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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2805                      **Hearing Date:** June 28, 2016  
**Author:** Olsen  
**Version:** March 17, 2016  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** JM

**Subject:** *Cargo Theft: Prevention Program*

## HISTORY

**Source:** Western Agricultural Processors Association

**Prior Legislation:** SB 1023 (Budget and Fiscal Review) – Ch. 43, Stats 2012  
SB 44 (Denham) – Ch. 18, Stats. 2003  
AB 1727 (Reyes) – Ch. 310, Stats. 2003  
AB 2768 (Poochigian) – Ch. 327, Stats. 1996

**Support:** Agricultural Council of California; California Farm Bureau Federation; California State Association of Counties; California State Sheriffs' Association; Pacific Merchant Shipping Association; Western Growers Association

**Opposition:** California Association of Highway Patrolmen

**Assembly Floor Vote:** 76 - 0

## PURPOSE

*The purpose of this bill is to allow specified counties to enter into an agreement to form the California Agriculture Cargo Theft Crime Prevention Program, which would be administered by the county sheriff's department of each participating county under a joint powers agreement (JPA).*

*Existing law* creates the Motor Carriers Safety Improvement Fund to cover the costs for the Department of the California Highway Patrol to deter commercial motor vehicle cargo, as specified. (Pen. Code § 14170.)

*Existing law* creates the Cargo Theft Interdiction Program to combat the ever increasing cargo theft problem. (Pen. Code § 14170.)

*Existing law* creates the Rural Crime Prevention Program to enhance crime prevention efforts by establishing programs to strengthen law enforcement agencies in rural areas to detect and monitor agricultural and rural based crimes. (Pen. Code § 14170.)

*Existing law* allows for the formation of a JPA for the purpose of two or more public agencies, by agreement, to jointly exercise any power common to the contracting parties. (Pen. Code, § 14170.)

*Existing law* provides that grand theft is theft committed in any of the following cases: (Pen. Code § 487, subd. (h).)

- a) When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950).
- b) Grand theft is committed in any of the following cases:
  - i) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding two hundred fifty dollars (\$250).
  - ii) For the purposes of establishing that the value of domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops under this paragraph exceeds two hundred fifty dollars (\$250), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops of the same variety and weight exceeded two hundred fifty dollars (\$250) in wholesale value.
  - iii) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding two hundred fifty dollars (\$250).
  - iv) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates nine hundred fifty dollars (\$950) or more in any 12 consecutive month period.
  - v) When the property is taken from the person of another.
  - vi) When the property taken is any of the following:
    - (1) An automobile.
    - (2) A firearm.

*This bill* permits the counties of Butte, Colusa, Fresno, Glenn, Kern, Kings, Los Angeles, Madera, Merced, Sacramento, San Benito, San Joaquin, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba to enter into an agreement to form the California Agriculture Cargo Theft Crime Prevention Program.

*This bill* requires the California Agriculture Cargo Theft Crime Prevention Program to be jointly administered by the county sheriff's department of each participating county under a joint powers agreement.

*This bill* requires the parties to the agreement to form a task force known as the California Agriculture Cargo Theft Crime Prevention Task Force.

*This bill* requires the task force to be an interactive team working together to develop crime prevention, problem solving, and crime control techniques, to encourage timely reporting of crimes, and to evaluate the results of these activities.

*This bill* permits the task force to operate from a joint facility in order to facilitate investigative coordination.

*This bill* allows the task force to develop a uniform procedure for all participating counties to collect data on agricultural cargo theft crimes.

### 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 has seen an increase in incidents of cargo theft in recent years. According to CargoNet, California experienced 158 cargo theft incidents in 2015, costing businesses over \$18.7 million – more than any other state. These massive losses are spread across all sectors of our economy including agriculture, retail, and technology. Organized crime has been responsible for many of these thefts, and the scope of crime suggests international actors are at play. However, local law enforcement agencies have been unable to adequately respond due to a lack of resources and the inability to coordinate statewide.

California needs a proactive solution that will aid local law enforcement officials and protect businesses. AB 2805 provides a solution to this ever-growing problem.

### 2. Cargo Theft of Agricultural Products - Background

As noted in author's statement, cargo theft of all kinds is a growing problem for a wide range of business, although agriculture has been hit particularly hard. According to the Western Agricultural Processors Association (Processors), the tree nut industry has reported 30 separate incidents of cargo theft in the last six months. Millions of dollars in almonds, walnuts, cashews and pistachios have been stolen via thieves, posing as legitimate truck drivers, creating fraudulent paperwork and picking up cargo. The industry has responded by fingerprinting truckers who come in to pick up loads and sometimes photographing big rig drivers. Processors also are checking truck vehicle identification numbers and calling to verify information. Others are adopting high-tech solutions, such as radio-frequency identification tags to track cargo loads. The Processors Association, the Agricultural Council of California and the Farm Bureau argue that a proactive, coordinated statewide task force will help lower the number of thefts. Law enforcement officials believe organized criminal enterprises might be diverting some of the nut cargo to the export market. However, local law enforcement agencies have been unable to adequately respond due to a lack of resources and the inability to coordinate statewide.

This bill would create the California Agriculture Cargo Theft Crime Prevention Program. Participating counties will create a task force comprising of members from each county office of the district attorney, sheriff, agricultural commissioner, and interested property owner groups or

associations. The task force will be modeled after the Rural Crime Prevention Task Force. At this time there is no proposed funding for AB 2805.

