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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 894                      **Hearing Date:** April 19, 2016  
**Author:** Jackson  
**Version:** January 21, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JD/ML

**Subject:** *Firearms: Lost or Stolen: Reports*

### HISTORY

**Source:** Author

**Prior Legislation:** SB 299 (DeSaulnier) – (2013) Vetoed  
SB 1366 (DeSaulnier) – (2012) Vetoed  
AB 334 (Levine) – (2007), amended into unrelated bill  
AB 86 (Levine) – Chapter 167, Statutes of 2006  
SB 59 (Lowenthal) – (2004), amended into unrelated bill  
AB 131 (Ortiz) – (1997), amended into unrelated bill

**Support:** American Academy of Pediatrics, California; California American College of Emergency Physicians; California Chapters of the Brady Campaign to Prevent Gun Violence; California Academy of Family Physicians; City of Santa Barbara, Office of Mayor; City of Santa Barbara, Police Department; Courage Campaign; Holman United Methodist Church; International Health & Epidemiology Research Center; Jewish Labor Committee Western Region; Law Center to Prevent Gun Violence; Los Angeles County Sheriff's Department; Physicians for Social Responsibility Sacramento Chapter; Physicians for Social Responsibility San Francisco Bay Area Chapter; Violence Prevention Coalition of Greater Los Angeles; Violence Prevention Coalition of Orange County; Women Against Gun Violence; Youth Alive!; one individual

**Opposition:** California Rifle and Pistol Association; The California Sportsman's Lobby, Inc.; Firearms Policy Coalition; Gun Owners of California; Outdoor Sportsmen's Coalition of California; Mono County Deputy Sheriff's Association; National Rifle Association; Safari Club International; and several individuals

### PURPOSE

*The purpose of this bill is to: (1) require that owners and possessors of firearms report the theft or loss of a firearm to local law enforcement agency within 5 days of the time they knew or reasonably should have known that the firearm had been stolen or lost, subject to infraction and misdemeanor penalties, as specified; (2) require firearms dealers to post notice of this requirement within their licensed premises, as specified; and (3) provide that these reporting provisions do not preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to reporting the theft or loss of a firearm.*

*Existing law* provides that persons licensed to make, import, collect, or deal in firearms are required to report the loss or theft of firearms they possess, to a law enforcement agency. For example, Penal Code section 26885 requires licensed dealers to report losses within 48 hours and Penal Code section 29115(a) requires licensed firearms manufacturers – whether of handguns or long guns – to report the loss or theft of firearms within 48 hours to specified law enforcement agencies.

*Existing law* provides that the sale, loan or transfer of firearms in almost all cases must be processed by, or through, a state licensed dealer or a local law enforcement agency with appropriate transfer forms being used. (Penal Code §§ 26500, 27545.) In those cases where dealer or law enforcement processing is not required, a handgun change of title report must still be sent to the Department of Justice (DOJ). (Penal Code § 27920.)

*Existing law* provides that, on request, DOJ will register transactions relating to handguns in the Automated Firearm System Unit for persons who are exempt from dealer processing or are otherwise exempt by statute from reporting processes. (Penal Code § 28000.)

*Existing law* requires handguns to be centrally registered at time of transfer or sale due to various transfer forms centrally compiled by the DOJ. DOJ is required to keep a registry from data sent to DOJ indicating who owns what handgun by make, model, and serial number and the date thereof. (Penal Code § 11106(a) and (c).) After 2017, this registry will include data on ownership of long guns, as well as handguns. (Chap. 745, Stats. of 2011.) Law enforcement agencies must promptly report to DOJ all reports they receive of lost, stolen, and found property. (Penal Code §§ 11107, 11108.) DOJ must keep a centralized and computerized list of all lost, stolen, and found serialized property reported to it. (Penal Code § 11106(a).)

*Existing law* provides that in addition to the requirements of Section 11108 that apply to a local law enforcement agency's duty to report to the DOJ the recovery of a firearm, a police or sheriff's department shall, and any other law enforcement agency or agent may, report to the department in a manner determined by the AG in consultation with the Bureau of Alcohol, Tobacco, Firearms and Explosives all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. In addition, any law enforcement agency or agent may report to the Attorney General pursuant to this section all information pertaining to any firearm taken into custody, except where the firearm has been voluntarily placed with the law enforcement agency for storage. (Penal Code § 11108.3.)

*Existing law* requires that a "personal handgun importer" – a person in lawful possession of a handgun who moves to California after January 1, 1998 – shall either report that ownership to the Department of Justice within 60 days or shall otherwise dispose of the handgun, as specified. (Penal Code §§ 17000(a), 27560.)

