
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1674 **Hearing Date:** June 14, 2016
Author: Santiago
Version: May 31, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: Transfers*

HISTORY

Source: Author

Prior Legislation: AB 202 (Knox) – Chap. 128, Stats. of 1999
AB 532 (Knox) – Failed passage on Assembly Floor, 1997-98

Support: California Chapters of the Brady Campaign to Prevent Gun Violence; City of Long Beach; Coalition Against Gun Violence, A Santa Barbara County Coalition; Women Against Gun Violence; Rabbis Against Gun Violence; Violence Prevention Coalition of Greater Los Angeles; San Francisco Bay Area Physicians for Social Responsibility; California Academy of Family Physicians; Courage Campaign; Friends Committee on Legislation of California; One individual

Opposition: California Rifle and Pistol Association; California Waterfowl Association; Deputies of the Mono County Deputy Sheriff's Association; Firearms Policy Coalition; Glenn County Rangeland Association; Gun Owners of California; National Rifle Association of America; National Shooting Sports Foundation

Assembly Floor Vote: 44 - 33

PURPOSE

The purpose of this bill is to: (1) prohibit any person from making an application to purchase more than one firearm within any 30-day period, as specified; and, (2) delete from the existing prohibition related to the purchase of more than one handgun in any 30-day period an exemption for a private part transfer through a licensed firearms dealer, as specified.

Existing law prohibits any person from making an application to purchase more than one handgun within any 30-day period. (Penal Code § 27535(a).)

Existing law exempts from the above 30-day prohibition any of the following:

- Any law enforcement agency;
- Any agency duly authorized to perform law enforcement duties;

- Any state or local correctional facility;
- Any private security company licensed to do business in California;
- Any person who is a peace officer, as specified, and is authorized to carry a firearm in the course and scope of employment;
- Any motion picture, television, video production company or entertainment or theatrical company whose production by its nature involves a firearm;
- Any authorized representative of a law enforcement agency, or a federally licensed firearms importer or manufacturer;
- Any private party transaction conducted through a licensed firearms dealer;
- Any person who is a licensed collector and has a current certificate of eligibility issued by the DOJ;
- The exchange, replacement, or return of a handgun to a licensed dealer within the 30-day period; and,
- A community college that is certified by the Commission on POST to present law enforcement academy basic course or other commission- certified training. (Penal Code § 27535(b).)

Existing law prohibits a handgun from being delivered when a licensed firearms dealer is notified by the DOJ that within the preceding 30-day period the purchaser has made another application to purchase a handgun and the purchase was not exempted, as specified. (Penal Code § 27540(f).)

Existing law provides that the penalties for making more than one application to purchase a handgun within any 30-day period is as follows:

- A first violation is an infraction punishable by a fine of fifty dollars (\$50);
- A second violation is an infraction punishable by a fine of one hundred (\$100); and,
- A third violation is a misdemeanor. (Penal Code § 27590(e)(1)-(3).)

This bill prohibits any person from making an application to purchase more than one long gun within any 30-day period.

This bill deletes from the existing prohibition related to the purchase of more than one handgun in any 30-day period an exemption for a private part transfer through a licensed firearms dealer, 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 Legislation

According to the author:

Historically, policymakers have believed that the bulk of gun violence has been perpetuated by handguns. Absent any data collection and analysis to the contrary, this perception has held for several decades, and has resulted in current law in California which limits new handgun purchases to one per month per person.

Recent data collection efforts in the state and elsewhere have begun to refute this theory, however. In fact, examining forensic data collected from the mass shootings that have occurred in the United States throughout the last 30 years, shows that 72 (exactly half) of the weapons used in those crimes were long guns: rifles, shotguns, and semi-automatic versions thereof. Of the 11 mass shootings in California, nearly the same is true: 12 long guns were used along with 16 handguns.

It should be noted that in mass shooting cases, analysis shows that nearly 80% of shooters (including those in San Bernardino) obtained their guns legally.

Long guns are a significant piece of California's gun trafficking problem, as well. Over the past ten years, Californians have typically purchased more long guns than handguns, including 538,149 guns in 2013. Of the 26,682 crime guns entered into the California Department of Justice's (DOJ) Automated Firearms Systems (AFS) database in 2009, 11,500 were long guns. Furthermore, DOJ has found that half the illegal firearms recovered from prohibited persons are long guns.

