
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 221 **Hearing Date:** April 2, 2019
Author: Hill
Version: February 7, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Firearms: Law Enforcement Agencies: Agency Firearm Accounting*

HISTORY

Source: Author

Prior Legislation: SB 1185 (Hill), 2018, failed passage in Senate Appropriations
AB 22 (Hill), 2017, failed passage in Senate Appropriations

Support: Bay Area Student Activists; Brady California United Against Gun Violence;
Youth ALIVE!

Opposition: None known

PURPOSE

The purpose of this bill is to require a law enforcement agencies to adopt written procedures to account for firearms that are owned, acquired, maintained, sold, loaned, lost, stolen, or in any way possessed by that agency or by an employee of that agency if used or carried for purposes of carrying out the official duties of his or her employment. The bill would additionally require that firearms that are lost, stolen, or otherwise disposed of be entered into the Automated Firearms System (AFS).

Existing law requires, in a variety of circumstances, that within ten days of the date that a firearm is sold, delivered, or transferred acquired by the agency, a record of the same must be entered as an institutional weapon into AFS by the law enforcement or state agency. Any agency without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system. (Penal Code §§ 26600, 26610, 26615, 26620, 27050, 27060, 27065, 27400, 27410, 27415, 27600, 27610, 27615, 27620, 27920, 28400, 28410, 28415, 30150, 30160, 30165, 31705, 31715, 31720, 34355, 34365, and 34370.)

Existing law requires, commencing July 1, 2017, every person to report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost. Every person who reports a firearm lost or stolen is required to notify the local law enforcement agency within five days if the firearm is subsequently recovered by the person. A person is not required to report the loss or theft of a firearm that is an antique firearm. (Penal Code § 25250.)

Existing law exempts the following from having to report their firearm lost or stolen: (Penal Code § 25255.)

- Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties if he or she reports the loss or theft to his or her employing agency.
- Any United States marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties.
- Any person who is licensed, pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and who reports the theft or loss in accordance with Section 923(g)(6) of Title 18 of the United States Code, or the successor provision thereto, and applicable regulations issued thereto.
- Any person whose firearm was lost or stolen prior to July 1, 2017.

Existing law requires that every sheriff or police chief submit a description of each firearm that has been reported lost or stolen directly into AFS. (Penal Code § 25260.)

This bill would require a law enforcement agency to adopt a written procedure to account for all firearms that are owned, acquired, maintained, sold, loaned, lost, stolen, or in any way possessed by that agency, or by an employee of that agency that are used or carried for purposes of carrying out the official duties of his or her employment. Additionally, it would require that within 10 days of the date that a firearm that is owned, acquired, maintained, or in any way possessed by that agency, or owned, acquired, maintained, or in any way possessed by an employee of that agency and used by that employee in carrying out his or her duties, is lost, stolen, or otherwise disposed of by the law enforcement agency, or by an employee of the law enforcement agency, a record of that disposition shall be entered into the AFS via the CLETS by the law enforcement agency.

This bill would require the written procedure to include, at a minimum, the following:

- The maintenance and accurate written accounting of all agency firearms and also firearms used or carried by an employee within the course of his or her employment that are not owned by the agency, including a method for updating the written accounting on a regular basis as firearms are destroyed, acquired, sold, loaned, lost, or stolen.
- Reconciliation of the written accounting and firearms that are in possession of the agency or its employees, or both, at least annually.
- A requirement that agency employees report to the agency those lost or stolen firearms within five days of the date they know or reasonably should have known that the firearms were lost or stolen.
- A process for disciplining agency employees who fail to report lost or stolen firearms that is consistent with current disciplinary procedures.

This bill defines the following:

- “Law enforcement agency” means every district attorney, municipal police department, sheriff’s department, district attorney’s office, county probation department, and social services agency, the Department of Justice, the Department of Corrections and

Rehabilitation, the Department of the California Highway Patrol, the police department of any campus of the University of California, the California State University, or community college, and every agency of the State of California expressly authorized by statute to investigate or prosecute law violators.

- “Firearm” has the same meaning as defined currently in the Penal Code.

COMMENTS

1. Need for This Bill

According to the author:

As part of their responsibility to protect the public and preserve public peace law enforcement agencies should be accountable for safely maintaining their inventory of firearms.

However, several reports and investigations have uncovered hundreds of lost and stolen law enforcement firearms that have never been reported or accounted for. Many of these weapons have ended up in the hands of criminals and have been used to commit crimes.

