
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 869 **Hearing Date:** March 29, 2016
Author: Hill
Version: January 12, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: Securing Handguns in Vehicles*

HISTORY

Source: Author

Prior Legislation: None known

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

Opposition: None known

PURPOSE

The purpose of this bill is to require a person, when leaving a handgun in a vehicle, to secure the handgun by locking it in the trunk of the vehicle or locking it in a locked container and placing the container out of plain view, as specified.

Under existing law a person is guilty of carrying a concealed firearm when the person:

- Carries concealed within any vehicle that is under the person's control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.
- Carries concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person.
- Causes to be carried concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(Penal Code § 25400(a).)

Under existing law a firearm carried openly in a belt holster is not concealed, as specified.

(Penal Code § 25400(b).)

Under existing law carrying a concealed firearm in is punishable as follows:

- If the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, as a felony.

- If the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.
- If the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.
- If the person is not in lawful possession of the firearm or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.
- If the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine.
- If both of the following conditions are met, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment:
 - The pistol, revolver, or other firearm capable of being concealed upon the person is loaded, or both it and the unexpended ammunition capable of being discharged from it are in the immediate possession of the person or readily accessible to that person.
 - The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(Penal Code 25400(c).)

Under existing law the prohibition on concealed carry as described in section 25400 does not apply to, or affect, any of the following:

- Any peace officer, listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, whether active or honorably retired;
- Any other duly appointed peace officer;
- Any honorably retired peace officer listed in subdivision (c) of Section 830.5;
- Any other honorably retired peace officer who during the course and scope of his or her appointment as a peace officer was authorized to, and did, carry a firearm;
- Any full-time paid peace officer of another state or the federal government who is carrying out official duties while in California; or
- Any person summoned by any of these officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer.

(Penal Code § 25450.)

Under existing law the prohibition on concealed carry as described in section 25400 is not construed to prohibit any citizen of the United States over the age of 18 years who resides or is temporarily within this state, and who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, from transporting or carrying any pistol, revolver, or other firearm capable of being concealed upon the person, provided that the following applies to the firearm:

- The firearm is within a motor vehicle and it is locked in the vehicle's trunk or in a locked container in the vehicle.
- The firearm is carried by the person directly to or from any motor vehicle for any lawful purpose and, while carrying the firearm, the firearm is contained within a locked container.

(Penal Code § 25610.)

Under existing law the prohibition on concealed carry, as described in section 25400, does not apply to, or affect:

- Any member of the Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, or the National Guard, when on duty, or any organization that is by law authorized to purchase or receive those weapons from the United States or this state. (Penal Code §25620.)
- The carrying of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person by duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations. (Penal Code § 25625.)
- Any guard or messenger of any common carrier, bank, or other financial institution, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state. (Penal Code § 25630.)
- Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using pistols, revolvers, or other firearms capable of being concealed upon the person upon the target ranges, or transporting these firearms unloaded when going to and from the ranges. (Penal Code § 25635.)
- Licensed hunters or fishermen carrying pistols, revolvers, or other firearms capable of being concealed upon the person while engaged in hunting or fishing, or transporting those firearms unloaded when going to or returning from the hunting or fishing expedition. (Penal Code § 25640.)

- The transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when the firearms are transported in conformance with applicable federal law. (Penal Code § 25645.)
- Upon approval of the sheriff of the county in which the retiree resides, any honorably retired federal officer or agent of any federal law enforcement agency, including, but not limited to, the Federal Bureau of Investigation, the United States Secret Service, the United States Customs Service, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the Federal Bureau of Narcotics, the United States Drug Enforcement Administration, the United States Border Patrol, and any officer or agent of the Internal Revenue Service who was authorized to carry weapons while on duty, who was assigned to duty within the state for a period of not less than one year, or who retired from active service in the state. (Penal Code § 25650.)
- The carrying of a pistol, revolver, or other firearm capable of being concealed upon the person by a person who is authorized to carry that weapon in a concealed manner pursuant to Chapter 4 (commencing with Section 26150). (Penal Code § 25655.)

This bill would require a person, when leaving a handgun in a vehicle, to secure the handgun by locking it in the trunk of the vehicle or locking it in a locked container and placing the container out of plain view.

