SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 1134	**Hearing Date:**	July 14, 2015
Author:	Mark Stone		
Version:	June 16, 2015		
Urgency:	No	**Fiscal:**	No
Consultant:	JRD		

Subject: ***Firearms: Concealed Firearm Licenses***

HISTORY

Source: California State Sheriffs' Association and Los Angeles County Sheriff's Department

Prior Legislation: None known

Support: Unknown

Opposition: California Rifle and Pistol Association; Firearms Policy Coalition; Gun Owners of California; Law Center to Prevent Gun Violence (unless amended); National Rifle Association

Assembly Floor Vote: 51 - 26

PURPOSE

The purpose of this legislation is to allow a sheriff to: 1) require an applicant, who resides in a city with a municipal police department, to apply for a concealed carry license, renew a license, or amend a license to carry a concealed handgun through the chief of police or other head of the municipal police department in lieu of the sheriff, provided that the chief or other head of the municipal police department agrees to process those applications; and 2) review any denial by the chief or other head of an application for a license or for the renewal of a license, as specified.

Existing law states that a county sheriff or municipal police chief may issue a license to carry a handgun capable of being concealed upon the person upon proof of all of the following:

- The person applying is of good moral character (Penal Code §§ 26150 and 26155(a)(1));
- Good cause exists for the issuance (Penal Code §§ 26150 and 26155(a)(2));
- The person applying meets the appropriate residency requirements (Penal Code §§ 26150 and 26155(a)(3)); and,

- The person has completed the appropriate training course, as specified. (Penal Code §§ 26150 and 26155(a)(4)).

Existing law states that a county sheriff or a chief of a municipal police department may issue a license to carry a concealed handgun in either of the following formats:

- A license to carry a concealed handgun upon his or her person (Penal Code §§ 26150 and 26155(b)(1)); or,

- A license to carry a loaded and exposed handgun if the population of the county, or the county in which the city is located, is less than 200,000 persons according to the most recent federal decennial census. (Penal Code §§ 26150 and 26155(b)(2).)

Existing law provides that a chief of a municipal police department shall not be precluded from entering into an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, or renewal of licenses, to carry a concealed handgun upon the person. (Penal Code § 26155(b)(3).)

Existing law provides that a license to carry a concealed handgun is valid for up to two years, three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer. (Penal Code § 26220.)

Existing law provides that a license may include any reasonable restrictions or conditions that the issuing authority deems warranted. (Penal Code § 26200.)

Existing law states that the fingerprints of each applicant are taken and submitted to the Department of Justice (DOJ). Provides criminal penalties for knowingly filing a false application for a concealed weapon license. (Penal Code §§ 26180 and 26185.)

Existing law requires the fingerprints of each applicant for a license to carry a concealed handgun be taken and two copies on forms prescribed by the DOJ and be forwarded to DOJ. Upon receipt of the fingerprints and the required fee, DOJ must promptly furnish the forwarding licensing authority a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. (Penal Code § 26185(a).)

Existing law states that if the license applicant has previously applied to the same licensing authority for a license to carry firearms and the applicant's fingerprints and fee have been previously forwarded to DOJ, the licensing authority must note the previous identification numbers and other data that would provide positive identification in the files of DOJ on the copy of any subsequent license submitted DOJ and no additional application form or fingerprints are required. (Penal Code § 26185(b).)

Existing law states that if a license applicant has a license issued and the applicant's fingerprints have been previously forwarded to DOJ the licensing authority must note the previous identification numbers and other data that would provide positive identification in the files of DOJ on the copy of any subsequent license submitted to DOJ and no additional fingerprints are required. (Penal Code § 26185(c).)

Existing law states that each applicant for a new license to carry a concealed handgun, or for the renewal of a license, must pay at the time of filing the application a fee determined by DOJ. The fee cannot exceed the application processing costs of DOJ. (Penal Code § 26190(a).)

