

AMENDED IN ASSEMBLY JANUARY 4, 2010

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 740

Introduced by Assembly Member Hagman

February 26, 2009

An act to amend Section ~~1269b~~ of the Penal Code, relating to bail. 12316 of, to add a heading for Chapter 2.6 (commencing with Section 12320) to, to repeal Sections 12317 and 12318 of, to repeal Article 3.5 (commencing with Section 12060) of Chapter 1 of, and to repeal the heading of Chapter 2.6 (commencing with Section 12316) of, Title 2 of Part 4 of the Penal Code, and to repeal Section 1 of Chapter 628 of the Statutes of 2009, relating to ammunition.

LEGISLATIVE COUNSEL'S DIGEST

AB 740, as amended, Hagman. ~~Bail.~~ Ammunition.

Existing law, effective January 1, 2010, provides that no handgun ammunition vendor, as defined, shall sell, offer for sale, or display for sale, any handgun ammunition in a manner that allows that ammunition to be accessible to a purchaser without the assistance of the vendor or employee thereof.

This bill would repeal those provisions.

Existing law, effective January 1, 2010, requires, subject to exceptions, commencing February 1, 2011, that handgun ammunition vendors obtain a thumbprint and other information from ammunition purchasers, as specified. It prohibits supplying or delivering, as specified, handgun ammunition to prohibited persons, as described, by persons or others who know, or by using reasonable care should know, that the recipient

is a person prohibited from possessing ammunition or a minor prohibited from possessing ammunition, as specified. Existing law, effective January 1, 2010, provides, subject to exceptions, that commencing February 1, 2011, the delivery or transfer of ownership of handgun ammunition may only occur in a face-to-face transaction, with the deliverer or transferor being provided bona fide evidence of identity of the purchaser or other transferee. Violations of any of the above provisions are misdemeanors, some with specified penalties.

This bill would repeal those provisions.

Existing law requires the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for all bailable offenses, as specified.

This bill would allow the superior court judges of any county in which the inmate population reaches 80% of the county correctional system’s mandated capacity to temporarily reduce or modify the bail schedule approved for the county in order to prevent the early release of prisoners who have not posted bail.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Article 3.5 (commencing with Section 12060) of
2 Chapter 1 of Title 2 of Part 4 of the Penal Code, as added by
3 Chapter 628 of the Statutes of 2009, is repealed.

4 SEC. 2. The heading of Chapter 2.6 (commencing with Section
5 12316) of Title 2 of Part 4 of the Penal Code, as added by Chapter
6 628 of the Statutes of 2009, is repealed.

7
8 CHAPTER 2.6. AMMUNITION

9
10 SEC. 3. Section 12316 of the Penal Code, as amended by
11 Chapter 628 of the Statutes of 2009, is amended to read:

12 12316. (a) (1) Any person, corporation, or dealer who does
13 any either of the following shall be punished by imprisonment in
14 a county jail for a term not to exceed six months, or by a fine not
15 to exceed one thousand dollars (\$1,000), or by both the
16 imprisonment and fine:

17 (A) Sells any ammunition or reloaded ammunition to a person
18 under 18 years of age.

1 (B) Sells any ammunition or reloaded ammunition designed
2 and intended for use in a handgun to a person under 21 years of
3 age. As used in this subparagraph, “ammunition” means handgun
4 ammunition as defined in subdivision (a) of Section 12323. Where
5 ammunition or reloaded ammunition may be used in both a rifle
6 and a handgun, it may be sold to a person who is at least 18 years
7 of age, but less than 21 years of age, if the vendor reasonably
8 believes that the ammunition is being acquired for use in a rifle
9 and not a handgun.

10 ~~(C) Supplies, delivers, or gives possession of any ammunition~~
11 ~~to any minor who he or she knows, or using reasonable care should~~
12 ~~know, is prohibited from possessing that ammunition at that time~~
13 ~~pursuant to Section 12101.~~

14 (2) Proof that a person, corporation, or dealer, or his or her agent
15 or employee, demanded, was shown, and acted in reasonable
16 reliance upon, bona fide evidence of majority and identity shall
17 be a defense to any criminal prosecution under this subdivision.
18 As used in this subdivision, “bona fide evidence of majority and
19 identity” means a document issued by a federal, state, county, or
20 municipal government, or subdivision or agency thereof, including,
21 but not limited to, a motor vehicle operator’s license, California
22 state identification card, identification card issued to a member of
23 the Armed Forces, or other form of identification that bears the
24 name, date of birth, description, and picture of the person.