*Existing law* provides that if any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance because it was unlawfully carried or used without the prior knowledge of its lawful owner that it would be so used, it shall be restored to the lawful owner, as soon as its use as evidence has been completed. The lawful owner must identify the weapon and provide proof of ownership. (Penal Code § 18005(b).)

*Existing law* requires that any person seeking the return of a firearm in the custody or control of a court or law enforcement agency must submit specified information, including for handguns the firearm's make, model, caliber, barrel length, handgun type, country of origin, and serial number. If the firearm has been reported lost or stolen to a law enforcement agency, as specified, the agency shall notify the owner or person entitled to possession of the firearm. The person seeking return of the firearm shall be subject to a background check, as specified. (Penal Code §§ 33850, 33855.)

*Existing law* excludes from the definition of "firearm," for a number of provisions of law, an unloaded "antique firearm" and uses the federal definition of that term. (Penal Code § 16170.)

*Existing law* requires licensed firearms dealers to post specified warnings in a conspicuous place on their premises, such as a warning about penalties for leaving a loaded firearm where a child obtains it. (Penal Code § 26835.)

*Existing law* pertaining to the "criminal storage" of firearms – both handguns and rifles and shotguns – makes it a crime to store firearms negligently and where a child (person under 18 years of age) gains access to the firearm(s), as specified. (Penal Code §§ 25100, et seq.)

*Existing law* provides that every person is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself. The design, distribution, or marketing of firearms and ammunition is not exempt from the duty to use ordinary care and skill that is required by this section. (Civil Code § 1714.)

*Existing law* provides that civil liability for any injury to the person or property of another proximately caused by the discharge of a firearm by a minor under the age of 18 years shall be imputed to a parent or guardian having custody and control of the minor for all purposes of civil damages, and such parent or guardian shall be jointly and severally liable with such minor for any damages resulting from such act, if such parent or guardian either permitted the minor to have the firearm or left the firearm in a place accessible to the minor; the liability imposed by this section is in addition to any liability otherwise imposed by law. However, no person, or group of persons collectively, shall incur liability under this section in any amount exceeding \$30,000 for injury to or death of one person as a result of any one occurrence or, subject to the limit as to one person, exceeding \$60,000 for injury to or death of all persons as a result of any one such occurrence. (Civil Code § 1714.3.)

*Existing law* provides that no person shall make an application to purchase more than one handgun within any 30-day period. (Penal Code § 27535(a).) However, an exemption to that restriction applies to the replacement of a handgun when the person's handgun was lost or stolen, and the person reported that firearm lost or stolen prior to the completion of the application to purchase to any local law enforcement agency of the city, county, or city and county in which the person resides. (Penal Code § 27535(b) (11).)

*This bill* would require that, beginning January 1, 2017, every person must report the theft or loss of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within 5 days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.

*This bill* provides that, for purposes of this requirement, a “firearm” includes the frame or receiver of the weapon.

*This bill* provides that, for purposes of this requirement, a “firearm” does not include an unloaded antique firearm.

*This bill* would also require that every person who has reported a firearm lost or stolen, as required above, shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within 48 hours if the firearm is subsequently recovered by the person.

*This bill* provides that a violation of either of the above provisions would be, for a first violation, an infraction punishable by a fine not to exceed \$100. A second violation would be an infraction, punishable by a fine not exceeding \$1,000. A third or subsequent violation would be a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$1,000, or by both that fine and imprisonment.

*This bill* requires that every person reporting a lost or stolen firearm shall report the make, model, and serial number of the firearm, if known by the person.

*This bill* provides that, beginning January 1, 2017, no person shall report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. A violation is an infraction, punishable by a fine not exceeding two hundred fifty dollars for a first offense, and by a fine not exceeding one thousand dollars for a second or subsequent offense.

*This bill* would require firearms dealers to conspicuously post within the licensed premises the following warnings in block letters not less than one inch in height: “IF A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS OR THEFT OCCURRED WITHIN 5 DAYS OF THE TIME YOU KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE FIREARM HAD BEEN LOST OR STOLEN.”

*This bill* provides that the lost or stolen firearm reporting requirement shall not apply to:

- Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties, if he or she reports the loss or theft to his or her employing agency.
- Any United States Marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties.
- Any federally licensed firearms dealer or manufacturer, as specified, who reports the theft or loss in accordance with specified federal law, or the successor thereto, and the applicable regulations.
- Any person whose firearm was lost or stolen prior to January 1, 2017.

*This bill* would provide that its provisions would “not preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to reporting the theft or loss of a firearm.”

