

**ASSEMBLY BILL**

**No. 92**

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**Introduced by Assembly Member Hauser**

January 4, 1995

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An act to amend Sections 12023, 12026, 12026.1, 12026.2, and 12050 of, and to add and repeal Section 12038 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 92, as introduced, Hauser. Firearms.

(1) Existing law provides that every person who carries a loaded firearm with the intent to commit a felony is guilty of armed criminal action, punishable by imprisonment in a county jail not exceeding one year or in the state prison.

This bill would provide instead that every person who carries a firearm, loaded or not, with the intent to commit a felony is guilty of armed criminal action. A violation of this provision where the firearm is loaded or the firearm is a pistol, revolver, or other firearm capable of being concealed upon the person is armed criminal action of the first degree, punishable by imprisonment in the state prison for 2, 3, or 4 years. All other violations are armed criminal action of the second degree, punishable by imprisonment in a county jail not exceeding one year or in the state prison.

(2) Existing law makes it a misdemeanor, with limited exceptions, for any person to carry a concealable weapon concealed within any vehicle or concealed upon the person without having a license. Existing law provides that notwithstanding this prohibition, any citizen of the United

States or legal resident over the age of 18 years who resides or is temporarily within this state and who is not within certain excepted classes shall not be prohibited from owning, possessing, keeping, or carrying, either openly or concealed, anywhere within his or her place of residence, place of business, or on private property a concealable weapon.

This bill would provide, instead, that the above prohibition shall not apply to or affect any citizen of the United States or legal resident as specified above who carries a concealable weapon within or on the described places or property. The bill would additionally make the above prohibition inapplicable to the transportation of a firearm to an authorized government representative who is acquiring the weapon as a part of an authorized voluntary program to buy or receive weapons from private individuals.

(3) Existing law requires the Attorney General to make reports to the Legislature regarding various subjects, including wiretapping, sex abuse offenses, hate crimes, and domestic violence. Existing law requires local law enforcement entities to submit specified information to the Attorney General.

This bill would require the district attorney of each county to prepare and submit to the Attorney General until 1999 an annual report consisting of profiles by race, age, gender, and ethnicity of persons charged with specified felonies for the current and previous calendar years. It would also require the Attorney General to prepare and submit to the Legislature until 1999 an annual report compiling all of the reports submitted to the Attorney General. The bill would impose a state-mandated local program by expanding the scope of the reporting duties of the district attorney in each county.

(4) Existing law sets forth procedures for the sheriff of a county or the chief or other head of a municipal police department of any city or city and county to issue a license to carry a pistol, revolver, or firearm capable of being concealed upon the person. A license issued pursuant to these provisions is valid for any period of time not to exceed one year from the date of the license, or in the case of a peace officer appointed pursuant to certain provisions, 3 years from the date of the license.



This bill would provide that any license issued under these provisions is valid for any period not to exceed 3 years from the date of the license.

(5) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 12023 of the Penal Code is  
2 amended to read:

3 12023. (a) Every person who carries a ~~loaded~~ firearm  
4 with the intent to commit a felony is guilty of armed  
5 criminal action.

6 (b) *(1) Armed criminal action is in the first degree*  
7 *where either of the following exists:*

8 *(A) The firearm is loaded.*

9 *(B) The firearm is a pistol, revolver, or other firearm*  
10 *capable of being concealed upon the person.*

11 *(2) All kinds of armed criminal action other than that*  
12 *specified in paragraph (1) are in the second degree.*

13 *(c) Armed criminal action is punishable as follows:*

14 *(1) Armed criminal action in the first degree is*  
15 *punishable by imprisonment in the state prison for two,*  
16 *three, or four years.*

17 *(2) Armed criminal action in the second degree is*  
18 *punishable by imprisonment in a county jail not*  
19 *exceeding one year, or in the state prison.*



1 SEC. 2. Section 12026 of the Penal Code is amended  
2 to read:

3 12026. (a) ~~Notwithstanding~~ Section 12025; *shall not*  
4 *apply to or affect* any citizen of the United States or legal  
5 resident over the age of 18 years who resides or is  
6 temporarily within this state, and who is not within the  
7 excepted classes prescribed by Section 12021 ~~shall not be~~  
8 ~~prohibited from owning, possessing, keeping, or carrying~~  
9 ~~or 12021.1 of this code or Section 8100 or 8103 of the~~  
10 ~~Welfare and Institutions Code, who carries, either openly~~  
11 ~~or concealed, anywhere within the citizen's or legal~~  
12 ~~resident's place of residence, place of business, or on~~  
13 ~~private property owned or lawfully possessed by the~~  
14 ~~citizen or legal resident any pistol, revolver, or other~~  
15 ~~firearm capable of being concealed upon the person, and~~  
16 ~~no permit or license to purchase, own, possess, keep, or~~  
17 ~~carry, either openly or concealed, any such firearm~~  
18 ~~within the citizen's or legal resident's place of residence,~~  
19 ~~place of business, or on private property owned or~~  
20 ~~lawfully possessed by the citizen or legal resident, shall be~~  
21 ~~required of the citizen or legal resident.~~

