
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 721 **Hearing Date:** July 11, 2017
Author: Bigelow
Version: February 15, 2017
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Firearms: Prohibited Firearms*

HISTORY

Source: California District Attorneys Association

Prior Legislation: None

Support: California State Sheriffs' Association; Peace Officers Research Association of California; Riverside Sheriff's Association; San Diego County District Attorney

Opposition: California Attorneys for Criminal Justice

Assembly Floor Vote: 66 - 4

PURPOSE

The purpose of this bill is to specify that district attorneys' offices and their employees, may purchase and possess short-barreled rifles and short-barreled shotguns.

Existing law provides that, subject to exceptions, no person may manufacture, import into this state, keep for sale, offer for sale, give, lend, or possess any short-barreled rifle or short-barreled shotgun. Nothing else in any provision shall be construed as authorizing the manufacture, importation into the state, keeping for sale, offering for sale, or giving, lending, or possession of any short-barreled rifle or short-barreled shotgun. (Pen. Code, § 33210.)

Existing law provides that, subject to exceptions, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any short-barreled rifle or short-barreled shotgun is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to realignment. (Pen. Code, § 33215.)

Existing law exempts the sale to, purchase by, or possession of short-barreled rifles or short-barreled shotguns by a police department, sheriff's office, marshal's office, the California Highway Patrol, the Department of Justice, the Department of Corrections and Rehabilitation, or the military or naval forces of this state or of the United States, for use in the discharge of their official duties. (Pen. Code, § 33220, subd. (a).)

Existing law exempts the possession of short-barreled rifles and short-barreled shotguns by peace officer members of a police department, sheriff's office, marshal's office, the California Highway Patrol, the Department of Justice, or the Department of Corrections and Rehabilitation, when on duty and the use is authorized by the agency and is within the course and scope of their duties, and the officers have completed a training course in the use of these weapons certified by the Commission on Peace Officer Standards and Training. (Pen. Code, § 33220, subd. (b).)

Existing law exempts the sale of an assault weapon or .50 BMG rifle to, or the purchase, importation, or possession of an assault weapon or a .50 BMG rifle by, the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Department of Corrections and Rehabilitation, the Department of the California Highway Patrol, district attorneys' offices, the Department of Fish and Wildlife, the Department of Parks and Recreation, or the military or naval forces of this state or of the United States, or any federal law enforcement agency for use in the discharge of their official duties. (Pen. Code, § 330625.)

Existing law exempts the sale to, purchase by, or possession of machine guns by a police department, a sheriff's office, a marshal's office, a district attorney's office, the California Highway Patrol, the Department of Justice, the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit, or the military or naval forces of this state or of the United States for use in the discharge of their official duties, provided, however, that any sale to these entities be transacted by a person who is permitted. (Pen. Code, § 32610, subd. (a).)

Existing law exempts the possession of machine guns by regular, salaried, full-time peace officer members of a police department, sheriff's office, marshal's office, district attorney's office, the California Highway Patrol, the Department of Justice, or the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit, when on duty and if the use is within the scope of their duties. (Pen. Code § 32610, subd. (b).)

This bill specifies that district attorneys' offices and their employees, may purchase and possess short-barreled rifles and short-barreled shotguns.

This bill specifies that district attorneys' offices, and peace officers within district attorneys' offices may purchase and possess short-barreled rifles and short-barreled shotguns.

This bill provides that use and purchase is permitted only when on duty and use is authorized by the agency and is in the scope of their duties.

This bill specifies that the officers must have completed a training course in the use of the weapons certified by the Commission on Peace Officer Standards and Training (POST).

COMMENTS

1. Need for This Bill

According to the author:

Currently, under Penal Code section 33220, the purchase and possession of short-barreled rifles and shotguns is authorized for a police department, sheriff's office, marshal's office, the California Highway Patrol, the Department of Justice, the Department of Corrections and Rehabilitation, or military or naval forces for use in the discharge of their official duties. Missing from that authorization is a district attorney's office, making it unlawful for a district attorney investigator to use or possess such firearms. This seems to be an unintentional oversight, as district attorney investigators (who are defined as peace officers under PC 830.1) are already authorized under PC 32610 to purchase and use machine guns, which by their very design have short barrels.