25 (b) (1) No person prohibited from owning or possessing a
26 firearm under Section 12021 or 12021.1 of this code or Section
27 8100 or 8103 of the Welfare and Institutions Code shall own,
28 possess, or have under his or her custody or control, any
29 ammunition or reloaded ammunition.

30 (2) For purposes of this subdivision, “ammunition” shall include,
31 but not be limited to, any bullet, cartridge, magazine, clip, speed
32 loader, autoloader, or projectile capable of being fired from a
33 firearm with a deadly consequence. ~~“Ammunition” does not include~~
34 ~~blanks.~~

35 (3) A violation of paragraph (1) of this subdivision is punishable
36 by imprisonment in a county jail not to exceed one year or in the
37 state prison, by a fine not to exceed one thousand dollars (\$1,000),
38 or by both the fine and imprisonment.

39 (4) A person who is not prohibited by paragraph (1) from
40 owning, possessing, or having under his or her custody or control,

1 any ammunition or reloaded ammunition, but who is enjoined from
2 engaging in activity pursuant to an injunction issued pursuant to
3 Section 3479 of the Civil Code against that person as a member
4 of a criminal street gang, as defined in Section 186.22, may not
5 own, possess, or have under his or her custody or control, any
6 ammunition or reloaded ammunition.

7 (5) A violation of paragraph (4) of this subdivision is a
8 misdemeanor.

9 (c) Unless it is with the written permission of the school district
10 superintendent, his or her designee, or equivalent school authority,
11 no person shall carry ammunition or reloaded ammunition onto
12 school grounds, except sworn law enforcement officers acting
13 within the scope of their duties or persons exempted under
14 subparagraph (A) of paragraph (1) of subdivision (a) of Section
15 12027. This subdivision shall not apply to a duly appointed peace
16 officer as defined in Chapter 4.5 (commencing with Section 830)
17 of Title 3 of Part 2, a full-time paid peace officer of another state
18 or the federal government who is carrying out official duties while
19 in California, any person summoned by any of these officers to
20 assist in making an arrest or preserving the peace while he or she
21 is actually engaged in assisting the officer, a member of the military
22 forces of this state or of the United States who is engaged in the
23 performance of his or her duties, a person holding a valid license
24 to carry the firearm pursuant to Article 3 (commencing with Section
25 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle
26 guard, who is engaged in the performance of his or her duties, as
27 defined in subdivision (e) of Section 7521 of the Business and
28 Professions Code. A violation of this subdivision is punishable by
29 imprisonment in a county jail for a term not to exceed six months,
30 a fine not to exceed one thousand dollars (\$1,000), or both the
31 imprisonment and fine.

32 (d) (1) A violation of paragraph (1) or (4) of subdivision (b) is
33 justifiable where all of the following conditions are met:

34 (A) The person found the ammunition or reloaded ammunition
35 or took the ammunition or reloaded ammunition from a person
36 who was committing a crime against him or her.

37 (B) The person possessed the ammunition or reloaded
38 ammunition no longer than was necessary to deliver or transport
39 the ammunition or reloaded ammunition to a law enforcement
40 agency for that agency's disposition according to law.

1 (C) The person is prohibited from possessing any ammunition
2 or reloaded ammunition solely because that person is prohibited
3 from owning or possessing a firearm only by virtue of Section
4 12021 or ammunition or reloaded ammunition because of paragraph
5 (4) of subdivision (b).

6 (2) Upon the trial for violating paragraph (1) or (4) of
7 subdivision (b), the trier of fact shall determine whether the
8 defendant is subject to the exemption created by this subdivision.

9 (3) The defendant has the burden of proving by a preponderance
10 of the evidence that he or she is subject to the exemption provided
11 by this subdivision.

12 *SEC. 4. Section 12317 of the Penal Code, as added by Chapter*
13 *628 of the Statutes of 2009, is repealed.*

14 ~~12317. (a) Any person, corporation, or firm who supplies,~~
15 ~~delivers, sells, or gives possession or control of, any ammunition~~
16 ~~to any person who he or she knows or using reasonable care should~~
17 ~~know is prohibited from owning, possessing, or having under his~~
18 ~~or her custody or control, any ammunition or reloaded ammunition~~
19 ~~pursuant to paragraph (1) or (4) of subdivision (b) of Section~~
20 ~~12316, is guilty of a misdemeanor, punishable by imprisonment~~
21 ~~in a county jail not exceeding one year, or a fine not exceeding~~
22 ~~one thousand dollars (\$1,000), or by both that fine and~~
23 ~~imprisonment.~~

24 ~~(b) The provisions of this section are cumulative and shall not~~
25 ~~be construed as restricting the application of any other law.~~
26 ~~However, an act or omission punishable in different ways by this~~
27 ~~section and another provision of law shall not be punished under~~
28 ~~more than one provision.~~

