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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2245                      **Hearing Date:** June 21, 2016  
**Author:** Cooper  
**Version:** June 13, 2016  
**Urgency:** No                              **Fiscal:** No  
**Consultant:** JRD

**Subject:** *Firearms: Prohibitions: Exemptions: Probation Departments*

## HISTORY

**Source:** Chief Probation Officers of California

**Prior Legislation:** None known

**Support:** California Police Chiefs Association; Los Angeles Professional Peace Officers Association; Peace Officers Research Association of California; Riverside Sheriffs' Association; Los Angeles Probation Officers Union, AFSCME Local 685; California Probation, Parole and Correctional Association

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

**Assembly Floor Vote:** 77 - 0

## PURPOSE

*The purpose of this bill is to exempt probation departments and sworn members of probation departments from the prohibition related to the purchase or sale of unsafe handguns, as specified.*

*Current law* defines an unsafe handgun as any pistol, revolver, or other firearm capable of being concealed upon the person, which lacks various specified safety mechanisms and does not pass specified safety tests. (Penal Code § 31910.)

*Existing law* provides that commencing January 1, 2001, no “unsafe handgun” may be manufactured or sold in California by a licensed dealer, except as specified, and requires that the Department of Justice (DOJ) prepare and maintain a roster of handguns which are determined not to be unsafe handguns. Private party sales (used or previously owned) and transfers of handguns through a licensed dealer are exempted from those restrictions. (Penal Code §§ 27545, 32000, et seq., § 32110.)

*Existing law* provides that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Penal Code § 32000(a).)

*Existing law* does the following:

- Defines “unsafe handgun” as any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, including a chamber load indicator and magazine disconnect, and does not pass listed tests, as specified. (Penal Code § 31910.)
- Requires any concealable firearm manufactured in California, or intended to be imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state DOJ to determine whether it meets required safety standards, as specified. (Penal Code § 32010.)
- Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Penal Code § 32015.)
- Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not to be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Penal Code § 32015.)

*Existing law* requires that, commencing January 1, 2010, all semiautomatic pistols that are not already listed on the roster be designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired, provided that the DOJ certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions. On May 17, 2013, DOJ issued that certification. (Penal Code § 31910(b)(7).)

*Existing law* allows the Attorney General to annually retest up to 5 percent of the handgun models that are listed on the roster. When retesting the Attorney General is required to:

- Obtain from retail or wholesale sources, or both, three samples of the handgun model to be retested;
- Select the certified laboratory to be used for the retesting;
- Use the type of ammunition recommended by the manufacturer in the user manual for the handgun, as specified; and,

- Conduct the retest in the same manner as the testing prescribed in Sections 31900 and 31905 (drop safety and firing requirement for handguns.)

If the handgun model fails retesting, the Attorney General is required to remove the handgun model from the roster. (Penal Code § 32020.)

*Existing law* specifies that the following are exempt from roster requirements:

- The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by DOJ to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this.
- The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section.
- Firearms listed as curios or relics, as defined in federal law.
- The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the DOJ, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person. (Penal Code § 32000(b).)

*Existing law* contains numerous additional exemptions to the safe handgun requirements, including an exemption for any transfer that is not required to be made through a licensed dealer. This exemption alone includes within it another approximately 25 exemptions. (Penal Code §§ 32110, 27850, et seq.)

*This bill* exempts probation departments and sworn members of probation departments, who have completed the firearms portion of the training course prescribed by the Commission on Peace Officer Standards and Training pursuant to Penal Code 832, from the prohibition related to the purchase or sale of unsafe handguns.

#### 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:

Currently, Penal Code 32000(b)(4) sets forth state exemptions for peace officers that are authorized to purchase and use, in their official duties, non-roster handguns. The

following agencies may purchase non-roster firearms for use in the discharge of their official duties:

- Department of Justice
- A police department
- A sheriff's official
- A marshal's office
- The Department of Corrections and Rehabilitation
- The California Highway Patrol
- Any district attorney's office
- Any federal law enforcement agency
- The military or naval forces of this state or of the United States

Penal Code 32000 does not expressly note probation departments as peace officers who are authorized to purchase non-roster firearms for official department use.