District attorney offices often rely on investigators to serve high-risk warrants, and the ability to utilize short-barreled rifles and shotguns (which are more maneuverable and concealable in tight operating quarters) would help increase investigator safety by making more tools available to these law enforcement officers.

2. Other Deadly Weapons Statutes and District Attorney Investigators

Under current law district attorney investigators are permitted to carry assault weapons and machine guns when they are on duty, and they are used within the scope of their duties. This bill actually imposes an additional mandate that the officers be trained in the use of short-barreled firearms by POST. The proponents of this legislation see the fact that district attorney investigators are not permitted to carry short barreled firearms as an oversight.

3. Theft and Loss of Firearms from Law Enforcement

One factor to consider when expanding the ability to possess dangerous weapons is that weapons can and are lost or stolen from law enforcement. On July 1, 2015, a federal ranger's stolen gun was used in the high-profile killing of Kate Steinle as she walked with her father on San Francisco Pier. A June 26, 2016 article published by the San Jose Mercury News highlighted the issue of lost or stolen guns from law enforcement.

944 Lost Guns, A Bay Area New Group Watchdog Report¹

Nine-hundred and forty-four guns. From Glocks, Sig Sauers and Remingtons to sniper and assault rifles, some equipped with grenade launchers.

¹ San Jose Mercury News, Bay Area News Group Watchdog Report, *944 Lost Guns*, by Thomas Peele, June 26, 2016; <http://extras.mercurynews.com/policeguns/>

They used to belong to law enforcement officers across California, but a new Bay Area News Group investigation found hundreds of police-issued weapons have been either stolen, lost or can't be accounted for since 2010, often disappearing onto the streets without a trace.

A year after a bullet from a federal agent's stolen gun killed 32-year-old Kate Steinle on a San Francisco pier, this news organization surveyed more than 240 local, state and federal law enforcement agencies and discovered an alarming disregard for the way many officers — from police chiefs to cadets to FBI agents — safeguard their weapons.

Their guns have been stolen from behind car seats and glove boxes, swiped from gym bags, dresser drawers and under beds. They have been left on tailgates, car roofs and even atop a toilet paper dispenser in a car dealership's bathroom. One officer forgot a high-powered assault rifle in the trunk of a taxi.

The tally includes Colts, Rugers, Smith & Wessons, a Derringer, a .44-caliber Dirty Harry hand cannon and a small snub-nosed revolver called a 'Detective Special.'

In all, since 2010, at least 944 guns have disappeared from police in the Bay Area and state and federal agents across California — an average of one almost every other day — and fewer than 20 percent have been recovered.

Little attention had been paid to the issue before Steinle's highly publicized death. But at least 86 weapons were snatched from officers' vehicles between January 2010 and last June's smash-and-grab burglary of a U.S. Bureau of Land Management ranger's gun recovered after Steinle's shooting. Police have not determined who stole it, but an illegal immigrant is charged in her killing...

...Even after Steinle's death, law enforcement agents have continued to leave guns available in their cars: Four FBI guns have been stolen from vehicles in the Bay Area this year, including three in Benicia; Salinas police had three stolen from cars in a six-week period in April and May. And a San Jose Police cadet resigned on the eve of becoming an officer after his gun was stolen from his car in late October while he was in the Benihana restaurant at Cupertino's Vallco Shopping Mall...

...Discipline appears rare

Strong discipline would help curb thefts, experts say, but it isn't clear whether such discipline happens; California's secretive police personnel laws often make it difficult to find out what happened to cops who left guns unsecured.

A few cases show punishment is far from severe.

When an unidentified Napa police officer left an assault weapon in the trunk of a taxi — the driver later turned it in — the discipline was a written reprimand, Chief Steven Potter said. When another cop had a weapon stolen from his home, he received a lecture and was told to buy a gun safe.

