

AMENDED IN ASSEMBLY FEBRUARY 23, 2010

AMENDED IN ASSEMBLY JUNE 24, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 282**

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**Introduced by Senator Wright**

February 24, 2009

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An act to amend ~~Section 186.22a of the Penal Code, relating to gangs~~ Sections 12061 and 12077 of the Penal Code, relating to deadly weapons transaction records.

LEGISLATIVE COUNSEL'S DIGEST

SB 282, as amended, Wright. ~~Criminal street gangs: injunction: petition to terminate.~~ *Deadly weapons transaction records: firearms and ammunition.*

*Existing law provides that commencing February 1, 2011, a vendor shall not sell or otherwise transfer ownership of any handgun ammunition without, at the time of delivery, legibly recording specified information regarding the purchaser or transferee, and maintaining the record for a period of not less than 5 years, as specified. Existing law provides that violation of these provisions is a misdemeanor. Existing law also provides that the records shall be subject to inspection by any peace officer and certain others, as specified, for purposes of an investigation where access to those records is or may be relevant to that investigation, when seeking information about persons prohibited from owning a firearm or ammunition, or when engaged in ensuring compliance with laws pertaining to firearms or ammunition, as specified.*

*This bill would provide that commencing February 1, 2011, except for investigatory and enforcement purposes described above, no ammunition vendor shall provide the required information to any 3rd party, or use the information for business purposes, without the written consent of the purchaser or transferee. The bill would also provide that any required ammunition records that are no longer required to be maintained shall be destroyed in a manner that protects the privacy of the purchaser or transferee who is the subject of the record. The bill would provide that violation of these provisions is a misdemeanor.*

*By expanding the scope of an existing crime, this bill would impose a state-mandated local program.*

*Existing law requires certain information be collected by firearms dealers in connection with the transfer of firearms and submitted to the Department of Justice, as specified.*

*This bill would provide that no firearms dealer shall provide the information required by those provisions to any 3rd party, or use the information for any business purposes not required by those provisions, without the written consent of the purchaser or transferee.*

*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.*

~~Existing law provides for injunctive relief from the unlawful activities of criminal street gangs, the duration of which is within the court's discretion. Existing law provides for injunctive relief from a person who engages in harassment, as specified, of a duration of not more than 3 years, and provides that, at any time within the 3 months before the expiration of the injunction prohibiting harassment, the plaintiff may apply for a renewal of that injunction by filing a new petition.~~

~~This bill would provide that, in addition to any other administrative or judicial remedies, in an action relating to an injunction issued against an individual who is a criminal street gang member, the individual may file a specified petition with the court to terminate the criminal street gang injunction against the individual. The bill would require the petition to be filed under penalty of perjury and to certify that the individual has not violated the injunction or been convicted of committing a new felony or misdemeanor and that not less than 5 years have elapsed between the application of the injunction to the individual and the filing~~

~~of the petition for termination. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program. The bill would require the court to grant the petition under specified circumstances. The bill would require the Judicial Council, by September 1, 2010, to develop, approve, and adopt forms and notices relating to the petition for termination of a criminal street gang injunction against an individual, as specified. The bill would express legislative findings, declarations, and intent regarding the enactment of its provisions.~~

~~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.~~

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

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

1     SECTION 1. Section 12061 of the Penal Code is amended to  
2 read:

3     12061. (a) A vendor shall comply with all of the following  
4 conditions, requirements and prohibitions:

5         (1) A vendor shall not permit any employee who the vendor  
6 knows or reasonably should know is a person described in Section  
7 12021 or 12021.1 of this code or Section 8100 or 8103 of the  
8 Welfare and Institutions Code to handle, sell, or deliver handgun  
9 ammunition in the course and scope of his or her employment.

10        (2) A vendor shall not sell or otherwise transfer ownership of,  
11 offer for sale or otherwise offer to transfer ownership of, or display  
12 for sale or display for transfer of ownership of any handgun  
13 ammunition in a manner that allows that ammunition to be  
14 accessible to a purchaser or transferee without the assistance of  
15 the vendor or employee thereof.