Additionally, nothing in current law sufficiently requires law enforcement agencies to account for, keep track of, or in any other way monitor their guns. Recent investigations into this issue have uncovered the following:

- A survey of 240 California law enforcement agencies found that between 2010 and 2016, 944 firearms were lost and fewer than 20 percent have been recovered. The lost items include pistols, assault rifles, and grenade launchers. Some of the guns ended up in the hands of criminals, like the Nortenos gang. Additionally, the investigation found that many departments do not have policies to keep track of guns or to audit their armory. A spokesperson for the Oakland Police Department said they have “done a very poor job” of keeping track of guns.
- Over a five year period, 134 southern California police agencies lost track of 329 guns. This includes handguns, assault rifles, and a grenade launcher. According to the investigation, “dozens of these guns wound up in the hands of criminals.” The Los Angeles County Sheriff’s office admitted to not knowing how many of their guns are missing. Similarly, the Long Beach Police Department stated that it does not keep track of its guns.

A 2015 Bay Area investigation found that over 500 guns from eight different police agencies have gone unaccounted for since 2010. The San Jose Police Department was responsible for 324 of the unaccounted guns. A spokesperson for the department said that “decades of poor recordkeeping is to blame for the missing guns.”

2. Effect of This Bill

Under existing law, there are a variety of circumstances in which a law enforcement agency is required to enter a firearm into AFS, including when the firearm is acquired by an agency or when a firearm is reported lost or stolen. Additionally, existing law requires that firearms be reported lost or stolen within five days of the discovery that the firearm is missing. Law enforcement is exempt from this reporting requirement if the officer reports the missing firearm to his or her agency.

This legislation seeks to strengthen existing law by requiring law enforcement to have a policy that includes:

- The maintenance and accurate written accounting of all agency firearms and firearms used or carried by an employee within the course of his or her employment, that are not owned by the agency, including a method for updating the written accounting on a regular basis as firearms are destroyed, acquired, sold, loaned, lost, or stolen.
- Reconciliation of the written accounting and firearms that are in possession of the agency or its employees, or both. The reconciliation must occur no less than once every year.
- A requirement that agency employees report to the agency those lost or stolen firearms within five days of the date they know or reasonably should have known that the firearms were lost or stolen.
- A process for disciplining agency employees who fail to report lost or stolen firearms that is consistent with current disciplinary procedures.

This legislation, additionally, requires law enforcement agencies to report into AFS when a firearm is lost or stolen.

3. Theft and Loss of Firearms from Law Enforcement

One factor to consider when expanding the ability to possess dangerous weapons is that weapons can and are lost or stolen from law enforcement. Often law enforcement officers are permitted possession of weapons that are illegal to the general public, such as assault weapons and high capacity magazines. On July 1, 2015, a federal ranger's stolen gun was used in the high-profile killing of Kate Steinle as she walked with her father on San Francisco Pier. A June 26, 2016 article published by the San Jose Mercury News highlighted the issue of lost or stolen guns from law enforcement.

944 Lost Guns, A Bay Area News Group Watchdog Report¹

Nine-hundred and forty-four guns. From Glockes, Sig Sauers and Remingtons to sniper and assault rifles, some equipped with grenade launchers.

They used to belong to law enforcement officers across California, but a new Bay Area News Group investigation found hundreds of police-issued weapons have been either stolen, lost or can't be accounted for since 2010, often disappearing onto the streets without a trace.

¹ San Jose Mercury News, Bay Area News Group Watchdog Report, *944 Lost Guns*, by Thomas Peele, June 26, 2016; <http://extras.mercurynews.com/policeguns/>

A year after a bullet from a federal agent's stolen gun killed 32-year-old Kate Steinle on a San Francisco pier, this news organization surveyed more than 240 local, state and federal law enforcement agencies and discovered an alarming disregard for the way many officers — from police chiefs to cadets to FBI agents — safeguard their weapons.

Their guns have been stolen from behind car seats and glove boxes, swiped from gym bags, dresser drawers and under beds. They have been left on tailgates, car roofs and even atop a toilet paper dispenser in a car dealership's bathroom. One officer forgot a high-powered assault rifle in the trunk of a taxi.

The tally includes Colts, Rugers, Smith & Wessons, a Derringer, a .44-caliber Dirty Harry hand cannon and a small snub-nosed revolver called a 'Detective Special.'

