
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1332 **Hearing Date:** April 5, 2016
Author: Mendoza
Version: February 19, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms*

HISTORY

Source: Author

Prior Legislation: None known

Support: Peace Officers Research Association of California; California Sportsman's Lobby; Outdoor Sportsmen's Coalition of California; California Chapters of Safari Club International

Opposition: Unknown

PURPOSE

The purpose of this bill is to: (1) provide for joint spousal registration in California, as specified; and (2) modify the firearm loan provisions, as specified.

Joint Spousal Registration

Existing law states, in order to assist in the investigation of crime, the prosecution of civil actions by city attorneys, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of licenses to carry firearms issued as provided, information reported to the Department of Justice (DOJ) as specified, dealers' records of sales of firearms, specified forms and reports, that are not dealers' records of sales of firearms, other specified information, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish this information to the officers authorized to receive state summary criminal history information. (Penal Code § 11106(a).)

Existing law requires the Attorney General to permanently keep and properly file and maintain all information reported to DOJ pursuant to specified provisions of law as to firearms and maintain a registry thereof. (Penal Code § 11106 (b).)

Existing law provides that any officer referred to in provisions of law related to who may receive state summary criminal history information may disseminate the name of the subject of the record, the number of the firearms listed in the record, and the description of any firearm, including the make, model, and caliber, from the record relating to any firearm's sale, transfer,

registration, or license record, or any information reported to DOJ if certain conditions are met. (Penal Code § 11106(c)(1).)

This bill would require the Attorney General to permanently keep and properly file and maintain the name of the person and his or her spouse or domestic partner, if the firearm is registered to both individuals, as specified.

This bill requires the department to modify its registration forms, if it has not already done so, so that both spouses or both domestic partners may register as the owners of the firearm, as specified.

This bill makes a number of findings relating to joint spousal registration, including:

- There are legitimate concerns that if joint firearm registration is explicitly allowed by virtue of the amendments made to Section 11106 of the Penal Code by the act that added this section, it may create a number of issues regarding third-party rights when the time comes to dispose of those jointly registered firearms. Those concerns exist now as to jointly registered .50 BMG rifles and assault weapons.
- Requiring the Attorney General to prepare and submit to the Legislature on or before January 1, 2018, a report concerning all of the following:
 - What process is occurring now as to the joint registration of firearms between spouses and registered domestic partners pursuant to the operation of law procedures by virtue of the amendments made to Section 11106 of the Penal Code by the act that added this section.
 - Any issues that have arisen as to joint family registration of .50 BMG rifles and assault weapons.
 - The barriers that exist, if any, to joint registration of firearms between spouses and registered domestic partners that are not obviated by the amendments made to Section 11106 of the Penal Code by the act that added this section.
 - The feasibility and costs of explicitly implementing a joint firearm registration system beyond the provisions of this act made by the amendments made to Section 11106 of the Penal Code by the act that added this section without disrupting the current Dealer Record of Sale system.
 - The overall costs of creating and maintaining, and the costs to the individuals of using, a joint firearm registration system beyond those changes made by the amendments made to Section 11106 of the Penal Code by the act that added this section.
 - The effect of an explicit joint firearm registration system on overall efforts by DOJ in terms of information and computerized upgrades that the department is currently undertaking.

- Recommendations for the disposition of jointly registered firearms that protect public safety, the registrants, and third parties.
- Proposals for any specific statutory changes necessary to implement the recommendations identified, as specified
- It is the intent of the Legislature, if joint firearm registration does not occur pursuant to the amendments made to Section 11106 of the Penal Code by the act that added this section, to enact legislation that will go into effect prior to January 1, 2019, to implement an explicit joint firearm registration system in a user-friendly manner that protects public safety and does not complicate the disposition of firearms that are jointly registered.
- It is the intent of the Legislature that the DOJ make available on its Internet Web site, in an editable public display format, the form referred to in Section 27882 of the Penal Code.

Loan Provisions of this Bill

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.

This bill would limit the duration of the infrequent loans to person known to each other to ten days, as specified.

This bill provides that section 27545 does not apply to the loan of a firearm provided all of the following are met:

- If the firearm being loaned is a handgun or semiautomatic center fire rifle, the handgun or rifle is registered to the person making the loan pursuant to Section 11106;
- The loan occurs within the lender's place of residence or private property, which is not zoned for commercial, retail, or industrial activity;
- The firearm at all times stays within the lender's place of residence or private property, which is not zoned for commercial, retail, or industrial activity;
- The individual receiving the firearm is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;
- The individual receiving the firearm is 18 years of age or older; and
- The individual receiving the firearm has a valid firearm safety certificate, except that if the firearm being loaned is a handgun, the individual may instead have an unexpired handgun safety certificate.