16        (3) Commencing February 1, 2011, a vendor shall not sell or  
17 otherwise transfer ownership of any handgun ammunition without,  
18 at the time of delivery, legibly recording the following information:

19           (A) The date of the sale or other transaction.

20           (B) The purchaser's or transferee's driver's license or other  
21 identification number and the state in which it was issued.

1 (C) The brand, type, and amount of ammunition sold or  
2 otherwise transferred.

3 (D) The purchaser's or transferee's signature.

4 (E) The name of the salesperson who processed the sale or other  
5 transaction.

6 (F) The right thumbprint of the purchaser or transferee on the  
7 above form.

8 (G) The purchaser's or transferee's full residential address and  
9 telephone number.

10 (H) The purchaser's or transferee's date of birth.

11 (4) Commencing February 1, 2011, the records required by this  
12 section shall be maintained on the premises of the vendor for a  
13 period of not less than five years from the date of the recorded  
14 transfer. *Commencing February 1, 2011, except for the purposes*  
15 *set forth in paragraph (5), no vendor shall provide the information*  
16 *specified in paragraph (3) to any third party, or use the information*  
17 *for any business purposes, without the written consent of the*  
18 *purchaser or transferee. Any records required by this section that*  
19 *are no longer required to be maintained shall be destroyed in a*  
20 *manner that protects the privacy of the purchaser or transferee*  
21 *who is the subject of the record.*

22 (5) Commencing February 1, 2011, the records referred to in  
23 paragraph (3) shall be subject to inspection at any time during  
24 normal business hours by any peace officer employed by a sheriff,  
25 city police department, or district attorney as provided in  
26 subdivision (a) of Section 830.1, or employed by the department  
27 as provided in subdivision (b) of Section 830.1, provided the officer  
28 is conducting an investigation where access to those records is or  
29 may be relevant to that investigation, is seeking information about  
30 persons prohibited from owning a firearm or ammunition, or is  
31 engaged in ensuring compliance with the Dangerous Weapons  
32 Control Law (Chapter 1 (commencing with Section 12000) of Title  
33 2 of Part 4), or any other laws pertaining to firearms or ammunition.  
34 The records shall also be subject to inspection at any time during  
35 normal business hours by any other employee of the department,  
36 provided that employee is conducting an investigation where access  
37 to those records is or may be relevant to that investigation, is  
38 seeking information about persons prohibited from owning a  
39 firearm or ammunition, or is engaged in ensuring compliance with  
40 the Dangerous Weapons Control Law (Chapter 1 (commencing

1 with Section 12000) of Title 2 of Part 4), or any other laws  
2 pertaining to firearms or ammunition.

3 (6) Commencing February 1, 2011, the vendor shall not  
4 knowingly make a false entry in, fail to make a required entry in,  
5 fail to obtain the required thumbprint, or otherwise fail to maintain  
6 in the required manner records prepared in accordance with  
7 paragraph (2). If the right thumbprint is not available, then the  
8 vendor shall have the purchaser or transferee use his or her left  
9 thumb, or any available finger, and shall so indicate on the form.  
10 If the purchaser or transferee is physically unable to provide a  
11 thumbprint or fingerprint, the vendor shall so indicate on the form.

12 (7) Commencing February 1, 2011, no vendor shall refuse to  
13 permit a person authorized under paragraph (5) to examine any  
14 record prepared in accordance with this section during any  
15 inspection conducted pursuant to this section, or refuse to permit  
16 the use of any record or information by those persons.

