

ASSEMBLY BILL

No. 2305

Introduced by Assembly Member Ridley-Thomas

February 21, 2014

An act to amend Sections 21510, 25400, and 25850 of the Penal Code, relating to weapons.

LEGISLATIVE COUNSEL'S DIGEST

AB 2305, as introduced, Ridley-Thomas. Weapons.

Under existing law, every person who carries a switchblade knife upon the person is guilty of a misdemeanor. Under existing law, a person is guilty of carrying a concealed firearm when the person carries concealed any handgun upon the person. Under existing law, a person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person while in any public place or on any public street.

This bill would make it a misdemeanor to carry a switchblade knife on or about the person. The bill would make a person who carries concealed a handgun on or about the person guilty of carrying a concealed firearm. The bill would make any person who carries a loaded firearm on or about the person guilty of carrying a loaded firearm. By expanding the definition of a crime, this bill 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.

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 21510 of the Penal Code is amended to
2 read:

3 21510. ~~Every~~A person who ~~does~~ *commits* any of the following
4 *acts* with a switchblade knife having a blade two or more inches
5 in length is guilty of a misdemeanor:

6 (a) Possesses the knife in the passenger’s or driver’s area of any
7 motor vehicle in any public place or place open to the public.

8 (b) Carries the knife ~~upon~~ *on or about* the person.

9 (c) Sells, offers for sale, exposes for sale, loans, transfers, or
10 gives the knife to any other person.

11 SEC. 2. Section 25400 of the Penal Code is amended to read:

12 25400. (a) A person is guilty of carrying a concealed firearm
13 ~~when if~~ the person ~~does~~ *commits* any of the following *acts*:

14 (1) Carries concealed within any vehicle that is under the
15 person’s control or direction any pistol, revolver, or other firearm
16 capable of being concealed upon the person.

17 (2) Carries concealed ~~upon~~ *on or about* the person any pistol,
18 revolver, or other firearm capable of being concealed upon the
19 person.

20 (3) Causes to be carried concealed within any vehicle in which
21 the person is an occupant any pistol, revolver, or other firearm
22 capable of being concealed upon the person.

23 (b) A firearm carried openly in a belt holster is not concealed
24 within the meaning of this section.

25 (c) Carrying a concealed firearm in violation of this section is
26 punishable as follows:

27 (1) If the person previously has been convicted of any felony,
28 or of any crime made punishable by a provision listed in Section
29 16580, as a felony.

30 (2) If the firearm is stolen and the person knew or had reasonable
31 cause to believe that it was stolen, as a felony.

32 (3) If the person is an active participant in a criminal street gang,
33 as defined in subdivision (a) of Section 186.22, under the Street
34 Terrorism Enforcement and Prevention Act (Chapter 11
35 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

36 (4) If the person is not in lawful possession of the firearm or
37 the person is within a class of persons prohibited from possessing
38 or acquiring a firearm pursuant to Chapter 2 (commencing with

1 Section 29800) or Chapter 3 (commencing with Section 29900)
2 of Division 9 of this title, or Section 8100 or 8103 of the Welfare
3 and Institutions Code, as a felony.

4 (5) If the person has been convicted of a crime against a person
5 or property, or of a narcotics or dangerous drug violation, by
6 imprisonment pursuant to subdivision (h) of Section 1170, or by
7 imprisonment in a county jail not to exceed one year, by a fine not
8 to exceed one thousand dollars (\$1,000), or by both that
9 imprisonment and fine.

10 (6) If both of the following conditions are met, by imprisonment
11 pursuant to subdivision (h) of Section 1170, or by imprisonment
12 in a county jail not to exceed one year, by a fine not to exceed one
13 thousand dollars (\$1,000), or by both that fine and imprisonment:

14 (A) The pistol, revolver, or other firearm capable of being
15 concealed upon the person is loaded, or both it and the unexpended
16 ammunition capable of being discharged from it are in the
17 immediate possession of the person or readily accessible to that
18 person.

19 (B) The person is not listed with the Department of Justice
20 pursuant to ~~paragraph (1) of subdivision (e)~~ of Section 11106 as
21 the registered owner of that pistol, revolver, or other firearm
22 capable of being concealed upon the person.

23 (7) In all cases other than those specified in paragraphs (1) to
24 (6), inclusive, by imprisonment in a county jail not to exceed one
25 year, by a fine not to exceed one thousand dollars (\$1,000), or by
26 both that imprisonment and fine.

27 (d) (1) Every person convicted under this section who
28 previously has been convicted of a misdemeanor offense
29 enumerated in Section 23515 shall be punished by imprisonment
30 in a county jail for at least three months and not exceeding six
31 months, or, if granted probation, or if the execution or imposition
32 of sentence is suspended, it shall be a condition thereof that the
33 person be imprisoned in a county jail for at least three months.

34 (2) Every person convicted under this section who has
35 previously been convicted of any felony, or of any crime made
36 punishable by a provision listed in Section 16580, if probation is
37 granted, or if the execution or imposition of sentence is suspended,
38 it shall be a condition thereof that the person be imprisoned in a
39 county jail for not less than three months.

1 (e) The court shall apply the three-month minimum sentence
2 as specified in subdivision (d), except in unusual cases where the
3 interests of justice would best be served by granting probation or
4 suspending the imposition or execution of sentence without the
5 minimum imprisonment required in subdivision (d) or by granting
6 probation or suspending the imposition or execution of sentence
7 with conditions other than those set forth in subdivision (d), in
8 which case, the court shall specify on the record and shall enter
9 on the minutes the circumstances indicating that the interests of
10 justice would best be served by that disposition.