## 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 Bill

According to the author:

Currently, ten states, the District of Columbia, and nine cities in California require firearm owners to report to law enforcement when their firearms are lost or stolen. The State of California does not.

Under current law, firearms dealers and manufacturers must report any lost or stolen firearms within 48 hours, and local law enforcement must enter reports of lost or stolen firearms into the state's Automated Property System database. However, firearm owners whose guns are lost or stolen are not required to do anything. As a result, law enforcement efforts to investigate gun crimes and disarm dangerous criminals are significantly hindered.

The public overwhelmingly supports laws requiring the reporting of lost or stolen firearms. A nationwide poll in 2011 found that 94% of Americans surveyed, including 94% of gun owners, favor laws to require the reporting of lost or stolen firearms.

SB 894 requires that, beginning January 1, 2017, every person whose firearm is lost or stolen must notify local law enforcement within 5 days of the time the person knew or reasonably should have known that the firearm had been lost or stolen.

The reporting of lost or stolen firearms will bring several critical improvements to public safety in California.

#### 1) Fight Gun Trafficking

When a crime gun is traced by law enforcement to the last known purchaser, that person may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. A reporting law would provide a tool for law enforcement to detect firearms trafficking and prosecute "straw purchasers," individuals who buy firearms on behalf of criminals who are prohibited from possessing guns.

An analysis by Mayors Against Illegal Guns – a nationwide coalition of over 600 mayors – found that states without mandatory lost or stolen reporting laws export two and a half times more crime guns across state lines than jurisdictions with such laws. Similarly, researchers from the Johns Hopkins Center for Gun Policy and Research found that state laws requiring the reporting of lost or stolen firearms were associated with crime gun export rates that were 43 percent lower than in states that lacked this policy.

## 2) Get Guns Away from Prohibited Persons

Mandatory reporting of lost or stolen firearms would enhance the California Department of Justice's efforts to remove firearms from convicted criminals and others identified in the state's Armed and Prohibited Persons System (APPS) database. Currently, these individuals, who own firearms but are prohibited from possessing them, may falsely claim that their illegally-possessioned firearms were lost or stolen. Moreover, with a reporting requirement, the APPS program will be more efficient since law enforcement resources would not be wasted on attempts to recover guns that have been reported lost or stolen.

## 3) Notify Law Enforcement about Missing Firearms

A reporting requirement would alert law enforcement to the existence of guns stolen by criminals in their communities. It would also make it easier for law enforcement to return lost or stolen firearms to their rightful owners. A 2007 report by the International Association of Chiefs of Police recommended that state and local governments mandate reporting of lost or stolen firearms. The IACP report concluded that, "law enforcement's early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence."

## 2. Does the Bill Violate the Fifth Amendment?

This bill raises the issue of whether it could violate the Fifth Amendment right against self-incrimination to require a person to report the loss or theft of a firearm that the person obtained or possessed illegally. In *Marchetti v. United States* (1968) 390 U.S. 39, the United States Supreme Court granted an individual who was charged with failing to comply with a gambling registration tax statute a defense from prosecution based on the Fifth Amendment. In *Marchetti*, however, the gambling statute was written in such a manner that the *only* persons required to comply with the statute were those engaged in illegal gambling activities. As such, the statute was designed to ferret out and cause the prosecution of illegal gambling through an ostensible tax scheme.

This bill, by contrast, would require "Commencing January 1, 2017, every person shall report the theft or loss of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within 5 days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost." Both those in lawful possession of the handgun and those not in lawful possession would be required to make the report or be subject to an infraction on the first offense and a misdemeanor for subsequent offenses. The requirement also does not differentiate between circumstances of the theft or loss, whether the weapon was stolen while carried illegally, for example, versus whether the weapon was lawfully stored at the person's residence. Therefore, because the statute does not appear to be designed to identify persons who are in illegal possession of a handgun before it was lost or stolen, there would not appear to be any Fifth Amendment defense to failure to comply.

## 3. Mandating Reporting of Lost and Stolen Firearms

In 2007, the International Association of Chiefs of Police held a summit on gun violence. The report issued following that summit states:

Nearly 30,000 American lives are lost to gun violence each year—a number far higher than in any other developed country. Two to three times that many suffer non-fatal injuries. Since 1963, more Americans died by gunfire than perished in combat in the whole of the 20th century (statistics cited in *Private Guns, Public Health*, University of Michigan Press, 2004). And the overall impact goes much farther. Gun violence reaches across borders and jurisdictions and compromises the safety of everyone along the way. (International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* (Sept. 2007), at page 8. <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87>.)

