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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 1362                      **Hearing Date:** April 19, 2016  
**Author:** Mendoza  
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**Urgency:** No                                      **Fiscal:** No  
**Consultant:** JRD

**Subject:** *Los Angeles County Metropolitan Transportation Authority: Security Officers*

### HISTORY

Source: Teamsters

Prior Legislation: None known

Support: Unknown

Opposition: None known

### PURPOSE

*The purpose of this legislation is to: (1) authorize a person regularly employed as a security officer by the Los Angeles County Metropolitan Transit Authority (LACMTA) to detain a person, as specified; (2) authorize these persons to carry a wooden club or baton, as specified; (3) allow these persons to carry a shotgun, as specified; (4) authorize the sale, giving, lending, and importation of any large-capacity magazine to LACMTA; and (5) authorize security officers employed by LACMTA to possess large-capacity magazines, as specified.*

*Existing law* provides for the licensure and regulation of private patrol operators (PPOs), armored contract carriers, and security guards by the Bureau of Security and Investigative Services (BSIS or Bureau) in the Department of Consumer Affairs (DCA) under the Private Security Services Act (Act). (Business and Professions Code § 7580 *et. seq.*)

*Existing law* defines a PPO as a person who, for any consideration, furnishes a watchman, guard, patrolperson or other person to protect persons or property. (Business and Professions Code § 7582.1.)

*Existing law* defines a security guard or security officer as an employee of a PPO whose job duties include protecting persons or property. (Business and Professions Code § 7582.1.)

*Existing law* exempts from the Act specific persons from its requirements. (Business and Professions Code § 7582.2.)

*Existing law* exempts from the Act, an officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties. (Business and Professions Code § 7582.2(b).)

*Existing law* requires that every licensee and any person employed and compensated by a licensee, other lawful business or public agency as a security guard or patrolperson, and who in the course of that employment or business carries a firearm, complete a course of training in the exercise of the powers to arrest and a course of training in the carrying and use of firearms. The course of training in the carrying and use of firearms is not be required of any employee who is not required or permitted by a licensee to carry or use firearms. The course in the carrying and use of firearms and the course of training in the exercise of the powers to arrest must meet the standards prescribed by DCA, as specified.(Business and Professions Code § 7583.5.)

*Existing law* requires that a person entering the employ of a licensee to perform the functions of a security guard or a security patrolperson complete a course in the exercise of the power to arrest prior to being assigned to a duty location, as specified. (Business and Professions Code § 7583.6.)

*Existing law* provides that the course of training in the exercise of the power to arrest may be administered, tested, and certified by any licensee or by any organization or school approved by the department. The course of training shall be approximately eight hours in length and shall cover the following topics:

- Responsibilities and ethics in citizen arrest.
- Relationship between a security guard and a peace officer in making an arrest.
- Limitations on security guard power to arrest.
- Restrictions on searches and seizures.
- Criminal and civil liabilities.
  - Personal liability.
  - Employer liability.
- Trespass law.
- Ethics and communications.
- Emergency situation response, including response to medical emergencies.
- Security officer safety.
- Any other topic deemed appropriate by the bureau.

(Business and Professions Code § 7583.7.)

*Existing law* requires that the course of training in the carrying and usage of the baton, the satisfactory completion of which shall be required of applicants who wish to obtain a baton permit, shall be in the format prescribed by DCA as delineated in the bureau's "Baton Training Manual." The course of training contained in the manual shall include, but not be limited to, the following subjects:

- Moral and legal aspects of baton usage.
- Use of force.
- Baton familiarization and uses.
- First aid for baton injuries.
- Fundamentals of baton handling.
  - Stances and grips.
  - Target areas.
  - Defensive techniques.
  - Control techniques.
  - Arrest and control techniques.

- Examination of the subject matter as taught in the classroom and as provided by the bureau.

(Business and Professions Code § 7583.9.)

*Existing law* requires that all baton course material provided to the certificate holder in the "Baton Training Manual" issued by the bureau be covered in each class session. And, in no event shall the class instruction for the course required for baton certification total less than eight hours. (Business and Professions Code § 7583.13.)

*Existing law* requires that a baton training facility issue a bureau-developed baton permit to any person who successfully completes a baton training course as described in Section 7585.9 and possesses a valid security guard registration card issued pursuant to Article 4 (commencing with Section 7583) or who has made application for that registration card. (Business and Professions Code § 7583.14.)

*Existing law* makes it unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public, as specified. This prohibition does not apply to peace officers or members of the Armed Forces of this state or the United States, while on duty or going to or returning from duty. (Fish and Game Code § 2006.)