Existing law allows the licensing authority of any city, city and county, or county to charge an additional fee in an amount equal to the actual costs for processing the application for a new license, including any required notices, excluding fingerprint and training costs, but in no case to exceed one hundred dollars ($100), and must transmit the additional fee, if any, to the city, city and county, or county treasury. The first 20 percent of this additional local fee may be collected upon filing of the initial application. The balance of the fee shall be collected only upon issuance of the license. (Penal Code § 26190(b).)

Existing law allows the licensing authority to charge an additional fee, not to exceed twenty-five dollars ($25), for processing the application for a license renewal, and shall transmit an additional fee, if any, to the city, city and county, or county treasury. (Penal Code § 26190(c).)

Existing law states that a license to carry a concealed handgun cannot be issued if DOJ determines that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. A license must be revoked by the local licensing authority if at any time either the local licensing authority is notified by DOJ that a licensee is prohibited by state or federal law from owning or purchasing firearms, or the local licensing authority determines that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. If at any time DOJ determines that a licensee is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, DOJ shall immediately notify the local licensing authority of the determination. (Penal Code § 26195.)

This bill states that a sheriff may require an applicant who resides in a city with a municipal police department to apply for a license, renew a license, or amend a license through the chief of police or other head of the municipal police department in lieu of the sheriff, provided that the chief or other head of the municipal police department agrees to process those applications. As part of that processing, if an applicant is denied a license or renewal of a license, the chief or other head of the municipal police department shall inform the applicant that the denial may be reviewed, at the sheriff's discretion, if requested by the applicant. The sheriff may, but is not required to, review the denial by the chief or other head of an application for a license or for the renewal of a license.

This bill states that when reviewing the denial of a license or denial of the renewal of a license because the applicant is not of good moral character, the sheriff may rely on the findings, background check, or other investigation conducted by the municipal police department. If the sheriff determines upon review that the applicant is of good moral character, the sheriff may issue or renew a license pursuant, as specified.

This bill states when reviewing the denial of a license or denial of the renewal of a license because the applicant does not demonstrate good cause for a license, the sheriff shall review that determination de novo. If the sheriff determines upon review that the applicant demonstrates good cause for a license, the sheriff may issue or renew a license, as specified.

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. Need for This Legislation

According to the author:

> Existing law allows the county sheriff or the chief of the city police department to grant licenses to carry concealed firearms. In addition, existing law also allows a police chief to enter in an agreement with the sheriff so that the sheriff handles and processes all concealed carry weapon (CCW) permits from a city. However, there is nothing in existing law that allows the sheriff to defer to a police chief in handling CCW applications. I agree with the California Sheriffs in that the police chief, whose department may be more familiar with city residents than a county sheriff, can be better positioned to make a determination that a person should be granted a CCW.

2. Lu v. County of Los Angeles

The Los Angeles County Sheriff's Department (LASD) instituted a policy requiring applicants for licenses to carry a concealed handgun to apply with the police chief in the city in which the person resides, rather than the sheriff. In 2013, the Los Angeles Superior Court held that the existing law did not, specifically, provide for that option and ordered the LASD to process all applications filed with the LASD. (*Lu v. County of Los Angeles*, BC480493). The court stated:

> Plaintiffs seek to require Defendants to exercise their statutory duty to determine whether applicants for licenses to carry handguns are of good moral character, are residents of the County, and have good cause for the licenses, as required by Penal Code §§ 17020 and 26150-26225. Plaintiffs each seek a license to carry handguns pursuant to Penal Code § 26150, et seq., and assert that they should not have to apply to their own cities for issuance of a concealed weapons license (CCW), as it violates their constitutional rights under the 14th Amendment to be prohibited from going directly to the Los Angeles Sheriff's Department (LASD). . .
>
> Defendants seek summary judgment/adjudication arguing that the policy requiring residents to seek a CCW permit from their respective city before seeking a CCW permit from the LASD does not violate the law, Plaintiffs fail to prove essential elements of their causes of action for violation of equal protection under the 14th Amendment of the U.S. Constitution, Platiniffs are not entitled to writ, injunctive, or declaratory relief as they cannot show that the LASD's policy is arbitrary, capricious, or without support, and naming the LASD and Sheriff Baca as defendants is redundant of suing the County of Los Angeles.
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> Plaintiffs argue that this case is really only about whether the LASD must follow the law as written by the legislature and as interpreted by the California Court of Appeal. The Second District Court of Appeal has expressly ruled that Penal Code §§26150-26225 impose a duty on the LASD to make an investigation and determine an application for a CCW permit on an individual basis. The sole issue in this case is whether the LASD has to follow that law.