22 (b) *No permit or license to purchase, own, possess,*  
23 *keep, or carry, either openly or concealed, shall be*  
24 *required of any citizen of the United States or legal*  
25 *resident over the age of 18 years who resides or is*  
26 *temporarily within this state, and who is not within the*  
27 *excepted classes prescribed by Section 12021 or 12021.1 of*  
28 *this code or Section 8100 or 8103 of the Welfare and*  
29 *Institutions Code, to purchase, own, possess, keep, or*  
30 *carry, either openly or concealed, a pistol, revolver, or*  
31 *other firearm capable of being concealed upon the*  
32 *person within the citizen's or legal resident's place of*  
33 *residence, place of business, or on private property*  
34 *owned or lawfully possessed by the citizen or legal*  
35 *resident.*

36 (c) Nothing in this section shall be construed as  
37 affecting the application of Section 12031.

38 SEC. 3. Section 12026.1 of the Penal Code is amended  
39 to read:



1 12026.1. (a) Section 12025 shall not be construed to  
2 prohibit any citizen of the United States over the age of  
3 18 years who resides or is temporarily within this state,  
4 and who is not within the excepted classes prescribed by  
5 Section 12021 *or 12021.1 of this code or Section 8100 or*  
6 *8103 of the Welfare and Institutions Code*, from  
7 transporting or carrying any pistol, revolver, or other  
8 firearm capable of being concealed upon the person,  
9 provided that the following applies to the firearm:

10 (1) The firearm is within a motor vehicle and it is  
11 locked in the vehicle's trunk or in a locked container in  
12 the vehicle other than the utility or glove compartment.

13 (2) The firearm is carried by the person directly to or  
14 from any motor vehicle for any lawful purpose and, while  
15 carrying the firearm, the firearm is contained within a  
16 locked container.

17 (b) The provisions of this section do not prohibit or  
18 limit the otherwise lawful carrying or transportation of  
19 any pistol, revolver, or other firearm capable of being  
20 concealed upon the person in accordance with this  
21 chapter.

22 (c) As used in this section, "locked container" means  
23 a secure container which is fully enclosed and locked by  
24 a padlock, key lock, combination lock, or similar locking  
25 device.

26 SEC. 4. Section 12026.2 of the Penal Code is amended  
27 to read:

28 12026.2. (a) Section 12025 does not apply to, or affect,  
29 any of the following:

30 (1) The possession of a firearm by an authorized  
31 participant in a motion picture, television, or video  
32 production or entertainment event when the participant  
33 lawfully uses the firearm as part of that production or  
34 event or while going directly to, or coming directly from,  
35 that production or event.

36 (2) The possession of a firearm in a locked container by  
37 a member of any club or organization, organized for the  
38 purpose of lawfully collecting and lawfully displaying  
39 pistols, revolvers, or other firearms, while the member is



1 at meetings of the clubs or organizations or while going  
2 directly to, and coming directly from, those meetings.

3 (3) The transportation of a firearm by a participant  
4 when going directly to, or coming directly from, a  
5 recognized safety or hunter safety class, or a recognized  
6 sporting event involving that firearm.

7 (4) The transportation of a firearm by a person listed  
8 in Section 12026 directly between any of the places  
9 mentioned in Section 12026.

10 (5) The transportation of a firearm by a person when  
11 going directly to, or coming directly from, a fixed place  
12 of business or private residential property for the purpose  
13 of the lawful repair or the lawful transfer, sale, or loan of  
14 that firearm.

15 (6) The transportation of a firearm by a person listed  
16 in Section 12026 when going directly from the place  
17 where that person lawfully received that firearm to that  
18 person's place of residence or place of business or to  
19 private property owned or lawfully possessed by that  
20 person.

21 (7) The transportation of a firearm by a person when  
22 going directly to, or coming directly from, a gun show,  
23 swap meet, or similar event to which the public is invited,  
24 for the purpose of displaying that firearm in a lawful  
25 manner.

26 (8) The transportation of a firearm by an authorized  
27 employee or agent of a supplier of firearms when going  
28 directly to, or coming directly from, a motion picture,  
29 television, or video production or entertainment event  
30 for the purpose of providing that firearm to an authorized  
31 participant to lawfully use as a part of that production or  
32 event.