*Existing law* authorizes certain persons who are not peace officers to exercise the powers of arrest under certain circumstances, if they have completed a specific training course prescribed by the Commission on Peace Officer Standards and Training. (Penal Code § 830.7).

*Existing law provides that* an arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace-officer or by a private person. (Penal Code § 834.)

*Existing law* allows a private person to arrest another:

- For a public offense committed or attempted in his presence.
- When the person arrested has committed a felony, although not in his presence.
- When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

(Penal Code § 837).

*Existing law* provides that, nothing in any provision listed in Section 16580, prohibits any police officer, special police officer, peace officer, or law enforcement officer, from carrying any wooden club or baton. (Penal Code § 22295(a).)

*Existing law* provides that, nothing in any provision listed in Section 16580 prohibits a uniformed security guard, regularly employed and compensated by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of employment, from carrying any wooden club or baton if the uniformed

security guard has satisfactorily completed a course of instruction certified by DCA in the carrying and use of the club or baton, as specified. (Penal Code § 22295(b) and (c).)

*Existing law* states that any uniformed security guard who successfully completes a course of instruction under this section is entitled to receive a permit to carry and use a club or baton within the scope of employment, issued by DCA. (Penal Code § 22295(d).)

*Existing law* states that any person who has received a permit or certificate that indicates satisfactory completion of a club or baton training course approved by the Commission on Peace Officer Standards and Training prior to January 1, 1983, is not be required to obtain a club or baton permit or complete a course certified by DCA. (Penal Code § 22295(e).)

*Existing law* provides that a person is guilty of carrying a loaded firearm when the person carries a loaded firearm upon the person or in a vehicle while at any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of an unincorporated territory. (Penal Code § 25850(a).)

*Existing law* provides that section 25850 does not apply to any armored vehicle guard, as defined in Section 7582.1 of the Business and Professions Code, if either of the following conditions is satisfied:

- The guard was hired prior to January 1, 1977, and is acting within the course and scope of employment.
- The guard was hired on or after January 1, 1977, has received a firearms qualification card from the Department of Consumer Affairs, and is acting within the course and scope of employment.

(Penal Code § 26015.)

*Existing law* provides that security guards are allowed to carry concealed weapons while actually shipping, transporting, or delivering money or other things of value. (Penal Code § 25630.)

*Existing law* provides that uniformed security guards or night watch persons employed by any public agency, while acting within the scope and course of their employment, may carry loaded firearm as long as they have been issued a certificate from the DCA indicating they have completed a course in the carrying and use of firearms and a course training in the exercise of the power of arrest. (Penal Code § 26030.)

*Existing law* provides that, except as specified, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine is punishable by specific penalties or as a felony. (Penal Code § 32310.)

*Existing law* exempts any federal, state, county, city, and county, or city agency that is charged with the enforcement of any law from the sale of, giving of, lending of, importation into this state of, purchase of, any large capacity magazine. (Penal Code § 32400.)

*This bill* provides that, notwithstanding any other law, persons regularly employed as security officers by the Los Angeles County Metropolitan Transportation Authority are not peace officers and may not exercise the powers of arrest of a peace officer, as specified in Section 836.

However, these persons may be authorized by the governing board of the authority to detain individuals on properties owned, controlled, operated, and administered by the authority when exigent circumstances exist. For purposes of this section, exigent circumstances exist only when the security officer has probable cause to believe that a person is at risk of serious bodily injury or death or a person has been assaulted and the suspect is attempting to flee. A detention made pursuant to this section shall be limited to a reasonable time to allow for an investigation by a peace officer.

*This bill* provides that nothing in any provision listed in Section 16580 prohibits a security officer regularly employed by the Los Angeles County Metropolitan Transportation Authority from carrying any wooden club or baton.

*This bill* provides that notwithstanding Section 25850 of this code and Section 2006 of the Fish and Game Code, a person regularly employed by the Los Angeles County Metropolitan Transportation Authority as a security officer may be permitted to carry a shotgun, as defined in Section 17190, in a patrol vehicle or armored vehicle owned by the authority for use in carrying out the security officer's official duties when performing revenue protection duties. A security officer may only carry a shotgun in a vehicle pursuant to this section if the vehicle is an armored vehicle designated for revenue collection and only when the officer is performing revenue protection duties.

*This bill* provides that Section 32310 does not apply to the sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by the Los Angeles County Metropolitan Transportation Authority for use by its employee security officers in the discharge of their official duties.

