
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1235 **Hearing Date:** April 19, 2016
Author: De León
Version: April 13, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Ammunition*

HISTORY

Source: Author

Prior Legislation: SB 53 (De León) – failed passage on Assembly Floor, 2013-2014
SB 427 (De León) – vetoed, 2011-2012
AB 2358 (De León) – failed passage on Senate Floor, 2010
AB 1663 (Hagman) – failed passage in Assembly Public Safety, 2010
AB 962 (De León) – Ch. 628, Statutes of 2009
AB 2062 (De León) – held in Senate Appropriations Committee, 2008
AB 362 (De León) – held in Senate Appropriations Committee, 2007
AB 996 (Ridley-Thomas) – vetoed, 2006
AB 352 (Koretz) – died in conference, 2006
AB 2714 (Torrico) – vetoed, 2005-06
SB 1152 (Scott) – vetoed, 2003-04

Support: California Chapters of the Brady Campaign to Prevent Gun Violence; Law Center to Prevent Gun Violence

Opposition: Firearms Policy Coalition; Gun Owners of America

PURPOSE

The purpose of this legislation is to add a definition of “ammunition” to the Penal Code, as specified.

Current law prohibits possession of ammunition by a person under 18 years of age, except as specified. A violation is generally punishable as a misdemeanor, but, if the minor has been found guilty of violating certain enumerated offenses previously, a violation may be punished as either a felony by 16 months, two or three years in county jail, or as a misdemeanor by up to one year in the county jail. (Penal Code §§ 29650 and 29700.)

Current law provides that selling any ammunition to a person under the age of 18, or selling ammunition designed and intended for a handgun to a person under the age of 21 is a misdemeanor. (Penal Code § 30300.)

Current law provides that, except as specified, any person who is prohibited from owning or possessing a firearm is also prohibited from owning, or possessing ammunition. A violation may be punished as either a felony by 16 months, two or three years in state prison or as a misdemeanor by up to one year in the county jail. (Penal Code § 30305(a).)

Current law provides that, except as specified, a person enjoined from engaging in activity pursuant to an injunction against that person as a member of a criminal street gang is prohibited from owning or possessing ammunition. Violation of this section is punishable as a misdemeanor. (Penal Code § 30305(b).)

Current law provides that supplying, selling, or delivering ammunition to someone that a person knows or reasonably should know is prohibited from owning or possessing ammunition is a misdemeanor punishable by up to one year in the county jail. (Penal Code § 30306.)

Current law provides that possession of ammunition on school grounds without the written permission of the school district superintendent is prohibited except for persons who have been issued a license to carry a concealed weapon or in limited situations involving law enforcement or military personnel. Violation of this section is punishable as a misdemeanor. (Penal Code § 30310.)

Current law prohibits possession of any handgun ammunition designed primarily to penetrate metal or armor. A violation is punishable as either a felony by 16 months, two or three years in county jail or as a misdemeanor by up to one year in the county jail, unless the person found the ammunition and they are not otherwise prohibited from possessing firearms or ammunition, and they are transporting it to a law enforcement agency for disposal. (Penal Code § 30315.)

Current law provides that manufacturing, importing, or selling handgun ammunition designed primarily to penetrate metal or armor is a felony, punishable by 16 months, two or three years in state prison and a fine of up to \$5,000, or both. (Penal Code § 30320.)

Current law provides that, with limited exceptions, delivery or transfer of ownership of handgun ammunition may only occur in a face-to-face transaction with bona fide evidence of identity from the purchaser. Violation of this section is punishable as a misdemeanor. (Penal Code § 30312.)*

Current law provides that vendors of handgun ammunition must comply with certain conditions, requirements and prohibitions, with limited exceptions, including not selling or transferring ownership of any handgun ammunition without, at the time of delivery, legibly recording the following information. (Penal Code § 30352.):*

- the date of the sale or other transaction;
- the purchaser's/transferee's driver's license or ID number and the state of issuance;
- the brand, type, and amount of ammunition sold or otherwise transferred.
- the purchaser's/transferee's signature;
- the name of the salesperson who processed the sale or other transaction;
- the right thumbprint of the purchaser or transferee on the above form;
- the purchaser's /transferee's full residential address and telephone number; and
- the purchaser's/transferee's date of birth.