17 (b) Paragraph (3) of subdivision (a) shall not apply to or affect  
18 sales or other transfers of ownership of handgun ammunition by  
19 handgun ammunition vendors to any of the following, if properly  
20 identified:

- 21 (1) A person licensed pursuant to Section 12071.
- 22 (2) A handgun ammunition vendor.
- 23 (3) A person who is on the centralized list maintained by the  
24 department pursuant to Section 12083.
- 25 (4) A target facility which holds a business or regulatory license.
- 26 (5) Gunsmiths.
- 27 (6) Wholesalers.
- 28 (7) Manufacturers or importers of firearms licensed pursuant  
29 to Chapter 44 (commencing with Section 921) of Title 18 of the  
30 United States Code, and the regulations issued pursuant thereto.
- 31 (8) Sales or other transfers of ownership made to authorized  
32 law enforcement representatives of cities, counties, cities and  
33 counties, or state or federal governments for exclusive use by those  
34 government agencies if, prior to the delivery, transfer, or sale of  
35 handgun ammunition, written authorization from the head of the  
36 agency authorizing the transaction is presented to the person from  
37 whom the purchase, delivery, or transfer is being made. Proper  
38 written authorization is defined as verifiable written certification  
39 from the head of the agency by which the purchaser, transferee,  
40 or person otherwise acquiring ownership is employed, identifying

1 the employee as an individual authorized to conduct the transaction,  
2 and authorizing the transaction for the exclusive use of the agency  
3 by which he or she is employed.

4 (c) (1) A violation of paragraph (3), (4), (6), or (7) of  
5 subdivision (a) is a misdemeanor.

6 (2) The provisions of this subdivision are cumulative, and shall  
7 not be construed as restricting the application of any other law.  
8 However, an act or omission punishable in different ways by  
9 different provisions of law shall not be punished under more than  
10 one provision.

11 *SEC. 2. Section 12077 of the Penal Code is amended to read:*

12 12077. (a) The Department of Justice shall prescribe the form  
13 of the register and the record of electronic transfer pursuant to  
14 Section 12074.

15 (b) (1) For handguns, information contained in the register or  
16 record of electronic transfer shall be the date and time of sale,  
17 make of firearm, peace officer exemption status pursuant to  
18 subdivision (a) of Section 12078 and the agency name, dealer  
19 waiting period exemption pursuant to subdivision (n) of Section  
20 12078, dangerous weapons permitholder waiting period exemption  
21 pursuant to subdivision (r) of Section 12078, curio and relic waiting  
22 period exemption pursuant to subdivision (t) of Section 12078,  
23 California Firearms Dealer number issued pursuant to Section  
24 12071, for transactions occurring prior to January 1, 2003, the  
25 purchaser's basic firearms safety certificate number issued pursuant  
26 to Sections 12805 and 12809, for transactions occurring on or after  
27 January 1, 2003, the purchaser's handgun safety certificate number  
28 issued pursuant to Article 8 (commencing with Section 12800),  
29 manufacturer's name if stamped on the firearm, model name or  
30 number, if stamped on the firearm, if applicable, serial number,  
31 other number (if more than one serial number is stamped on the  
32 firearm), any identification number or mark assigned to the firearm  
33 pursuant to Section 12092, caliber, type of firearm, if the firearm  
34 is new or used, barrel length, color of the firearm, full name of  
35 purchaser, purchaser's complete date of birth, purchaser's local  
36 address, if current address is temporary, complete permanent  
37 address of purchaser, identification of purchaser, purchaser's place  
38 of birth (state or country), purchaser's complete telephone number,  
39 purchaser's occupation, purchaser's sex, purchaser's physical  
40 description, all legal names and aliases ever used by the purchaser,

1 yes or no answer to questions that prohibit purchase including, but  
2 not limited to, conviction of a felony as described in Section 12021  
3 or an offense described in Section 12021.1, the purchaser's status  
4 as a person described in Section 8100 of the Welfare and  
5 Institutions Code, whether the purchaser is a person who has been  
6 adjudicated by a court to be a danger to others or found not guilty  
7 by reason of insanity, whether the purchaser is a person who has  
8 been found incompetent to stand trial or placed under  
9 conservatorship by a court pursuant to Section 8103 of the Welfare  
10 and Institutions Code, signature of purchaser, signature of  
11 salesperson (as a witness to the purchaser's signature),  
12 salesperson's certificate of eligibility number if he or she has  
13 obtained a certificate of eligibility, name and complete address of  
14 the dealer or firm selling the firearm as shown on the dealer's  
15 license, the establishment number, if assigned, the dealer's  
16 complete business telephone number, any information required by  
17 Section 12082, any information required to determine whether or  
18 not paragraph (6) of subdivision (c) of Section 12072 applies, and  
19 a statement of the penalties for any person signing a fictitious name  
20 or address or for knowingly furnishing any incorrect information  
21 or for knowingly omitting any information required to be provided  
22 for the register.