11 (f) A peace officer may arrest a person for a violation of
12 paragraph (6) of subdivision (c) if the peace officer has probable
13 cause to believe that the person is not listed with the Department
14 of Justice pursuant to ~~paragraph (1) of subdivision (e)~~ of Section
15 11106 as the registered owner of the pistol, revolver, or other
16 firearm capable of being concealed upon the person, and one or
17 more of the conditions in subparagraph (A) of paragraph (6) of
18 subdivision (c) is met.

19 SEC. 3. Section 25850 of the Penal Code is amended to read:

20 25850. (a) A person is guilty of carrying a loaded firearm
21 when the person carries a loaded firearm on *or about* the person
22 or in a vehicle while in any public place or on any public street in
23 an incorporated city or in any public place or on any public street
24 in a prohibited area of unincorporated territory.

25 (b) In order to determine whether or not a firearm is loaded for
26 the purpose of enforcing this section, peace officers are authorized
27 to examine any firearm carried by anyone on *or about* the person
28 or in a vehicle while in any public place or on any public street in
29 an incorporated city or prohibited area of an unincorporated
30 territory. Refusal to allow a peace officer to inspect a firearm
31 pursuant to this section constitutes probable cause for arrest for
32 violation of this section.

33 (c) Carrying a loaded firearm in violation of this section is
34 punishable, as follows:

35 (1) Where the person previously has been convicted of any
36 felony, or of any crime made punishable by a provision listed in
37 Section 16580, as a felony.

38 (2) Where the firearm is stolen and the person knew or had
39 reasonable cause to believe that it was stolen, as a felony.

1 (3) Where the person is an active participant in a criminal street
2 gang, as defined in subdivision (a) of Section 186.22, under the
3 Street Terrorism Enforcement and Prevention Act (Chapter 11
4 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

5 (4) Where the person is not in lawful possession of the firearm,
6 or is within a class of persons prohibited from possessing or
7 acquiring a firearm pursuant to Chapter 2 (commencing with
8 Section 29800) or Chapter 3 (commencing with Section 29900)
9 of Division 9 of this title, or Section 8100 or 8103 of the Welfare
10 and Institutions Code, as a felony.

11 (5) Where the person has been convicted of a crime against a
12 person or property, or of a narcotics or dangerous drug violation,
13 by imprisonment pursuant to subdivision (h) of Section 1170, or
14 by imprisonment in a county jail not to exceed one year, by a fine
15 not to exceed one thousand dollars (\$1,000), or by both that
16 imprisonment and fine.

17 (6) Where the person is not listed with the Department of Justice
18 pursuant to Section 11106 as the registered owner of the handgun,
19 by imprisonment pursuant to subdivision (h) of Section 1170, or
20 by imprisonment in a county jail not to exceed one year, or by a
21 fine not to exceed one thousand dollars (\$1,000), or both that fine
22 and imprisonment.

23 (7) In all cases other than those specified in paragraphs (1) to
24 (6), inclusive, as a misdemeanor, punishable by imprisonment in
25 a county jail not to exceed one year, by a fine not to exceed one
26 thousand dollars (\$1,000), or by both that imprisonment and fine.

27 (d) (1) Every person convicted under this section who has
28 previously been convicted of an offense enumerated in Section
29 23515, or of any crime made punishable under a provision listed
30 in Section 16580, shall serve a term of at least three months in a
31 county jail, or, if granted probation or if the execution or imposition
32 of sentence is suspended, it shall be a condition thereof that the
33 person be imprisoned for a period of at least three months.

34 (2) The court shall apply the three-month minimum sentence
35 except in unusual cases where the interests of justice would best
36 be served by granting probation or suspending the imposition or
37 execution of sentence without the minimum imprisonment required
38 in this section or by granting probation or suspending the
39 imposition or execution of sentence with conditions other than
40 those set forth in this section, in which case, the court shall specify

1 on the record and shall enter on the minutes the circumstances
 2 indicating that the interests of justice would best be served by that
 3 disposition.

4 (e) A violation of this section that is punished by imprisonment
 5 in a county jail not exceeding one year shall not constitute a
 6 conviction of a crime punishable by imprisonment for a term
 7 exceeding one year for the purposes of determining federal firearms
 8 eligibility under Section 922(g)(1) of Title 18 of the United States
 9 Code.

10 (f) Nothing in this section, or in Article 3 (commencing with
 11 Section 25900) or Article 4 (commencing with Section 26000),
 12 shall preclude prosecution under Chapter 2 (commencing with
 13 Section 29800) or Chapter 3 (commencing with Section 29900)
 14 of Division 9 of this title, Section 8100 or 8103 of the Welfare and
 15 Institutions Code, or any other law with a greater penalty than this
 16 section.

17 (g) Notwithstanding paragraphs (2) and (3) of subdivision (a)
 18 of Section 836, a peace officer may make an arrest without a
 19 warrant:

20 (1) When the person arrested has violated this section, although
 21 not in the officer’s presence.

22 (2) Whenever the officer has reasonable cause to believe that
 23 the person to be arrested has violated this section, whether or not
 24 this section has, in fact, been violated.

25 (h) A peace officer may arrest a person for a violation of
 26 paragraph (6) of subdivision (c), if the peace officer has probable
 27 cause to believe that the person is carrying a handgun in violation
 28 of this section and that person is not listed with the Department of
 29 Justice pursuant to ~~paragraph (1) of subdivision (e) of Section~~
 30 11106 as the registered owner of that handgun.

31 SEC. 4. No reimbursement is required by this act pursuant to
 32 Section 6 of Article XIII B of the California Constitution because
 33 the only costs that may be incurred by a local agency or school
 34 district will be incurred because this act creates a new crime or
 35 infraction, eliminates a crime or infraction, or changes the penalty
 36 for a crime or infraction, within the meaning of Section 17556 of
 37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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