

AMENDED IN SENATE MARCH 11, 2002
AMENDED IN SENATE FEBRUARY 25, 2002
AMENDED IN ASSEMBLY MARCH 27, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1590

Introduced by Assembly Member Simitian

February 23, 2001

An act to amend Sections 422, 537e, 594, 594.1, 594.2, 594.6, 594.7, 594.8, 1538.5, and 12020 of, and to add Section 594.05 to, the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1590, as amended, Simitian. Crime.

Existing law provides that any person who threatens ~~injury~~ in writing, verbally, or via an electronic communication device, to commit a crime which will result in death or great bodily injury, as specified, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

This bill would expand this provision to also include threats made by nonverbal conduct intended by the actor to be a substitute for oral or written verbal communication.

Existing law provides that any person who buys, sells, or has in his or her possession personal property from which the serial number has been removed is punishable by imprisonment in a county jail for up to 6 months if the value of the property does not exceed \$400.

This bill would provide that the punishment for buying, selling, or possessing personal property from which the serial number has been

removed would be imprisonment in the state prison or in a county jail not exceeding one year.

Existing law, as amended by an initiative statute, provides that every person who maliciously defaces, damages, or destroys real or personal property is guilty of vandalism. Existing law also provides that it is unlawful to furnish aerosol paint capable of defacing property to a minor.

This bill would recast these provisions and also provide that it would be unlawful to furnish a minor with acid. This bill would make it unlawful to possess acid with the intent to commit vandalism or graffiti.

Under existing law, a defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure based on specified grounds. Existing law allows a court to hold a hearing on the defendant's motion, but it does not specify whether the prosecution or defense investigator may be present in the courtroom during the hearing while other witnesses are testifying.

This bill would specify that during a hearing on a motion to suppress or return evidence, the prosecution or defense investigator may be present in the courtroom during the hearing while other witnesses are testifying.

Existing law defines brass knuckles and shurikens as metal weapons that are unlawful to manufacture, sell, or possess.

This bill would change the definitions of these weapons to include like weapons made of any material, including metal, plastic, wood or paper products, or composites. Because this bill would change the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would amend an initiative statute and in accordance with its provisions would require a $\frac{2}{3}$ vote for enactment by the Legislature.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. *This act shall be known as, and may be cited as,*
2 *the Omnibus Crime Prevention Act of 2002.*

3 SEC. 1.5. Section 422 of the Penal Code is amended to read:

4 422. Any person who willfully threatens to commit a crime
5 which will result in death or great bodily injury to another person,
6 with the specific intent that the statement, made verbally, in
7 writing, by nonverbal conduct intended by the actor to be a
8 substitute for oral or written verbal expression, or by means of an
9 electronic communication device, is to be taken as a threat, even
10 if there is no intent of actually carrying it out, which, on its face
11 and under the circumstances in which it is made, is so unequivocal,
12 unconditional, immediate, and specific as to convey to the person
13 threatened, a gravity of purpose and an immediate prospect of
14 execution of the threat, and thereby causes that person reasonably
15 to be in sustained fear for his or her own safety or for his or her
16 immediate family's safety, shall be punished by imprisonment in
17 the county jail not to exceed one year, or by imprisonment in the
18 state prison.

19 For the purposes of this section, "immediate family" means any
20 spouse, whether by marriage or not, parent, child, any person
21 related by consanguinity or affinity within the second degree, or
22 any other person who regularly resides in the household, or who,
23 within the prior six months, regularly resided in the household.

24 "Electronic communication device" includes, but is not limited
25 to, telephones, cellular telephones, computers, video recorders,
26 fax machines, or pagers. "Electronic communication" has the
27 same meaning as the term defined in Subsection 12 of Section
28 2510 of Title 18 of the United States Code.

29 SEC. 2. Section 537e of the Penal Code is amended to read:

30 537e. (a) Any person who knowingly buys, sells, receives,
31 disposes of, conceals, or has in his or her possession any personal
32 property from which the manufacturer's serial number,
33 identification number, electronic serial number, or any other
34 distinguishing number or identification mark has been removed,
35 defaced, covered, altered, or destroyed, is guilty of a public
36 offense, punishable as follows:



- 1 (1) If the value of the property does not exceed four hundred
2 dollars (\$400), by imprisonment in a county jail not exceeding one
3 year.
- 4 (2) If the value of the property exceeds four hundred dollars
5 (\$400), by imprisonment in the state prison, or by imprisonment
6 in a county jail not exceeding one year.
- 7 (b) For purposes of this subdivision, “personal property”
8 includes, but is not limited to, the following:
 - 9 (1) Any television, radio, recorder, phonograph, telephone,
10 piano, or any other musical instrument or sound equipment.
 - 11 (2) Any washing machine, sewing machine, vacuum cleaner,
12 or other household appliance or furnishings.
 - 13 (3) Any typewriter, adding machine, dictaphone, or any other
14 office equipment or furnishings.
 - 15 (4) Any computer or any computer component, including the
16 frame, chassis, or casing.
 - 17 (5) Any tool or similar device, including any technical or
18 scientific equipment.
 - 19 (6) Any bicycle, exercise equipment, or any other
20 entertainment or recreational equipment.
 - 21 (7) Any electrical or mechanical equipment, contrivance,
22 material, or piece of apparatus or equipment, or any component
23 part thereof.
 - 24 (8) Any clock, watch, watch case, or watch movement.
 - 25 (9) Any vehicle or vessel, or any component part thereof.
- 26 (c) When property described in subdivision (b) comes into the
27 custody of a peace officer it shall become subject to the provision
28 of Chapter 12 (commencing with Section 1407) of Title 10 of Part
29 2, relating to the disposal of stolen or embezzled property.
30 Property subject to this section shall be considered stolen or
31 embezzled property for the purposes of that chapter, and prior to
32 being disposed of, shall have an identification mark imbedded or
33 engraved in, or permanently affixed to it.
- 34 (d) This section does not apply to those cases or instances
35 where any of the changes or alterations enumerated in subdivision
36 (a) have been customarily made or done as an established practice
37 in the ordinary and regular conduct of business, by the original
38 manufacturer, or by his or her duly appointed direct representative,
39 or under specific authorization from the original manufacturer.
- 40 SEC. 3. Section 594 of the Penal Code is amended to read:



1 594. (a) Every person who maliciously commits any of the
2 following acts with respect to any real or personal property not his
3 or her own, in cases other than those specified by state law, is guilty
4 of vandalism:

5 (1) Damages.

6 (2) Destroys.

7 Whenever a person violates this subdivision with respect to real
8 property, vehicles, signs, fixtures, furnishings, or property
9 belonging to any public entity, as defined by Section 811.2 of the
10 Government Code, or the federal government, it shall be a
11 permissive inference that the person neither owned the property
12 nor had the permission of the owner to damage or destroy the
13 property.

14 (b) (1) If the amount of damage or destruction is four hundred
15 dollars (\$400) or more, vandalism is punishable by imprisonment
16 in the state prison or in a county jail not exceeding one year, or by
17 a fine of not more than ten thousand dollars (\$10,000), or if the
18 amount of damage or destruction is ten thousand dollars (\$10,000)
19 or more, by a fine of not more than fifty thousand dollars
20 (\$50,000), or by both that fine and imprisonment.

21 (2) (A) If the amount of damage or destruction is less than four
22 hundred dollars (\$400), vandalism is punishable by imprisonment
23 in a county jail not exceeding one year, or by a fine of not more than
24 one thousand dollars (\$1,000), or by both that fine and
25 imprisonment.