This bill would make a violation of its requirements an infraction punishable by a fine not exceeding \$1,000.

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:

Stolen guns are a major problem in California. According to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), in 2012 at least 10,639 guns in California were reported as lost or stolen.

In the past few years, according to a report published in the San Francisco Chronicle, gun thefts from cars have steadily increased in the city. For example, in San Francisco, 31 guns were stolen from cars in 2012, 48 in 2014, and through November 20, 2015, there were 57 guns stolen from cars. The rise in gun thefts from cars corresponds with a rise in car burglaries overall.

Firearms belonging to law enforcement officers also have been stolen from cars throughout the Bay Area. Just last year:

- In August 2015, a handgun belonging to a Hayward police officer was stolen from a car in Oakland.
- Also in August, a handgun belonging to the chief of UC Berkeley Police was stolen from her car while she was jogging.
- In October 2015, the handgun of an off-duty CHP officer was stolen from his car while in San Francisco.

- In January 2016, 3 handguns were stolen out of an FBI vehicle parked in a Benicia neighborhood.

Tragically, many stolen guns end up being used in violent crimes. In the latter half of 2015, four people were killed with guns stolen from cars; two of the weapons were taken from law enforcement officers' vehicles:

- A gun stolen from the car of a federal Bureau of Land Management ranger was used to kill a 32-year-old woman who was strolling with her father on San Francisco's Pier 14 on a July 2015 afternoon.
- A gun stolen from the car of a federal Immigration and Customs Enforcement officer was used in the slaying of a muralist as worked in Oakland in September 2015.
- A weapon stolen from a civilian's vehicle was used to gun down a backpacker in Golden Gate Park and a hiker in Marin County.

While researching the bill, our office came upon a particularly striking story that highlights the problem. On August 4, 2000, Louis Peoples was sentenced to death for murdering 4 people. The gun he used in the murders was a .40 caliber fully loaded Glock stolen out of the vehicle of an off duty Alameda county deputy sheriff who was in Stockton to attend his son's baseball game. The deputy left his handgun in a fanny pack in the car. Louis Peoples also used the gun to rob a bank, rob a liquor store, and hold up a market, all in Stockton.

2. Effect of This Bill

Section 25400 provides that a person is guilty of carrying a concealed firearm when the person: (1) carries concealed within any vehicle that is under the person's control or direction any pistol, revolver, or other firearm capable of being concealed upon the person; (2) carries concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person; or, (3) causes to be carried concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

A defendant is guilty of a violation of 25400 if:

1. The defendant carried within a vehicle a firearm capable of being concealed on the person;
2. The defendant knew the firearm was in the vehicle;
3. The firearm was substantially concealed within the vehicle; and
4. The vehicle was under the defendant's control or direction.¹

¹ A weapon is carried in a vehicle in violation of this statute, regardless of whether the vehicle is or has been in motion, where it is found concealed in a parked and locked automobile in such manner that it would be carried within the vehicle when in motion. *People v. Smith* (1946, Cal App Dep't Super Ct) 72 Cal App 2d Supp 875, 164 P2d 857, 1946 Cal App LEXIS 1114.

(2-2500 CALCRIM 2521)

Concealed carry is, however, acceptable if the person has a concealed carry license or is a member of particular group, like law enforcement officers. Given that these groups are allowed to concealed carry, it is arguable that they are, additionally, immune from criminal liability for leaving a handgun unlocked in their vehicle. This legislation makes it clear that all individuals, including those that are exempt from the concealed carry laws, are required to lock their handguns in the vehicle's trunk or in a locked container when a handgun is left unattended in a vehicle.

3. Proposed Amendments

The bill will be amended to: (1) strike "Notwithstanding Section 25450" in subdivision (a); (2) add a cross-reference to the definition of "vehicle" in vehicle code section 670; (3) add a cross-reference to the definition of "locked container" in penal code section 16850; (4) clarify that the legislation applies to handguns left "unattended" in vehicles; (5) add a definition of "unattended"; and, (6) add an exception for on-duty peace officers actively engaged in a crime or crime scene.

- END -