A 2007 University of Pennsylvania report to the National Institute of Justice found that a quarter of all guns used in crime were purchased as part of a multi-gun sale and that guns purchased in bulk were up to 64% more likely to be used for illegal purposes than guns purchased individually.

Reducing gun violence is an issue that is of vital importance to me. In April 2014, one person purchased 144 long guns in California in one single transaction. It is mind boggling that a person (no matter their intentions) could purchase as many rifles or shotguns they want at any given time. It is past time for us to treat long guns the same as handguns – they hold equal powers of destruction and create major problems for law enforcement, and society in general, when they fall into the wrong hands.

AB 1674 will limit purchases of guns to one per month. This includes both purchases of used guns and new long guns. With data showing compelling evidence that long guns are used in crimes at similar rates to handguns, they should be treated no differently. In fact, California already maintains parity between these types of guns in both background checks and sale records. AB 1674 takes the remaining step by creating parity in purchase limitations.

2. History of One-Handgun-a-Month Law

According to the Senate Public Safety Analysis of Assembly Bill 202 (Knox, of 1999), which created the one-handgun-a-month law in California:

The State of Virginia enacted a “one-handgun-a-month” law in 1993 (before the Federal Brady Bill, which required at least a five day waiting period plus a background check for states without such requirements). That state had weak restrictions on handgun sales and it has been stated that gun traffickers from New York City routinely traveled to Virginia to purchase quantities of weapons to take back for illegal sale in other states. Purchases of more than one handgun per 30-day period in Virginia is allowed upon completion of an "enhanced" background check when the purchase is for lawful business or personal use, for purposes of collectors, bulk sales and purchases from estates, to replace a lost or stolen weapon, and similar situations.

Supporters of limits on purchases of handguns assume that the Virginia limits and the limits in this bill would only affect a very small proportion of legitimate handgun purchasers. A family of two adults could still purchase 24 handguns a year under the provisions of both this bill and the Virginia law.

Virginia repealed this law in 2012. But, according to the Law Center to Prevent Gun Violence,

Virginia’s one-gun-a-month law – which was in effect from 1993 to 2012 and prohibited the purchase of more than one handgun per person in any 30-day period – significantly reduced the number of crime guns traced to Virginia dealers. Virginia initially adopted its law after the state became recognized as a primary source of crime guns recovered in states in the northeastern U.S. After the law’s adoption, the odds of tracing a gun originally acquired in the Southeast to a Virginia gun dealer (as opposed to a dealer in a different southeastern state) dropped by:

- 71% for guns recovered in New York;
- 72% for guns recovered in Massachusetts; and
- 66% for guns recovered in New Jersey, New York, Connecticut, Rhode Island and Massachusetts combined.

(<http://smartgunlaws.org/multiple-purchases-sales-of-firearms-policy-summary/>
[footnotes omitted].)

Other states that have limits on the number of firearms that can be sold in one month include:

- California: California law prohibits any person from purchasing more than one handgun within any 30-day period. In addition, a licensed firearms dealer may not deliver a handgun to any person following notification from the California Department of Justice that the purchaser has applied to acquire a handgun within the preceding 30-day period. Finally, firearms dealers must conspicuously post in their licensed premises a warning, in block letters at least one inch in height, notifying purchasers of these restrictions.

- District of Columbia: A person may not register more than one handgun in the District during any 30-day period. Since every handgun must be registered, this amounts to a purchase and sale limitation of one handgun per 30-day period. . .
- Maryland: Maryland prohibits any person from purchasing more than one handgun or assault weapon within a 30-day period. Under limited circumstances, a person may be approved by the Secretary of the Maryland State Police to purchase multiple handguns or assault weapons in a 30-day period. Maryland also penalizes any dealer or other seller who knowingly participates in an illegal purchase of a handgun or assault weapon. . .
- New Jersey: New Jersey prohibits licensed firearms dealers from knowingly delivering more than one handgun to any person within any 30-day period. With limited exceptions, no person may purchase more than one handgun within any 30-day period. New Jersey requires a handgun purchaser to obtain a separate permit for each handgun purchased, and present the permit to the seller. The seller must keep a copy of each permit presented.

