

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2478**

---

---

**Introduced by Assembly Member Melendez**

February 19, 2016

---

---

An act to amend ~~Section 27590~~ *Sections 1203, 27590, and 29805* of the Penal Code, relating to firearms, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2478, as amended, Melendez. Firearms: violations.

Existing law prohibits specified persons from owning, purchasing, receiving, or having in his or her possession, any firearm. Existing law prohibits a person, corporation, or firm from knowingly selling, supplying, delivering, or giving possession or control of a firearm to one of those prohibited persons, and makes a violation of that prohibition a felony punishable by imprisonment for 2, 3, or 4 years in the county jail.

This bill would make that offense punishable by imprisonment for 2, 3, or 4 years in the state prison.

Existing law prohibits a person, corporation, or firearms dealer from selling, supplying, delivering, or giving possession or control of a firearm to anyone whom the person, corporation, or dealer has cause to believe is a prohibited person, and makes a violation of that prohibition punishable as a felony or misdemeanor subject to imprisonment in the county jail or by a fine not to exceed \$1,000, or by both that fine and imprisonment. Under existing law, for each felony case, a court is required to hold, and a prosecutor is required to attend, a preliminary hearing.

This bill would make that offense a felony punishable by imprisonment for 2, 3, or 4 years in the state prison. By imposing additional duties on local prosecutors by increasing the number of preliminary hearings, and by increasing the penalties of an existing crime, this bill would impose a state-mandated local program.

Existing law prohibits a person, corporation, or dealer from selling, loaning, or transferring a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to anyone who is not the one actually being loaned the firearm, if the person, corporation, or dealer has knowledge that the firearm is to be subsequently sold, loaned, or transferred to avoid provisions of law requiring firearms transfers to be conducted through a firearms dealer and other requirements pertaining to dealer transactions, or to avoid provisions establishing exemptions from those requirements, as specified. Existing law makes this offense punishable as a felony or misdemeanor subject to imprisonment in the county jail or by a fine not to exceed \$1,000, or by both that fine and imprisonment.

This bill would make that offense a felony punishable by imprisonment for 16 months, or 2 or 3 years in the state prison. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program.

Existing law prohibits a person, corporation, or firearms dealer from acquiring a firearm for the purpose of selling, loaning, or transferring the firearm if, for a dealer, he or she has the intent to transfer the firearm to a minor or to evade specified requirements on the transfer of firearms, or in the case of a person or corporation, the person or corporation intends to violate the requirement, or provisions of an exception to the requirement, that the transaction be conducted through a licensed firearms dealer. Existing law makes this offense punishable as a misdemeanor by imprisonment in the county jail not exceeding one year, or as a felony punishable by imprisonment in the county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment.

This bill would make that offense punishable as a felony by imprisonment for 16 months, or 2 or 3 years in the state prison. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program.

The bill would appropriate ~~an unspecified sum~~ \$2,200,000 from the General Fund to the Department of Justice for vertical prosecution, as

defined, of those offenses described above, by the department. The bill would require the department to submit a report to the Legislature and the Governor, on or before January 1, 2020, which details the number of prosecutions filed and convictions obtained by the department for the offenses described above.

*The bill would also make conforming changes.*

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:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

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

1     SECTION 1. Section 1203 of the Penal Code is amended to  
2 read:

3     1203. (a) As used in this code, “probation” means the  
4 suspension of the imposition or execution of a sentence and the  
5 order of conditional and revocable release in the community under  
6 the supervision of a probation officer. As used in this code,  
7 “conditional sentence” means the suspension of the imposition or  
8 execution of a sentence and the order of revocable release in the  
9 community subject to conditions established by the court without  
10 the supervision of a probation officer. It is the intent of the  
11 Legislature that both conditional sentence and probation are  
12 authorized whenever probation is authorized in any code as a  
13 sentencing option for infractions or misdemeanors.

14     (b) (1) Except as provided in subdivision (j), if a person is  
15 convicted of a felony and is eligible for probation, before judgment  
16 is pronounced, the court shall immediately refer the matter to a  
17 probation officer to investigate and report to the court, at a specified  
18 time, upon the circumstances surrounding the crime and the prior  
19 history and record of the person, which may be considered either  
20 in aggravation or mitigation of the punishment.