This bill provides that Section 27545 does not apply to the loan of a firearm provided all of the following are met:

- If the firearm being loaned is a handgun or semiautomatic center fire rifle, the handgun or rifle is registered to the person making the loan pursuant to Section 11106.
- The firearm being loaned is stored in the receiver's place of residence or in an enclosed structure on the receiver's private property, which is not zoned for commercial, retail, or industrial activity.
- The firearm at all times stays within the receiver's place of residence or in an enclosed structure on the receiver's private property, which is not zoned for commercial, retail, or industrial activity.
- The individual receiving the firearm is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

- The individual receiving the firearm is 18 years of age or older.
- The individual receiving the firearm has a valid firearm safety certificate, except that if the firearm being loaned is a handgun, the individual may instead have an unexpired handgun safety certificate.
- One of the following applies:
 - The firearm is maintained within a locked container.
 - The firearm is disabled by a firearm safety device.
 - The firearm is maintained within a locked gun safe.
 - The firearm is locked with a locking device, as defined in Section 16860, which has rendered the firearm inoperable.
- The loan does not exceed 30 days in duration.
- The loan is made without consideration.
- There is writing in a format prescribed by the Department of Justice that explains the obligations imposed by this section that is signed by both the party loaning the firearm for storage and the person receiving the firearm.
- Both parties to the loan have signed copies of the writing, 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:

California gun laws do not currently permit joint registration and ownership of a firearm. Joint registration has been occurring by default as a result of some local jurisdictions issuing a license to carry to both spouses for the same handgun. The local jurisdiction then transmits this information to the California Department of Justice (DOJ). Additionally, joint registration has been occurring when a firearm is brought into California from a state where joint registration is allowed. Joint spousal firearm registration exists in Hawaii, Maryland, and New York. Allowing for joint spousal registration in California will bring consistency to law for a practice that is already occurring in the state. Joint spousal registration is especially important if one spouse dies, in which case, the firearm would remain safely in the possession of the surviving spouse.

Too many preventable incidents occur in which injury is caused by irresponsible firearm use. In 2014, there were a total of 33,599 firearm deaths in the United States, 10,945 of which were homicides, according to the Centers for Disease Control (CDC). In California specifically, there were 2,942 firearm deaths and 1,813 homicides. In 2015, there were approximately 278 unintentional shootings by children aged 17 and under in the United States, resulting in 88 deaths. Because of existing loan exemptions, individuals who are personally known to each other may enter into a firearm loan transfer without going through a licensed firearm dealer and background check, if the loan does not exceed 30 days. This exception provides an opportunity of up to a month for a firearm to be in the possession of individuals who are legally prohibited from carrying one. Reducing the loan to 10 days decreases the chance of crimes being committed with the firearm, while still allowing for a loan in case there is necessity for it, including during a time of need for emergency protection.

According to the Bureau of Justice Statistics (BJS), about 1.4 million firearms were stolen during household burglaries and other property crimes between 2005 and 2010. A 2010 audit conducted by the San Jose Police Department reported that around 300 of its firearms could not be accounted for, some of which may have been stolen from officer's homes. Graham Barlowe, Agent of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, Sacramento Office, stated that "In this day and age of technology, most of the electronics don't really have any value at all... the firearms do. Even an old firearm is still valuable" (NBC Bay Area, 2015). Although reports vary, stolen guns may account for roughly 15% of guns used in crimes, thus it is essential that a safekeeping program is available when a gun owner leaves their property.

This bill will create greater safeguards to prevent firearms from falling into the wrong hands.

2. Effect of This Bill

This bill: (1) provides for joint spousal registration in California; and (2) modifies the firearm loan provisions.

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 bill limits that duration of the loan to 10 days and adds additional loan provisions. The additional loan provisions would allow a person to loan a handgun or centerfire rifle in certain circumstances. Members may wish to consider an amendment expanding these exceptions to all firearms.

This legislation, additionally, requires that the Department of Justice report a variety of information relating to spousal registration by January 1, 2018. This requirement is in the bill's intent language. Members may wish to consider recommending that this requirement be codified to ensure that the department is aware that it needs to report to the Legislature in 2018.

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