

AMENDED IN SENATE SEPTEMBER 6, 1995

AMENDED IN SENATE AUGUST 31, 1995

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AMENDED IN ASSEMBLY MARCH 15, 1995

AMENDED IN ASSEMBLY FEBRUARY 28, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 144

Introduced by Assembly Member Willard Murray

January 13, 1995

An act to amend Sections 1203.06, ~~12022.5~~, 12101, and 12323 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 144, as amended, W. Murray. Crimes.

(1) Under existing law, probation shall not be granted to any persons who committed or attempted to commit, among other crimes, various forms of kidnapping. ~~Existing law provides a definition of "rifle" in connection with a provision that establishes an enhancement for every person who carries a loaded or unloaded firearm on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crime.~~ Existing law also makes the prohibition against possession of a concealable firearm inapplicable to a minor at least 16 years of age who has the prior written consent of his or her parent and the minor is engaged in specified lawful recreational activity involving the firearm.

This bill would make technical, clarifying changes to the above provisions.

~~(2) Existing law prescribes enhanced prison terms for any person who personally uses a firearm in the commission or attempted commission of a felony. These additional terms may be imposed in, among other things, cases of assault upon the person of another with a firearm pursuant to a specified provision.~~

~~This bill would provide that the additional terms may be imposed in any case involving assault with a firearm pursuant to this and additional provisions.~~

~~(3) Existing law specifies prohibitions and penalties with regard to manufacturing, importing, selling, offering to sell, knowingly transporting or knowingly possessing any handgun ammunition designed primarily to penetrate metal or armor. Handgun ammunition is defined for these purposes.~~

This bill would redefine “handgun ammunition” and would define “handgun ammunition designed primarily to penetrate metal or armor,” “body vest or shield,” and “rifle” for the purposes of these provisions. The bill would declare that these provisions are declaratory of existing law.

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

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

- 1 SECTION 1. Section 1203.06 of the Penal Code is
- 2 amended to read:
- 3 1203.06. Notwithstanding Section 1203:
- 4 (a) Probation shall not be granted to, nor shall the
- 5 execution or imposition of sentence be suspended for, any
- 6 of the following persons:
- 7 (1) Any person who personally used a firearm during
- 8 the commission or attempted commission of any of the
- 9 following crimes:
- 10 (A) Murder.
- 11 (B) Robbery, in violation of Section 211.
- 12 (C) Kidnapping, in violation of Section 207.
- 13 (D) Kidnapping in violation of Section 209.



1 (E) Burglary of the first degree, as defined in Section
2 460.

3 (F) Except as provided in Section 1203.065, rape in
4 violation of paragraph (2) of subdivision (a) of Section
5 261.

6 (G) Assault with intent to commit rape or sodomy, in
7 violation of Section 220.

8 (H) Escape, in violation of Section 4530 or 4532.

9 (I) Carjacking, in violation of Section 215.

10 (J) Any person convicted of aggravated mayhem in
11 violation of Section 205.

12 (K) Torture, in violation of Section 206.

13 (L) Kidnapping, in violation of Section 209.5.

14 (M) A felony violation of Section 136.1 or 137.

15 (2) Any person previously convicted of a felony
16 specified in subparagraphs (A) to (L), inclusive, of
17 paragraph (1), or assault with intent to commit murder
18 under former Section 217, who is convicted of a
19 subsequent felony and who was personally armed with a
20 firearm at any time during its commission or attempted
21 commission or was unlawfully armed with a firearm at the
22 time of his or her arrest for the subsequent felony.

23 (3) Aggravated arson, in violation of Section 451.5.

24 (b) (1) The existence of any fact which would make
25 a person ineligible for probation under subdivision (a)
26 shall be alleged in the accusatory pleading, and either
27 admitted by the defendant in open court, or found to be
28 true by the jury trying the issue of guilt, by the court
29 where guilt is established by plea of guilty or nolo
30 contendere, or by trial by the court sitting without a jury.

31 (2) This subdivision does not prohibit the
32 adjournment of criminal proceedings pursuant to
33 Division 6 (commencing with Section 6000) of the
34 Welfare and Institutions Code.

35 (3) As used in subdivision (a), “used a firearm” means
36 to display a firearm in a menacing manner, to
37 intentionally fire it, or to intentionally strike or hit a
38 human being with it.



1 (4) As used in subdivision (a), “armed with a firearm”
2 means to knowingly carry a firearm as a means of offense
3 or defense.

4 ~~SEC. 2. Section 12022.5 of the Penal Code is amended~~
5 ~~to read:~~

6 ~~12022.5. (a) (1) Except as provided in subdivisions~~
7 ~~(b) and (c), any person who personally uses a firearm in~~
8 ~~the commission or attempted commission of a felony~~
9 ~~shall, upon conviction of that felony or attempted felony,~~
10 ~~in addition and consecutive to the punishment~~
11 ~~prescribed for the felony or attempted felony of which he~~
12 ~~or she has been convicted, be punished by an additional~~
13 ~~term of imprisonment in the state prison for 3, 4, or 10~~
14 ~~years, unless use of a firearm is an element of the offense~~
15 ~~of which he or she was convicted.~~

16 ~~(2) If the person described in paragraph (1) has been~~
17 ~~convicted of carjacking or attempted carjacking, the~~
18 ~~additional term shall be 4, 5, or 10 years. The court shall~~
19 ~~order imposition of the middle term unless there are~~
20 ~~circumstances in aggravation or mitigation. The court~~
21 ~~shall state its reasons for its enhancement choice on the~~
22 ~~record at the time of sentencing.~~