21     (2) (A) The probation officer shall immediately investigate and  
22 make a written report to the court of his or her findings and  
23 recommendations, including his or her recommendations as to the

1 granting or denying of probation and the conditions of probation,  
2 if granted.

3 (B) Pursuant to Section 828 of the Welfare and Institutions  
4 Code, the probation officer shall include in his or her report any  
5 information gathered by a law enforcement agency relating to the  
6 taking of the defendant into custody as a minor, which shall be  
7 considered for purposes of determining whether adjudications of  
8 commissions of crimes as a juvenile warrant a finding that there  
9 are circumstances in aggravation pursuant to Section 1170 or to  
10 deny probation.

11 (C) If the person was convicted of an offense that requires him  
12 or her to register as a sex offender pursuant to Sections 290 to  
13 290.023, inclusive, or if the probation report recommends that  
14 registration be ordered at sentencing pursuant to Section 290.006,  
15 the probation officer's report shall include the results of the  
16 State-Authorized Risk Assessment Tool for Sex Offenders  
17 (SARATSO) administered pursuant to Sections 290.04 to 290.06,  
18 inclusive, if applicable.

19 (D) The probation officer may also include in the report his or  
20 her recommendation of both of the following:

21 (i) The amount the defendant should be required to pay as a  
22 restitution fine pursuant to subdivision (b) of Section 1202.4.

23 (ii) Whether the court shall require, as a condition of probation,  
24 restitution to the victim or to the Restitution Fund and the amount  
25 thereof.

26 (E) The report shall be made available to the court and the  
27 prosecuting and defense attorneys at least five days, or upon request  
28 of the defendant or prosecuting attorney nine days, prior to the  
29 time fixed by the court for the hearing and determination of the  
30 report, and shall be filed with the clerk of the court as a record in  
31 the case at the time of the hearing. The time within which the report  
32 shall be made available and filed may be waived by written  
33 stipulation of the prosecuting and defense attorneys that is filed  
34 with the court or an oral stipulation in open court that is made and  
35 entered upon the minutes of the court.

36 (3) At a time fixed by the court, the court shall hear and  
37 determine the application, if one has been made, or, in any case,  
38 the suitability of probation in the particular case. At the hearing,  
39 the court shall consider any report of the probation officer,  
40 including the results of the SARATSO, if applicable, and shall

1 make a statement that it has considered the report, which shall be  
2 filed with the clerk of the court as a record in the case. If the court  
3 determines that there are circumstances in mitigation of the  
4 punishment prescribed by law or that the ends of justice would be  
5 served by granting probation to the person, it may place the person  
6 on probation. If probation is denied, the clerk of the court shall  
7 immediately send a copy of the report to the Department of  
8 Corrections and Rehabilitation at the prison or other institution to  
9 which the person is delivered.

10 (4) The preparation of the report or the consideration of the  
11 report by the court may be waived only by a written stipulation of  
12 the prosecuting and defense attorneys that is filed with the court  
13 or an oral stipulation in open court that is made and entered upon  
14 the minutes of the court, except that a waiver shall not be allowed  
15 unless the court consents thereto. However, if the defendant is  
16 ultimately sentenced and committed to the state prison, a probation  
17 report shall be completed pursuant to Section 1203c.

18 (c) If a defendant is not represented by an attorney, the court  
19 shall order the probation officer who makes the probation report  
20 to discuss its contents with the defendant.

21 (d) If a person is convicted of a misdemeanor, the court may  
22 either refer the matter to the probation officer for an investigation  
23 and a report or summarily pronounce a conditional sentence. If  
24 the person was convicted of an offense that requires him or her to  
25 register as a sex offender pursuant to Sections 290 to 290.023,  
26 inclusive, or if the probation officer recommends that the court,  
27 at sentencing, order the offender to register as a sex offender  
28 pursuant to Section 290.006, the court shall refer the matter to the  
29 probation officer for the purpose of obtaining a report on the results  
30 of the State-Authorized Risk Assessment Tool for Sex Offenders  
31 administered pursuant to Sections 290.04 to 290.06, inclusive, if  
32 applicable, which the court shall consider. If the case is not referred  
33 to the probation officer, in sentencing the person, the court may  
34 consider any information concerning the person that could have  
35 been included in a probation report. The court shall inform the  
36 person of the information to be considered and permit him or her  
37 to answer or controvert the information. For this purpose, upon  
38 the request of the person, the court shall grant a continuance before  
39 the judgment is pronounced.

