
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1135 **Hearing Date:** May 10, 2016
Author: Levine
Version: May 4, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: Assault Weapons*

HISTORY

Source: Author

Prior Legislation: SB 47 (Yee) – died in Assembly Appropriations, 2013
SB 249 (Yee) – died in Assembly Appropriations, 2012
AB 2728 (Klehs) – Ch. 793, Statutes of 2006
SB 238 (Perata) – Ch. 499, Statutes of 2003
SB 626 (Perata) – Ch. 937, Statutes of 2001
SB 23 (Perata) – Ch. 129, Statutes of 1999
Roberti-Roos Assault Weapons Control Act – Ch. 19, § 3, Stats. 1989

Support: California Chapters of the Brady Campaign to Prevent Gun Violence; Coalition Against Gun Violence, a Santa Barbara County Coalition; Law Center to Prevent Gun Violence

Opposition: Crossroads of the West; California Sportsman’s Lobby; California State Sheriffs’ Association; Firearms Policy Coalition; Outdoor Sportsmen’s Coalition of California; National Rifle Association; National Shooting Sports Foundation; Safari Club International

Assembly Floor Vote: Not Relevant

PURPOSE

The purpose of this bill is to: (1) amend the definition of assault weapon to refer to a firearm that has one of several specified military-style features and does not have a “fixed magazine” rather than a firearm that has one of those features and “has the capacity to accept a detachable magazine;” (2) define “fixed magazine” as “an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action”; (3) provide that any person who was eligible to register an assault weapon and lawfully possessed such a weapon prior to January 1, 2017, would be exempt from penalties, if the person registers the weapon by January 1, 2018; (4) require that any person who from January 1, 2001, to December 31, 2016, lawfully possessed an assault weapon that does not have a fixed magazine, as defined, register the

firearm before January 1, 2018, with the Department of Justice (DOJ), as specified; (5) provide that this registration be submitted online, as specified; (6) authorize DOJ to charge a fee of up to \$15 per person but not to exceed the reasonable processing costs of the department for this registration; and (7) require DOJ to establish procedures for the purpose of carrying out this registration requirement and to specify that these procedures shall be exempt from the Administrative Procedure Act.

Current law contains legislative findings and declarations that the proliferation and use of assault and .50 BMG rifles poses a threat to the health, safety, and security of all citizens of California. (Penal Code § 30505.)

Current law states legislative intent to place restrictions on the use of assault weapons and .50 BMG rifles and to establish a registration and permit procedure for their lawful sale and possession. (Penal Code § 30505.)

Current law defines “assault weapon” as one of certain specified rifles and pistols (Penal Code § 30510) or as:

- A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and has at least one of the following:
 - A pistol grip that protrudes conspicuously beneath the action of the weapon;
 - A thumbhole stock;
 - A vertical handgrip;
 - A folding or telescoping stock;
 - A grenade launcher or flare launcher;
 - A flash suppressor; or,
 - A forward handgrip.
- A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds;
- A semiautomatic, centerfire rifle that has an overall length of less than 30 inches;
- A semiautomatic pistol that has the capacity to accept a detachable magazine and has at least one of the following:
 - A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer;
 - A second handgrip;
 - A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, excepting a slide that encloses the barrel; or
 - The capacity to accept a detachable magazine at some location outside of the pistol grip.
- A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds;
- A semiautomatic shotgun that has both of the following:

- A folding or telescoping stock; and
- A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.
- A semiautomatic shotgun that has the ability to accept a detachable magazine; and
- Any shotgun that has a revolving cylinder. (Penal Code § 30515.)

Current law defines a “detachable magazine” as any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. Ammunition feeding device includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine. (11 Cal. Code of Regs. § 5469.)

Current law provides that unlawful possession of an assault weapon is an alternate felony-misdemeanor and shall be punished by imprisonment in a county jail for a period not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 (16 months, two or three years). Notwithstanding the above, a first violation of these provisions is punishable by a fine not exceeding \$500 if the person was found in possession of no more than two firearms and certain specified conditions are met. (Penal Code § 30605.)

Current law provides that any person who within California manufactures, imports into California, offers for sale, or who gives or lends any assault weapon with specified exceptions is guilty of a felony punishable by imprisonment in state prison for four, six, or eight years. (Penal Code § 30600.)

Current law defines a “.50 BMG rifle and cartridge,” as specified. (Penal Code §§ 30525, 30530.)

Current law exempts the DOJ, law enforcement agencies, military forces, and other specified agencies from the prohibition against sales to, purchase by, importation of, or possession of assault weapons or .50 BMG rifles. (Penal Code § 30625.)