33 (9) The transportation of a firearm by a person when  
34 going directly to, or coming directly from, a target range,  
35 which holds a regulatory or business license, for the  
36 purposes of practicing shooting at targets with that  
37 firearm at that target range.

38 (10) The transportation of a firearm by a person when  
39 going directly to, or coming directly from, a place  
40 designated by a person authorized to issue licenses



1 pursuant to Section 12050 when done at the request of the  
2 issuing agency so that the issuing agency can determine  
3 whether or not a license should be issued to that person  
4 to carry that firearm.

5 (11) The transportation of a firearm by a person when  
6 going directly to, or coming directly from, a law  
7 enforcement agency for the purpose of a lawful transfer,  
8 sale, or loan of that firearm pursuant to Section 12084.

9 (12) The transportation of a firearm by a person when  
10 going directly to, or coming directly from, a lawful  
11 camping activity for the purpose of having that firearm  
12 available for lawful personal protection while at the  
13 lawful campsite. This paragraph shall not be construed to  
14 override the statutory authority granted to the  
15 Department of Parks and Recreation or any other state  
16 or local governmental agencies to promulgate rules and  
17 regulations governing the administration of parks and  
18 campgrounds.

19 (13) The transportation of a firearm by a person in  
20 order to comply with subdivision (c) or (i) of Section  
21 12078 as it pertains to that firearm.

22 (14) The transportation of a firearm by a person in  
23 order to utilize subdivision (l) of Section 12078 as it  
24 pertains to that firearm.

25 (15) The transportation of a firearm by a person when  
26 going directly to, or coming directly from, a gun show or  
27 event, as defined in Section 178.100 of Title 27 of the Code  
28 of Federal Regulations, for the purpose of lawfully  
29 transferring, selling, or loaning that firearm in  
30 accordance with subdivision (d) of Section 12072.

31 *(16) The transportation of a firearm by a person in*  
32 *order to utilize paragraph (3) of subdivision (a) of*  
33 *Section 12078 as it pertains to that firearm.*

34 (b) In order for a firearm to be exempted under  
35 subdivision (a), while being transported to or from a  
36 place, the firearm shall be unloaded, kept in a locked  
37 container, as defined in subdivision (d), and the course of  
38 travel shall include only those deviations between  
39 authorized locations as are reasonably necessary under  
40 the circumstances.



1 (c) This section does not prohibit or limit the  
2 otherwise lawful carrying or transportation of any pistol,  
3 revolver, or other firearm capable of being concealed  
4 upon the person in accordance with this chapter.

5 (d) As used in this section, “locked container” means  
6 a secure container which is fully enclosed and locked by  
7 a padlock, key lock, combination lock, or similar locking  
8 device. The term “locked container” does not include the  
9 utility or glove compartment of a motor vehicle.

10 SEC. 5. Section 12038 is added to the Penal Code, to  
11 read:

12 12038. (a) The district attorney of each county shall  
13 submit annually on or before June 30 to the Attorney  
14 General a report consisting of profiles by race, age,  
15 gender, and ethnicity of persons charged with felonies  
16 under paragraph (2) of subdivision (b) of Section 12025  
17 for the current and previous calendar year.

18 (b) The Attorney General shall prepare and submit  
19 annually on or before December 31 to the Legislature a  
20 report compiling all of the reports submitted pursuant to  
21 subdivision (a).

22 (c) This section shall remain in effect only until  
23 January 1, 1999, and as of that date is repealed.

24 SEC. 6. Section 12050 of the Penal Code is amended  
25 to read:

26 12050. (a) (1) The sheriff of a county or the chief or  
27 other head of a municipal police department of any city  
28 or city and county, upon proof that the person applying  
29 is of good moral character, that good cause exists for the  
30 issuance, and that the person applying is a resident of the  
31 county, may issue to that person a license to carry a pistol,  
32 revolver, or other firearm capable of being concealed  
33 upon the person in either one of the following formats:

34 (A) A license to carry concealed a pistol, revolver, or  
35 other firearm capable of being concealed upon the  
36 person.

37 (B) Where the population of the county is less than  
38 200,000 persons according to the most recent federal  
39 decennial census, a license to carry loaded and exposed



1 in that county a pistol, revolver, or other firearm capable  
2 of being concealed upon the person.

3 (2) A license issued pursuant to this section is valid for  
4 any period of time not to exceed ~~one year from the date~~  
5 ~~of the license, or in the case of a peace officer appointed~~  
6 ~~pursuant to Section 830.6,~~ three years from the date of the  
7 license.