The report discusses the causes of gun violence and makes several specific recommendations. Many of the recommendations are already state law in California such as a ban on military-style assault weapons, mandating safe storage and trigger-lock devices, and requiring all firearms transfers to take place through a licensed dealer. One recommendation contained in the report that is not currently required under state law in California is the reporting of all lost and stolen firearms. The report states:

**State and local governments should mandate the reporting of lost and stolen firearms, and federal law in this area should be tightened.**

The federal government has already taken steps to protect citizens against the criminal misuse of lost and stolen guns. As of 1994, federal law requires FFLs to report their lost and stolen guns to ATF and local law enforcement within 48 hours of discovering that the gun is missing. This law should be strengthened to ensure that dealers keep track of their inventories by requiring them to report missing firearms within 5 days after they know or should know that the gun is missing.

As a result of current federal policy, and in particular the work of ATF's Stolen Firearms Program at the National Tracing Center, many stolen guns have been recovered and instances of gun violence averted.

Every state and local government should mandate that gun owners report lost and stolen guns. Stolen guns represent a major risk to the community at large, because they have, by definition, entered criminal hands. Ensuring law enforcement's early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence. (*Id* at page 22.)

Mayors Against Illegal Guns is group of over 600 mayors from across the country. In September 2010, the group published a report on the connection between gun laws and illegal interstate gun trafficking. Two findings detailed in the report were that states that do not require gun owners to report lost or stolen guns to police export crime guns at a rate more than two and a half times greater than states that require such reporting and such states are also the source of a greater proportion of short "time to crime" guns.<sup>1</sup>

Lost or stolen guns account for a large share of firearms trafficking. Over 150,000 firearms were reported lost or stolen in 2008. Eighty-five percent of

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<sup>1</sup> Time-to-Crime ("TTC") measures the time between a gun's initial retail sale and its recovery in a crime.



these guns were never recovered, and tens of thousands more were likely never even reported. Reporting lost or stolen guns to local law enforcement fights illegal gun trafficking in two ways. First, it enables police to respond more rapidly to a report that a gun was stolen and possibly return it to its owner or track down the thieves. Second, if a trafficker or straw buyer is identified through gun tracing and confronted by police, such a requirement prevents them from evading responsibility by claiming that the crime gun was stolen from them. Federal law requires FFLs [federally licensed dealers, manufacturers or collectors] to report lost or stolen guns, but this requirement does not apply to other gun owners. Currently, seven states and the District of Columbia require gun owners to report lost or stolen guns to local law enforcement.

These states have an average export rate of 6.2 guns per 100,000 inhabitants. In comparison, the 43 states that do not require such reporting have a crime gun export rate of 16.1 guns per 100,000 inhabitants, which is more than two and a half times greater than the rate of states that do.

Furthermore, the states that do not require gun owners to report lost or stolen guns are also the source of a greater proportion of short TTC guns – 23.1% of guns originating from these states have a short TTC, while only 17.8% of guns originating from states that require gun owners to report lost or stolen guns have a short TTC. (*Trace the Guns – The Link Between Gun Laws and Interstate Gun Trafficking*, A Report from Mayors Against Illegal Guns, September 2010, page 22-23.

[http://www.mayorsagainstillegalsguns.org/downloads/pdf/trace\\_the\\_guns\\_report.pdf](http://www.mayorsagainstillegalsguns.org/downloads/pdf/trace_the_guns_report.pdf).)

#### **4. The Armed Prohibited Persons File**

Current California law requires the Attorney General to maintain an online database known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who are on record as the owner of a firearm and who, subsequent to the date of taking possession of that firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Penal Code § 30000.) This data base allows police to identify and retrieve firearms from people who may be mentally unstable or under an injunction due to allegations of domestic violence, or have been convicted of a crime of violence. However, this system relies on the accuracy of firearms ownership records. Because there is no requirement for firearms owners to report lost or stolen firearms, these records are necessarily incomplete and this makes enforcement of firearms prohibitions difficult. When police contact a prohibited person who is on record as the owner of a firearm, that person can simply assert that the firearm was either lost or stolen and they are under no obligation to produce any evidence to support that claim. One effect of this bill would be to allow police to cite individuals in this situation who claim their firearms were lost or stolen but have not reported that loss. The penalty for the first offense would be a fine of up to \$100. A second offense would carry a fine of up to \$1,000, and any subsequent offenses would be punishable as a misdemeanor, with a possible jail sentence of up to six months, a fine of up to \$1,000, or both.