29 ~~(c) For purposes of this section, "ammunition" shall include,~~
30 ~~but not be limited to, any bullet, cartridge, magazine, clip, speed~~
31 ~~loader, autoloader, or projectile capable of being fired from a~~
32 ~~firearm with deadly consequence. "Ammunition" does not include~~
33 ~~blanks.~~

34 *SEC. 5. Section 12318 of the Penal Code, as added by Chapter*
35 *628 of the Statutes of 2009, is repealed.*

36 ~~12318. (a) Commencing February 1, 2011, the delivery or~~
37 ~~transfer of ownership of handgun ammunition may only occur in~~
38 ~~a face-to-face transaction with the deliverer or transferor being~~
39 ~~provided bona fide evidence of identity from the purchaser or other~~
40 ~~transferee. A violation of this section is a misdemeanor.~~

1 (b) For purposes of this section:

2 (1) “Bona fide evidence of identity” means a document issued
3 by a federal, state, county, or municipal government, or subdivision
4 or agency thereof, including, but not limited to, a motor vehicle
5 operator’s license, state identification card, identification card
6 issued to a member of the Armed Forces, or other form of
7 identification that bears the name, date of birth, description, and
8 picture of the person.

9 (2) “Handgun ammunition” means handgun ammunition as
10 defined in subdivision (a) of Section 12323, but excluding
11 ammunition designed and intended to be used in an “antique
12 firearm” as defined in Section 921(a)(16) of Title 18 of the United
13 States Code. Handgun ammunition does not include blanks.

14 (3) “Handgun ammunition vendor” has the same meaning as
15 set forth in Section 12060.

16 (e) Subdivision (a) shall not apply to or affect the deliveries,
17 transfers, or sales of, handgun ammunition to any of the following:

18 (1) Authorized law enforcement representatives of cities,
19 counties, cities and counties, or state and federal governments for
20 exclusive use by those government agencies if, prior to the delivery,
21 transfer, or sale of the handgun ammunition, written authorization
22 from the head of the agency employing the purchaser or transferee,
23 is obtained identifying the employee as an individual authorized
24 to conduct the transaction, and authorizing the transaction for the
25 exclusive use of the agency employing the individual.

26 (2) Sworn peace officers, as defined in Chapter 4.5 (commencing
27 with Section 830) of Title 3 of Part 2 who are authorized to carry
28 a firearm in the course and scope of their duties.

29 (3) Importers and manufacturers of handgun ammunition or
30 firearms licensed to engage in business pursuant to Chapter 44
31 (commencing with Section 921) of Title 18 of the United States
32 Code and the regulations issued pursuant thereto.

33 (4) Persons who are on the centralized list maintained by the
34 Department of Justice pursuant to Section 12083.

35 (5) Persons whose licensed premises are outside this state who
36 are licensed as dealers or collectors of firearms pursuant to Chapter
37 44 (commencing with Section 921) of Title 18 of the United States
38 Code and the regulations issued pursuant thereto.

39 (6) Persons licensed as collectors of firearms pursuant to Chapter
40 44 (commencing with Section 921) of Title 18 of the United States

1 ~~Code and the regulations issued pursuant thereto whose licensed~~
2 ~~premises are within this state who has a current certificate of~~
3 ~~eligibility issued to him or her by the Department of Justice~~
4 ~~pursuant to Section 12071.~~

5 ~~(7) A handgun ammunition vendor.~~

6 ~~(8) A consultant evaluator, as defined in subdivision (s) of~~
7 ~~Section 12001.~~

8 *SEC. 6. A heading for Chapter 2.6 (commencing with Section*
9 *12320) is added to Title 2 of Part 4 of the Penal Code, to read:*

10
11 *CHAPTER 2.6. AMMUNITION*

12
13 *SEC. 7. Section 1 of Chapter 628 of the Statutes of 2009 is*
14 *repealed.*

15 ~~SECTION 1. This act shall be known, and may be cited, as the~~
16 ~~Anti-Gang Neighborhood Protection Act of 2009.~~

