
UNFINISHED BUSINESS

Bill No: SB 497
Author: Portantino (D), et al.
Amended: 9/5/17
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

SUBJECT: Firearms

SOURCE: Author

DIGEST: This bill allows a peace officer when leaving a handgun in an unattended vehicle to lock the handgun in the center console, as specified.

Assembly Amendments

- 1) Added the provisions related to permitting peace officers to leave a handgun in an unattended vehicle.
- 2) Deleted the provisions of the bill related to firearm transfers.

ANALYSIS:

Existing law:

- 1) Requires every person who is leaving a handgun in an unattended vehicle, lock the handgun in the vehicle's trunk, lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle's interior, and a violation of this provision is an infraction punishable by a fine not to exceed \$1,000. (Pen. Code, § 25140, subds. (a) & (b).)
- 2) Defines "vehicle" as "a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks." (Pen. Code, § 25140.)

- 3) Defines "locked container" as "a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device." A locked container "does not include the utility or glove compartment of a motor vehicle." (Pen. Code, § 25140.)
- 4) Provides that a vehicle is unattended when a person who is lawfully carrying or transporting a handgun in a vehicle is not within close enough proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents. (Pen. Code, § 25140.)
- 5) Exempts a peace officer from this requirement during circumstances requiring immediate aid or action that are within the course of his or her official duties. (Pen. Code, § 25140.)
- 6) States that local ordinances pertaining to handgun storage in unattended cars supersede this section if the jurisdiction had enacted the ordinance before the effective date of this statute. (Pen. Code, § 25140.)

This bill:

- 1) Provides that a peace officer when leaving a handgun in an unattended vehicle not equipped with a trunk, may lock the handgun out of plain view within the center utility console of that motor vehicle with a padlock, keylock, combination lock, or other similar locking device.
- 2) Defines "peace officer" to mean "a sworn California peace officer or a sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of that officer's duties, while that officer is on duty or off duty."
- 3) Defines "trunk" to mean "the fully enclosed and locked main storage or luggage compartment of a vehicle that is not accessible from the passenger compartment. A trunk does not include the rear of a hatchback, station wagon, or sport utility vehicle, any compartment that has a window, or a toolbox or utility box attached to the bed of a pickup truck."
- 4) Defines "plain view" to include "any area of a vehicle that is visible by peering through the windows of the vehicle, including windows that are tinted, or without illumination."

Background:

Last year SB 869 (Hill), chapter 651, of the statutes of 2016, required a person, when leaving a handgun in a vehicle, to secure the handgun by locking it in the trunk of the vehicle or locking it in a locked container and placing the container out of plain view.

A U.S. citizen over 18 years of age who is not prohibited from possessing a firearm, and who is a California resident or temporarily in the state, may transport by motor vehicle any handgun provided it is unloaded and locked in the trunk or in a locked container. Furthermore, the handgun must be carried directly to or from any motor vehicle for any lawful purpose and, while being carried must be contained within a locked container.

The term "locked container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. This includes the trunk of a motor vehicle, but does not include the utility or glove compartment. (Pen. Code, § 16850.)

Shotguns and rifles are not generally covered by concealed-carry provisions (because they are considered non-concealable) and therefore are not required to be transported in a locked container. They must be unloaded while they are being transported.

Registered assault weapons may be transported only between specified locations and must also be unloaded and stored in a locked container when transported. (See California Department of Justice Website.)

The background for SB 869 stated that in recent years there has been an increase in incidents of handguns stolen from cars. This includes handguns stolen from law enforcement vehicles. Tragically, many stolen guns end up being used in violent crimes.

As the background provided by the author notes, in the latter half of 2015, four people were killed with guns stolen from cars; two of the weapons were taken from law enforcement officers' vehicles. For example, in July 2015, a gun stolen from the car of a federal Bureau of Land Management ranger was used to kill a 32-year-old woman at San Francisco's Pier 14. In September 2015, a gun stolen from the car of a federal Immigration and Customs Enforcement officer was used in the killing of a muralist in Oakland. A weapon was stolen from a civilian's vehicle was used to kill a backpacker in Golden Gate Park and a hiker in Marin County.

One factor to consider is that weapons can be lost or stolen from law enforcement. 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.

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-

¹ San Jose Mercury News, Bay Area News Group Watchdog Report, *944 Lost Guns*, by Thomas Peele, June 26, 2016.

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.'

Comments:

The current contents of the bill were added in the Assembly, and the provisions that were previously heard by the Senate were later amended out of the bill in the Assembly Appropriations Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee: Implementation costs of approximately \$190,000 (Dealers' Record of Sale Account) to the Department of Justice (DOJ) in the first year, and minor annual costs of less than \$5,000 every year thereafter. However, those provisions were amended out of the bill in the Assembly Appropriations Committee.

SUPPORT: (Verified 9/13/17)

None received for the current version of the bill.

OPPOSITION: (Verified 9/13/17)

None received for the current version of the bill.

Prepared by: Gabriel Caswell / PUB. S. /
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