The court goes on to find:

> Plaintiffs' opposition heavily relies on *Salute v. Pitchess*, 61 Cal. App. 3d 557 (1976) to support their argument that Defendants are violating the law. The court finds that the discussion in *Saulte* supports denial of this motion.

In *Salute* the plaintiffs "were duly licensed private investigators" seeking CCW permits. See *Id*., at p. 559. The Court acknowledged that "[t]he petitioners allege, and the sheriff admits, that the sheriff has a fixed policy of not granting applications under section 12050 except in a limited number of cases." See *Id*., at p. 560. In *Salute*, that policy was stated as follows:

> "The Sheriff's policy is not to issue any concealed weapons permit to any person, except for judges who express concern for their personal safety. In special circumstances, the request of a public officer holder who expresses concern for his personal safely would be considered. . ." and "the outstanding permits issued by the Sheriff are only 24 in number." See *Salute, Id*.

Plaintiffs successfully argue that the LASD's current policy in this matter is akin to the improper "fixed policy" in *Salute*. Here the LASD admits that, where the applicant lives in an incorporated city which is not policed by the LASD, it has a policy requiring that before the LASD will consider and application for a CCW permit such applicant must first apply with the Chief of Police of the city in which the resident lives and be denied a CCW permit. (Motion, Rogers Dec., ¶9) Such a policy is similar to a fixed policy of only granting a limited number of applications because in essence the LASD will not consider any applications that have not been first tendered to the local Chief of Polic[e] of the applicable city.

It is clear to this court that the decision in *Salute* was meant to address strict policies by the LASD that ultimately result in the agency not considering applications on a case-by-case basis. The Court stated the following:

> While the court cannot compel a public officer to exercise his discretion in any particular manner, it may direct him to exercise that discretion. *We regard the case at bench as involving a refusal of the sheriff to exercise the discretion given him by the statute*. Section 12050 imposes only three limits on the grant of an application to carry a concealed weapon: the applicant must be of good moral character, show good cause and be a resident of the county. To determine, in advance, as a uniform rule, that only selected public officials can show good cause it to refuse to consider the existence of good cause on the part of citizens generally and is an abuse of, and not an exercise of, discretion. (Emphasis added.) See *Salute, Id.*

The Court further stated that "[i]t is the duty of the sheriff to make such an investigation and determination, on an individual basis, on every application under section 12050." See *Id*, at p. 560-561.

Defendants have instituted an improper policy requiring certain applicants such as Plaintiffs to first apply with their city's Chief of Police before filing a separate application with the LASD. While this court cannot direct Defendants *how* to exercise their discretion in making the good cause determination during the application process, this court can direct LASD to exercise its discretion and consider the application without first requiring the applicant to seek the CCW

> permit with his/her local policy chief. Indeed, Penal Code §26175(g) says "[a]n applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form described in subdivision (a), except to clarify or interpret information provided by the applicant on the standard application form." LASD's policy effectively requires Plaintiffs to present two (2) applications—first to the local Chief of Polic[e] and then to LASD. This is not proper. LASD's policy in this case is not consistent with the statutory scheme for issuance of CCW permits as set forth in Penal Code §§26150, et seq., and the policy is not consistent with the *Salute* case.