26 (B) If the amount of damage or destruction is less than four
27 hundred dollars (\$400), and the defendant has been previously
28 convicted of vandalism or affixing graffiti or other inscribed
29 material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7,
30 vandalism is punishable by imprisonment in a county jail for not
31 more than one year, or by a fine of not more than five thousand
32 dollars (\$5,000), or by both that fine and imprisonment.

33 (c) If a minor is personally unable to pay a fine levied for acts
34 prohibited by this section, the parent of that minor shall be liable
35 for payment of the fine. A court may waive payment of the fine,
36 or any part thereof, by the parent upon a finding of good cause.

37 (d) This section shall become operative on January 1, 2002.

38 SEC. 4. Section 594.05 is added to the Penal Code, to read:

39 594.05. (a) Every person who maliciously defaces with
40 graffiti or other inscribed material any real or personal property



1 not his or her own, in cases other than those specified by state law,
2 is guilty of vandalism. Whenever a person violates this subdivision
3 with respect to real property, vehicles, signs, fixtures, furnishings,
4 or property belonging to any public entity, as defined by Section
5 811.2 of the Government Code, or the federal government, it shall
6 be a permissive inference that the person neither owned the
7 property nor had the permission of the owner to deface the
8 property.

9 (b) (1) If the amount of defacement is four hundred dollars
10 (\$400) or more, vandalism is punishable by imprisonment in the
11 state prison or in a county jail not exceeding one year, or by a fine
12 of not more than ten thousand dollars (\$10,000), or if the amount
13 of defacement is ten thousand dollars (\$10,000) or more, by a fine
14 of not more than fifty thousand dollars (\$50,000), or by both that
15 imprisonment and fine.

16 (2) (A) If the amount of defacement is less than four hundred
17 dollars (\$400), vandalism is punishable by imprisonment in a
18 county jail not exceeding one year, or by a fine of not more than
19 one thousand dollars (\$1,000), or by both that fine and
20 imprisonment.

21 (B) If the amount of defacement is less than four hundred
22 dollars (\$400), and the defendant has been previously convicted of
23 vandalism or affixing graffiti or other inscribed material under
24 Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is
25 punishable by imprisonment in a county jail for not more than one
26 year, or by a fine of not more than five thousand dollars (\$5,000),
27 or by both that fine and imprisonment.

28 (c) Upon conviction of any person under this section for acts of
29 vandalism consisting of defacing property with graffiti or other
30 inscribed materials, the court may, in addition to any punishment
31 imposed under subdivision (b), order the defendant to clean up,
32 repair, or replace the damaged property himself or herself, or order
33 the defendant, and his or her parents or guardians if the defendant
34 is a minor, to keep the damaged property or another specified
35 property in the community free of graffiti for up to one year.
36 Participation of a parent or guardian is not required under this
37 subdivision if the court deems this participation to be detrimental
38 to the defendant, or if the parent or guardian is a single parent who
39 must care for young children.



1 (d) If a minor is personally unable to pay a fine levied for acts
2 prohibited by this section, the parent of that minor shall be liable
3 for payment of the fine. A court may waive payment of the fine,
4 or any part thereof, by the parent upon a finding of good cause.

5 (e) As used in this section, the term “graffiti or other inscribed
6 material” includes any unauthorized inscription, word, figure,
7 mark, or design, that is written, marked, etched, scratched, drawn,
8 or painted on real or personal property.

9 (f) The court may order any person ordered to perform
10 community service or graffiti removal pursuant to paragraph (1)
11 of subdivision (c) to undergo counseling.

12 SEC. 5. Section 594.1 of the Penal Code is amended to read:

13 594.1. (a) (1) It shall be unlawful for any person, firm, or
14 corporation, except a parent or legal guardian, to sell or give or in
15 any way furnish to another person, who is in fact under the age of
16 18 years, any acid or aerosol container of paint that is capable of
17 defacing property without first obtaining bona fide evidence of
18 majority and identity.

19 (2) For purposes of this subdivision, “bona fide evidence of
20 majority and identity” is any document evidencing the age and
21 identity of an individual which has been issued by a federal, state,
22 or local governmental entity, and includes, but is not limited to, a
23 motor vehicle operator’s license, a registration certificate issued
24 under the federal Selective Service Act, or an identification card
25 issued to a member of the armed forces.

26 (3) This subdivision shall not apply to the furnishing of six
27 ounces or less of an acid or aerosol container of paint to a minor
28 for the minor’s use or possession under the supervision of the
29 minor’s parent, guardian, instructor, or employer.

30 (4) Aerosol containers of paint, acid or related substances may
31 be furnished for use in school-related activities that are part of the
32 instructional program when used under controlled and supervised
33 situations within the classroom or on the site of a supervised
34 project. These containers or substances may not leave the
35 supervised site and shall be inventoried by the instructor. This use
36 shall comply with Section 32060 of the Education Code regarding
37 the safe use of toxic art supplies in schools.

38 (b) It shall be unlawful for any person under the age of 18 years
39 to purchase acid or an aerosol container of paint that is capable of
40 defacing property.



1 (c) Every retailer selling or offering for sale in this state acid or
2 aerosol containers of paint capable of defacing property shall post
3 in a conspicuous place a sign in letters at least three-eighths of an
4 inch high stating: “Any person who maliciously defaces real or
5 personal property with acid or paint is guilty of vandalism which
6 is punishable by a fine, imprisonment, or both.”

7 (d) It is unlawful for any person to carry on his or her person
8 and in plain view to the public acid or an aerosol container of paint
9 while in any posted public facility, park, playground, swimming
10 pool, beach, or recreational area, other than a highway, street,
11 alley, or way, unless he or she has first received valid authorization
12 from the governmental entity which has jurisdiction over the
13 public area.

14 As used in this subdivision, “posted” means a sign placed in a
15 reasonable location or locations stating it is a misdemeanor to
16 possess acid or a spray can of paint in that public facility, park,
17 playground, swimming pool, beach, or recreational area without
18 valid authorization.

19 (e) (1) It is unlawful for any person under the age of 18 years
20 to possess acid or an aerosol container of paint for the purpose of
21 defacing property while on any public highway, street, alley, or
22 way, or other public place, regardless of whether that person is or
23 is not in any automobile, vehicle, or other conveyance.

24 (2) As a condition of probation for any violation of this
25 subdivision, the court may order a defendant convicted of a
26 violation of this subdivision to perform community service as
27 follows:

28 (A) For a first conviction under this subdivision, community
29 service not to exceed 100 hours over a period not to exceed 90 days
30 during a time other than his or her hours of school attendance or
31 employment.

32 (B) If the person has a prior conviction under this subdivision,
33 community service not to exceed 200 hours over a period of 180
34 days during a time other than his or her hours of school attendance
35 or employment.

36 (C) If the person has two prior convictions under this
37 subdivision, community service not to exceed 300 hours over a
38 period not to exceed 240 days during a time other than his or her
39 hours of school attendance or employment.



1 (f) Violation of any provision of this section is a misdemeanor.
2 Upon conviction of any person under this section, the court may,
3 in addition to any other punishment imposed, if the jurisdiction has
4 adopted a graffiti abatement program as defined in subdivision (f)
5 of Section 594, order the defendant, and his or her parents or
6 guardians if the defendant is a minor, to keep the damaged property
7 or another specified property in the community free of graffiti, as
8 follows:

9 (1) For a first conviction under this section, for 90 days.