8 (b) A license may include any reasonable restrictions  
9 or conditions which the issuing authority deems  
10 warranted, including restrictions as to the time, place,  
11 manner, and circumstances under which the person may  
12 carry a pistol, revolver, or other firearm capable of being  
13 concealed upon the person.

14 (c) Any restrictions imposed pursuant to subdivision  
15 (b) shall be indicated on any license issued.

16 (d) A license shall not be issued if the Department of  
17 Justice determines that the person is within a prohibited  
18 class described in Section 12021 or 12021.1 of this code or  
19 Section 8100 or 8103 of the Welfare and Institutions Code.

20 (e) (1) The license shall be revoked by the local  
21 licensing authority if at any time either the local licensing  
22 authority is notified by the Department of Justice that a  
23 licensee is within a prohibited class described in Section  
24 12021 or 12021.1 of this code or Section 8100 or 8103 of the  
25 Welfare and Institutions Code, or the local licensing  
26 authority determines that the person is within a  
27 prohibited class described in Section 12021 or 12021.1 of  
28 the code or Section 8100 or 8103 of the Welfare and  
29 Institutions Code.

30 (2) If at any time the Department of Justice  
31 determines that a licensee is within a prohibited class  
32 described in Section 12021 or 12021.1 of this code or  
33 Section 8100 or 8103 of the Welfare and Institutions Code,  
34 the department shall immediately notify the local  
35 licensing authority of the determination.

36 (3) If the local licensing authority revokes the license,  
37 the Department of Justice shall be notified of the  
38 revocation pursuant to Section 12053. The licensee shall  
39 also be immediately notified of the revocation in writing.



1 (f) (1) A person issued a license pursuant to this  
2 section may apply to the licensing authority for an  
3 amendment to the license to do one or more of the  
4 following:

5 (A) Add or delete authority to carry a particular pistol,  
6 revolver, or other firearm capable of being concealed  
7 upon the person.

8 (B) Authorize the licensee to carry concealed a pistol,  
9 revolver, or other firearm capable of being concealed  
10 upon the person.

11 (C) If the population of the county is less than 200,000  
12 persons according to the most recent federal decennial  
13 census, authorize the licensee to carry loaded and  
14 exposed in that county a pistol, revolver, or other firearm  
15 capable of being concealed upon the person.

16 (D) Change any restrictions or conditions on the  
17 license, including restrictions as to the time, place,  
18 manner, and circumstances under which the person may  
19 carry a pistol, revolver, or other firearm capable of being  
20 concealed upon the person.

21 (2) When the licensee changes his or her address, the  
22 license shall be amended to reflect the new address and  
23 a new license shall be issued pursuant to paragraph (3).

24 (3) If the licensing authority amends the license, a new  
25 license shall be issued to the licensee reflecting the  
26 amendments.

27 (4) The licensee shall notify the licensing authority in  
28 writing within 10 days of any change in the licensee's  
29 place of residence. If the license is one to carry concealed  
30 a pistol, revolver, or other firearm capable of being  
31 concealed upon the person, then it may not be revoked  
32 solely because the licensee changes his or her place of  
33 residence to another county if the licensee has not  
34 breached any conditions or restrictions set forth in the  
35 license or has not fallen into a prohibited class described  
36 in Section 12021 or 12021.1 of this code or Section 8100 or  
37 8103 of the Welfare and Institutions Code. If the license  
38 is one to carry loaded and exposed a pistol, revolver, or  
39 other firearm capable of being concealed upon the  
40 person, the license shall be revoked immediately if the



1 licensee changes his or her place of residence to another  
2 county.

3 (5) An amendment to the license does not extend the  
4 original expiration date of the license and the license shall  
5 be subject to renewal at the same time as if the license had  
6 not been amended.

7 (6) An application to amend a license does not  
8 constitute an application for renewal of the license.

9 SEC. 7. Notwithstanding Section 17610 of the  
10 Government Code, if the Commission on State Mandates  
11 determines that this act contains costs mandated by the  
12 state, reimbursement to local agencies and school  
13 districts for those costs shall be made pursuant to Part 7  
14 (commencing with Section 17500) of Division 4 of Title  
15 2 of the Government Code. If the statewide cost of the  
16 claim for reimbursement does not exceed one million  
17 dollars (\$1,000,000), reimbursement shall be made from  
18 the State Mandates Claims Fund.

19 Notwithstanding Section 17580 of the Government  
20 Code, unless otherwise specified, the provisions of this act  
21 shall become operative on the same date that the act  
22 takes effect pursuant to the California Constitution.