In all, since 2010, at least 944 guns have disappeared from police in the Bay Area and state and federal agents across California — an average of one almost every other day — and fewer than 20 percent have been recovered.

Little attention had been paid to the issue before Steinle's highly publicized death. But at least 86 weapons were snatched from officers' vehicles between January 2010 and last June's smash-and-grab burglary of a U.S. Bureau of Land Management ranger's gun recovered after Steinle's shooting. Police have not determined who stole it, but an illegal immigrant is charged in her killing...

...Even after Steinle's death, law enforcement agents have continued to leave guns available in their cars: Four FBI guns have been stolen from vehicles in the Bay Area this year, including three in Benicia; Salinas police had three stolen from cars in a six-week period in April and May. And a San Jose Police cadet resigned on the eve of becoming an officer after his gun was stolen from his car in late October while he was in the Benihana restaurant at Cupertino's Vallco Shopping Mall...

...Discipline appears rare

Strong discipline would help curb thefts, experts say, but it isn't clear whether such discipline happens; California's secretive police personnel laws often make it difficult to find out what happened to cops who left guns unsecured.

A few cases show punishment is far from severe.

When an unidentified Napa police officer left an assault weapon in the trunk of a taxi — the driver later turned it in — the discipline was a written reprimand, Chief Steven Potter said. When another cop had a weapon stolen from his home, he received a lecture and was told to buy a gun safe.

A cop leaving a gun unsecured in a vehicle can be "gross negligence," Stephanie Wheaton, a senior DMV investigator, wrote in a January memo after investigating an underling whose gun was stolen in Los Angeles County last year.

Wheaton found the investigator 'changed his story,' first claiming he left a bag containing the gun in the car, then saying he took the gun in his house.

She wrote that, at a minimum, the investigator's punishment should be to pay the state the cost of the weapon — more than \$700. A DMV spokesman would not say if or how the investigator was disciplined.

Alameda Sheriff Ahern said that none of the guns stolen from his deputies' personal vehicles resulted in the kind of internal affairs investigations that can lead to serious discipline. Rather, he said, the department took administrative measures, such as 'an informal counseling session' and what he called a 'formal record of conversation.'

Most missing guns unaccounted for

Far more guns are listed as lost, missing or unaccounted for than stolen — designations that can seem charitable, with police saying they sometimes use that listing when they suspect but aren't sure that the weapon might have been stolen.

Stockton police list two Colt assault rifles as lost, although Lt. Rodney Rego said they were probably stolen when a police building being closed was burglarized.

'We just don't really know what happened to them,' he said. The department also listed 15 12-gauge Remington shotguns and two Bushmaster assault rifles as unaccounted for in 2014. Two of the shotguns have been found. Some of the others 'might have been cannibalized for parts,' lost, traded in for newer weapons, or stolen, Rego said.

San Jose lost track of 324 guns, with records showing the city's lax controls failed to track whether officers took their weapons with them when they retired. The city recovered 14 of the missing weapons, records show. Like Oakland, San Jose's numbers are eye-popping, but experts argue that other large departments would likely show similar numbers of missing weapons if they conducted similar audits. San Francisco, the region's other large department, keeps documented track of rifles and shotguns, a spokesman said, but not pistols.

Oakland police have historically 'done a very poor job' of keeping track of weapons, working with 'a system that is really lousy,' said Lt. Sekou Millington, commander of the department's training office.

A 2011 report showed 305 missing weapons, and follow-ups have added to the total. Forty-seven have turned up, but most are gone, Millington said, sold, perhaps, but not documented. The department has little idea where they might be and in whose hands. Millington said he hopes the city will buy software to track when guns enter or leave the station and signal alerts when one is gone too long.

'As bad as this is,' Millington said, 'I hope it is going to get us the technology we need to fix it.'

4. Argument in Support:

According to Youth ALIVE!:

Guns that go unaccounted for and untraceable have affected the population we serve for too long. Emerging weapons such as "ghost guns" are known to bypass traditional methods of firearms safety and gun purchase accountability. AB 221 would add a tremendous protective layer of safety, transparency and

accountability. Our violence prevention professionals at Youth ALIVE! Are committed to mediating conflicts and reducing gun violence. In an effort to promote safer communities and transparent gun ownership, a sufficient system proposed in SB 221 would help eliminate thousands of lost or stolen firearms.

-- END --