10 (2) If the defendant has a prior conviction under this section, for
11 180 days.

12 (3) If the defendant has two or more prior convictions under
13 this section, for 240 days.

14 Participation of a parent or guardian is not required under this
15 subdivision if the court deems this participation to be detrimental
16 to the defendant, or if the parent or guardian is a single parent who
17 must care for young children.

18 (g) The court may order any person ordered to perform
19 community service or graffiti removal pursuant to subdivision (e)
20 or (f) to undergo counseling.

21 SEC. 6. Section 594.2 of the Penal Code is amended to read:

22 594.2. (a) Every person who possesses a masonry or glass
23 drill bit, a carbide drill bit, a glass cutter, a grinding stone, an awl,
24 a chisel, a carbide scribe, an aerosol paint container, a felt tip
25 marker, any acid capable of defacing, damaging, or destroying
26 property or any other marking substance with the intent to commit
27 vandalism or graffiti, is guilty of a misdemeanor.

28 (b) As a condition of probation for any violation of this section,
29 the court may order the defendant to perform community service
30 not to exceed 90 hours during a time other than his or her hours of
31 school attendance or employment.

32 (c) For the purposes of this section:

33 (1) "Felt tip marker" means any broad-tipped marker pen with
34 a tip exceeding three-eighths of one inch in width, or any similar
35 implement containing an ink that is not water soluble.

36 (2) "Marking substance" means any substance or implement,
37 other than aerosol paint containers and felt tip markers, that could
38 be used to draw, spray, paint, etch, or mark.

39 SEC. 7. Section 594.6 of the Penal Code is amended to read:



1 594.6. (a) Every person who, having been convicted of
 2 vandalism or affixing graffiti or other inscribed material under
 3 Section 594, 594.05, 594.3, 594.4, or 640.7, or any combination
 4 of these offenses, may be ordered by the court as a condition of
 5 probation to perform community service not to exceed 300 hours
 6 over a period not to exceed 240 days during a time other than his
 7 or her hours of school attendance or employment. Nothing in this
 8 subdivision shall limit the court from ordering the defendant to
 9 perform a longer period of community service if a longer period
 10 of community service is authorized under other provisions of law.

11 (b) In lieu of the community service that may be ordered
 12 pursuant to subdivision (a), the court may order the defendant, and
 13 his or her parents or guardians if the defendant is a minor, as a
 14 condition of probation, to keep a specified property in the
 15 community free of graffiti for up to one year. Participation of a
 16 parent or guardian is not required under this subdivision if the
 17 court deems this participation to be detrimental to the defendant,
 18 or if the parent or guardian is a single parent who must care for
 19 young children.

20 (c) The court may order any person ordered to perform
 21 community service or graffiti removal pursuant to subdivision (a)
 22 or (b) to undergo counseling.

23 SEC. 8. Section 594.7 of the Penal Code is amended to read:

24 594.7. Notwithstanding subdivision (b) of Section 594, every
 25 person who, having been convicted previously of a violation of
 26 Section 595, 594.05, or of vandalism under Section 594 for
 27 maliciously defacing with graffiti or other inscribed material any
 28 real or personal property not his or her own on two separate
 29 occasions and having been incarcerated pursuant to a sentence, a
 30 conditional sentence, or a grant of probation for at least one of the
 31 convictions, is subsequently convicted of vandalism under Section
 32 594, shall be punished by imprisonment in a county jail not
 33 exceeding one year, or in the state prison.

34 SEC. 9. Section 594.8 of the Penal Code is amended to read:

35 594.8. (a) Any person convicted of possession of a
 36 destructive implement with intent to commit graffiti or willfully
 37 affixing graffiti under Section 594, 594.05, 594.2, 640.5, 640.6, or
 38 640.7, where the offense was committed when he or she was under
 39 the age of 18 years, shall perform not less than 24 hours of
 40 community service during a time other than his or her hours of



1 school attendance or employment. One parent or guardian shall be
2 present at the community service site for at least one-half of the
3 hours of community service required under this section unless
4 participation by the parent, guardian, or foster parent is deemed by
5 the court to be inappropriate or potentially detrimental to the child.

6 (b) In lieu of the community service required pursuant to
7 subdivision (a), the court may order the defendant, and his or her
8 parents or guardians if the defendant is a minor, to keep a specified
9 property in the community free of graffiti for at least 60 days.
10 Participation of a parent or guardian is not required under this
11 subdivision if the court deems this participation to be detrimental
12 to the defendant, or if the parent or guardian is a single parent who
13 must care for young children.

14 (c) The court may order any person ordered to perform
15 community service or graffiti removal pursuant to subdivision (a)
16 or (b) to undergo counseling.

17 SEC. 10. *Section 1538.5 of the Penal Code is amended to*
18 *read:*

19 1538.5. (a) (1) A defendant may move for the return of
20 property or to suppress as evidence any tangible or intangible thing
21 obtained as a result of a search or seizure on either of the following
22 grounds:

23 (A) The search or seizure without a warrant was unreasonable.

24 (B) The search or seizure with a warrant was unreasonable
25 because any of the following apply:

26 (i) The warrant is insufficient on its face.

27 (ii) The property or evidence obtained is not that described in
28 the warrant.

29 (iii) There was not probable cause for the issuance of the
30 warrant.

31 (iv) The method of execution of the warrant violated federal or
32 state constitutional standards.

33 (v) There was any other violation of federal or state
34 constitutional standards.

35 (2) A motion pursuant to paragraph (1) shall be made in writing
36 and accompanied by a memorandum of points and authorities and
37 proof of service. The memorandum shall list the specific items of
38 property or evidence sought to be returned or suppressed and shall
39 set forth the factual basis and the legal authorities that demonstrate
40 why the motion should be granted.



1 (b) When consistent with the procedures set forth in this section
2 and subject to the provisions of Section 170 to 170.6, inclusive, of
3 the Code of Civil Procedure, the motion should first be heard by
4 the magistrate who issued the search warrant if there is a warrant.

5 (c) Whenever a search or seizure motion is made in the
6 municipal or superior court as provided in this section, the judge
7 or magistrate shall receive evidence on any issue of fact necessary
8 to determine the motion. *At the hearing on a search and seizure*
9 *motion, the investigating officer or the investigator for the*
10 *defendant may be present in the courtroom while another witness*
11 *is under investigation.*

12 (d) If a search or seizure motion is granted pursuant to the
13 proceedings authorized by this section, the property or evidence
14 shall not be admissible against the movant at any trial or other
15 hearing unless further proceedings authorized by this section,
16 Section 871.5, 1238, or 1466 are utilized by the people.

17 (e) If a search or seizure motion is granted at a trial, the property
18 shall be returned upon order of the court unless it is otherwise
19 subject to lawful detention. If the motion is granted at a special
20 hearing, the property shall be returned upon order of the court only
21 if, after the conclusion of any further proceedings authorized by
22 this section, Section 1238 or 1466, the property is not subject to
23 lawful detention or if the time for initiating the proceedings has
24 expired, whichever occurs last. If the motion is granted at a
25 preliminary hearing, the property shall be returned upon order of
26 court after 10 days unless the property is otherwise subject to
27 lawful detention or unless, within that time, further proceedings
28 authorized by this section, Section 871.5 or 1238 are utilized; if
29 they are utilized, the property shall be returned only if, after the
30 conclusion of the proceedings, the property is no longer subject to
31 lawful detention.