**3. California Rural Crime Prevention Programs**

This bill is similar in concept to the California Rural Crime Prevention Program, which was established by AB 2768 (Poochigian), Ch. 327, Stats. 1996. The program was renamed the Central Valley Rural Crime Prevention Program (CVRCPP) in 2002. A parallel program - the Central Coast Rural Crime Prevention Program (CCRCPP) - was enacted by SB 44 (Denham) in 2003. The programs – including a funding distribution formula for participating counties – are still in statute.

2014 Budget legislation – AB 1468 (Committee on Budget) included the following funding sources and allocations for CVRCPP and CCRCPP in Penal Code 13821, subdivision (c): Commencing with the 2013–14 fiscal year, the Central Valley and Central Coast Rural Crime Prevention Programs, authorized by Sections 14170 and 14180, shall receive 9.06425605 percent and shall be allocated by the Controller in monthly installments according to the following schedule:

Fresno County	18.5588%
Kern County	13.7173%
Kings County	6.8587%
Madera County	4.4380%
Merced County	6.8587%
Monterey County	7.2411%
San Benito County	4.8273%
San Joaquin County	6.8587%
San Luis Obispo County	2.1723%
Santa Barbara County	3.6206%
Santa Cruz County	1.4482%
Stanislaus County	6.8587%
Tulare County	16.5415%

A 2002 report by the Legislative Analyst found mixed results for the CVRCPP, although LAO had limited data to analyze. The report included the following positive conclusion: “[A]ll eight [participating] counties had better outcomes than the state as a whole, suggesting that the Rural Crime Prevention program has led to greater success in the area of arrests, prosecutions, and convictions.” [http://www.lao.ca.gov/2002/rural\\_crime/rural\\_crime\\_052102.pdf](http://www.lao.ca.gov/2002/rural_crime/rural_crime_052102.pdf)

The experience of the participants in the CVRCPP and the CCRCPP could be valuable for participants in implementing the program created by this bill. Participants could limit mistakes and emphasize strategies that were successful in those programs. Further, an agricultural cargo crime prevention program could perhaps use part of collaborative structure created for the CVRCPP and CCRCPP.

#### **4. A Separate Statute Defines Cargo Theft**

California law defines cargo theft as a separate form of grand theft. (Pen. Code § 487h.) The basic elements of the crime are the same as other forms of grand theft – the taking of the property of another valued at over \$950, with the intent to permanently deprive the owner of possession or use of the property. The only difference is the kind of property taken.

The cargo theft statute was enacted to allow law enforcement to separately track the incidence of cargo theft in California. The Federal Bureau of Investigation has required separate reporting of cargo theft since 2006. California ports are a substantial security concern of the federal and state governments. In 2015, the Brookings Institute reported that the combined value of goods handled by the ports of Long Beach and Los Angeles ranked 1st in the United States and the San Francisco-Oakland ports ranked 9th.<sup>1</sup> The Los Angeles County Sheriff sponsored the bill that defined cargo theft - SB 24 (Oropeza) Ch. 607, Stats. 2009. At the time that SB 24 was enacted, the sponsor noted that federal funding is available for security at ports, including to combat cargo theft.

#### **5. Argument in Support**

The California State Association of Counties argues in support:

In recent years, California has seen an increase in incidents of cargo theft with over 150 cargo thefts in 2015, costing businesses over \$18.7 million. These massive losses are spread across all sectors of our economy. Local law enforcement has struggled to adequately respond due to a lack of resources and the inability to coordinate statewide.

AB 2805 creates a task force charged with developing and adopting standards for detecting and tracking cargo theft. The task force would be comprised of members from diverse law enforcement groups and businesses from the following participating counties: Butte, Colusa, Fresno, Glenn, Kern, Kings, Los Angeles, Madera, Merced, Sacramento, San Benito, San Joaquin, Stanislaus, Sutter, Tehama, Tulare, Yolo and Yuba. The bill provides a comprehensive, cross jurisdictional approach to cargo theft of agricultural commodities, many of which are destined for export. Because of the nature of cargo moving throughout the state, this bill addresses some of the impediments facing law enforcement by providing better coordination and cooperation between various jurisdictions.

#### **6. Argument in Opposition**

The California Association of Highway Patrolmen argues in opposition:

The CHP is the statewide law enforcement organization tasked with addressing cargo theft in California, and has been providing cargo theft investigations for more than two decades. We are unaware of any allegations that the CHP has not performed their duties adequately.

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<sup>1</sup> <http://www.brookings.edu/blogs/the-avenue/posts/2015/07/01-top-10-metro-ports-tomer-kane>. This ranking appears to include cargo handled by the Los Angeles World Airports

AB 2805 would set up a cargo theft program in Butte, Colusa, Fresno, Glenn, Kern, Kings, Los Angeles, Madera, Sacramento, San Benito, San Joaquin, Stanislaus, Sutter, Tehama, Tulare, Yolo and Yuba counties and rely on sheriffs to coordinate so that enforcement is done consistently throughout each county. This is precisely why the CHP was formed – for uniform, statewide enforcement of commercial vehicle laws and the California Vehicle Code. The CHP is the only agency that has jurisdiction across all county lines. We simply do not believe this bill is necessary.

**-- END --**