23 (2) Effective January 1, 2003, the purchaser shall provide his  
24 or her right thumbprint on the register in a manner prescribed by  
25 the department. No exception to this requirement shall be permitted  
26 except by regulations adopted by the department.

27 (3) The firearms dealer shall record on the register or record of  
28 electronic transfer the date that the handgun is delivered.

29 (c) (1) For firearms other than handguns, information contained  
30 in the register or record of electronic transfer shall be the date and  
31 time of sale, peace officer exemption status pursuant to subdivision  
32 (a) of Section 12078 and the agency name, auction or event waiting  
33 period exemption pursuant to subdivision (g) of Section 12078,  
34 California Firearms Dealer number issued pursuant to Section  
35 12071, dangerous weapons permitholder waiting period exemption  
36 pursuant to subdivision (r) of Section 12078, curio and relic waiting  
37 period exemption pursuant to paragraph (1) of subdivision (t) of  
38 Section 12078, full name of purchaser, purchaser's complete date  
39 of birth, purchaser's local address, if current address is temporary,  
40 complete permanent address of purchaser, identification of

1 purchaser, purchaser's place of birth (state or country), purchaser's  
2 complete telephone number, purchaser's occupation, purchaser's  
3 sex, purchaser's physical description, all legal names and aliases  
4 ever used by the purchaser, yes or no answer to questions that  
5 prohibit purchase, including, but not limited to, conviction of a  
6 felony as described in Section 12021 or an offense described in  
7 Section 12021.1, the purchaser's status as a person described in  
8 Section 8100 of the Welfare and Institutions Code, whether the  
9 purchaser is a person who has been adjudicated by a court to be a  
10 danger to others or found not guilty by reason of insanity, whether  
11 the purchaser is a person who has been found incompetent to stand  
12 trial or placed under conservatorship by a court pursuant to Section  
13 8103 of the Welfare and Institutions Code, signature of purchaser,  
14 signature of salesperson (as a witness to the purchaser's signature),  
15 salesperson's certificate of eligibility number if he or she has  
16 obtained a certificate of eligibility, name and complete address of  
17 the dealer or firm selling the firearm as shown on the dealer's  
18 license, the establishment number, if assigned, the dealer's  
19 complete business telephone number, any information required by  
20 Section 12082, and a statement of the penalties for any person  
21 signing a fictitious name or address or for knowingly furnishing  
22 any incorrect information or for knowingly omitting any  
23 information required to be provided for the register.

24 (2) Effective January 1, 2003, the purchaser shall provide his  
25 or her right thumbprint on the register in a manner prescribed by  
26 the department. No exception to this requirement shall be permitted  
27 except by regulations adopted by the department.

28 (3) The firearms dealer shall record on the register or record of  
29 electronic transfer the date that the firearm is delivered.

30 (d) Where the register is used, the following shall apply:

31 (1) Dealers shall use ink to complete each document.

32 (2) The dealer or salesperson making a sale shall ensure that all  
33 information is provided legibly. The dealer and salespersons shall  
34 be informed that incomplete or illegible information will delay  
35 sales.

36 (3) Each dealer shall be provided instructions regarding the  
37 procedure for completion of the form and routing of the form.  
38 Dealers shall comply with these instructions which shall include  
39 the information set forth in this subdivision.

1 (4) One firearm transaction shall be reported on each record of  
2 sale document. For purposes of this subdivision, a “transaction”  
3 means a single sale, loan, or transfer of any number of firearms  
4 that are not handguns.