32 (f) (1) If the property or evidence relates to a felony offense
33 initiated by a complaint, the motion shall be made in the superior
34 court only upon filing of an information, except that the defendant
35 may make the motion at the preliminary hearing in the municipal
36 court or in the superior court in a county in which there is no
37 municipal court, but the motion shall be restricted to evidence
38 sought to be introduced by the people at the preliminary hearing.

39 (2) The motion may be made at the preliminary examination
40 only if at least five court days before the date set for the preliminary



1 examination the defendant has filed and personally served on the
2 people a written motion accompanied by a memorandum of points
3 and authorities as required by paragraph (2) of subdivision (a). At
4 the preliminary examination, the magistrate may grant the
5 defendant a continuance for the purpose of filing the motion and
6 serving the motion upon the people, at least five court days before
7 resumption of the examination, upon a showing that the defendant
8 or his or her attorney of record was not aware of the evidence or
9 was not aware of the grounds for suppression before the
10 preliminary examination.

11 (3) Any written response by the people to the motion described
12 in paragraph (2) shall be filed with the court and personally served
13 on the defendant or his or her attorney of record at least two court
14 days prior to the hearing at which the motion is to be made.

15 (g) If the property or evidence relates to a misdemeanor
16 complaint, the motion shall be made in the municipal court or in
17 the superior court in a county in which there is no municipal court
18 before trial and heard prior to trial at a special hearing relating to
19 the validity of the search or seizure. If the property or evidence
20 relates to a misdemeanor filed together with a felony, the
21 procedure provided for a felony in this section and Sections 1238
22 and 1539 shall be applicable.

23 (h) If, prior to the trial of a felony or misdemeanor, opportunity
24 for this motion did not exist or the defendant was not aware of the
25 grounds for the motion, the defendant shall have the right to make
26 this motion during the course of trial in the municipal or superior
27 court.

28 (i) If the property or evidence obtained relates to a felony
29 offense initiated by complaint and the defendant was held to
30 answer at the preliminary hearing, or if the property or evidence
31 relates to a felony offense initiated by indictment, the defendant
32 shall have the right to renew or make the motion in the superior
33 court at a special hearing relating to the validity of the search or
34 seizure which shall be heard prior to trial and at least 10 court days
35 after notice to the people, unless the people are willing to waive a
36 portion of this time. Any written response by the people to the
37 motion shall be filed with the court and personally served on the
38 defendant or his or her attorney of record at least two court days
39 prior to the hearing, unless the defendant is willing to waive a
40 portion of this time. If the offense was initiated by indictment or



1 if the offense was initiated by complaint and no motion was made
2 at the preliminary hearing, the defendant shall have the right to
3 fully litigate the validity of a search or seizure on the basis of the
4 evidence presented at a special hearing. If the motion was made at
5 the preliminary hearing, unless otherwise agreed to by all parties,
6 evidence presented at the special hearing shall be limited to the
7 transcript of the preliminary hearing and to evidence that could not
8 reasonably have been presented at the preliminary hearing, except
9 that the people may recall witnesses who testified at the
10 preliminary hearing. If the people object to the presentation of
11 evidence at the special hearing on the grounds that the evidence
12 could reasonably have been presented at the preliminary hearing,
13 the defendant shall be entitled to an in camera hearing to determine
14 that issue. The superior court shall base its ruling on all evidence
15 presented at the special hearing and on the transcript of the
16 preliminary hearing, and the findings of the magistrate shall be
17 binding on the superior court as to evidence or property not
18 affected by evidence presented at the special hearing. After the
19 special hearing is held in the superior court, any review thereafter
20 desired by the defendant prior to trial shall be by means of an
21 extraordinary writ of mandate or prohibition filed within 30 days
22 after the denial of his or her motion at the special hearing.

23 (j) If the property or evidence relates to a felony offense
24 initiated by complaint and the defendant's motion for the return of
25 the property or suppression of the evidence at the preliminary
26 hearing is granted, and if the defendant is not held to answer at the
27 preliminary hearing, the people may file a new complaint or seek
28 an indictment after the preliminary hearing, and the ruling at the
29 prior hearing shall not be binding in any subsequent proceeding,
30 except as limited by subdivision (p). In the alternative, the people
31 may move to reinstate the complaint, or those parts of the
32 complaint for which the defendant was not held to answer,
33 pursuant to Section 871.5. If the property or evidence relates to a
34 felony offense initiated by complaint and the defendant's motion
35 for the return or suppression of the property or evidence at the
36 preliminary hearing is granted, and if the defendant is held to
37 answer at the preliminary hearing, the ruling at the preliminary
38 hearing shall be binding upon the people unless, upon notice to the
39 defendant and the court in which the preliminary hearing was held
40 and upon the filing of an information, the people, within 15 days



1 after the preliminary hearing, request in the superior court a special
2 hearing, in which case the validity of the search or seizure shall be
3 relitigated de novo on the basis of the evidence presented at the
4 special hearing, and the defendant shall be entitled, as a matter of
5 right, to a continuance of the special hearing for a period of time
6 up to 30 days. The people may not request relitigation of the
7 motion at a special hearing if the defendant's motion has been
8 granted twice. If the defendant's motion is granted at a special
9 hearing in the superior court, the people, if they have additional
10 evidence relating to the motion and not presented at the special
11 hearing, shall have the right to show good cause at the trial why the
12 evidence was not presented at the special hearing and why the prior
13 ruling at the special hearing should not be binding, or the people
14 may seek appellate review as provided in subdivision (o), unless
15 the court, prior to the time the review is sought, has dismissed the
16 case pursuant to Section 1385. If the case has been dismissed
17 pursuant to Section 1385, or if the people dismiss the case on their
18 own motion after the special hearing, the people may file a new
19 complaint or seek an indictment after the special hearing, and the
20 ruling at the special hearing shall not be binding in any subsequent
21 proceeding, except as limited by subdivision (p). If the property or
22 evidence seized relates solely to a misdemeanor complaint, and the
23 defendant made a motion for the return of property or the
24 suppression of evidence in the municipal court or superior court
25 in a county in which there is no municipal court prior to trial, both
26 the people and defendant shall have the right to appeal any decision
27 of that court relating to that motion to the superior court of the
28 county in which the municipal or superior court is located, in
29 accordance with the California Rules of Court provisions
30 governing appeals to the appellate division in criminal cases. If the
31 people prosecute review by appeal or writ to decision, or any
32 review thereof, in a felony or misdemeanor case, it shall be binding
33 upon them.

34 (k) If the defendant's motion to return property or suppress
35 evidence is granted and the case is dismissed pursuant to Section
36 1385, or the people appeal in a misdemeanor case pursuant to
37 subdivision (j), the defendant shall be released pursuant to Section
38 1318 if he or she is in custody and not returned to custody unless
39 the proceedings are resumed in the trial court and he or she is
40 lawfully ordered by the court to be returned to custody.



1 If the defendant's motion to return property or suppress
2 evidence is granted and the people file a petition for writ of
3 mandate or prohibition pursuant to subdivision (o) or a notice of
4 intention to file such a petition, the defendant shall be released
5 pursuant to Section 1318, unless (1) he or she is charged with a
6 capital offense in a case where the proof is evident and the
7 presumption great, or (2) he or she is charged with a noncapital
8 offense defined in Chapter 1 (commencing with Section 187) of
9 Title 8 of Part 1, and the court orders that the defendant be
10 discharged from actual custody upon bail.

