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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 456                      **Hearing Date:** April 14, 2015  
**Author:** Block  
**Version:** February 25, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** LT

**Subject:** *Criminal Threats: Discharge of a Firearm*

### HISTORY

**Source:** San Diego County District Attorney

**Prior Legislation:** None known

**Support:** California District Attorneys Association; Peace Officers Research Association of California; California State Sheriffs' Association; California Chapters of the Brady Campaign to Prevent Gun Violence; Association for Los Angeles Deputy Sheriffs; Los Angeles Police Protective League; Riverside Sheriffs Association; Los Angeles Association of Deputy District Attorneys

**Opposition:** Legal Services for Prisoners with Children

### PURPOSE

*The purpose of this bill is to enact a new misdemeanor prohibiting persons from threatening to discharge a firearm at a school, as specified.*

*Existing law* provides that “any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison” (Penal Code § 422).

*This bill* would enact a new crime to provide that “a person who maliciously threatens to discharge a firearm on the campus of a public or private university, community college, school, or location where a school-sponsored event is taking place in the state, and who maliciously causes the report of that threat to be made to law enforcement, is guilty of a misdemeanor.”

*This bill* would provide that “a threat to discharge a firearm, [as specified], includes a threat that is communicated orally, in writing, by means of an electronic communication device, including

but not limited to, a telephone, cellular telephone, computer, video recorder, fax machine, text message, on social media, or by any other means.”

*This bill* would define “‘school’ to mean a preschool, elementary school, middle school, junior high school, high school, or charter school.”

*This bill* would provide that “a person convicted of violating its provisions, based upon a report that resulted in an emergency response, is liable to a public agency for the reasonable costs of the emergency response by any public agency.”

*This bill* would provide that its provisions would “not preclude punishing a person for conduct under any other law providing for greater punishment.”

### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”( Defendants’ February 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).

While significant gains have been made in reducing the prison population, the state now 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. Stated Need for This Bill

The author states:

SB 456 criminalizes the making of a threat to commit a school shooting, whether directed to a specific individual, or whether posted on social media for an invited or general viewing population.

A recent study of threats from August-December of 2014 by the President of National School Safety and Security Services shows some alarming trends. The number of threats in that time period was up 158% from last year, with 37% of those threats sent electronically via social media, e-mail, text messaging and other online resources. Nearly 30% of the threats analyzed resulted in a school evacuation, and 10% resulted in school closures for at least a portion of the day. In the San Diego Unified School District, alone, there have been 138 reported threats in the past year.

There are significant costs associated with threats that target schools—both in the initial response required to insure that the community is safe by shutting down the targeted schools, but also in the subsequent investigation that may require substantial time, resources, and opportunity costs.

SB 456 applies specifically to school-shooting threats, and does not require proof of a specifically targeted individual, or a demonstration of sustained fear by any one particular person, thus filling the gap left by statutes that proscribe bomb threats and criminal threats, SB 456 holds offenders accountable, deters future conduct, and shifts the burden of costs by authorizing the court to order restitution.

### 2. What the Bill Does

As explained in detail above, this bill will enact a new crime, punishable as a misdemeanor, to threaten to discharge a firearm on the campus of a public or private university, community college, school, or location where a school-sponsored event is taking place. Under current law it is a crime to make a credible threat of death or great bodily injury, which includes the following elements: The defendant made the threat “verbally,” in writing or by means of an electronic communication device and with the intent that it be taken as a threat; and it appears that the defendant had the means and intent to carry out the threat such that the victim was placed in sustained fear for his or her own safety or that of his or her immediate family.

This crime is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1000, or both, or by imprisonment in a state prison for 16 months, 2 or 3 years and a fine of up to \$10,000.

### 3. First Amendment Issues—Free Speech and Limits on Threatening Speech

Courts have long held that speech concerning public issues is entitled to great protection under the First Amendment. (*Burson v. Freeman* (1992) 504 U.S. 191.) The California Constitution also protects free speech. (Cal. Const. Art. I, § 2.) The First Amendment protects the free trade in ideas. “[T]he government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” (*Texas v. Johnson* (1989) 491 U.S. 397, 414.)