5 (e) The dealer or salesperson making a sale shall ensure that all  
6 required information has been obtained from the purchaser. The  
7 dealer and all salespersons shall be informed that incomplete  
8 information will delay sales.

9 (f) Effective January 1, 2003, the purchaser’s name, date of  
10 birth, and driver’s license or identification number shall be obtained  
11 electronically from the magnetic strip on the purchaser’s driver’s  
12 license or identification and shall not be supplied by any other  
13 means except as authorized by the department. This requirement  
14 shall not apply in either of the following cases:

15 (1) The purchaser’s identification consists of a military  
16 identification card.

17 (2) Due to technical limitations, the magnetic stripe reader is  
18 unable to obtain the required information from the purchaser’s  
19 identification. In those circumstances, the firearms dealer shall  
20 obtain a photocopy of the identification as proof of compliance.

21 (3) In the event that the dealer has reported to the department  
22 that the dealer’s equipment has failed, information pursuant to this  
23 subdivision shall be obtained by an alternative method to be  
24 determined by the department.

25 (g) *No dealer shall provide the information required by this*  
26 *section to any third party, or use the information for any business*  
27 *purposes not required by this section, without the written consent*  
28 *of the purchaser or transferee.*

29 ~~(g)~~

30 (h) As used in this section, the following definitions shall  
31 control:

32 (1) “Purchaser” means the purchaser or transferee of a firearm  
33 or the person being loaned a firearm.

34 (2) “Purchase” means the purchase, loan, or transfer of a firearm.

35 (3) “Sale” means the sale, loan, or transfer of a firearm.

36 *SEC. 3. No reimbursement is required by this act pursuant to*  
37 *Section 6 of Article XIII B of the California Constitution because*  
38 *the only costs that may be incurred by a local agency or school*  
39 *district will be incurred because this act creates a new crime or*  
40 *infraction, eliminates a crime or infraction, or changes the penalty*

1 *for a crime or infraction, within the meaning of Section 17556 of*  
2 *the Government Code, or changes the definition of a crime within*  
3 *the meaning of Section 6 of Article XIII B of the California*  
4 *Constitution.*

5 ~~SECTION 1. (a) The Legislature finds and declares the~~  
6 ~~following:~~

7 ~~(1) Under federal law applicable to the California gang database~~  
8 ~~(28 C.F.R. 23.20(h)), there is a five-year limit on the retention of~~  
9 ~~names in the system.~~

10 ~~(2) Under state law relating to the registration of gang offenders~~  
11 ~~(subd. (c), Sec. 186.32, Pen. C.), there is a five-year limit on the~~  
12 ~~application of registration requirements on gang offenders.~~

13 ~~(3) Existing law does not provide a time limit on the duration~~  
14 ~~of gang injunctions as applied to an individual.~~

15 ~~(b) It is the intent of the Legislature in enacting this bill to~~  
16 ~~provide a time limit on the duration of gang injunctions as applied~~  
17 ~~to an individual that is consistent with related state and federal law~~  
18 ~~involving gangs.~~

19 ~~SEC. 2. Section 186.22a of the Penal Code is amended to read:~~

20 ~~186.22a. (a) Every building or place used by members of a~~  
21 ~~criminal street gang for the purpose of the commission of the~~  
22 ~~offenses listed in subdivision (c) of Section 186.22 or any offense~~  
23 ~~involving dangerous or deadly weapons, burglary, or rape, and~~  
24 ~~every building or place wherein or upon which that criminal~~  
25 ~~conduct by gang members takes place, is a nuisance which shall~~  
26 ~~be enjoined, abated, and prevented, and for which damages may~~  
27 ~~be recovered, whether it is a public or private nuisance.~~

28 ~~(b) Any action for injunction or abatement filed pursuant to~~  
29 ~~subdivision (a), including an action filed by the Attorney General,~~  
30 ~~shall proceed according to the provisions of Article 3 (commencing~~  
31 ~~with Section 11570) of Chapter 10 of Division 10 of the Health~~  
32 ~~and Safety Code, except that all of the following shall apply:~~