11 (l) If the defendant's motion to return property or suppress
12 evidence is granted, the trial of a criminal case shall be stayed to
13 a specified date pending the termination in the appellate courts of
14 this state of the proceedings provided for in this section, Section
15 871.5, 1238, or 1466 and, except upon stipulation of the parties,
16 pending the time for the initiation of these proceedings. Upon the
17 termination of these proceedings, the defendant shall be brought
18 to trial as provided by Section 1382, and, subject to the provisions
19 of Section 1382, whenever the people have sought and been denied
20 appellate review pursuant to subdivision (o), the defendant shall
21 be entitled to have the action dismissed if he or she is not brought
22 to trial within 30 days of the date of the order that is the last denial
23 of the petition. Nothing contained in this subdivision shall prohibit
24 a court, at the same time as it rules upon the search and seizure
25 motion, from dismissing a case pursuant to Section 1385 when the
26 dismissal is upon the court's own motion and is based upon an
27 order at the special hearing granting the defendant's motion to
28 return property or suppress evidence. In a misdemeanor case, the
29 defendant shall be entitled to a continuance of up to 30 days if he
30 or she intends to file a motion to return property or suppress
31 evidence and needs this time to prepare for the special hearing on
32 the motion. In case of an appeal by the defendant in a misdemeanor
33 case from the denial of the motion, he or she shall be entitled to bail
34 as a matter of right, and, in the discretion of the trial or appellate
35 court, may be released on his or her own recognizance pursuant to
36 Section 1318. In *the* case of an appeal by the defendant in a
37 misdemeanor case from the denial of the motion, the trial court
38 may, in its discretion, ~~grant order or deny~~ a stay of ~~the trial~~ *further*
39 *proceedings* pending disposition of the appeal.



1 (m) The proceedings provided for in this section, and Sections
2 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive
3 remedies prior to conviction to test the unreasonableness of a
4 search or seizure where the person making the motion for the
5 return of property or the suppression of evidence is a defendant in
6 a criminal case and the property or thing has been offered or will
7 be offered as evidence against him or her. A defendant may seek
8 further review of the validity of a search or seizure on appeal from
9 a conviction in a criminal case notwithstanding the fact that the
10 judgment of conviction is predicated upon a plea of guilty. Review
11 on appeal may be obtained by the defendant provided that at some
12 stage of the proceedings prior to conviction he or she has moved
13 for the return of property or the suppression of the evidence.

14 (n) This section establishes only the procedure for suppression
15 of evidence and return of property, and does not establish or alter
16 any substantive ground for suppression of evidence or return of
17 property. Nothing contained in this section shall prohibit a person
18 from making a motion, otherwise permitted by law, to return
19 property, brought on the ground that the property obtained is
20 protected by the free speech and press provisions of the United
21 States and California Constitutions. Nothing in this section shall
22 be construed as altering (1) the law of standing to raise the issue
23 of an unreasonable search or seizure; (2) the law relating to the
24 status of the person conducting the search or seizure; (3) the law
25 relating to the burden of proof regarding the search or seizure; (4)
26 the law relating to the reasonableness of a search or seizure
27 regardless of any warrant that may have been utilized; or (5) the
28 procedure and law relating to a motion made pursuant to Section
29 871.5 or 995, or the procedures that may be initiated after the
30 granting or denial of such a motion.

31 (o) Within 30 days after a defendant's motion is granted at a
32 special hearing in the superior court in a felony case, the people
33 may file a petition for writ of mandate or prohibition in the court
34 of appeal, seeking appellate review of the ruling regarding the
35 search or seizure motion. If the trial of a criminal case is set for a
36 date that is less than 30 days from the granting of a defendant's
37 motion at a special hearing in the superior court in a felony case,
38 the people, if they have not filed such a petition and wish to
39 preserve their right to file a petition, shall file in the superior court
40 on or before the trial date or within 10 days after the special



1 hearing, whichever occurs last, a notice of intention to file a
2 petition and shall serve a copy of the notice upon the defendant.

3 (p) If a defendant's motion to return property or suppress
4 evidence in a felony matter has been granted twice, the people may
5 not file a new complaint or seek an indictment in order to relitigate
6 the motion or relitigate the matter de novo at a special hearing in
7 the superior court as otherwise provided by subdivision (j), unless
8 the people discover additional evidence relating to the motion that
9 was not reasonably discoverable at the time of the second
10 suppression hearing. Relitigation of the motion shall be heard by
11 the same judge who granted the motion at the first hearing if the
12 judge is available.

13 (q) The amendments to this section enacted in the 1997 portion
14 of the 1997–98 Regular Session of the Legislature shall apply to
15 all criminal proceedings conducted on or after January 1, 1998.

16 *SEC. II.* Section 12020 of the Penal Code is amended to read:
17 12020. (a) Any person in this state who does any of the
18 following is punishable by imprisonment in a county jail not
19 exceeding one year or in the state prison:

20 (1) Manufactures or causes to be manufactured, imports into
21 the state, keeps for sale, or offers or exposes for sale, or who gives,
22 lends, or possesses any cane gun or wallet gun, any undetectable
23 firearm, any firearm which is not immediately recognizable as a
24 firearm, any camouflaging firearm container, any ammunition
25 which contains or consists of any fléchette dart, any bullet
26 containing or carrying an explosive agent, any ballistic knife, any
27 multiburst trigger activator, any nunchaku, any short-barreled
28 shotgun, any short-barreled rifle, any metal knuckles, any belt
29 buckle knife, any leaded cane, any zip gun, any shuriken, any
30 unconventional pistol, any lipstick case knife, any cane sword, any
31 shobi-zue, any air gauge knife, any writing pen knife, any metal
32 military practice handgrenade or metal replica handgrenade, or
33 any instrument or weapon of the kind commonly known as a
34 blackjack, brass knuckles, slungshot, billy, sandclub, sap, or
35 sandbag.

36 (2) Commencing January 1, 2000, manufactures or causes to be
37 manufactured, imports into the state, keeps for sale, or offers or
38 exposes for sale, or who gives, or lends, any large-capacity
39 magazine.



1 (3) Carries concealed upon his or her person any explosive
2 substance, other than fixed ammunition.

3 (4) Carries concealed upon his or her person any dirk or dagger.

4 However, a first offense involving any metal military practice
5 handgrenade or metal replica handgrenade shall be punishable
6 only as an infraction unless the offender is an active participant in
7 a criminal street gang as defined in the Street Terrorism and
8 Enforcement and Prevention Act (Chapter 11 (commencing with
9 Section 186.20) of Title 7 of Part 1). A bullet containing or
10 carrying an explosive agent is not a destructive device as that term
11 is used in Section 12301.

12 (b) Subdivision (a) does not apply to any of the following:

13 (1) The sale to, purchase by, or possession of short-barreled
14 shotguns or short-barreled rifles by police departments, sheriffs'
15 offices, marshals' offices, the California Highway Patrol, the
16 Department of Justice, or the military or naval forces of this state
17 or of the United States for use in the discharge of their official
18 duties or the possession of short-barreled shotguns and
19 short-barreled rifles by peace officer members of a police
20 department, sheriff's office, marshal's office, the California
21 Highway Patrol, or the Department of Justice when on duty and the
22 use is authorized by the agency and is within the course and scope
23 of their duties and the peace officer has completed a training course
24 in the use of these weapons certified by the Commission on Peace
25 Officer Standards and Training.

