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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 678                      **Hearing Date:** April 28, 2015  
**Author:** Hill  
**Version:** April 20, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** JRD

**Subject:** *User-authorized firearms.*

### HISTORY

Source: Author

Prior Legislation: SB 293 (DeSaulnier) – held in Senate Appropriations, 2013  
SB 697 (DeSaulnier) – died in this Committee, 2009  
AB 2235 (DeSaulnier) – held in Senate Appropriations, 2008  
AB 1471 (Feuer) – Ch. 572, Statutes of 2007

Support: Allied Biometrix, Inc.; Law Center to Prevent Gun Violence; New Jersey Innovation Institute

Opposition: Firearms Policy Coalition (previous version)

### PURPOSE

*The purpose of this legislation is to require the Department of Justice (DOJ) to convene a workgroup and prepare a report to the Legislature on user-authorized firearms, as specified.*

*Existing law* generally regulates the sale, use and possession of firearms in California. (Penal Code § 1600, et seq.)

*This bill* would require DOJ, with input from the working group described in the legislation, to:

- Survey the status of the current user-authorized firearm industry;
- Assess the market conditions and barriers to market of user-authorized firearms;
- Investigate methods to increase the availability and use of user authorized firearms in California; and,
- Provide recommendations on manufacturer performance and reliability standards and how those standards should be tested.

*This bill* would require DOJ to report its findings to the Legislature by January 1, 2017.

### 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 Bill

According to the Author:

SB 678 will provide important feedback and analysis regarding user-authorized firearms. This important technology has the potential to save lives, especially those of children. It is essential for the Legislature to understand the status of this industry, and what we can do to foster it and incentivize it to grow. Additionally it is critical to have a public forum to provide input on what some basic reliability standards should be for this new innovative technology. Without a basic understanding of where this industry is and

what is needed for it to grow, the Legislature cannot make informed decisions regarding this technology and burgeoning industry.

## 2. User-authorized Firearms

In a 2002 issue of the journal “The Future of Children,” a publication of The Woodrow Wilson School of Public and International Affairs at Princeton University and The Brookings Institution, researchers wrote the following:

### **The Promise of Personalized Guns**

Some researchers believe that the most important change that could be made in the design of handguns to reduce the incidence of gun-related injuries, especially to children, would be to personalize guns. A “smart” gun would rely upon a personal identification number (PIN), a magnetic ring worn by the user, a radio-frequency device on the user’s clothing or person, or fingerprint recognition technology to ensure that only an authorized user could actually fire the gun. Some technology to produce smart guns already exists; other technology seems feasible in the near future.

Theoretically, handgun personalization would prevent unauthorized persons of any age—not just young children—from operating a firearm. Until these types of guns are widely available for use, however, their effectiveness remains unmeasured. It is not known how many firearm injuries personalization of guns may prevent. However, personalization technology could prevent the use of stolen handguns, thus shrinking the illegal gun market, and it could decrease access to firearms by adolescents and protect young children.

### **An Emerging Technology**

In 1992, faculty at The Johns Hopkins School of Public Health commissioned three undergraduate engineering students to devise a personalized gun. With an investment of \$2,000, and use of existing technology, the students converted a revolver so that only its authorized user could operate it. The gun’s firing mechanism was blocked unless it was touched by an electronic “touch-memory” device. Only the handgun’s authorized user had possession of the device.

Today, the technology to make personalized *guns* is far more sophisticated. In the near future, personalized guns that identify the authorized user by a PIN programmed into a gun may be available for sale. This development would make possible an early version of a personalized gun. Another future version of a personalized gun could employ biometrics, such as fingerprint recognition, for identification of the authorized user. Computer chips already on the market for use in other products immediately scan fingerprints. Soon these chips will be made durable enough to withstand the trauma of gunfire and will be incorporated into guns. A personalized holster already on the market keeps a *gun* locked in its holster unless a device reads the fingerprint of an authorized user.

### Potential Advantages and Drawbacks of Personalized Guns

Personalization has the potential to make guns less accessible to young people and therefore holds promise for reducing firearm injury and death. Personalized guns are not a panacea, however. The increased cost of the guns, the immense stock of nonpersonalized guns in this country, and the potential for an increase in *gun* sales once personalized *guns* enter the market make uncertain the precise impact of smart guns on the safety of children and youth.