Current law requires that any person who lawfully possesses an assault weapon, as specified, must register the firearm with DOJ, as specified. (Penal Code § 30900 et. seq.)

This bill would amend the definition of assault weapon to refer to a firearm that has one of several specified features and does not have a “fixed magazine” rather than a firearm with one of those features and the “capacity to accept a detachable magazine.”

This bill would define “fixed magazine” as “an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.”

This bill would provide that, notwithstanding the new definition of assault weapon contained in this bill, any person who possessed an assault weapon prior to January 1, 2017, is exempt from punishment pursuant to Section 30605, if all of the following are applicable:

- Prior to January 1, 2017, the person was eligible to register that assault weapon pursuant to subdivision (c) of Section 30900;
- The person lawfully possessed that assault weapon on January 1, 2017; and
- The person registers the assault weapon by January 1, 2018, as specified.

This bill would provide that any person who, from January 1, 2001, to December 31, 2016, inclusive, lawfully possessed an assault weapon that does not have a fixed magazine, as defined in Section 30515, including those weapons with an ammunition feeding device that can be removed readily from the firearm with the use of a tool, shall register the firearm before January 1, 2018, with the department pursuant to those procedures that the department may establish.

- Registrations shall be submitted electronically via the Internet utilizing a public-facing application made available by the department.
- The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the date the firearm was acquired, the name and address of the individual from whom, or business from which, the firearm was acquired, as well as the registrant's full name, address, telephone number, date of birth, sex, height, weight, eye color, hair color, and California driver's license number or California identification card number.
- The department may charge a fee of up to fifteen dollars (\$15) per person but not to exceed the reasonable processing costs of the department. The fee shall be paid by debit or credit card at the time that the electronic registration is submitted to the department. The fee shall be deposited in the Dealers' Record of Sale Special Account.
- The department shall establish procedures for the purpose of carrying out this subdivision. These procedures shall be exempt from the Administrative Procedure Act.

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. **Bullet Button: San Bernardino Shooting**

On December 2, 2015, 14 people were killed and 21 were seriously injured in a mass shooting at the Inland Regional Center in San Bernardino, California. The perpetrators of this mass shooting used firearms that were legally purchased in California.

A carveout in a California gun law reportedly allowed for the legal purchase of two assault-style rifles that were used in the San Bernardino shooting Wednesday, which killed 14 people and injured 21 others, though the weapons were later altered illegally. Many guns in the style of the two AR-15 semiautomatic rifles, a .223-caliber DPMS Model A15 and a Smith & Wesson M&P15, are banned under a 1989 California gun law targeting assault weapons. The law specifically targets assault rifles with magazines that are detachable by hand, in order to prevent users from reloading quickly and inflicting mass damage.

But if the guns are equipped with a "bullet button," as the *Wall Street Journal* reports the San Bernardino shooters' were, they're perfectly legal to sell. Instead of removing a magazine by hand, the shooter must press a recessed button that is only accessible using the tip of a bullet or another small tool. Technically, this does not classify as a "detachable magazine," so the guns are allowed. In practice, the method still allows users to swap out magazines within seconds. Gunmakers began making bullet buttons after California passed its harsher gun laws, according to the Associated Press.

But in this case, the weapons were additionally altered in a way that violated the California law, the *Journal* reports, allowing one to use higher-capacity magazines than permitted.

The two gunmen fired 65 to 75 rounds during the attack and then another 76 rounds in a later shootout with police, according to officials. They had more than 1,400 more assault rifle rounds on their bodies and in their vehicle.

(This Gun Law May Have Let the San Bernardino Attackers Shoot Faster, Victor Luckerson, Time Magazine, December 4, 2015, <http://time.com/4136757/san-bernardino-shooting-gun-law-bullet-button/>.)

2. Background – The Genesis and Evolution of the Assault Weapons Ban in California

The origin of and subsequent modifications to the assault weapons ban in California are described by the federal Court of Appeal in the following extended excerpt from *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002) (as amend. Jan. 27, 2003).

In response to a proliferation of shootings involving semi-automatic weapons, the California Legislature passed the Roberti-Roos Assault Weapons Control Act (“the AWCA”) in 1989. The immediate cause of the AWCA’s enactment was a random shooting earlier that year at the Cleveland Elementary School in Stockton, California. An individual armed with an AK-47 semi-automatic weapon opened fire on the schoolyard, where three hundred pupils were enjoying their morning recess. Five children aged 6 to 9 were killed, and one teacher and 29 children were wounded.

