penal Code § 11106(a).)

Existing law provides that in addition to the requirements of Section 11108 that apply to a local law enforcement agency's duty to report to the DOJ the recovery of a firearm, a police or sheriff's department shall, and any other law enforcement agency or agent may, report to the department in a manner determined by the AG in consultation with the Bureau of Alcohol, Tobacco, Firearms and Explosives all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. In addition, any law enforcement agency or agent may report to the Attorney General pursuant to this section all information pertaining to any firearm taken into custody, except where the firearm has been voluntarily placed with the law enforcement agency for storage. (Penal Code § 11108.3.)

Existing law provides that if any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance because it was unlawfully carried or used without the prior knowledge of its lawful owner that it would be so used, it shall be restored to the lawful owner, as soon as its use as evidence has been completed. The lawful owner must identify the weapon and provide proof of ownership. (Penal Code § 18005(b).)

Existing law requires that any person seeking the return of a firearm in the custody or control of a court or law enforcement agency must submit specified information, including for handguns the firearm's make, model, caliber, barrel length, handgun type, country of origin, and serial number. If the firearm has been reported lost or stolen to a law enforcement agency, as specified, the agency shall notify the owner or person entitled to possession of the firearm. The person seeking return of the firearm shall be subject to a background check, as specified. (Penal Code §§ 33850, 33855.)

This bill would make it a misdemeanor to report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false.

Firearms Prohibition

Existing law requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to DOJ to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. (Penal Code § 28160-28220.)

Existing law requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is prohibited from purchasing a firearm. (Penal Code § 28220.)

Current federal law provides that certain people are prohibited from owning or possessing a firearm:

Any person who:

- Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- Is a fugitive from justice;
- Is an unlawful user of or addicted to any controlled substance, as defined;
- Has been adjudicated as a mental defective or who has been committed to a mental institution;
- Being an alien —
 - is illegally or unlawfully in the United States; or
 - except as specified, has been admitted to the United States under a nonimmigrant visa, as defined;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Having been a citizen of the United States, has renounced his citizenship;
- Is subject to a court order that —
 - was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- Has been convicted in any court of a misdemeanor crime of domestic violence.

(18 USC § 922(g).)

Current California law provides that certain people are prohibited from owning or possessing a firearm, including:

Lifetime Ban

- Anyone convicted of a felony;
- Anyone addicted to a narcotic drug;
- Any juvenile convicted of a violent crime with a gun and tried in adult court;
- Any person convicted of a federal crime that would be a felony in California and sentenced to more than 30 days in prison, or a fine of more than \$1,000;
- Anyone convicted of certain violent misdemeanors, e.g., assault with a firearm; inflicting corporal injury on a spouse or significant other, or brandishing a firearm in the presence of a police officer.

(Penal Code §§ 29800, 23515 and 29805.)

Existing law provides that a violation of these provisions is a felony. (*Id.*)

Ten Year Ban

Anyone convicted of numerous misdemeanors involving violence or threats of violence. (Penal Code § 29805.)

Existing law provides that a violation of these provisions is a wobbler, as specified. (*Id.*)

Five Year Ban

Any person taken into custody, assessed, and admitted to a designated facility due to that person being found to be a danger to themselves or others as a result of a mental disorder, is prohibited from possessing a firearm during treatment and for five years from the date of their discharge. (Welfare and Institutions Code §§ 8100 and 8103(f).)

Existing law provides that a violation of these provisions is a wobbler, as specified. (*Id.*)

Temporary Bans

Persons who are bound by a temporary restraining order or injunction or a protective order issued under the Family Code or the Welfare and Institutions Code, may be prohibited from firearms ownership for the duration of that court order. (Penal Code § 29825.)

Existing law provides that the violation of these provisions is a wobbler or a misdemeanor, as specified. (*Id.*)

This bill would add falsely reporting that a firearm has been stolen to offenses for which a conviction results in a 10-year prohibition on possession of a firearm, as specified.

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. Need for This Bill

According to the author:

The failure to report firearms as lost or stolen, as well as the false reporting of firearms as lost or stolen, remains a significant hindrance to the tracking of these firearms. There is a concern that a straw purchaser, who legally buys a firearm with the intent of illegally selling it to another individual, would falsely report that firearm as lost or stolen in order to place distance between themselves and any crimes committed with that firearm. AB 1695 makes filing a report that a firearm has been lost or stolen—knowing the report to be false—a misdemeanor. Additionally, AB 1695 places the convicted individual on the prohibited persons list, barring them from owning a firearm for the following ten years. This prohibition will prevent an individual convicted of this crime from subsequently acquiring additional firearms and making further illegal sales.

2. Firearms Prohibitions for Misdemeanor Offenses

As detailed above, current state and federal laws prohibit persons who have been convicted of specific crimes from owning or possessing firearms. For example, anyone convicted of any felony offense is prohibited for life from firearms ownership under both federal and state law. (18 U.S.C. § 922(g); Penal Code § 29800.) California goes further and imposes a 10-year firearms prohibition on persons convicted of numerous misdemeanor offenses that involve either violence or the threat of violence. (Penal Code § 29805.) Additionally, anyone who has been found to be a danger to themselves or others due to mental illness is subject to a five-year prohibition (Welfare and Institutions Code §§ 8100, 8103(f)), and people under domestic violence restraining orders are subject to a prohibition for the duration of that court order. (Penal Code § 29825.)

According to a study published in the Journal of American Medical Association:

Handgun purchasers with only 1 prior misdemeanor conviction and no convictions for offenses involving firearms or violence were nearly 5 times as likely as those with no prior criminal history to be charged with new offenses involving firearms or violence.

(Wintemute GJ. *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm Related Criminal Activity Among Authorized Purchasers of Handguns*. Journal of the American Medical Association 1998; 280: 2083-2087.)

To this end, this bill would not only make it a misdemeanor to falsely report a firearm lost or stolen, but would also expand the number of misdemeanor convictions resulting in a 10-year prohibition by adding falsely reporting a lost or stolen firearm.

3. Argument in Opposition

The Firearms Policy Coalition states:

AB 1695 creates a new misdemeanor crime of falsifying a report of a lost or stolen firearm, then makes that crime one which subjects the violator to a 10-year total prohibition on firearm possession for a non-violent, paperwork crime.

With more than 500 law enforcement agencies in the State—some which are tasked with enforcing local ordinances that mandate specific reporting requirements—it's difficult to conceive of a uniform prosecution scheme under AB 1695.

Each city, county, and special district may have its own form. Some might take the report online, and some might require a phone report. And some require that you report to the jurisdiction where the firearm was lost or stolen, not the city in which you live. The potential for mistakes and misinformation is great.

Yet, AB 1695 purports to sweep in and save the day with a brand-new crime to fix a non-existent problem (and, upon a conviction for that crime, tack on yet another person to the failed Armed Prohibited Persons System).

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