The court ultimately denied defendants motion for summary judgment and issued a writ of mandamus (mandate) ordering defendants "to consider the applications of all persons seeking a CCW permit in the first instance without requiring any applicant to first seek a CCW permit with his/her local police chief or city." This matter is currently pending review by the California Court of Appeals.

3. Effect of This Legislation

The version of this legislation that passed out of the Assembly would have simply authorized the sheriff of a county in which a city is located to enter into an agreement with the chief or other head of the municipal police agency in that city for the chief or head of that municipal police agency to process all applications for licenses to carry a concealed handgun upon the person, renewal of those licenses, and amendments to those licenses. This legislation was amended in the Senate to, additionally, allow a sheriff, at his or her discretion, to review a police chief's denial of a CCW request.

The proponents of AB 1134 state that this legislation is necessary to allow a sheriff to defer to a police chief in handling CCW applications. Specifically, the California State Sheriffs' Association states,

> AB 1134 amends the law so that sheriffs may, but are not required to, enter into agreements with police chiefs to handle CCW applications. Recent amendments clarify that if such an agreement exists, it would only apply to the resident of a police chief's city. We believe that the police chief, whose department may be more familiar with city residents than a county sheriff, can be better positioned to make the determination that a person should be granted a CCW. In these cases, we believe the sheriff and police chief should be allowed to enter into an agreement, if both parties agree. However, this measure also specifies that a sheriff may, but is not required to, review the denials of applications. This will ensure CCWs are issued to those qualified under the Penal Code.

Given that the proponents argue that a police chief "whose department may be more familiar with city residents than a county sheriff, can be better position to make the determination that a person should be granted a CCW," members may wish to consider whether allowing a sheriff to review a police chief's decision to deny a CCW advances public safety.

4. Issues with This Legislation

Sheriff Review of the Police Chief Decision:

This bill states that when reviewing the denial of a license, or denial of the renewal of a license, because the applicant is not of good moral character, the sheriff may rely on the findings, background check, or other investigation conducted by the municipal police department. And, when reviewing the denial of a license or denial of the renewal of a license because the applicant does not demonstrate good cause for a license, the sheriff shall review that determination de novo. It is unclear why a review of a denial based on a failure to show good moral character would be treated differently than a review of a failure to show good cause.

Background Check:

When applying for a license to carry a concealed firearm an applicant must be fingerprinted and pay a fee to DOJ to do a background check. Should the individual pass the background check and be issued a license, DOJ notifies the agency that requested the background of any new prohibiting criminal offense. It is unclear whether a sheriff, who is reviewing a decision made by another law enforcement agency, would require an individual to resubmit fingerprints. If the sheriff does not require fingerprints to be resubmitted, the sheriff would not receive subsequent arrest information.

Fees Charged for Concealed Carry Permits:

Existing law allows the licensing authority of any city, city and county, or county to charge fee in an amount equal to the actual costs for processing the application for a new CCW and the licensing authority may collect 20 percent of its fee upon the filing of the application. (Penal Code § 26190(b).) It is unclear whether a sheriff, who is reviewing a denial by a police chief, would treat the review as a new application and charge an additional fee.

5. Argument in Support

According to the Los Angeles County Sheriff's Department:

> Existing law authorizes the sheriff of a county, or the chief or other head of a municipal police department, upon proof that the person applying is of good moral character, that good cause exists, and that the person applying satisfies certain conditions, to issue a license for the person to carry a concealed handgun, as specified. Existing law provides that the chief or other head of a municipal police department is not precluded from entering into an agreement with the sheriff of eh county in which the city is located for the sheriff to process all applications for licenses for a person to carry a concealed handgun, renewal of those licenses, and amendments to those licenses.
>
> AB 1134 would provide that the sheriff of the county in which the city is located is not precluded from entering into an agreement with the chief or other head of a municipal police department to process all applications for licenses for a person to carry a concealed handgun, renewals of those licenses, and amendments to those licenses.