The First Amendment is not absolute. “There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem.” (*Chaplinsky v. New Hampshire* (1942) 315 U.S. 568, 571-572.) The First Amendment permits “restrictions upon the content of speech in a few limited areas, which are ‘of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality’.” (*R. A. V. v. City of St. Paul* (1992) 505 U.S. 377, 382-383. quoting *Chaplinsky* at p. 572). In particular, expressive conduct intended to intimidate is not protected by the First Amendment. (*Virginia v. Black* (2003) 538 U.S. 343.)

A specific form of unprotected, intimidating speech is called “true threats” in First Amendment jurisprudence. “A threat is an expression of an intention to inflict evil, injury or damage on another. Alleged threats should be considered in light of their entire factual context, including the surrounding events and reactions of the listeners. ... A true threat, that is one where a reasonable person would foresee that the listener will believe he will be subjected to physical violence upon his person, is unprotected by the First Amendment.” (*Planned Parenthood of the Columbia/Willamette v. American Coalition of Life Activists* (2002) 290 F.3<sup>rd</sup> 1058, 1077.)

### 4. Author’s Amendments

The author intends to amend this bill in Committee as follows:

- Revise the bill’s provisions to remove the word “maliciously,” and instead require that a person who threatens to discharge a firearm on the campus of a school, as specified **who knew or should have known that the threat could be taken as true, causing others to reasonably believe that a shooting is likely to occur**, is guilty of a misdemeanor.
- Revise the bill’s provisions to provide that the fact that precautionary measures were taken by a school or law enforcement agency is evidence of a reasonable belief that a shooting was likely to occur.
- Revise the bill’s provisions for this new crime to include a minor adjudged to be a delinquent ward of the juvenile court, based upon a violation of this section is liable to a public agency for any reasonable costs of the emergency response to the person’s threat by that public agency.

Members may wish to discuss whether these amendments strengthen the bill with respect to the constitutional considerations noted above.

## 5. Background: School Threats

Recent media reports have described numerous incidents involving school threats. For example, in San Diego:

...there were 5 percent more suspensions and expulsions in San Diego County related to making terrorist threats in the 2013-14 school year than in the previous school year, and 35 percent more than in the 2011-12 school year. Threats typically surface on social media or are made via phone or email. Once school officials learn of it, police are called in to investigate, and a school might get locked down, with everyone on campus kept behind locked doors the coast is clear. That could take hours.

Students from high school campuses in Oceanside, San Diego, El Cajon and San Marcos, have been arrested on suspicion of using the app to threaten schools.

The CEO, Jonathan Lucas, said recent changes to the app make it “very clear” that threats of violence and bullying won’t be tolerated. He said users are asked to carefully consider the contents of their posts and are even shown their IP addresses. He said the company has been cooperating with all law enforcement investigations and has a quick process in place to help investigators locate users who commit crimes. (Winkley, Lyndsay, and Pat Maio. "Online Schools Threats Up; Officials Crack down." *U-T San Diego*. N.p., 22 Mar. 2015. Web. 07 Apr. 2015.)

Similarly, in Los Angeles, an 11<sup>th</sup> grade student was arrested for making threats through the social media app, Burnbook, against a Los Angeles county high school. Investigators were informed that the student had published the threat online and was taken into custody the following day. He was charged with making criminal threats after he confessed to threatening to bring a weapon to school. The student told deputies that he was making jokes. ("Student Arrested after Social Media Threats against School." *Student Arrested following Threats on Social Media against Los Angeles County School*. The Associated Press, 12 Mar. 2015. Web. 07 Apr. 2015.)

Based on these reports, it appears current law already addresses the kinds of threats this bill seeks to address. Members may wish to discuss why current law is not adequate, and how this bill would enhance campus safety against credible threats.

## 6. Related Bill

SB 110 (Fuller), scheduled to be heard the same day as this bill, similarly addresses threats relating to schools. That bill is broader, however targeting threats of “unlawful violence,” and does not include the more specific “true threat” language proposed by this bill.