26 (2) The manufacture, possession, transportation or sale of
27 short-barreled shotguns or short-barreled rifles when authorized
28 by the Department of Justice pursuant to Article 6 (commencing
29 with Section 12095) of this chapter and not in violation of federal
30 law.

31 (3) The possession of a nunchaku on the premises of a school
32 which holds a regulatory or business license and teaches the arts
33 of self-defense.

34 (4) The manufacture of a nunchaku for sale to, or the sale of a
35 nunchaku to, a school which holds a regulatory or business license
36 and teaches the arts of self-defense.

37 (5) Any antique firearm. For purposes of this section, "antique
38 firearm" means any firearm not designed or redesigned for using
39 rimfire or conventional center fire ignition with fixed ammunition
40 and manufactured in or before 1898 (including any matchlock,



1 flintlock, percussion cap, or similar type of ignition system or
2 replica thereof, whether actually manufactured before or after the
3 year 1898) and also any firearm using fixed ammunition
4 manufactured in or before 1898, for which ammunition is no
5 longer manufactured in the United States and is not readily
6 available in the ordinary channels of commercial trade.

7 (6) Tracer ammunition manufactured for use in shotguns.

8 (7) Any firearm or ammunition which is a curio or relic as
9 defined in Section 178.11 of Title 27 of the Code of Federal
10 Regulations and which is in the possession of a person permitted
11 to possess the items pursuant to Chapter 44 (commencing with
12 Section 921) of Title 18 of the United States Code and the
13 regulations issued pursuant thereto. Any person prohibited by
14 Section 12021, 12021.1, or 12101 of this code or Section 8100 or
15 8103 of the Welfare and Institutions Code from possessing
16 firearms or ammunition who obtains title to these items by bequest
17 or intestate succession may retain title for not more than one year,
18 but actual possession of these items at any time is punishable
19 pursuant to Section 12021, 12021.1, or 12101 of this code or
20 Section 8100 or 8103 of the Welfare and Institutions Code. Within
21 the year, the person shall transfer title to the firearms or
22 ammunition by sale, gift, or other disposition. Any person who
23 violates this paragraph is in violation of subdivision (a).

24 (8) Any other weapon as defined in subsection (e) of Section
25 5845 of Title 26 of the United States Code and which is in the
26 possession of a person permitted to possess the weapons pursuant
27 to the federal Gun Control Act of 1968 (Public Law 90-618), as
28 amended, and the regulations issued pursuant thereto. Any person
29 prohibited by Section 12021, 12021.1, or 12101 of this code or
30 Section 8100 or 8103 of the Welfare and Institutions Code from
31 possessing these weapons who obtains title to these weapons by
32 bequest or intestate succession may retain title for not more than
33 one year, but actual possession of these weapons at any time is
34 punishable pursuant to Section 12021, 12021.1, or 12101 of this
35 code or Section 8100 or 8103 of the Welfare and Institutions Code.
36 Within the year, the person shall transfer title to the weapons by
37 sale, gift, or other disposition. Any person who violates this
38 paragraph is in violation of subdivision (a). The exemption
39 provided in this subdivision does not apply to pen guns.



1 (9) Instruments or devices that are possessed by federal, state,
2 and local historical societies, museums, and institutional
3 collections which are open to the public, provided that these
4 instruments or devices are properly housed, secured from
5 unauthorized handling, and, if the instrument or device is a
6 firearm, unloaded.

7 (10) Instruments or devices, other than short-barreled shotguns
8 or short-barreled rifles, that are possessed or utilized during the
9 course of a motion picture, television, or video production or
10 entertainment event by an authorized participant therein in the
11 course of making that production or event or by an authorized
12 employee or agent of the entity producing that production or event.

13 (11) Instruments or devices, other than short-barreled shotguns
14 or short-barreled rifles, that are sold by, manufactured by, exposed
15 or kept for sale by, possessed by, imported by, or lent by persons
16 who are in the business of selling instruments or devices listed in
17 subdivision (a) solely to the entities referred to in paragraphs (9)
18 and (10) when engaging in transactions with those entities.

19 (12) The sale to, possession of, or purchase of any weapon,
20 device, or ammunition, other than a short-barreled rifle or
21 short-barreled shotgun, by any federal, state, county, city and
22 county, or city agency that is charged with the enforcement of any
23 law for use in the discharge of their official duties, or the
24 possession of any weapon, device, or ammunition, other than a
25 short-barreled rifle or short-barreled shotgun, by peace officers
26 thereof when on duty and the use is authorized by the agency and
27 is within the course and scope of their duties.

28 (13) Weapons, devices, and ammunition, other than a
29 short-barreled rifle or short-barreled shotgun, that are sold by,
30 manufactured by, exposed or kept for sale by, possessed by,
31 imported by, or lent by, persons who are in the business of selling
32 weapons, devices, and ammunition listed in subdivision (a) solely
33 to the entities referred to in paragraph (12) when engaging in
34 transactions with those entities.

35 (14) The manufacture for, sale to, exposing or keeping for sale
36 to, importation of, or lending of wooden clubs or batons to special
37 police officers or uniformed security guards authorized to carry
38 any wooden club or baton pursuant to Section 12002 by entities
39 that are in the business of selling wooden batons or clubs to special



1 police officers and uniformed security guards when engaging in
2 transactions with those persons.

3 (15) Any plastic toy handgrenade, or any metal military
4 practice handgrenade or metal replica handgrenade that is a relic,
5 curio, memorabilia, or display item, that is filled with a permanent
6 inert substance or that is otherwise permanently altered in a
7 manner that prevents ready modification for use as a grenade.

8 (16) Any instrument, ammunition, weapon, or device listed in
9 subdivision (a) that is not a firearm that is found and possessed by
10 a person who meets all of the following:

11 (A) The person is not prohibited from possessing firearms or
12 ammunition pursuant to Section 12021 or 12021.1 or paragraph
13 (1) of subdivision (b) of Section 12316 of this code or Section 8100
14 or 8103 of the Welfare and Institutions Code.

15 (B) The person possessed the instrument, ammunition,
16 weapon, or device no longer than was necessary to deliver or
17 transport the same to a law enforcement agency for that agency's
18 disposition according to law.

19 (C) If the person is transporting the listed item, he or she is
20 transporting the listed item to a law enforcement agency for
21 disposition according to law.

22 (17) Any firearm, other than a short-barreled rifle or
23 short-barreled shotgun, that is found and possessed by a person
24 who meets all of the following:

25 (A) The person is not prohibited from possessing firearms or
26 ammunition pursuant to Section 12021 or 12021.1 or paragraph
27 (1) of subdivision (b) of Section 12316 of this code or Section 8100
28 or 8103 of the Welfare and Institutions Code.

29 (B) The person possessed the firearm no longer than was
30 necessary to deliver or transport the same to a law enforcement
31 agency for that agency's disposition according to law.

32 (C) If the person is transporting the firearm, he or she is
33 transporting the firearm to a law enforcement agency for
34 disposition according to law.

35 (D) Prior to transporting the firearm to a law enforcement
36 agency, he or she has given prior notice to that law enforcement
37 agency that he or she is transporting the firearm to that law
38 enforcement agency for disposition according to law.

39 (E) The firearm is transported in a locked container as defined
40 in subdivision (d) of Section 12026.2.