33 ~~(1) The court shall not assess a civil penalty against any person~~  
34 ~~unless that person knew or should have known of the unlawful~~  
35 ~~acts.~~

36 ~~(2) No order of eviction or closure may be entered.~~

37 ~~(3) All injunctions issued shall be limited to those necessary to~~  
38 ~~protect the health and safety of the residents or the public or those~~  
39 ~~necessary to prevent further criminal activity.~~

1 ~~(4) Suit may not be filed until 30-day notice of the unlawful use~~  
2 ~~or criminal conduct has been provided to the owner by mail, return~~  
3 ~~receipt requested, postage prepaid, to the last known address.~~

4 ~~(5) (A) In addition to any other applicable administrative or~~  
5 ~~judicial remedies, in any action relating to an individual subject~~  
6 ~~to an injunction issued pursuant to this section or issued pursuant~~  
7 ~~to Section 3479 or 3480 of the Civil Code enjoining criminal street~~  
8 ~~gang activity as a nuisance, the individual may petition the court~~  
9 ~~to terminate the gang injunction against the individual pursuant to~~  
10 ~~these provisions.~~

11 ~~(B) The defendant shall file the original petition to terminate~~  
12 ~~an injunction with the court that issued the injunction and shall~~  
13 ~~serve a copy of the petition on the agency that prosecuted the case.~~

14 ~~(C) The individual shall in the petition certify, under penalty of~~  
15 ~~perjury, the following:~~

16 ~~(i) The individual has not violated the subject injunction.~~

17 ~~(ii) The individual has not been convicted of committing a new~~  
18 ~~felony or misdemeanor.~~

19 ~~(iii) Not less than five years have elapsed between the~~  
20 ~~application of the injunction to the individual and the filing of this~~  
21 ~~petition.~~

22 ~~(D) If any of the information required in subparagraph (C) is~~  
23 ~~missing from the petition, or if proof of service on the prosecuting~~  
24 ~~agency is not provided, the court shall return the petition to the~~  
25 ~~individual and advise him or her that the matter cannot be~~  
26 ~~considered without the missing information.~~

27 ~~(E) A reply to the petition, if any, shall be filed with the court~~  
28 ~~within 60 days of the date on which the prosecuting agency is~~  
29 ~~served with the motion, unless a continuance is granted for good~~  
30 ~~cause.~~

31 ~~(F) If the court finds by a preponderance of the evidence that~~  
32 ~~the statements in the petition are true, or if no reply to the petition~~  
33 ~~is filed, the court shall grant the petition to terminate the injunction~~  
34 ~~as regards the individual.~~

35 ~~(e) Whenever an injunction is issued pursuant to subdivision~~  
36 ~~(a), or Section 3479 of the Civil Code, to abate gang activity~~  
37 ~~constituting a nuisance, the Attorney General or any district~~  
38 ~~attorney or any prosecuting city attorney may maintain an action~~  
39 ~~for monetary damages on behalf of the community or neighborhood~~  
40 ~~injured by that nuisance. Any monetary damages awarded shall~~

1 be paid by or collected from assets of the criminal street gang or  
2 its members. Only members of the criminal street gang who  
3 created, maintained, or contributed to the creation or maintenance  
4 of the nuisance shall be personally liable for the payment of the  
5 damages awarded. In a civil action for damages brought pursuant  
6 to this subdivision, the Attorney General, district attorney, or city  
7 attorney may use, but is not limited to the use of, the testimony of  
8 experts to establish damages suffered by the community or  
9 neighborhood injured by the nuisance. The damages recovered  
10 pursuant to this subdivision shall be deposited into a separate  
11 segregated fund for payment to the governing body of the city or  
12 county in whose political subdivision the community or  
13 neighborhood is located, and that governing body shall use those  
14 assets solely for the benefit of the community or neighborhood  
15 that has been injured by the nuisance.

