
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 892 **Hearing Date:** June 9, 2015
Author: Achadjian
Version: February 26, 2015
Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *Unsafe Handguns: Peace Officer's State-Issued Handguns: Transfer to Spouse*

HISTORY

Source: California Association of Highway Patrolmen

Prior Legislation: AB 685 (Achadjian) – Chapter 16, Statutes of 2013

Support: California Police Chiefs Association; Los Angeles Deputy Sheriffs; Los Angeles Police Protective League, Riverside Sheriffs

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this legislation is to exempt the purchase of a state-issued handgun by the spouse or domestic partner of a peace officer who died in the line of duty from the prohibition on unsafe handguns.

Existing law provides that commencing January 1, 2001, no “unsafe handgun” may be manufactured or sold in California by a licensed dealer, except as specified, and requires that the Department of Justice (DOJ) prepare and maintain a roster of handguns which are determined not to be unsafe handguns. Private party sales (used or previously owned) and transfers of handguns through a licensed dealer are exempted from those restrictions. (Penal Code §§ 27545, 32000, et seq., § 32110.)

Existing law provides that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Penal Code § 32000(a).)

Existing law specifies that this prohibition does not apply to:

- The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the DOJ to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited,

inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this.

- The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section.
- Firearms listed as curios or relics, as defined in federal law.
- The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person.

(Penal Code § 32000(b).)

Existing law contains numerous additional exemptions to the safe handgun requirements, including an exemption for any transfer that is not required to be made through a licensed dealer. This exemption alone includes within it another approximately 25 exemptions. (Penal Code §§ 32110, 27850, et seq.)

This bill would exempt the sale, purchase, or delivery of a handgun, if the sale is of a state-issued handgun to the spouse or domestic partner of a peace officer who died in the line of duty.

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:

Currently, The Department of Justice maintains a list of “unsafe handguns” and prohibits the manufacture, import, sale and possession of such handguns. A violation constitutes imprisonment in a county jail for no more than one year.

Since many of the state-issued handguns to law enforcement are listed on the DOJ’s list of unsafe handguns, a transfer of such firearm is prohibited to the spouse and/or domestic partner.

2. “Not Unsafe” Handgun Law and the Effect of This Bill

SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, as defined, with certain specific exceptions. SB 15 defined an “unsafe handgun” as follows: (a) does not have a requisite safety device; (b) does not meet specified firing tests; and, (c) does not meet a specified drop safety test.

SB 489 (Scott), Chapter 500, Statutes of 2003, added to the unsafe handgun law requirements for semiautomatic pistols that became effective in 2006 and 2007. The legislation requires that for a new semiautomatic center-fire pistol firearm to be added to the roster it has to be equipped with

a chamber load indicator¹ and a magazine disconnect² (if it has a detachable magazine). The legislation also requires that all semiautomatic rimfire pistols, with a detachable magazine, have a magazine disconnect. All firearms that were on the not unsafe handgun list prior to the effective dates were essentially grandfathered in.

AB 1471 (Feuer), Chapter 572, Statutes of 2007, added “microstamping” as a requirement for a firearm to be placed on the not unsafe handgun roster beginning January 1, 2010, “provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.” The Department of Justice issued the certification on May 17, 2013. Like the other provisions, the “microstamping” requirement did not apply to firearms already on the roster.

A number of peace officers are exempt from roster requirements and, according to the California Association of Highway Patrolmen, “many of the state-issued handguns to law enforcement are included on the list of unsafe handguns, a transfer of such firearm is prohibited to the spouse and/or domestic partner.” This legislation would create an exception to the not unsafe firearms laws by allowing the sale of a state-issued handgun to the spouse or domestic partner of a peace officer who died in the line of duty.

-- END --

¹ A chamber load indicator is a device that plainly indicates that a cartridge is in the firing chamber. (Penal Code § 16380.)

² A magazine disconnect is a mechanism that prevents a semiautomatic pistol from operating when a detachable magazine is not inserted in the semiautomatic pistol. (Penal Code § 16900.)