Current law requires that handgun ammunition vendors must keep these records for a period of not less than 5 years and must make these records available to inspection by specified law enforcement during normal business hours. (Penal Code §§ 30355, 30357.)*

Current law requires that handgun ammunition vendors shall not knowingly make a false entry or fail to make an entry or obtain the required thumbprint. (Penal Code § 30360.)*

Current law provides that violations of the above laws regarding handgun ammunition vendors are punishable as a misdemeanor. (Penal Code § 30365.)*

Current law defines “handgun ammunition” as “ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles” and exempting, as specified:

- ammunition designed and intended to be used in an antique firearm; and
- blanks. (Penal Code § 16650.)*

* Enforcement of these sections is currently stayed per order of the Fresno County Superior Court in *Parker v. State of California*, No. 10 CECG 02116. That order is currently on appeal.

This bill provides that, except as specified, ammunition means “one or more loaded cartridges consisting of a primer case, propellant, and with one or more projectiles.” This bill provides that ammunition does include blanks.

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. Author’s Statement

According to the author:

In 2009, AB 962 (De León), the Anti-Gang Neighborhood Protection Act, was enacted to bring accountability to the sale of handgun ammunition and deter prohibited individuals from purchasing ammunition. Unfortunately, in an attempt to upend the law, the National Rifle Association and others challenged it in court. The resulting case, *Parker v. California*, has prevented the implementation of the law as we wait for the California Supreme Court to make an ultimate decision. As a result of the court-issued injunction applied to AB 962, today any criminal can walk into a Big 5 or Wal-Mart and purchase ammunition, no questions asked. It continues to be easier in California to purchase a pallet of ammunition than a pack of cigarettes or allergy medicine. There is no way to track who is buying and selling bullets and this blind eye approach is putting ammunition in the hands of killers. This measure clarifies the definition of ammunition.

2. Background – AB 962 and the Ruling in *Parker v. State of California, et al.*

AB 962 (De León), Chap. 628, Statutes of 2009, created several new requirements regarding handgun ammunition sales. These include requiring that handgun ammunition sellers obtain personal identification information from buyers and retain that information for inspection by law enforcement upon request, (Penal Code §§ 30345, et seq.) and that all delivery of handgun ammunition take place in a face-to-face transaction (prohibiting direct sales over the internet). (Penal Code § 30312.) On January 31, 2011, a Superior Court in Fresno ruled that the definition of “handgun ammunition” contained in sections 12060(b) and 12318(b)(2) (now renumbered as section 16650) was unconstitutionally vague, rendering invalid the provisions of sections 12060, 12061 (now renumbered as sections 30345, et seq.) and 12318. Each of these sections were

enacted pursuant to AB 962.¹ As a result of this finding the Court enjoined the State Attorney General from enforcing those statutes. (*Parker v. State of California, et al.*, Fresno County Superior Court, Case No. 10 CECG 02116, Order Denying Plaintiff’s Motion for Summary Judgment and Granting In Part and Denying In Part Defendant’s Motion for Summary Adjudication, , pages 4, 11-17.)

The Court stated:

Because the language of the definition of “handgun ammunition” fundamentally requires each law enforcement officer to make a subjective determination as to whether or not the ammunition at issue is ammunition “principally for use” in a handgun and then subjectively apply their own definition to the situation before them, the definition of “handgun ammunition” established in section 12060(b) and 12318(b)(2) gives unlimited discretion to each individual law enforcement officer to determine arbitrarily if the ammunition at issue is “handgun ammunition” and to apply their particular classification of “handgun ammunition” or not to the specific issue before them. (*Id* at pages 14-15.)

The state appealed this decision and the 5th District Court of Appeal stated in its holding:

This appeal presents a facial challenge under the void-for-vagueness doctrine to a statutory scheme within the Penal Code regulating the sale, display, and transfer of “handgun ammunition.” The statutes at issue, former sections 12060, 12061 and 12318, defined “handgun ammunition” as ammunition “principally for use” in handguns as opposed to rifles and other firearms. In the proceedings below, respondents challenged the constitutionality of these statutes on grounds that they failed to provide adequate notice of the conduct proscribed and lacked sufficiently definite guidelines to prevent arbitrary or discriminatory enforcement by police.