6. Argument in Opposition

According to the Firearms Policy Coalition:

> Assembly Bill 1134 isn't about California's sheriffs having a newly recognized "need" at all. Rather, AB 1134 is a means for sheriffs to abrogate important ministerial duties and re-introduce treacherous political dynamics into a system methodically crafted by the Legislature to establish reasonable and uniform procedural standards.
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> And the political precedent that would be set by passing Assembly Bill 1134 is frightening. AB 1134 stands for the proposition that if a local agency ignores for decades the Legislature's well-considered mandates, gets sued for it, and loses in court, the Legislature will save that agency from responsibility by passing a bill to bail them out.
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> If California's sheriffs are concerned about processing an increasing number of carry license applications, a better solution would be to remove that burden from them entirely by way of a standardized, objective, and fair process at the state level.
>
> In any case, a municipality's recalcitrance to follow the Legislature's mandates should not be rewarded.

According to the Law Center to Prevent Gun Violence, which is opposed unless the bill is amended:

> [R]ecent amendments to AB 1134 would make current law even more asymmetrical, not less. As amended, the bill would still authorize county sheriffs to enter into agreements with the chiefs of local police departments allowing the police chief to process all CCW permit applications by his or her city's residents. But AB 1134 would now also grant sheriffs the power to unilaterally review and overrule local police departments' considered, final determinations on CCW permit applications. Oddly, the bill would provide no parallel authority for local police departments to review sheriffs' final determinations on CCW applications after entering into an agreement allowing all CCW applications to be processed by the sheriff. This proposed asymmetry is arbitrary, confusing, and simply inconsistent with AB 1134's original purpose of promoting efficient, effective, and informed review of CCW applications by local law enforcement agencies. Such agencies should be authorized, but not required, to decide between themselves whether to provide secondary review of CCW applications by either agency.
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> As amended, AB 1134 would now also require a sheriff, when reviewing a local police department's denial of a CCW application for failure to show good cause, to "review that determination de novo," or from the beginning, meaning that the sheriff would be required to repeat the entire application process anew without being able to use any of the information or insights gleaned by the local police

department in denying that application. Therefore, instead of promoting coordination between local law enforcement agencies on a matter of significant concern to public safety, this bill would actually require sheriffs reviewing police department determinations to actively ignore the police departments' findings in these cases. We believe such a requirement is ill-considered. If sheriffs and police chiefs wish to adopt such a constraint, they should be authorized, but not required, to do so.

Instead, we recommend that AB 1134 be amended to include clear, symmetrical language providing both sheriffs and local police departments the same authority

to enter into whatever agreements regarding CCW permit applications would suit the needs of their own communities and respective agencies. Accordingly, we recommend that AB 1134 be amended to state as follows, with proposed new language italicized in bold:

> Cal. Penal Code § 26150:
>
> ***(c) Nothing in this chapter shall preclude the sheriff of the county in which the city is located from entering into an agreement with the chief or other head of a municipal police department of a city for the chief or other head of a municipal police department to process all applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this chapter. Such an agreement may authorize, but is not required to authorize, the sheriff to review any determination made by the chief or other head of a municipal police department of a city regarding the applications.***
>
> Cal. Penal Code § 26155:
>
> (c) Nothing in this chapter shall preclude the chief or other head of a municipal police department of any city from entering an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this chapter. ***Such an agreement may authorize, but is not required to authorize, the chief or other head of a municipal police department of a city to review any determination made by the sheriff regarding the applications.***

These amendments would improve efficiency, clarity, and public safety by giving law enforcement agencies clear, symmetrical authority to enter into agreements regarding CCW permit applications in their own communities as they deem fit. These amendments would cleanly correct the asymmetry in existing law, answer the legal uncertainty created by *Lu v. Baca*, and avert the potential negative consequences of AB 1134's arbitrary, confusing, and asymmetrical language as currently written.

-- END –