1 (18) The possession of any weapon, device, or ammunition, by
2 a forensic laboratory or any authorized agent or employee thereof
3 in the course and scope of his or her authorized activities.

4 (19) The sale of, giving of, lending of, importation into this
5 state of, or purchase of, any large-capacity magazine to or by any
6 federal, state, county, city and county, or city agency that is
7 charged with the enforcement of any law, for use by agency
8 employees in the discharge of their official duties whether on or
9 off duty, and where the use is authorized by the agency and is
10 within the course and scope of their duties.

11 (20) The sale to, lending to, transfer to, purchase by, receipt of,
12 or importation into this state of, a large capacity magazine by a
13 sworn peace officer as defined in Chapter 4.5 (commencing with
14 Section 830) of Title 3 of Part 2 who is authorized to carry a firearm
15 in the course and scope of his or her duties.

16 (21) The sale or purchase of any large-capacity magazine to or
17 by a person licensed pursuant to Section 12071.

18 (22) The loan of a lawfully possessed large-capacity magazine
19 between two individuals if all of the following conditions are met:

20 (A) The person being loaned the large-capacity magazine is not
21 prohibited by Section 12021, 12021.1, or 12101 of this code or
22 Section 8100 or 8103 of the Welfare and Institutions Code from
23 possessing firearms or ammunition.

24 (B) The loan of the large-capacity magazine occurs at a place
25 or location where the possession of the large-capacity magazine is
26 not otherwise prohibited and the person who lends the
27 large-capacity magazine remains in the accessible vicinity of the
28 person to whom the large-capacity magazine is loaned.

29 (23) The importation of a large-capacity magazine by a person
30 who lawfully possessed the large-capacity magazine in the state
31 prior to January 1, 2000, lawfully took it out of the state, and is
32 returning to the state with the large-capacity magazine previously
33 lawfully possessed in the state.

34 (24) The lending or giving of any large-capacity magazine to
35 a person licensed pursuant to Section 12071, or to a gunsmith, for
36 the purposes of maintenance, repair, or modification of that
37 large-capacity magazine.

38 (25) The return to its owner of any large-capacity magazine by
39 a person specified in paragraph (24).



1 (26) The importation into this state of, or sale of, any
2 large-capacity magazine by a person who has been issued a permit
3 to engage in those activities pursuant to Section 12079, when those
4 activities are in accordance with the terms and conditions of that
5 permit.

6 (27) The sale of, giving of, lending of, importation into this
7 state of, or purchase of, any large-capacity magazine, to or by
8 entities that operate armored vehicle businesses pursuant to the
9 laws of this state.

10 (28) The lending of large-capacity magazines by the entities
11 specified in paragraph (27) to their authorized employees, while
12 in the course and scope of their employment for purposes that
13 pertain to the entity's armored vehicle business.

14 (29) The return of those large-capacity magazines to those
15 entities specified in paragraph (27) by those employees specified
16 in paragraph (28).

17 (30) (A) The manufacture of a large-capacity magazine for
18 any federal, state, county, city and county, or city agency that is
19 charged with the enforcement of any law, for use by agency
20 employees in the discharge of their official duties whether on or
21 off duty, and where the use is authorized by the agency and is
22 within the course and scope of their duties.

23 (B) The manufacture of a large-capacity magazine for use by
24 a sworn peace officer as defined in Chapter 4.5 (commencing with
25 Section 830) of Title 3 of Part 2 who is authorized to carry a firearm
26 in the course and scope of his or her duties.

27 (C) The manufacture of a large-capacity magazine for export
28 or for sale to government agencies or the military pursuant to
29 applicable federal regulations.

30 (31) The loan of a large-capacity magazine for use solely as a
31 prop for a motion picture, television, or video production.

32 (32) The purchase of a large-capacity magazine by the holder
33 of a special weapons permit issued pursuant to Section 12095,
34 12230, 12250, 12286, or 12305, for any of the following purposes:

35 (A) For use solely as a prop for a motion picture, television, or
36 video production.

37 (B) For export pursuant to federal regulations.

38 (C) For resale to law enforcement agencies, government
39 agencies, or the military, pursuant to applicable federal
40 regulations.



1 (c) (1) As used in this section, a “short-barreled shotgun”
2 means any of the following:

3 (A) A firearm which is designed or redesigned to fire a fixed
4 shotgun shell and having a barrel or barrels of less than 18 inches
5 in length.

6 (B) A firearm which has an overall length of less than 26 inches
7 and which is designed or redesigned to fire a fixed shotgun shell.

8 (C) Any weapon made from a shotgun (whether by alteration,
9 modification, or otherwise) if that weapon, as modified, has an
10 overall length of less than 26 inches or a barrel or barrels of less
11 than 18 inches in length.

12 (D) Any device which may be readily restored to fire a fixed
13 shotgun shell which, when so restored, is a device defined in
14 subparagraphs (A) to (C), inclusive.

15 (E) Any part, or combination of parts, designed and intended
16 to convert a device into a device defined in subparagraphs (A) to
17 (C), inclusive, or any combination of parts from which a device
18 defined in subparagraphs (A) to (C), inclusive, can be readily
19 assembled if those parts are in the possession or under the control
20 of the same person.

21 (2) As used in this section, a “short-barreled rifle” means any
22 of the following:

23 (A) A rifle having a barrel or barrels of less than 16 inches in
24 length.

25 (B) A rifle with an overall length of less than 26 inches.

26 (C) Any weapon made from a rifle (whether by alteration,
27 modification, or otherwise) if that weapon, as modified, has an
28 overall length of less than 26 inches or a barrel or barrels of less
29 than 16 inches in length.

30 (D) Any device which may be readily restored to fire a fixed
31 cartridge which, when so restored, is a device defined in
32 subparagraphs (A) to (C), inclusive.

33 (E) Any part, or combination of parts, designed and intended
34 to convert a device into a device defined in subparagraphs (A) to
35 (C), inclusive, or any combination of parts from which a device
36 defined in subparagraphs (A) to (C), inclusive, may be readily
37 assembled if those parts are in the possession or under the control
38 of the same person.

39 (3) As used in this section, a “nunchaku” means an instrument
40 consisting of two or more sticks, clubs, bars or rods to be used as



1 handles, connected by a rope, cord, wire, or chain, in the design of
2 a weapon used in connection with the practice of a system of
3 self-defense such as karate.

4 (4) As used in this section, a “wallet gun” means any firearm
5 mounted or enclosed in a case, resembling a wallet, designed to be
6 or capable of being carried in a pocket or purse, if the firearm may
7 be fired while mounted or enclosed in the case.

8 (5) As used in this section, a “cane gun” means any firearm
9 mounted or enclosed in a stick, staff, rod, crutch, or similar device,
10 designed to be, or capable of being used as, an aid in walking, if
11 the firearm may be fired while mounted or enclosed therein.

12 (6) As used in this section, a “fléchette dart” means a dart,
13 capable of being fired from a firearm, that measures
14 approximately one inch in length, with tail fins that take up
15 approximately five-sixteenths of an inch of the body.

16 (7) As used in this section, “brass knuckles” means any device
17 or instrument made of any material, including metal, plastic, wood
18 or paper products, or composites, and which may be worn for
19 purposes of offense or defense in or on the hand and which either
20 protects the wearer’s hand while striking a blow or increases the
21 force of impact from the blow or injury to the individual receiving
22 the blow. The material contained in the device may help support
23 the hand or fist, provide a shield to protect it, or consist of
24 projections or studs which would contact the individual receiving
25 a blow.