1 (e) Except in unusual cases where the interests of justice would  
2 best be served if the person is granted probation, probation shall  
3 not be granted to any of the following persons:

4 (1) Unless the person had a lawful right to carry a deadly  
5 weapon, other than a firearm, at the time of the perpetration of the  
6 crime or his or her arrest, any person who has been convicted of  
7 arson, robbery, carjacking, burglary, burglary with explosives,  
8 rape with force or violence, torture, aggravated mayhem, murder,  
9 attempt to commit murder, trainwrecking, kidnapping, escape from  
10 the state prison, or a conspiracy to commit one or more of those  
11 crimes and who was armed with the weapon at either of those  
12 times.

13 (2) Any person who used, or attempted to use, a deadly weapon  
14 upon a human being in connection with the perpetration of the  
15 crime of which he or she has been convicted.

16 (3) Any person who willfully inflicted great bodily injury or  
17 torture in the perpetration of the crime of which he or she has been  
18 convicted.

19 (4) Any person who has been previously convicted twice in this  
20 state of a felony or in any other place of a public offense which,  
21 if committed in this state, would have been punishable as a felony.

22 (5) Unless the person has never been previously convicted once  
23 in this state of a felony or in any other place of a public offense  
24 which, if committed in this state, would have been punishable as  
25 a felony, any person who has been convicted of burglary with  
26 explosives, rape with force or violence, torture, aggravated  
27 mayhem, murder, attempt to commit murder, trainwrecking,  
28 extortion, kidnapping, escape from the state prison, a violation of  
29 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one  
30 or more of those crimes.

31 (6) Any person who has been previously convicted once in this  
32 state of a felony or in any other place of a public offense which,  
33 if committed in this state, would have been punishable as a felony,  
34 if he or she committed any of the following acts:

35 (A) Unless the person had a lawful right to carry a deadly  
36 weapon at the time of the perpetration of the previous crime or his  
37 or her arrest for the previous crime, he or she was armed with a  
38 weapon at either of those times.

1 (B) The person used, or attempted to use, a deadly weapon upon  
2 a human being in connection with the perpetration of the previous  
3 crime.

4 (C) The person willfully inflicted great bodily injury or torture  
5 in the perpetration of the previous crime.

6 (7) Any public official or peace officer of this state or any city,  
7 county, or other political subdivision who, in the discharge of the  
8 duties of his or her public office or employment, accepted or gave  
9 or offered to accept or give any bribe, embezzled public money,  
10 or was guilty of extortion.

11 (8) Any person who knowingly furnishes or gives away  
12 phencyclidine.

13 (9) Any person who intentionally inflicted great bodily injury  
14 in the commission of arson under subdivision (a) of Section 451  
15 or who intentionally set fire to, burned, or caused the burning of,  
16 an inhabited structure or inhabited property in violation of  
17 subdivision (b) of Section 451.

18 (10) Any person who, in the commission of a felony, inflicts  
19 great bodily injury or causes the death of a human being by the  
20 discharge of a firearm from or at an occupied motor vehicle  
21 proceeding on a public street or highway.

22 (11) Any person who possesses a short-barreled rifle or a  
23 short-barreled shotgun under Section 33215, a machinegun under  
24 Section 32625, or a silencer under Section 33410.

25 (12) Any person who is convicted of violating Section 8101 of  
26 the Welfare and Institutions Code.

27 (13) Any person who is described in subdivision ~~(b)~~ or ~~(e)~~ (b),  
28 (c), (f), or (g) of Section 27590.

29 (f) When probation is granted in a case which comes within  
30 subdivision (e), the court shall specify on the record and shall enter  
31 on the minutes the circumstances indicating that the interests of  
32 justice would best be served by that disposition.

33 (g) If a person is not eligible for probation, the judge shall refer  
34 the matter to the probation officer for an investigation of the facts  
35 relevant to determination of the amount of a restitution fine  
36 pursuant to subdivision (b) of Section 1202.4 in all cases where  
37 the determination is applicable. The judge, in his or her discretion,  
38 may direct the probation officer to investigate all facts relevant to  
39 the sentencing of the person. Upon that referral, the probation  
40 officer shall immediately investigate the circumstances surrounding

1 the crime and the prior record and history of the person and make  
2 a written report to the court of his or her findings. The findings  
3 shall include a recommendation of the amount of the restitution  
4 fine as provided in subdivision (b) of Section 1202.4.