The California Assembly met soon thereafter in an extraordinary session called for the purpose of enacting a response to the Stockton shooting. The legislation that followed, the AWCA, was the first legislative restriction on assault weapons in the nation, and was the model for a similar federal statute enacted in 1994. The AWCA renders it a felony offense to manufacture in California any of the semi-automatic weapons specified in the statute, or to possess, sell, transfer, or import into the state such weapons without a permit. The statute contains a grandfather clause that permits the ownership of assault weapons by individuals who lawfully purchased them before the statute’s enactment, so long as the owners register the weapons with the state Department of Justice. The grandfather clause, however, imposes significant restrictions on the use of weapons that are registered pursuant to its provisions. Approximately forty models of firearms are listed in the statute as subject to its restrictions. The specified weapons include “civilian” models of military weapons that feature slightly less firepower than the military-issue versions, such as the Uzi, an Israeli-made military rifle; the AR-15, a semi-automatic version of the United States military’s standard-issue machine gun, the M-16; and the AK-47, a Russian-designed and Chinese-produced military rifle. The AWCA also includes a mechanism for the Attorney General to seek a judicial declaration in certain California Superior Courts that weapons identical to the listed firearms are also subject to the statutory restrictions.

The AWCA includes a provision that codifies the legislative findings and expresses the legislature's reasons for passing the law:

The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in [the statute] based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a registration and permit procedure for their lawful sale and possession. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

In 1999, the legislature amended the AWCA in order to broaden its coverage and to render it more flexible in response to technological developments in the manufacture of semiautomatic weapons. The amended AWCA retains both the original list of models of restricted weapons, and the judicial declaration procedure by which models may be added to the list. The 1999 amendments to the AWCA statute add a third method of defining the class of restricted weapons: The amendments provide that a weapon constitutes a restricted assault weapon if it possesses certain generic characteristics listed in the statute. Examples of the types of weapons restricted by the revised AWCA include a "semiautomatic, center-fire rifle that has a fixed magazine with the capacity to accept more than 10 rounds," and a semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and also features a flash suppressor, a grenade launcher, or a flare launcher. The amended AWCA also restricts assault weapons equipped with "barrel shrouds," which protect the user's hands from the intense heat created by the rapid firing of the weapon, as well as semiautomatic weapons equipped with silencers. (*Silveira v. Lockyer*, 312 F.3d 1052, 1057-1059 (9th Cir. Cal. 2002) (footnotes omitted; citations omitted).)

3. Constitutional Questions

The constitutionality of California's assault weapons ban has been upheld by both the California Supreme Court (*Kasler v. Lockyer*, 23 Cal. 4th 472 (2000)), and the federal Court of Appeal. (*Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002) (as amend. Jan. 27, 2003).) While the California Supreme Court rejected allegations that the law violated equal protection guarantees, the separation of powers, and failed to provide adequate notice of what was prohibited under the law, the Ninth Circuit Court of Appeal decision in *Silveira* was based largely on its interpretation of the Second Amendment right to keep and bear arms. The Second Amendment to the Constitution states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." (United States Const. Amend. 2.) The *Silveira* Court based its ruling on the widely-held interpretation of the Second Amendment known as the "collective rights" view, that the right secured by the Second Amendment relates to firearm ownership only in the context of a "well regulated militia." (*Silveira v. Lockyer*, 312 F.3d 1052, 1086 (9th Cir. Cal. 2002).)

The *Silveira* Court's interpretation of the meaning of the Second Amendment has since been squarely rejected by the U.S. Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). Whether the *Heller* and *McDonald* cases mean that California's assault weapons ban violates the Second Amendment, and is therefore unconstitutional, is a different matter.

In *Heller*, the Supreme Court rejected the "collective rights" view of the Second Amendment, and, instead endorsed the "individual rights" interpretation, that the Second Amendment protects the right of each citizen to firearm ownership. After adopting this reading of the Second Amendment, the Supreme Court held that federal law may not prevent citizens from owning a handgun in their home. (*District of Columbia v. Heller*, 554 U.S. 570, 683-684.) In the *McDonald* case, the Supreme Court extended this ruling to apply to laws passed by the 50 states. (*McDonald v. City of Chicago*, 130 S. Ct. 3020, 3050.)

While the Supreme Court has held it is unconstitutional to prohibit citizens from owning a handgun in the home for self-defense, it has also stated that the right secured by the Second Amendment does not prohibit laws banning certain types of weapons for civilian use, specifically, "M-16 rifles and the like." Whether the specific prohibitions contained in California's existing assault weapons ban, or those proposed in this bill, are consistent with the right guaranteed under the Second Amendment was not specifically resolved by the decisions in *Heller* and *McDonald*.