A cop leaving a gun unsecured in a vehicle can be “gross negligence,” Stephanie Wheaton, a senior DMV investigator, wrote in a January memo after investigating an underling whose gun was stolen in Los Angeles County last year.

Wheaton found the investigator 'changed his story,' first claiming he left a bag containing the gun in the car, then saying he took the gun in his house.

She wrote that, at a minimum, the investigator's punishment should be to pay the state the cost of the weapon — more than \$700. A DMV spokesman would not say if or how the investigator was disciplined.

Alameda Sheriff Ahern said that none of the guns stolen from his deputies' personal vehicles resulted in the kind of internal affairs investigations that can lead to serious discipline. Rather, he said, the department took administrative measures, such as 'an informal counseling session' and what he called a 'formal record of conversation.'

Most missing guns unaccounted for

Far more guns are listed as lost, missing or unaccounted for than stolen — designations that can seem charitable, with police saying they sometimes use that listing when they suspect but aren't sure that the weapon might have been stolen.

Stockton police list two Colt assault rifles as lost, although Lt. Rodney Rego said they were probably stolen when a police building being closed was burglarized.

'We just don't really know what happened to them,' he said. The department also listed 15 12-gauge Remington shotguns and two Bushmaster assault rifles as unaccounted for in 2014. Two of the shotguns have been found. Some of the others 'might have been cannibalized for parts,' lost, traded in for newer weapons, or stolen, Rego said.

San Jose lost track of 324 guns, with records showing the city's lax controls failed to track whether officers took their weapons with them when they retired. The city recovered 14 of the missing weapons, records show. Like Oakland, San Jose's numbers are eye-popping, but experts argue that other large departments would likely show similar numbers of missing weapons if they conducted similar audits. San Francisco, the region's other large department, keeps documented track of rifles and shotguns, a spokesman said, but not pistols.

Oakland police have historically 'done a very poor job' of keeping track of weapons, working with 'a system that is really lousy,' said Lt. Sekou Millington, commander of the department's training office.

A 2011 report showed 305 missing weapons, and follow-ups have added to the total. Forty-seven have turned up, but most are gone, Millington said, sold, perhaps, but not documented. The department has little idea where they might be and in whose hands. Millington said he hopes the city will buy software to track when guns enter or leave the station and signal alerts when one is gone too long.

'As bad as this is,' Millington said, 'I hope it is going to get us the technology we need to fix it.'

4. Argument in Support

According to the California District Attorneys Association:

This bill would add district attorney investigators to the list of law enforcement officers authorized to purchase and possess short-barreled rifles or short-barreled shotguns.

Currently, under Penal Code section 33220, the purchase and possession of short-barreled rifles and shotguns is authorized for a police department, sheriff's office, marshal's office, the California Highway Patrol, the Department of Justice, the Department of Corrections and Rehabilitation, or military or naval forces for use in the discharge of their official duties. Missing from that authorization is a district attorney's office, making it unlawful for a district attorney investigator to use or possess such firearms. This seems to be an unintentional oversight, as district attorney investigators (who are defined as peace officers under PC 830.1) are already authorized under PC 32610 to purchase and use machine guns, which by their very design have short barrels.

District attorney offices often rely on investigators to serve high-risk warrants, and the ability to utilize short-barreled rifles and shotguns (which are more maneuverable and concealable in tight operating quarters) would help increase investigator safety by making more tools available to these law enforcement officers.

5. Argument in Opposition

According to the California Attorneys for Criminal Justice:

Currently, the list of these approved specified government entities include the following: police departments, sheriff's offices, marshal's offices, the California Highway Patrol, the Department of Justice, the Department of Corrections and Rehabilitation, or the military or naval forces of this state or of the United States, for use in the discharge of their official duties. CACJ believes district attorney's offices are not engaged in the same type of duties and are not at a constant state of risk as the above mentioned entities. Therefore, it is unnecessary to expand the list to include them or their peace officer members. District Attorneys already have authority to carry handguns as they carry out their duties.

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