This historically has not presented an issue to departments in being able to purchase the necessary models of firearms needed for on-duty responsibilities. However, recently two county probation departments had their purchase orders to upgrade on-duty handguns to the latest models denied by firearms dealers noting PC 32000(b)(4) and similar issues are occurring for other probation departments.

Probation officers receive the same POST certified PC 832 firearms and arrest training as other peace officers currently noted in existing law. Further, probation officers qualify quarterly for their firearms training which meets and exceeds the general training requirements.

Probation also often works in concert with other local law enforcement agencies on task forces including, but not limited to, gang task forces, narcotic task forces, compliance checks, PC 290 registration compliance and other duties.

Therefore, it is important that probation be able to purchase, train with, and use the same models of firearms that other peace officers that we work with are able to use.

## **2. Safe Handgun Law and the Effect of This Bill**

SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, as defined, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device; (b) does not meet specified firing tests; and, (c) does not meet a specified drop safety test.

SB 489 (Scott), Chapter 500, Statutes of 2003, added to the unsafe handgun law requirements for semiautomatic pistols that became effective in 2006 and 2007. The legislation requires that for a new semiautomatic center-fire pistol firearm to be added to the roster it has to be equipped with a chamber load indicator<sup>1</sup> and a magazine disconnect<sup>2</sup> (if it has a detachable magazine). The

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<sup>1</sup> A chamber load indicator is a device that plainly indicates that a cartridge is in the firing chamber. (Penal Code § 16380.)

legislation also requires that all semiautomatic rimfire pistols, with a detachable magazine, have a magazine disconnect. All firearms that were on the not unsafe handgun list prior to the effective dates were essentially grandfathered in. Those who supported SB 489 argued:

It is just common sense that handgun should include a chamber load indicator that makes it clear whether the weapon is loaded. Since cheap disposable cameras can clearly count down the number of pictures left, it is inexcusable that handguns do not indicate when a bullet is in the chamber. Magazine safety disconnects would also greatly reduce the number of unintentional accidental shootings by ensuring that when the magazine is removed the gun will not fire.

([http://leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0451-500/sb\\_489\\_cfa\\_20030630\\_103204\\_asm\\_comm.html](http://leginfo.ca.gov/pub/03-04/bill/sen/sb_0451-500/sb_489_cfa_20030630_103204_asm_comm.html).)

AB 1471 (Feuer), Chapter 572, Statutes of 2007, added “microstamping” as a requirement for a firearm to be placed on the not unsafe handgun roster beginning January 1, 2010, “provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.” As discussed above, the Department of Justice issued the certification on May 17, 2013. Like the other provisions, the “microstamping” requirement did not apply to firearms already on the roster. The author of AB 1471 provided the rationale for the additional requirement:

AB 1471 will help law enforcement identify and apprehend armed gang members before they inflict more harm on others, including innocent bystanders. In instances of drive-by shootings, where the only evidence at the crime scene may be a spent cartridge case, law enforcement could quickly obtain a critical lead.

([http://leginfo.ca.gov/pub/07-08/bill/asm/ab\\_1451-1500/ab\\_1471\\_cfa\\_20070625\\_130933\\_sen\\_comm.html](http://leginfo.ca.gov/pub/07-08/bill/asm/ab_1451-1500/ab_1471_cfa_20070625_130933_sen_comm.html).)

Current law exempts handguns from the safety testing requirements that are sold to, or purchased by, the Department of Justice, any police department, any sheriff’s official, any marshal’s office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney’s office, or the military. Sworn members of those agencies are also exempted from the ban on buying or selling handguns that are not on DOJ’s “not unsafe” handgun roster. The law, additionally, allows sworn members of these agencies to sell an off-roster handgun to someone who is not exempt.