4. How This Bill Would Change the Existing Assault Weapons Ban

As the Court of Appeal explained, in 1999, the Assault Weapons ban was amended to expand the definition of an assault weapon to include a definition by the generic characteristics, specifically, to include a "semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine" in addition to one of several specified characteristics, such as a grenade launcher or flash suppressor. (SB 23 (Perata) Stats. 1999, Ch. 129, § 7 et seq.) SB 23 was enacted in response to the marketing of so-called "copycat" weapons, firearms that were substantially similar to weapons on the prohibited list but differed in some insignificant way, perhaps only the name of the weapon, thereby defeating the intent of the ban. "SB 23 takes weapons that are made, then modified, named and re-named off the market. It fixes the loophole in current law that bans guns by name, not by capability, by providing a generic definition of the weapons." (Committee analysis of SB 23 (Perata), Assembly Public Safety Committee.)

SB 23's generic definition of an assault weapon was intended to close the loophole in the law created by its definition of assault weapons as only those specified by make and model. Regulations promulgated after the enactment of SB 23 define a detachable magazine as "any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool." (11 CFR § 5469(a).) In response to this definition, a new feature has been developed by firearms manufacturers to make semi-automatic rifles "California compliant," the bullet button.

In 2012, researchers at the nonprofit Violence Policy Center in Washington, D.C. released a paper describing the phenomenon of the bullet button and its effect on California's assault weapons ban:

The “Bullet Button”–Assault Weapon Manufacturers’ Gateway to the California Market

Catalogs and websites from America’s leading assault rifle manufacturers are full of newly designed “California compliant” assault weapons. Number one and two assault weapon manufacturers Bushmaster and DPMS, joined by ArmaLite, Colt, Sig Sauer, Smith & Wesson, and others are all introducing new rifles designed to circumvent California’s assault weapons ban and are actively targeting the state in an effort to lift now-sagging sales of this class of weapon. They are accomplishing this with the addition of a minor design change to their military-style weapons made possible by a definitional loophole: the “bullet button.” [Please see the Appendix beginning on page six for 2012 catalog copy featuring “California compliant” assault rifles utilizing a “bullet button” from leading assault weapon manufacturers.]

California law bans semiautomatic rifles with the capacity to accept a detachable ammunition magazine and any one of six enumerated additional assault weapon characteristics (e.g., folding stock, flash suppressor, pistol grip, or other military-style features).

High-capacity detachable ammunition magazines allow shooters to expel large amounts of ammunition quickly and have no sporting purpose.¹ However, in California an ammunition magazine is not viewed as detachable if a “tool” is required to remove it from the weapon. The “bullet button” is a release button for the ammunition magazine that can be activated with the tip of a bullet. With the tip of the bullet replacing the use of a finger in activating the release, the button can be pushed and the detachable ammunition magazine removed and replaced in seconds. Compared to the release process for a standard detachable ammunition magazine it is a distinction without a difference.

1 Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles, April 1998. (Bullet Buttons, The Gun Industry’s Attack on California’s Assault Weapons Ban, Violence Policy Center, Washington D.C., May 2012.)

This bill would amend the definition of assault weapon to a firearm that has one of several specified features and does not have a “fixed magazine,” rather than a firearm that has one of those features and “has the capacity to accept a detachable magazine.” It would also define, “fixed magazine” as “an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.” So, a semiautomatic rifle could have a detachable magazine, as long as it does not also have any features or it could have the features as long as it had a fixed magazine. The purpose of this change is to clarify that equipping a weapon with a “bullet button” magazine release does not take that weapon outside the definition of an assault weapon.

This bill would also require any person who, from January 1, 2001, to December 31, 2016, lawfully possessed an assault weapon that does not have a fixed magazine, as defined, including those weapons with an ammunition feeding device that can be removed readily from the firearm

with the use of a tool, in other words, those weapons with a “bullet button” magazine release, to register the firearm before January 1, 2018, with the department pursuant to those procedures that the department may establish. Because the bill would clarify that these are assault weapons, this provision is consistent with the existing law that requires assault weapons, lawfully possessed, to be registered with DOJ.

5. Related Legislation

This committee heard and passed (5-2) Senate Bill 880 (Hall) on April 19, 2016, which is virtually identical to this bill.

6. Technical Amendments

Section 2 should be amended to read:

~~Notwithstanding the meaning of “assault weapon” under Section 30515, as amended by the act that added this section,~~ Section 30605 does not apply to the possession of an assault weapon by a person who has possessed the assault weapon prior to January 1, 2017, if all of the following are applicable:

- (a) Prior to January 1, 2017, the person ~~was~~ *would have been* eligible to register that assault weapon pursuant to subdivision ~~(e)~~ (b) of Section 30900.
- (b) The person lawfully possessed that assault weapon prior to January 1, 2017.
- (c) The person registers the assault weapon by January 1, 2018, in accordance with subdivision (b) of Section 30900.

– END –