#### 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. Need for This Legislation

According to the author:

Security officers employed by the Los Angeles County Mass Transit Authority (LACMTA) are charged with the protection of transit personnel, transit property, and persons using transit services. Over the years, their job has become increasingly dangerous. It often requires interaction with individuals engaged in criminal conduct, individuals threatening violence, or, in some circumstances, individuals committing violent acts. Unfortunately, the law is not clear with respect to what these officers can do once they’ve detained an individual committing these acts. Since they are not peace officers, LACMTA security officers are limited to making a citizen’s arrest. This creates significant liability concerns. An additional matter dealt with in this bill is to clarify what weapons LACMTA security officers are permitted to use in the course of their duties.

### 2. Background of Los Angeles County Metropolitan Transit Authority

LACMTA is the public transportation operating agency for the County of Los Angeles formed in 1993 out of a merger of the Southern California Rapid Transit District and the Los Angeles County Transportation Commission. It is chartered under state law as a regional transportation planning agency.

Metro directly operates bus, light rail, heavy rail, and bus rapid transit services. It provides funding and directs planning for commuter rail and freeway/expressway projects within Los Angeles County. In February 2016, LACMTA reports that there were 26,233,143 boardings for the bus system. With respect to the rail system, LACMTA highlights that there were 34,785,787 boardings.

The agency develops and oversees transportation plans, policies, funding programs, and both short-term and long-range solutions that address the county's increasing mobility, accessibility and environmental needs. The agency is also the primary transit provider for the City of Los Angeles providing the bulk of such services while the City of Los Angeles Department of Transportation operates a much smaller system of its own Commuter Express bus service to outlying suburbs in the city of Los Angeles and the Downtown Area Short Hop (DASH), mini-bus service in downtown and other neighborhoods in the city of Los Angeles.

### **3. Bureau of Security and Investigative Services in the Department of Consumer Affairs**

Bureau of Security and Investigative Services (BSIS) currently licenses about 380,000 companies and employees serving in the areas of alarm services, locksmith services, private investigation, private security, repossession, and firearm and baton training. Based on the past three fiscal years, the Bureau issues an average of 1,900 company licenses, 71,000 employee registrations, and 12,000 Bureau firearm permits. On average, the Bureau renews 9,500 company licenses, 105,000 employee registrations, and 11,500 Bureau firearm permits each year.

Specifically, the Bureau regulates the following Acts:

- Alarm Company Act
- Locksmith Act
- Private Investigator Act
- Private Security Services Act
- Proprietary Security Services Act
- Collateral Recovery Act

Currently, BSIS does not have jurisdiction over LACMTA since it is a public agency. However, the Bureau does regulate individuals that desire to be a security guard and carry a firearm and baton.

Standard procedure for LACMTA security guards include registering with BSIS as a security guard and applying for a firearms and baton permit. Applicants undergo a rigorous application process where they must complete a background check and other mandatory training requirements. Once registration is complete and both permits are received, LACMTA security guards can carry both a firearm and baton. Approximately 90% of LACMTA's security guards are classified as armed guards.

### **4. Memorandum of Understanding with Los Angeles Sheriff's Department**

LACMTA currently has a Memorandum of Understanding (MOU) with the Los Angeles Sheriff's Department to provide law enforcement services. This MOU was recently extended. In a letter to the Board of Supervisors, the Los Angeles Sheriff stated:

**IT IS RECOMMENDED THAT THE BOARD:**

Delegate authority to the Sheriff, as an agent for the County, to execute Modification Number Twelve (Modification) to the Agreement for Transit Community Policing Services with Metro, extending the term of the Agreement for one year, from July 1, 2015, through June 30, 2016, at a maximum annual cost not to exceed \$102,851,601. The total not to exceed contract sum is \$568,627,498.

The purpose of the Modification to this Agreement is to provide Metro with law enforcement services for an additional year, from July 1, 2015, through June 30, 2016. The Agreement was approved by the Board on June 30, 2009, and will expire on June 30, 2015.

Metro completed an extensive public safety audit in 2014. However, Metro is in the process of reviewing the audit findings and implementing the necessary corrective measures. Metro is also in the process of deciding what contract changes they will require in the next Request for Proposal (RFP). It is in the best interest of Metro and the County to extend the term of the current Agreement in order for Metro and the Department to review the audit findings and make plans for adjusting Transit Community Policing Services provided to Metro. An extension of the Agreement for one year through June 30, 2016, will allow for the continued provision of law enforcement services by the Department, while the parties negotiate a new agreement for law enforcement services.