As stated in the author’s statement, until recently, probation departments have been able to purchase off-roster firearms. There was, evidently, some confusion among dealers as to who qualifies for the roster exemptions. When this was discovered by DOJ, the dealers were issued cited and DOJ reminded the dealers that only listed law enforcement agencies are allowed to purchase off-roster firearms. DOJ, additionally, added the following to their website:

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<sup>2</sup> A magazine disconnect is a mechanism that prevents a semiautomatic pistol from operating when a detachable magazine is not inserted in the semiautomatic pistol. (Penal Code § 16900.)

**Non-Roster Handguns (Unsafe Handguns)**

The following agencies may purchase non-roster firearms for use in the discharge of their official duties:

Department of Justice

A police department

A sheriff's official

A marshal's office

The Department of Corrections and Rehabilitation

The California Highway Patrol

Any district attorney's office

Any federal law enforcement agency

The military or naval forces of this state or of the United States (Pen. Code, § 32000, subd. (b)(4).)

Penal Code section 32000 does not prohibit the sale to, or purchase by, sworn members of the above agencies of a handgun.

(<http://oag.ca.gov/firearms/exemptpo>.)

This legislation would add probation departments to this list of exempted law enforcement agencies. Given that this legislation will also exempt probation officers, who, under existing law, are able to sell these handguns to non-exempt individuals, members may wish to discuss whether there should be a limitation on the transferability of these firearms.

**3. Argument in Support**

According to the Chief Probation Officers of California:

Existing law does not expressly note probation departments as peace officers who are authorized to purchase non-roster firearms for official department use, which historically has not presented an issue to departments in being able to purchase the necessary models of firearms needed for on-duty responsibilities.

However, recently a few county probation department-Marin and San Mateo- had their purchase order to upgrade on-duty handguns to the latest models denied by firearms dealers noting state exemptions for peace officers that are authorized to purchase and use, in their official duties, not on the rostered list.

Probation officers receive the same POST certified PC 832 firearms and arrest

training as other peace officers currently noted in existing law. Further, probation officers qualify quarterly for their firearms training which meets and exceeds the general training requirements.

In addition to the duties of supervising persons on probation, Post-Release Community Supervision (PRCS), and Mandatory Supervision (MS), probation often works in concert with other local law enforcement agencies on task forces including, but not limited to, gang task forces, narcotic task forces, compliance checks, PC 290 registration compliance and other duties. Therefore, it is important that probation be able to purchase, train with, and use the same models of firearms that other peace officers that we work with are able to use”.

#### **4. Argument in Opposition**

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

AB 2245 would expand this exemption and allow probation departments to obtain unsafe handguns. The bill is unnecessary because probation officers have many safer models of handguns available to them.

Officers frequently take their service weapons home and, in some cases, fail to lock them away. Firearms with prominent loaded chamber indicators and magazine disconnect safety devices are safer than those without these and other safety features.

There are many instances of even highly trained law enforcement officers being unaware that a round remains in the chamber of a pistol that lacks a loaded chamber indicator and unintentionally shooting someone. Some models of unsafe handguns lack manual safeties. Unsafe gun designs help cause many unintentional firearm injuries and deaths. For example, unintentional injuries called “Glock leg” are common.

There have also been a number of instances where firearms originally sold to law enforcement were, in turn, re-sold or transferred to civilians. Some law enforcement handguns have been stolen or in other ways have gotten into civilian hands.

Finally, I am also personally opposed to expanding exemptions to California’s handgun safety standards. A model of pistol frequently used by law enforcement killed my son years ago. My son’s friend thought he had unloaded the gun, which lacked a prominent loaded chamber indicator. The boy walked into the room where my son was and made the horrible mistake of pulling the trigger, expecting to hear a “click.” The bullet hidden in the chamber killed my son. Since then, I have learned that even highly trained law enforcement officers sometimes make the mistake of not knowing when a bullet remains in the chamber.

-- END --