(<http://smartgunlaws.org/multiple-purchases-sales-of-firearms-policy-summary/>[footnotes omitted].)

3. Argument in Support

The California Chapters of the Brady Campaign to Prevent Gun Violence state:

In 1999, legislation (AB 202) was enacted that limits purchases of handguns from licensed firearms dealers in California to no more than one per person per month. AB 202 provided a number of exemptions, including private party transactions. The purpose of the bill was to curb the illegal flow of handguns by taking the profit out of selling guns from bulk purchases on the black market. AB 1674 applies existing law under AB 202 to all firearms, including long guns (rifles, shotguns, and lower receivers), and removes the exemption for private party transfers. Under AB 1674, firearms will not be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser had made another application to purchase a firearm.

It stands to reason that a person buying large quantities of guns at one time may be acting as a straw purchaser or gun trafficker. Moreover, firearms acquired this way are frequently used in crime. In fact, an ATF study of tracing data demonstrated that 22% of all handguns recovered in crime in 1999 were originally purchased as part of a multiple sale. A similar study found that 20% of all handguns recovered in crime in 2000 were originally purchased as part of a multiple sale. Additionally, a University of Pennsylvania report found that a quarter of all guns used in crime were purchased as part of a multiple-gun sale and that guns purchased in bulk were up to 64% more likely to be used for illegal purposes than guns purchased individually.

The California Brady Campaign believes that handguns and long guns should be subject to the same laws. Sixteen years ago, it was thought that handguns made up an overwhelming share of crime guns, but the data shows that is no longer the case. Of the 26,682 crime guns entered into the Department of Justice's Automated Firearms Systems database in 2009, 11,500 were long guns. Additionally, 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.

AB 1674 (Santiago)

Over the past ten years, Californians have annually purchased more long guns than handguns, including 534,469 long guns in 2013. These long guns include legal weapons that have military-style features and a mechanism, such as a bullet button, to allow for the rapid exchange of magazines and lower receivers, which can be assembled into military-style weapons. Limiting multiple-gun sales within a short period of time for such weapons, which are more lethal than handguns, is clearly in the interest of public safety.

The Department of Justice began to retain records of long gun purchases on January 1, 2014. An analysis of the transaction data from the period January 2014 through June 2015 shows that 81.9% of long guns were sold as a single long gun purchase within a 30-day period. Clearly, the vast majority of long gun purchasers will not be impacted by AB 1674. However at the opposite end of the spectrum, an individual purchased 177 long guns in two transactions within a one month period (April 2014). Furthermore, sales to single individuals ranging from 5 to 54 long guns per month occurred on 1,787 occasions, totaling 12,090 guns. Department data also shows that when multiple long guns are transferred in a sale, it is more than twice as likely that lower receivers are included. The largest bulk sale of long guns in one month to an individual (177 long guns) was composed entirely of lower receivers, which can be built into illegal assault weapons and sold on the black market.

Preventing the flow of illegal guns is important to public safety regardless of whether the firearm is a handgun or long gun, or purchased new from a dealer or through a private party transaction. Limiting firearms sales to one gun per month is a recognized strategy to reduce gun trafficking and keep firearms out of dangerous hands.

4. Argument in Opposition

According to the Firearms Policy Coalition:

AB 1674 seeks to limit, chill, and, and ration a fundamental, individual right by making it a crime to even apply for the otherwise lawful purchase of a constitutionally-protected firearm more than once every thirty days.

As the shooting sports experience historic growth from participation by more and more law-abiding people across all social, racial, gender, and financial lines, Assemblymember Santiago would respond by creating an artificial market cap on

the very instruments protected by the Second Amendment to the United States Constitution.

In spite of a total lack of controlling regulations on the possession, transfer, and use of firearms in the production of movies and television, Hollywood, however, would be exempt from this scheme, leaving only “regular citizens” to comply with AB 1674.

AB 1674 would additionally ban the timely, lawful transfer of private property between individuals (through licensed firearm dealers, no less) by eliminating the ability for a law-abiding California gun owner to sell, trade, or loan their firearms if the intended buyer or transferee has already initiated any kind of acquisition within the past 30 days.

The Second Amendment is not a second-class right and California’s law-abiding residents are not second-class people. AB 1674 must be rejected for its moral and policy flaws if not for its blatant constitutional infirmities.

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