The Agreement with Metro has provided benefits to the County as a whole, primarily resulting in greater visibility and faster response times to all Metro related incidents. This has further enhanced the Department's ability to deploy personnel and other resources during times of mutual aid, disaster, and emergency. The Department has been able to expand partnerships, provide greater responsiveness, and increase regional focus on reducing crime as a result of serving Metro within the County.  
(<http://file.lacounty.gov/bos/supdocs/94997.pdf>.)

**4. Effect of This Legislation***Arrest Provisions*

Existing law allows a private person to arrest another: (1) for a public offense committed or attempted in his presence; (2) when the person arrested has committed a felony, although not in his presence; or, (3) when a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it. (Penal Code § 837.) Because armed security officers are not peace officers, they exercise a private person's power to arrest, which, in most cases, does not allow security officers to detain an individual. The BSIS training manual explains,

A person who voluntarily responds to questioning and is not actually restrained (i.e., free to go at any time) is considered to be detained. A person may be detained by the police for further questioning in an investigation, and that person is not necessarily under arrest. The police have the authority to detain a person against his/her will and still not arrest that person. Security guard/proprietary private security officers do not have the authority to detain a person against their will except under Penal Code Section 490.5 [allows



merchants to detain shoplifters]. . . (*Power to Arrest Training Manual, BSIS, June 2015, [http://www.bsis.ca.gov/forms\\_pubs/poa.pdf](http://www.bsis.ca.gov/forms_pubs/poa.pdf)*.)

This legislation authorizes an armed security guard to detain a suspect when working for LACMTA. Specifically, this legislation would authorize detention in cases in which these guards are “authorized by the governing board of the authority to detain individuals on properties owned, controlled, operated, and administered by the authority when exigent circumstances exist. For purposes of this section, exigent circumstances exist only when the security officer has probable cause to believe that a person is at risk of serious bodily injury or death or a person has been assaulted and the suspect is attempting to flee. A detention made pursuant to this section shall be limited to a reasonable time to allow for an investigation by a peace officer.”

#### *Security Guard use of a Baton*

Security guards are currently allowed to carry a baton. Specifically, existing law states that any uniformed security guard who successfully completes a course of instruction under this section is entitled to receive a permit to carry and use a club or baton within the scope of employment, issued by the DCA. (Penal Code § 22295(d).) This legislation, as drafted, would allow a security officer who is regularly employed by LACMTA to carry and use a club or baton without training or a permit. Members may wish to consider whether it is appropriate to allow a security officer, with not training, to carry and use a club or baton.

#### *Security Officer Carrying Shotgun*

Under existing law it is a crime to carry a loaded firearm upon your person or in a vehicle while at any public place. (Penal Code § 25850(a).) Armored vehicle guards are, however, exempt from this prohibition, so long as they possess a firearms qualification card from DCA, and they are acting within the course and scope of employment. (Penal Code § 26015.) However, a provision of the fish and game code makes it unlawful to possess a loaded rifle or shotgun in any vehicle which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code § 2006). The only exceptions to this provision are for law enforcement and law enforcement. (*Id.*)

This legislation would allow a security officer employed by the LACMTA to carry a shotgun in a patrol vehicle or armored vehicle for use in carrying out the security officer’s official duties when performing revenue protection duties. And, limits this ability to when a security officer is in an armored vehicle designated for revenue collection and only when the officer is performing revenue protection duties. While these provisions bring clarity and consistency to the code, members may wish to consider recommending an amendment requiring that a security officer that carries a shotgun pursuant to this legislation possess a firearms qualification card from DCA.

#### *Security Officer Use of a Large-capacity Magazine*

An existing state law bans the sale and manufacture of high-capacity magazines, but allows possession of the magazines. (Penal Code §32400.) Los Angeles recently passed a city ordinance prohibiting the possession of large-capacity magazines (magazines that contain more

than 10 rounds).<sup>1</sup> The ordinance lists a number of groups that are exemption from the prohibition, including law enforcement, historical societies, and armored car businesses.

The LACMTA is, however, not exempt from the prohibition on large-capacity magazines. As such, this legislation seeks to allow LACMTA to purchase large-capacity magazines and for their officers to us them in their official duties. Members may wish to consider whether it is appropriate to grant this exemption to LACMTA, which would act as an exception to the recently enacted Los Angeles ordinance.

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<sup>1</sup> The Los Angeles City Council approved the ordinance on July 18, 2015. The mayor signed the ordinance on August 7, 2015. The ordinance went into effect on September 19, 2015. (<https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=13-0068>.) There were additional exceptions to the ordinance added in January of 2016. (<https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=13-0068-S2>.)