The trial court agreed with respondents, declaring the challenged statutes constitutionally invalid and issuing a permanent injunction against their enforcement. Appellants contend the statutes are not unconstitutional because it is possible to conceive of circumstances in which the statutory language would not be vague. These issues are addressed in the first part of our opinion. The second part of the opinion pertains to the trial court’s partial denial of a motion to tax costs filed by appellants after the permanent injunction was issued. We affirm the judgment in full. (*Parker v. State of California*, 221 Cal. App. 4th 340, 346-47 (Cal. App. 5th Dist. 2013).)

Parker v. State of California is currently pending before the California Supreme Court.

This bill adds a definition of ammunition to the penal code. While the intent of this legislation is, seemingly, to cure the vagueness issue cited by the Court in *Parker*, this legislation does not amend the sections of the penal code that require “handgun ammunition” vendors to complete a variety of tasks. This legislation, additionally, does not amend the definition of “handgun ammunition.” Given this, it is doubtful that this legislation will remedy the vagueness concerns raised in *Parker*.

¹ Old Penal Code section 12318 defines “handgun ammunition” by cross-reference to old section 12323(a), now renumbered section 16650.

3. Argument in Support

According to the California Chapters of the Brady Campaign to Prevent Gun Violence:

In 2009, the California Brady Campaign Chapters were co-sponsors of AB 962, which was signed by Governor Schwarzenegger. The law will reduce easy access to handgun ammunition and give law enforcement a tool to find and remove illegal guns and ammunition from prohibited persons. Under AB 962, sellers of handgun ammunition are required to store handgun ammunition so that is inaccessible to a purchaser without the assistance of the vendor. Secondly, the bill requires the sale or transfer of handgun ammunition to be completed in face-to-face transactions. Finally, AB 962 requires sellers of handgun ammunition to maintain records containing certain information about the purchaser and the type and amount of handgun ammunition sold.

However, in 2011 a Superior Court in Fresno ruled in *Parker v. State of California, et al.* that the definition of "handgun ammunition" was unconstitutionally vague, rendering invalid the provisions of AB 962. The Court enjoined the State Attorney General from enforcing those statutes. The case is currently on appeal and pending before the California Supreme Court. SB 1235 seeks to resolve the vague definition issue by having the AB 962 provisions apply to "ammunition" and defining it to mean one or more loaded cartridges consisting of a primer case, propellant, and with one or more projectiles.

From a policy perspective, it makes sense to apply the requirements under AB 962 to long gun ammunition as long guns are increasingly used in crime. Moreover, DOJ has found that over the last three fiscal years, nearly half the illegal firearms recovered from prohibited persons through the Armed Prohibited Persons System are long guns.ⁱ Further, over the past ten years, Californians have annually purchased more long guns than handguns, including 534,469 long guns in 2013.ⁱⁱ These long guns include legal weapons that have military-style features and mechanisms, such as a bullet button, to allow for the rapid exchange of magazines. These weapons in the wrong hands are a great threat to public safety.

The California Chapters of the Brady Campaign to Prevent Gun Violence support reducing easy access to ammunition, both for handguns and long guns, and providing law enforcement with another investigative tool. The goal of SB 1235 is to resolve the issue impeding the implementation of AB 962 and accordingly, the California Brady Campaign is in support of the measure.

4. Argument in Opposition

According to the Firearms Policy Coalition:

On behalf of the members and supporters of Firearms Policy Coalition, I respectfully submit our opposition to Senate Bill 1235 (De León), a measure that clumsily tinkers with the definition of "ammunition".

SB 1235 was recently gutted amended to a non-germane subject (from public employees' retirement to ammunition).

In its current form, the bill does not serve any purpose other than to create redundancies and conflicts within existing penal code statutes relating to ammunition.

To the extent that SB 1235 might later be amended to restrict the purchase or possession of ammunition by law-abiding citizens, we are unable to provide comments as to why any potential amendments to the bill may be unworkable, contrary to existing state or federal statutes, or unconstitutional.

We urge the author to withdraw this measure, and barring that, for the committee to reject any further restrictions on the people's free exercise of their civil rights.

-- END --

ⁱ California Department of Justice, "SB 140 Supplemental Report of the 2015-16 Budget Package: Armed Prohibited Persons System," <http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/sb-140-supp-budget-report.pdf>.

ⁱⁱ California Department of Justice, "Dealer's Record of Sale (Calendar Year Statistics)," http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/dros_chart.pdf?.