17 ~~SECTION 1. Section 1269b of the Penal Code is amended to~~
18 ~~read:~~

19 ~~1269b. (a) The officer in charge of a jail in which an arrested~~
20 ~~person is held in custody, an officer of a sheriff's department or~~
21 ~~police department of a city who is in charge of a jail or is employed~~
22 ~~at a fixed police or sheriff's facility and is acting under an~~
23 ~~agreement with the agency that keeps the jail in which an arrested~~
24 ~~person is held in custody, an employee of a sheriff's department~~
25 ~~or police department of a city who is assigned by the department~~
26 ~~to collect bail, the clerk of the superior court of the county in which~~
27 ~~the offense was alleged to have been committed, and the clerk of~~
28 ~~the superior court in which the case against the defendant is~~
29 ~~pending may approve and accept bail in the amount fixed by the~~
30 ~~warrant of arrest, schedule of bail, or order admitting to bail in~~
31 ~~cash or surety bond executed by a certified, admitted surety insurer~~
32 ~~as provided in the Insurance Code, to issue and sign an order for~~
33 ~~the release of the arrested person, and to set a time and place for~~
34 ~~the appearance of the arrested person before the appropriate court~~
35 ~~and give notice thereof.~~

36 ~~(b) If a defendant has appeared before a judge of the court on~~
37 ~~the charge contained in the complaint, indictment, or information,~~
38 ~~the bail shall be in the amount fixed by the judge at the time of the~~
39 ~~appearance. If that appearance has not been made, the bail shall~~
40 ~~be in the amount fixed in the warrant of arrest or, if no warrant of~~

1 arrest has been issued, the amount of bail shall be pursuant to the
 2 uniform countywide schedule of bail for the county in which the
 3 defendant is required to appear, previously fixed and approved as
 4 provided in subdivisions (e) and (d).

5 (e) (1) It is the duty of the superior court judges in each county
 6 to prepare, adopt, and annually revise a uniform countywide
 7 schedule of bail for all bailable felony offenses and for all
 8 misdemeanor and infraction offenses except Vehicle Code
 9 infractions. The penalty schedule for infraction violations of the
 10 Vehicle Code shall be established by the Judicial Council in
 11 accordance with Section 40310 of the Vehicle Code.

12 (2) The superior court judges of any county in which the inmate
 13 population reaches 80 percent of the county correctional system's
 14 mandated capacity may, for a temporary period, reduce or modify
 15 the bail schedule approved for the county in order to prevent the
 16 early release of prisoners who have not posted bail.

17 (d) A court may, by local rule, prescribe the procedure by which
 18 the uniform countywide schedule of bail is prepared, adopted, and
 19 annually revised by the judges. If a court does not adopt a local
 20 rule, the uniform countywide schedule of bail shall be prepared,
 21 adopted, and annually revised by a majority of the judges.

22 (e) In adopting a uniform countywide schedule of bail for all
 23 bailable felony offenses the judges shall consider the seriousness
 24 of the offense charged. In considering the seriousness of the offense
 25 charged the judges shall assign an additional amount of required
 26 bail for each aggravating or enhancing factor chargeable in the
 27 complaint, including, but not limited to, additional bail for charges
 28 alleging facts that would bring a person within any of the following
 29 sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9,
 30 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5,
 31 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of this code, or
 32 Section 11356.5, 11370.2, or 11370.4 of the Health and Safety
 33 Code.

34 In considering offenses in which a violation of Chapter 6
 35 (commencing with Section 11350) of Division 10 of the Health
 36 and Safety Code is alleged, the judge shall assign an additional
 37 amount of required bail for offenses involving large quantities of
 38 controlled substances.

39 (f) The countywide bail schedule shall contain a list of the
 40 offenses and the amounts of bail applicable for each as the judges

1 ~~determine to be appropriate. If the schedule does not list all~~
2 ~~offenses specifically, it shall contain a general clause for designated~~
3 ~~amounts of bail as the judges of the county determine to be~~
4 ~~appropriate for all the offenses not specifically listed in the~~
5 ~~schedule. A copy of the countywide bail schedule shall be sent to~~
6 ~~the officer in charge of the county jail, to the officer in charge of~~
7 ~~each city jail within the county, to each superior court judge and~~
8 ~~commissioner in the county, and to the Judicial Council.~~

9 ~~(g) Upon posting bail, the defendant or arrested person shall be~~
10 ~~discharged from custody as to the offense on which the bail is~~
11 ~~posted.~~

12 ~~All money and surety bonds so deposited with an officer~~
13 ~~authorized to receive bail shall be transmitted immediately to the~~
14 ~~judge or clerk of the court by which the order was made or warrant~~
15 ~~issued or bail schedule fixed. If, in the case of felonies, an~~
16 ~~indictment is filed, the judge or clerk of the court shall transmit~~
17 ~~all of the money and surety bonds to the clerk of the court.~~

18 ~~(h) If a defendant or arrested person so released fails to appear~~
19 ~~at the time and in the court so ordered upon his or her release from~~
20 ~~custody, Sections 1305 and 1306 apply.~~