26 (8) As used in this section, a “ballistic knife” means a device
27 that propels a knifelike blade as a projectile by means of a coil
28 spring, elastic material, or compressed gas. Ballistic knife does not
29 include any device which propels an arrow or a bolt by means of
30 any common bow, compound bow, crossbow, or underwater spear
31 gun.

32 (9) As used in this section, a “camouflaging firearm
33 container” means a container which meets all of the following
34 criteria:

35 (A) It is designed and intended to enclose a firearm.

36 (B) It is designed and intended to allow the firing of the
37 enclosed firearm by external controls while the firearm is in the
38 container.

39 (C) It is not readily recognizable as containing a firearm.



1 “Camouflaging firearm container” does not include any
2 camouflaging covering used while engaged in lawful hunting or
3 while going to or returning from a lawful hunting expedition.

4 (10) As used in this section, a “zip gun” means any weapon or
5 device which meets all of the following criteria:

6 (A) It was not imported as a firearm by an importer licensed
7 pursuant to Chapter 44 (commencing with Section 921) of Title 18
8 of the United States Code and the regulations issued pursuant
9 thereto.

10 (B) It was not originally designed to be a firearm by a
11 manufacturer licensed pursuant to Chapter 44 (commencing with
12 Section 921) of Title 18 of the United States Code and the
13 regulations issued pursuant thereto.

14 (C) No tax was paid on the weapon or device nor was an
15 exemption from paying tax on that weapon or device granted under
16 Section 4181 and Subchapters F (commencing with Section 4216)
17 and G (commencing with Section 4221) of Chapter 32 of Title 26
18 of the United States Code, as amended, and the regulations issued
19 pursuant thereto.

20 (D) It is made or altered to expel a projectile by the force of an
21 explosion or other form of combustion.

22 (11) As used in this section, a “shuriken” means any
23 instrument, without handles, consisting of a plate made of any
24 material, including, metal, plastic, wood or paper products, or
25 composites, and having three or more radiating points with one or
26 more sharp edges and designed in the shape of a polygon, trefoil,
27 cross, star, diamond, or other geometric shape for use as a weapon
28 for throwing.

29 (12) As used in this section, an “unconventional pistol” means
30 a firearm that does not have a rifled bore and has a barrel or barrels
31 of less than 18 inches in length or has an overall length of less than
32 26 inches.

33 (13) As used in this section, a “belt buckle knife” is a knife
34 which is made an integral part of a belt buckle and consists of a
35 blade with a length of at least 2¹/₂ inches.

36 (14) As used in this section, a “lipstick case knife” means a
37 knife enclosed within and made an integral part of a lipstick case.

38 (15) As used in this section, a “cane sword” means a cane,
39 swagger stick, stick, staff, rod, pole, umbrella, or similar device,



1 having concealed within it a blade that may be used as a sword or
2 stiletto.

3 (16) As used in this section, a “shobi-zue” means a staff,
4 crutch, stick, rod, or pole concealing a knife or blade within it
5 which may be exposed by a flip of the wrist or by a mechanical
6 action.

7 (17) As used in this section, a “leaded cane” means a staff,
8 crutch, stick, rod, pole, or similar device, unnaturally weighted
9 with lead.

10 (18) As used in this section, an “air gauge knife” means a
11 device that appears to be an air gauge but has concealed within it
12 a pointed, metallic shaft that is designed to be a stabbing
13 instrument which is exposed by mechanical action or gravity
14 which locks into place when extended.

15 (19) As used in this section, a “writing pen knife” means a
16 device that appears to be a writing pen but has concealed within it
17 a pointed, metallic shaft that is designed to be a stabbing
18 instrument which is exposed by mechanical action or gravity
19 which locks into place when extended or the pointed, metallic shaft
20 is exposed by the removal of the cap or cover on the device.

21 (20) As used in this section, a “rifle” means a weapon designed
22 or redesigned, made or remade, and intended to be fired from the
23 shoulder and designed or redesigned and made or remade to use
24 the energy of the explosive in a fixed cartridge to fire only a single
25 projectile through a rifled bore for each single pull of the trigger.

26 (21) As used in this section, a “shotgun” means a weapon
27 designed or redesigned, made or remade, and intended to be fired
28 from the shoulder and designed or redesigned and made or remade
29 to use the energy of the explosive in a fixed shotgun shell to fire
30 through a smooth bore either a number of projectiles (ball shot) or
31 a single projectile for each pull of the trigger.

32 (22) As used in this section, an “undetected firearm” means
33 any weapon which meets one of the following requirements:

34 (A) When, after removal of grips, stocks, and magazines, it is
35 not as detectable as the Security Exemplar, by walk-through metal
36 detectors calibrated and operated to detect the Security Exemplar.

37 (B) When any major component of which, when subjected to
38 inspection by the types of X-ray machines commonly used at
39 airports, does not generate an image that accurately depicts the



1 shape of the component. Barium sulfate or other compounds may
2 be used in the fabrication of the component.

3 (C) For purposes of this paragraph, the terms “firearm,”
4 “major component,” and “Security Exemplar” have the same
5 meanings as those terms are defined in Section 922 of Title 18 of
6 the United States Code.

7 All firearm detection equipment newly installed in nonfederal
8 public buildings in this state shall be of a type identified by either
9 the United States Attorney General, the Secretary of
10 Transportation, or the Secretary of the Treasury, as appropriate, as
11 available state-of-the-art equipment capable of detecting an
12 undetectable firearm, as defined, while distinguishing innocuous
13 metal objects likely to be carried on one’s person sufficient for
14 reasonable passage of the public.

15 (23) As used in this section, a “multiburst trigger activator”
16 means one of the following devices:

17 (A) A device designed or redesigned to be attached to a
18 semiautomatic firearm which allows the firearm to discharge two
19 or more shots in a burst by activating the device.

20 (B) A manual or power-driven trigger activating device
21 constructed and designed so that when attached to a semiautomatic
22 firearm it increases the rate of fire of that firearm.

23 (24) As used in this section, a “dirk” or “dagger” means a
24 knife or other instrument with or without a handguard that is
25 capable of ready use as a stabbing weapon that may inflict great
26 bodily injury or death. A nonlocking folding knife, a folding knife
27 that is not prohibited by Section 653k, or a pocketknife is capable
28 of ready use as a stabbing weapon that may inflict great bodily
29 injury or death only if the blade of the knife is exposed and locked
30 into position.

31 (25) As used in this section, “large-capacity magazine” means
32 any ammunition feeding device with the capacity to accept more
33 than 10 rounds, but shall not be construed to include any of the
34 following:

35 (A) A feeding device that has been permanently altered so that
36 it cannot accommodate more than 10 rounds.

37 (B) A .22 caliber tube ammunition feeding device.

38 (C) A tubular magazine that is contained in a lever-action
39 firearm.

1 (d) Knives carried in sheaths which are worn openly suspended
2 from the waist of the wearer are not concealed within the meaning
3 of this section.

4 ~~SEC. 11.~~

5 *SEC. 12.* No reimbursement is required by this act pursuant
6 to Section 6 of Article XIII B of the California Constitution
7 because the only costs that may be incurred by a local agency or
8 school district will be incurred because this act creates a new crime
9 or infraction, eliminates a crime or infraction, or changes the
10 penalty for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition of a
12 crime within the meaning of Section 6 of Article XIII B of the
13 California Constitution.

