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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 1037                      **Hearing Date:** April 19, 2016  
**Author:** Allen  
**Version:** April 13, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JRD

**Subject:** *Return of Firearms: Special Procedures*

## HISTORY

Source: Author

Prior Legislation: None known

Support: Unknown

Opposition:<sup>1</sup> American Civil Liberties Union; California Association of Federal Firearms Licensees; California Public Defenders' Association; The California Sportsman's Lobby; Firearms Policy Coalition; Gun Owners of California; National Rifle Association of America; Outdoor Sportsmen's Coalition of California; Safari Club International

## PURPOSE

*The purpose of this legislation is to increase the statute of limitations on selling or supplying a firearm to a prohibited person, selling a firearm to a minor and, selling a firearm to a straw purchaser, as specified.*

*Existing law* prescribes the statute of limitations for filing various criminal complaints. (Penal Code § 803.)

*Existing law* provides that no person, corporation, or firm shall knowingly sell, supply, deliver, or give possession or control of a firearm to any person prohibited from possessing a firearm, as specified. (Penal Code §27500(a).)

*Existing law* provides that no person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to anyone whom the person, corporation, or dealer has cause to believe is a person prohibited from possessing a firearm, as specified. (Penal Code § 27500(b).)

*Existing law* states that no person licensed under Sections 26700 to 26915, inclusive, shall sell, supply, deliver, or give possession or control of a handgun to any person under the age of 21 years, or any other firearm to a person under the age of 18 years. (Penal Code § 27510.)

*Existing law* states that no person, corporation, or dealer shall sell, loan, or transfer a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is not the actual

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<sup>1</sup> All opposition was to previous versions of this legislation.

purchaser or transferee of the firearm, or to anyone who is not the one actually being loaned the firearm, if the person, corporation, or dealer, as specified. (Penal Code § 27515.)

*This bill* would provide that, notwithstanding any other statute of limitation for filing a criminal complaint, the limitation of time would not commence until one year after discovery of the violation, but in no case longer than 5 years, for selling or supplying a firearm to a prohibited person, selling a firearm to a minor, selling a firearm to a straw purchaser, as specified.

#### 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:

California law prohibits licensed dealers or any person from providing guns to prohibited persons, children, and people who intend to resell them illegally. This bill allows law enforcement additional time to prosecute these crimes by extending the statute of limitations from three years to five, which aligns with the federal statute of limitations for prosecution of similar crimes.

### 2. Statute of Limitations

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Penal Code § 804.) The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. *People v. Morris* (1988) 46 Cal.3d 1, 13. The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The Legislature enacted the current statutory scheme regarding statutes of limitations for crimes in 1984 in response to a report of the California Law Revision Commission:

The Commission identified various factors to be considered in drafting a limitations statute. These factors include: (a) The staleness factor. A person accused of a crime should be protected from having to face charges based on possibly unreliable evidence and from losing access to the evidentiary means to defend. (b) The repose factor. This reflects society's lack of a desire to prosecute for crimes committed in the distant past. (c) The motivation factor. This aspect of the statute imposes a priority among crimes for investigation and prosecution. (d) The seriousness factor. The statute of limitations is a grant of amnesty to a defendant; the more serious the crime, the less willing society is to grant that amnesty. (e) The concealment factor. Detection of certain concealed crimes may be quite difficult and may require long investigations to identify and prosecute the perpetrators.

The Commission concluded that a felony limitations statute generally should be based on the seriousness of the crime. Seriousness is easily determined based on classification of a crime as felony or misdemeanor and the punishment specified, and a scheme based on seriousness generally will accommodate the other factors as well. Also, the simplicity of

a limitations period based on seriousness provides predictability and promotes uniformity of treatment.<sup>2</sup>

This legislation would provide that the statute of limitations would not commence to run until one year from the date of discovery, but in no case beyond five years, for violations of Penal Code sections 27500 (selling or supplying firearm to prohibited person), 27510 (selling firearm to minor), and 27515 (selling to a straw purchaser). This legislation, thus, could increase the statute of limitations for misdemeanor violations of these sections by four years, and felony violations by two years.

### **3. Argument in Opposition**

According to the American Civil Liberties Union of California, who is opposed, unless amended to the March 30, 2016 version of this legislation:

SB 1037 would also amend the Penal Code section establishing statute so limitations to provide that the statute of limitations for a number of firearms offenses would not begin to run until one year after the date of discovery of the offense. This represents a major departure in the treatment of statutes of limitations in California and poses a substantial threat to civil liberties. Current law allows the statute of limitation to begin running after discovery of the offense only for crimes which, by their very nature, include an element of concealment, such as fraud. SB 1037 would extend this concept, which is predicated on the notion that the crime itself contained an element of concealment, which therefore caused the offense to go undiscovered, to offenses where there is not concealment involved.

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<sup>2</sup> 1 Witkin Cal. Crim. Law Defenses, Section 214 (3rd Ed. 2004), citing 17 Cal. Law Rev. Com. Reports, pp.308-314