5 (h) If a defendant is convicted of a felony and a probation report  
6 is prepared pursuant to subdivision (b) or (g), the probation officer  
7 may obtain and include in the report a statement of the comments  
8 of the victim concerning the offense. The court may direct the  
9 probation officer not to obtain a statement if the victim has in fact  
10 testified at any of the court proceedings concerning the offense.

11 (i) A probationer shall not be released to enter another state  
12 unless his or her case has been referred to the Administrator of the  
13 Interstate Probation and Parole Compacts, pursuant to the Uniform  
14 Act for Out-of-State Probationer or Parolee Supervision (Article  
15 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part  
16 4) and the probationer has reimbursed the county that has  
17 jurisdiction over his or her probation case the reasonable costs of  
18 processing his or her request for interstate compact supervision.  
19 The amount and method of reimbursement shall be in accordance  
20 with Section 1203.1b.

21 (j) In any court where a county financial evaluation officer is  
22 available, in addition to referring the matter to the probation officer,  
23 the court may order the defendant to appear before the county  
24 financial evaluation officer for a financial evaluation of the  
25 defendant's ability to pay restitution, in which case the county  
26 financial evaluation officer shall report his or her findings regarding  
27 restitution and other court-related costs to the probation officer on  
28 the question of the defendant's ability to pay those costs.

29 Any order made pursuant to this subdivision may be enforced  
30 as a violation of the terms and conditions of probation upon willful  
31 failure to pay and at the discretion of the court, may be enforced  
32 in the same manner as a judgment in a civil action, if any balance  
33 remains unpaid at the end of the defendant's probationary period.

34 (k) Probation shall not be granted to, nor shall the execution of,  
35 or imposition of sentence be suspended for, any person who is  
36 convicted of a violent felony, as defined in subdivision (c) of  
37 Section 667.5, or a serious felony, as defined in subdivision (c) of  
38 Section 1192.7, and who was on probation for a felony offense at  
39 the time of the commission of the new felony offense.

1 SECTION 1.

2 SEC. 2. Section 27590 of the Penal Code is amended to read:

3 27590. (a) Except as provided in subdivision (b), (c), or (e),  
4 a violation of this article is a misdemeanor.

5 (b) If any of the following circumstances apply, a violation of  
6 this article is punishable by imprisonment pursuant to subdivision  
7 (h) of Section 1170 for two, three, or four years.

8 (1) If the defendant has a prior conviction of violating the  
9 provisions, other than Section 27535, Section 27560 involving a  
10 firearm that is not a handgun, or Section 27565 involving a firearm  
11 that is not a handgun, of this article or former Section 12100 of  
12 this code, as Section 12100 read at any time from when it was  
13 enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to  
14 when it was repealed by Section 18 of Chapter 23 of the Statutes  
15 of 1994, or Section 8101 of the Welfare and Institutions Code.

16 (2) If the defendant has a prior conviction of violating any  
17 offense specified in Section 29905 or of a violation of Section  
18 32625 or 33410, or of former Section 12560, as that section read  
19 at any time from when it was enacted by Section 4 of Chapter 931  
20 of the Statutes of 1965 to when it was repealed by Section 14 of  
21 Chapter 9 of the Statutes of 1990, or of any provision listed in  
22 Section 16590.

23 (3) If the defendant is in a prohibited class described in Chapter  
24 2 (commencing with Section 29800) or Chapter 3 (commencing  
25 with Section 29900) of Division 9 of this title, or Section 8100 or  
26 8103 of the Welfare and Institutions Code.

27 (4) A violation of this article by a person who actively  
28 participates in a “criminal street gang” as defined in Section 186.22.

29 (5) A violation of Section 27510 involving the delivery of any  
30 firearm to a person who the dealer knows, or should know, is a  
31 minor.

32 (c) A violation of any of the following shall be punished by  
33 imprisonment in a county jail not exceeding one year or pursuant  
34 to subdivision (h) of Section 1170, or by a fine not to exceed one  
35 thousand dollars (\$1,000), or by both that fine and imprisonment:

36 (1) A violation of Section 27505 involving the sale, loan, or  
37 transfer of a handgun to a minor.