16 (d) No nonprofit or charitable organization which is conducting  
17 its affairs with ordinary care or skill, and no governmental entity,  
18 shall be abated pursuant to subdivisions (a) and (b).

19 (e) Nothing in this chapter shall preclude any aggrieved person  
20 from seeking any other remedy provided by law.

21 (f) (1) Any firearm, ammunition which may be used with the  
22 firearm, or any deadly or dangerous weapon which is owned or  
23 possessed by a member of a criminal street gang for the purpose  
24 of the commission of any of the offenses listed in subdivision (c)  
25 of Section 186.22, or the commission of any burglary or rape, may  
26 be confiscated by any law enforcement agency or peace officer.

27 (2) In those cases where a law enforcement agency believes that  
28 the return of the firearm, ammunition, or deadly weapon  
29 confiscated pursuant to this subdivision, is or will be used in  
30 criminal street gang activity or that the return of the item would  
31 be likely to result in endangering the safety of others, the law  
32 enforcement agency shall initiate a petition in the superior court  
33 to determine if the item confiscated should be returned or declared  
34 a nuisance.

35 (3) No firearm, ammunition, or deadly weapon shall be sold or  
36 destroyed unless reasonable notice is given to its lawful owner if  
37 his or her identity and address can be reasonably ascertained. The  
38 law enforcement agency shall inform the lawful owner, at that  
39 person's last known address by registered mail, that he or she has  
40 30 days from the date of receipt of the notice to respond to the

1 court clerk to confirm his or her desire for a hearing and that the  
2 failure to respond shall result in a default order forfeiting the  
3 confiscated firearm, ammunition, or deadly weapon as a nuisance.

4 (4) If the person requests a hearing, the court clerk shall set a  
5 hearing no later than 30 days from receipt of that request. The  
6 court clerk shall notify the person, the law enforcement agency  
7 involved, and the district attorney of the date, time, and place of  
8 the hearing.

9 (5) At the hearing, the burden of proof is upon the law  
10 enforcement agency or peace officer to show by a preponderance  
11 of the evidence that the seized item is or will be used in criminal  
12 street gang activity or that return of the item would be likely to  
13 result in endangering the safety of others. All returns of firearms  
14 shall be subject to Section 12021.3.

15 (6) If the person does not request a hearing within 30 days of  
16 the notice or the lawful owner cannot be ascertained, the law  
17 enforcement agency may file a petition that the confiscated firearm,  
18 ammunition, or deadly weapon be declared a nuisance. If the items  
19 are declared to be a nuisance, the law enforcement agency shall  
20 dispose of the items as provided in Section 12028.

21 SEC. 3. The Judicial Council shall, by September 1, 2010,  
22 do both of the following:

23 (a) Develop, approve, and adopt a petition form that meets the  
24 requirements of paragraph (5) of subdivision (b) of Section 186.22a  
25 of the Penal Code. The form of the petition shall be as simple as  
26 possible, requiring only that the petitioner fill out his or her name,  
27 check any applicable box or boxes, and provide a signature, under  
28 penalty of perjury. The petition shall contain a notice that if an  
29 individual cannot afford the petition filing fee, the individual may  
30 file for a waiver of the fee under Section 68632 of the Government  
31 Code.

32 (b) Ensure that an injunction issued against an individual  
33 pursuant to Section 186.22a of the Penal Code or issued pursuant  
34 to Section 3479 or 3480 of the Civil Code enjoining criminal street  
35 gang activity as a nuisance shall prominently display a notice, in  
36 bold 20-point type, that states that the individual may, after five  
37 years, petition the court to terminate the injunction by use of the  
38 form described in subdivision (a).

39 SEC. 4. No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because

1 ~~the only costs that may be incurred by a local agency or school~~  
2 ~~district will be incurred because this act creates a new crime or~~  
3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
4 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
5 ~~the Government Code, or changes the definition of a crime within~~  
6 ~~the meaning of Section 6 of Article XIII B of the California~~  
7 ~~Constitution.~~

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