
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 242 **Hearing Date:** April 21, 2015
Author: Monning
Version: April 7, 2015
Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *School Security: Surplus Military Equipment.*

HISTORY

Source: Author

Prior Legislation: None known

Support: California State Conference of the National Association for the Advancement of Colored People; California Parents and Teachers Association

Opposition: None known

PURPOSE

The purpose of the bill is to require a school district's police department to obtain approval from its governing board prior to receiving federal surplus military equipment.

Under existing law the governing board of a school district may establish a school police department under the supervision of a school chief of police and may employ peace officers, as specified, to ensure the safety of school district personnel and pupils, and the security of the real and personal property of the school district. (Education Code § 38000(b).)

Under existing law the governing board of a school district that establishes a police department must set minimum qualifications of employment for the school chief of police, including, but not limited to, prior employment as a peace officer or completion of a peace officer training course approved by the Commission on Peace Officer Standards and Training. (Education Code § 38000(c).)

Under existing law persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are peace officers, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code. (Education Code §38001.)

Under existing law following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty, or when making an arrest as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, as specified. These peace officers may carry firearms

only if authorized and under terms and conditions specified by their employing agency. These peace officers include:

- Members of a California Community College police department, as specified.
- Persons employed as members of a police department of a school district, as specified.
- Any peace officer employed by a K-12 public school district or California Community College district, as specified.

(Penal Code § 830.32.)

This bill prohibits the governing board of a school district that establishes a school police department from permitting the school police department to receive federal surplus military equipment, as specified, unless the governing board does all of the following:

- Votes to approve the acquisition of surplus military equipment at a regularly scheduled public board meeting;
- Provides parents or guardians and other members of the public a chance to comment at a regularly scheduled public board meeting on the proposed acquisition of surplus military equipment, and clearly and in a manner recognizable to the general public, identify in the agenda the topic to be discussed at the meeting;
- Identifies safe and secure storage for surplus military equipment to be received by a school police department; and,
- Ensures that peace officers employed by a school police department possess adequate training in the safe use and handling of the surplus military equipment to be received.

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 Legislation

According to the Author:

Education Code Section 38000 allows for a school district board to establish a police department to service a school district and the surrounding community. The police officers who serve in these departments are fully trained, POST-certified peace officers. Some of these school district police departments have elected to apply for and receive military surplus and weapons through the US Department of Defense’s 1033 Program, coordinated through the Governor's Office of Emergency Services in California.

The 1033 program has provided over \$5.1 billion worth of military weapons and supplies to law enforcement agencies throughout the county, including over 120 school district police departments. In California, there have been a number of high-profile instances where school districts have received these items such as with San Diego Unified School District, which received a 14-ton Mine Resistant and Ambush Proof (MRAP) vehicle, and Los Angeles Unified School District, which also received an MRAP, sixty-one M-16 automatic rifles, and three 40mm M-79 grenade launchers. While school boards have statutory authority over the school police departments they authorize, the weapons and supplies received by these school police departments are often sought without the approval or knowledge of their elected school boards. This lack of notification is made worse by not including parents, teachers, and community members in the discussion of

whether these materials should even be part of the school or community policing strategy.

SB 242 seeks to remedy this lack of transparency and ensure community involvement and a parental voice in policing decisions made by school district police departments. The measure will require that before a school district police department is permitted to receive military surplus items through the Federal 1033 Program, the governing school board must: publicly vote to approve the acquisition of equipment; provide parents, guardians, and community members a chance to publicly comment on the proposal at a regularly scheduled meeting of the board; provide parents with written notice and a detailed description of the military equipment's functions and purpose; and identify safe storage of the equipment.

2. Effect of the Legislation

The National Defense Authorization Act authorizes the Secretary of Defense to transfer excess property that it determines suitable for use in law enforcement activities to federal, state, and local law enforcement jurisdictions. This is referred to as the 1033 Program. The Defense Logistics Agency (DLA) Law Enforcement Support Office is assigned to determine whether property is suitable for use by these agencies. The DLA defines law enforcement activities as those performed by government agencies whose primary function is the enforcement of applicable federal, state, and local laws and whose compensated law enforcement officers have powers of arrest and apprehension. The law enforcement agencies must be authorized and certified annually to participate.

The Governor's Office of Emergency Services implements the 1033 Program in California and conducts management and oversight of the program through the California Public Safety Procurement Program. The Office of Emergency Services also provides support and technical assistance to law enforcement agencies participating (or interested in participating) in the program.

Since 1997, the 1033 Program has provided over \$5.1 billion of military equipment to thousands of local law enforcement agencies throughout the country, including more than 120 school district police departments that serve K-12 students.

There has been national media attention surrounding the 1033 Program and the transfer of surplus military weaponry to school police departments.

[S]ix California school district police departments received equipment from the Department of Defense Excess Property Program, also known as the 1033 Program. The details:

- Baldwin Park School Police Department: 3 M16 assault rifles
- Kern High School District Police: 30 magazine pouches for M4 assault rifle ammunition
- Los Angeles School Police Department: 61 M16 assault rifles, 3 M79 grenade launchers, 1 mine-resistant vehicle
- Oakland Unified School Police: utility truck
- San Diego Unified Schools Police: 1 mine-resistant vehicle

The M16s were valued at \$499 each, the grenade launchers at \$720, and the mine-resistant vehicles, or MRAPs, at \$733,000.

The Pentagon has been giving surplus military equipment to state and local law enforcement agencies for more than a decade. The militarized police response in Ferguson, Missouri, to protests over the police killing of teenager Michael Brown has prompted some lawmakers to question the use of the military equipment by police. A recent poll found that 51 percent of Americans think it's unnecessary for police to use military weapons for law enforcement.

“The only thing that I know of is a rescue vehicle,” Los Angeles School Police Department Sgt. Steve Mayoral explained to The Huffington Post when asked about the rifles, grenade launchers and armored vehicle -- by far the largest haul by a school police department in the state. Mayoral said school police intend to use the mine-resistant vehicle for rescue emergencies. He said he could not confirm the status of the rifles and grenade launchers.

A Los Angeles Unified School District spokesperson who requested anonymity confirmed school police received the gear noted in the report. The district, which has 400 sworn officers, has been receiving military weaponry since 2001, the spokesperson said.

The M16 rifles the district received have been modified to fire only one shot with each pull of the trigger, and have only been used in training, the spokesperson said. An officer must complete 40 hours of training before using the military rifle, the spokesperson said.

The spokesperson said the grenade launchers are the type some police departments use for tear gas and have never been used by the school district, which doesn't have munitions for them. The armored vehicle was received over the summer and hasn't been deployed yet.

The spokesperson said one reason the school district sought the military gear was to prepare for a mass shooting incident like Columbine High School or Sandy Hook Elementary School.

The other California school district that received a mine-resistant vehicle was the San Diego Unified School District Police Department, which, according to NBC San Diego, intends to convert it into a “victim rescue vehicle.”

“We recognize the public concern over perceived ‘militarization of law enforcement,’ but nothing could be further from the truth for School Police,” San Diego school police Capt. Joseph Florentino explained, NBC San Diego reported.

(California School Cops Received Military Rifles, Grenade Launchers, Armored Vehicles, Matt Ferner, Huffington Post, September 12, 2014, http://www.huffingtonpost.com/2014/09/12/militarized-police-california_n_5813014.html.)

This bill would not prevent school police departments from accessing surplus military equipment. The bill, instead, seeks to ensure community involvement and greater transparency if a school police department elects to acquire military equipment.

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