Personalized firearms would cost more than firearms sold today, although how much more is unknown. A national poll on gun ownership and safety found that 80% of people who would buy a personalized gun would buy one even if the personalization device added \$100 to \$300 to the price. Even so, it is unlikely that all, or even a significant proportion, of the nearly 200 million existing firearms in the United States would be retrofitted for personalization. The majority of these older weapons would remain available for use and purchase. Also unknown is how many people who do not currently own firearms would purchase personalized guns because they would seem safer than other guns. Would the rate of concealed- weapon carrying increase? How many mothers would buy a handgun for self-protection if the handgun were “childproof”?

Although firearms would remain hazardous for children even with personalization, safer *gun* design could contribute to the broader strategy to prevent firearm injuries among children and adolescents. At the very least, young children could be protected from adult inattention to safe firearm storage. In a more complex set of circumstances, adolescents would have decreased access to operable firearms.

Adolescents, proscribed by law from owning firearms, nevertheless have four types of access to guns: (1) unauthorized access to firearms in homes; (2) authorized access to firearms transferred from *My*, fiends, and acquaintances; (3) illegal purchase of firearms off the street or through retailers, either directly or through an intermediary; and (4) theft. The hope for personalization technology is that the firearm operating system would be individualized to the gun owner so that the illegal transfer of weapons, the utilization of stolen weapons, and other unauthorized weapon use could not occur or would occur only with great effort. Personalization could decrease the pool of readily usable firearms.

Thus, for an adolescent, operating a firearm and obtaining an operable firearm would be more difficult and complicated. For adolescents, who frequently behave impulsively, the time it would take to find a usable firearm or to make a firearm usable might result in a change of mind and a loss of interest. Personalization could thereby work to prevent many homicides, suicides, and unintentional injuries among children and adolescents. (Stephen P. Teret, J.D., M.P.H.; Patti L. Culross, M.D., M.P.H., *The Future of Children*, Vol. 12, No. 2, Children, Youth, and Gun Violence. (Summer - Autumn, 2002), pp. 118-131.)

### 3. Legislative Efforts Relating to Owner-Authorized Handguns

Bills promoting owner-authorized handguns in some fashion have been introduced in several states<sup>1</sup> as well as in Congress.<sup>2</sup> In 2002, New Jersey passed the first state to require owner-authorized handguns, as soon as the technology becomes available. On December 23, 2002, the Associated Press reported:

New Jersey on Monday became the first state to enact “smart gun” legislation that would eventually require new handguns to contain a mechanism that allows only their owners to fire them.

The law will not go into effect immediately because the technology is still under development and it could be years before it becomes a reality. But supporters hailed it as an important milestone in the campaign to reduce handgun deaths.

“This is common-sense legislation. There are safety regulations on cars, on toys. It’s clearly time we have safety regulations on handguns,” Gov. James E.

McGreevey said at Monday’s bill signing ceremony.

(<http://www.foxnews.com/story/0,2933,73763,00.html>.)

In Maryland, a “personalized handgun” is defined as any handgun manufactured with incorporated design technology (1) allowing the handgun to be fired only by a person who is the authorized user of the handgun, and (2) preventing any of the handgun’s safety characteristics from being easily deactivated. Maryland’s Handgun Roster Board is required to review the status of personalized handgun technology and report its findings to the Governor and the General Assembly.

### 4. Effect of This Legislation

This legislation would require DOJ, with input from the working group described in the legislation, to: (1) survey the status of the current user-authorized firearm industry; (2) assess the market conditions and barriers to market of user-authorized firearms; (3) investigate methods to increase the availability and use of user authorized firearms in California; and, (4) make recommendations on manufacturer performance and reliability standards and how those standards should be tested. DOJ would be required to report its findings to the Legislature by January 1, 2017.

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<sup>1</sup> New York Assembly Bill 4878, introduced 1997; New Jersey Senate Bill 113, Assembly Bill 780, introduced 1998; Pennsylvania House Bill 1376, introduced 1999; Tennessee House Bill 0954, Senate Bill 0469, introduced 1999; Hawaii House Bill 41, introduced 2001; Los Angeles motion to require that handguns sold in the city incorporate safety features to prevent unauthorized or accidental firing by criminals, minors, and others, introduced 1999.

<sup>2</sup> *Children’s Gun Violence Prevention Act of 1999*, 106th Congress, 1st Session (March 25, 1999), H.R. 1342 and S. 735; *Childproof Handgun Act of 1999*, 106th Congress, 1st Session (January 28, 1999), S. 319; *Childproof Handgun Act of 1999*, 106th Congress, 1st Session (June 7, 1999), H.R. 2025; *Concurrent Resolution Expressing the Sense of Congress in Support of the Development and Use of Firearms Personalization Technology*, 106th Congress, 1<sup>st</sup> Session (June 7, 1999), H. Con. Res. 125.