38 (2) A violation of Section 27510 involving the delivery of a  
39 handgun.

1 (3) A violation of subdivision (a), (c), (d), (e), or (f) of Section  
2 27540 involving a handgun.

3 (4) A violation of Section 27545 involving a handgun.

4 (5) A violation of Section 27550.

5 (6) A violation of Section 27585 involving a handgun.

6 (d) An additional term of imprisonment for one, two, or three  
7 years shall be imposed in addition and consecutive to the sentence  
8 prescribed for a violation of Section 27510 or subdivision (b) of  
9 Section 27500 if the firearm transferred in violation of Section  
10 27510 or subdivision (b) of Section 27500 is used in the subsequent  
11 commission of a felony for which a conviction is obtained and the  
12 prescribed sentence is imposed.

13 (e) (1) A first violation of Section 27535 is an infraction  
14 punishable by a fine of fifty dollars (\$50).

15 (2) A second violation of Section 27535 is an infraction  
16 punishable by a fine of one hundred dollars (\$100).

17 (3) A third or subsequent violation of Section 27535 is a  
18 misdemeanor.

19 (4) For purposes of this subdivision each application to purchase  
20 a handgun in violation of Section 27535 shall be deemed a separate  
21 offense.

22 (f) A violation of the following shall be punished by  
23 imprisonment in the state prison for 16 months, or two or three  
24 years:

25 (1) A violation of Section 27515.

26 (2) A violation of Section 27520.

27 (g) A violation of Section 27500 shall be punished by  
28 imprisonment in the state prison for two, three, or four years.

29 *SEC. 3. Section 29805 of the Penal Code is amended to read:*  
30 29805. Except as provided in Section 29855 or subdivision (a)  
31 of Section 29800, any person who has been convicted of a  
32 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,  
33 subdivision (d) of Section 148, Section 171b, paragraph (1) of  
34 subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243,  
35 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6,  
36 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section  
37 12100, as that section read at any time from when it was enacted  
38 by Section 3 of Chapter 1386 of the Statutes of 1988 to when it  
39 was repealed by Section 18 of Chapter 23 of the Statutes of 1994,  
40 Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision

1 (b) or (d) of Section 26100, or Section 27510, or Section 8100,  
2 8101, or 8103 of the Welfare and Institutions Code, any  
3 firearm-related offense pursuant to Sections 871.5 and 1001.5 of  
4 the Welfare and Institutions Code, or of the conduct punished in  
5 subdivision-(e) (c), (f), or (g) of Section 27590, and who, within  
6 10 years of the conviction, owns, purchases, receives, or has in  
7 possession or under custody or control, any firearm is guilty of a  
8 public offense, which shall be punishable by imprisonment in a  
9 county jail not exceeding one year or in the state prison, by a fine  
10 not exceeding one thousand dollars (\$1,000), or by both that  
11 imprisonment and fine. The court, on forms prescribed by the  
12 Department of Justice, shall notify the department of persons  
13 subject to this section. However, the prohibition in this section  
14 may be reduced, eliminated, or conditioned as provided in Section  
15 29855 or 29860.

16 ~~SEC. 2.~~

17 *SEC. 4.* (a) The sum of ~~\_\_\_\_\_~~ *two million two hundred thousand*  
18 *dollars (\$2,200,000)* is hereby appropriated from the General Fund  
19 to the Department of Justice for vertical prosecution of straw  
20 purchases of firearms and knowing transfers of firearms to  
21 prohibited persons, in violation of Section 27500, 27515, or 27520  
22 of the Penal Code, or any combination of those offenses.

23 (b) As used in this section, “vertical prosecution” means a  
24 specially trained deputy attorney general assigned to the case from  
25 its filing to its completion.

26 ~~SEC. 3.~~

27 *SEC. 5.* (a) On or before January 1, 2020, the Department of  
28 Justice shall submit a report to the Legislature and the Governor  
29 which includes the number of prosecutions filed and convictions  
30 obtained by the department for violations of Sections 27500, 27515,  
31 and 27520, pursuant to this act. The report shall be submitted in  
32 compliance with Section 9795 of the Government Code.

33 (b) Pursuant to Section 10231.5 of the Government Code, this  
34 section is repealed on January 1, 2024.

35 ~~SEC. 4.~~

36 *SEC. 6.* 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.

O