## 5. Potential for Inadvertent Violation

Under the reporting requirement established in this bill, a violation of this law would occur by way of an omission or failure to act. As such, this could be an easy statute to violate inadvertently. For example, a person might inherit a firearm, put it in a box in the attic and forget about it. Later, the person's house is burglarized and the person doesn't think to look in the box in the attic where the gun was kept to see if it is still there. If it turns out the gun was stolen in the burglary, the person could be in violation of this law because they failed to report the theft of the gun. The bill requires gun owners to report any firearm that they knew or *reasonably should have known* was lost or stolen within 5 days of the loss. In the above scenario, a court might well conclude that the gun owner *should have* checked to see if the gun was stolen after the burglary, that the failure to do so was unreasonable, and therefore the failure to report the loss resulted in a violation of this statute.

Imposing this reporting requirement involves something of a paradigm shift in attitudes about firearm ownership. Simply put, this bill requires firearms owners to be aware of the whereabouts of their firearms at all times. While most firearms owners are undoubtedly law abiding citizens, it is not clear what percentage of them would report a lost or stolen gun currently. Making it a requirement to do so imposes a significant new responsibility on gun owners.

## 6. Senate Bill 1366 (2012) and Senate Bill 299 (2013): Veto Message

This legislation is similar to two bills, Senate Bill 1366 (DeSaulnier, of 2012) and Senate Bill 299 (Desaulnier, of 2013), that were vetoed by the governor. The governor stated in his veto message of Senate Bill 299:

I am returning Senate Bill 299 without my signature.

Last year I vetoed a nearly identical bill, SB 1366, noting that I was not convinced that criminalizing the failure to report a lost or stolen firearm would improve identification of gun traffickers or help law enforcement disarm people prohibited from possessing guns. I continue to believe that responsible people report the loss or theft of a firearm and irresponsible people do not. I remain skeptical that this bill would change those behaviors.

## 7. Argument in Support

Women Against Gun Violence states:

Women Against Gun Violence supports Senate Bill 894, which seeks to improve public safety by requiring that every person whose firearm is lost or stolen notify local law enforcement within 5 days of the time the person knew or reasonably should have known that their firearm had been lost or stolen.

SB 894 would provide a tool for law enforcement to detect firearms trafficking and charge criminals who engage in such activity. A requirement to report lost or stolen firearms would assist in the identification and prosecution of "straw buyers," individuals who purchase guns legally, then sell them to people who cannot legally purchase firearms such as gang members, criminals, or minors. When crime guns are traced to straw buyers, they falsely claim that the firearm was lost or stolen. The lack of a reporting requirement enables straw buyers to

shield their criminal activity and continue to sell guns illegally to dangerous criminals. A reporting requirement would likewise assist in the prosecution of armed criminals who falsely claim that a crime gun traced to them was lost or stolen when in fact it was used in a crime. It also enables criminals to hide their involvement in a crime and evade apprehension.

SB 894 would help law enforcement efforts to disarm individuals who possess a firearm and subsequently becomes prohibited by law from purchasing or possessing firearms because of falling into a prohibited class. When law enforcement attempts to recover these illegal firearms, gun owners may falsely claim that the gun was lost or stolen. A reporting requirement would improve the efficiency and implementation of the state's Armed and Prohibited Persons System Program, in which law enforcement agencies work to proactively disarm prohibited individuals before they harm themselves or others.

Finally, SB 894 would alert law enforcement to the existence of a stolen gun in their jurisdictions and facilitate the return of stolen firearms to their rightful owners. The recovery of stolen guns protects communities and reduces gun violence.

## 8. Argument in Opposition

The National Rifle Association of America states:

SB 894 would require a victim of a crime to report to local Law Enforcement the theft of a firearm within an arbitrary time requirement of 5 days and the recovery of the firearm within 48 hours.

This bill would place firearms owners in jeopardy of prosecution for becoming a victim of a crime by placing criminal liability on the firearm's owner regardless of whether they knew their firearm was stolen, if law enforcement thinks they "should have known" it was stolen.

Firearm owners voluntarily and regularly report stolen firearms, but the criminal penalties of SB 894 forces crime victims to decline to cooperate with police if a stolen firearm is recovered. A firearms owner who was **not** aware of the legal requirement to report the loss or theft of a firearm and who is contacted by police investigating a crime faces possible criminal prosecution for failing to report that the firearm was stolen or missing. Such an owner with need to hire a lawyer, who will advise them to remain silent while immunity is negotiated, rather than quickly supplying police the information they need to properly and promptly investigate the crime, which may be time sensitive.

In 2012 and 2013, similar legislation was passed by the legislature and was vetoed each time by Governor Brown.

For the foregoing reasons, the National Rifle Association strongly urges your opposition to SB 894.