23 ~~(b) (1) Notwithstanding subdivision (a), any person~~
24 ~~who is convicted of a felony or an attempt to commit a~~
25 ~~felony, including murder or attempted murder, in which~~
26 ~~that person discharged a firearm at an occupied motor~~
27 ~~vehicle which caused great bodily injury or death to the~~
28 ~~person of another, shall, upon conviction of that felony or~~
29 ~~attempted felony, in addition and consecutive to the~~
30 ~~sentence prescribed for the felony or attempted felony,~~
31 ~~be punished by an additional term of imprisonment in the~~
32 ~~state prison for 5, 6, or 10 years.~~

33 ~~(2) Notwithstanding subdivision (a), any person who~~
34 ~~personally uses an assault weapon, as specified in Section~~
35 ~~12276, or a machinegun, as defined in Section 12200, in the~~
36 ~~commission or attempted commission of a felony, shall,~~
37 ~~upon conviction of that felony or attempted felony, in~~
38 ~~addition and consecutive to the sentence prescribed for~~
39 ~~the felony or attempted felony, be punished by an~~



1 ~~additional term of imprisonment in the state prison for 5,~~
2 ~~6, or 10 years.~~

3 ~~(e) Notwithstanding the enhancement set forth in~~
4 ~~subdivision (a), any person who personally uses a firearm~~
5 ~~in the commission or attempted commission of a violation~~
6 ~~of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378,~~
7 ~~11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety~~
8 ~~Code, shall, upon conviction of that offense and in~~
9 ~~addition and consecutive to the punishment prescribed~~
10 ~~for the offense of which he or she has been convicted, be~~
11 ~~punished by an additional term of imprisonment in the~~
12 ~~state prison for 3, 4, or 10 years in the court's discretion.~~
13 ~~The court shall order the imposition of the middle term~~
14 ~~unless there are circumstances in aggravation or~~
15 ~~mitigation. The court shall state the reasons for its~~
16 ~~enhancement choice on the record.~~

17 ~~(d) The additional term provided by this section may~~
18 ~~be imposed in cases of assault with a firearm under~~
19 ~~Section 245, or assault with a deadly weapon which is a~~
20 ~~firearm under Section 245, or murder if the killing was~~
21 ~~perpetrated by means of shooting a firearm from a motor~~
22 ~~vehicle, intentionally at another person outside of the~~
23 ~~vehicle with the intent to inflict great bodily injury or~~
24 ~~death.~~

25 ~~(e) When a person is found to have personally used a~~
26 ~~firearm, an assault weapon, or a machinegun in the~~
27 ~~commission or attempted commission of a felony as~~
28 ~~provided in this section and the firearm, assault weapon,~~
29 ~~or machinegun is owned by that person, the court shall~~
30 ~~order that the firearm be deemed a nuisance and~~
31 ~~disposed of in the manner provided in Section 12028.~~

32 ~~(f) For purposes of imposing an enhancement under~~
33 ~~Section 1170.1, the enhancements under this section shall~~
34 ~~count as one, single enhancement.~~

35 **SEC. 3.**

36 *SEC. 2.* Section 12101 of the Penal Code is amended
37 to read:

38 12101. (a) (1) A minor shall not possess a pistol,
39 revolver, or other firearm capable of being concealed
40 upon the person.



1 (2) Paragraph (1) shall not apply if one of the
2 following circumstances exists:

3 (A) The minor is accompanied by his or her parent or
4 legal guardian, and the minor is actively engaged in, or is
5 in direct transit to or from, a lawful, recreational sport,
6 including, but not limited to, competitive shooting, or
7 agricultural, ranching, or hunting activity, or a motion
8 picture, television, or video production, or entertainment
9 or theatrical event, the nature of which involves this use
10 of a firearm.

11 (B) The minor is accompanied by a responsible adult,
12 the minor has the prior written consent of his or her
13 parent or legal guardian, and the minor is actively
14 engaged in, or is in direct transit to or from, a lawful,
15 recreational sport, including, but not limited to,
16 competitive shooting, or agricultural, ranching, or
17 hunting activity, or a motion picture, television, or video
18 production, or entertainment or theatrical event, the
19 nature of which involves the use of a firearm.

20 (C) The minor is at least 16 years of age, the minor has
21 the prior written consent of his or her parent or legal
22 guardian and the minor is actively engaged in, or is in
23 direct transit to or from, a lawful recreational sport,
24 including, but not limited to, competitive shooting, or
25 agricultural, ranching, or hunting activity, or a motion
26 picture, television, or video production, or entertainment
27 or theatrical event, the nature of which involves the use
28 of a firearm.

29 (D) The minor has the prior written consent of his or
30 her parent or legal guardian, the minor is on lands owned
31 or lawfully possessed by his or her parent or legal
32 guardian, and the minor is actively engaged in, or is in
33 direct transit to or from, a lawful, recreational sport,
34 including, but not limited to, competitive shooting, or
35 agricultural, ranching, or hunting activity, or a motion
36 picture, television, or video production, or entertainment
37 or theatrical event, the nature of which involves the use
38 of a firearm.

39 (b) (1) A minor shall not possess live ammunition.



1 (2) Paragraph (1) shall not apply if one of the
2 following circumstances exists:

3 (A) The minor has the written consent of his or her
4 parent or legal guardian to possess live ammunition.

5 (B) The minor is accompanied by his or her parent or
6 legal guardian.

7 (C) The minor is actively engaged in, or is going to or
8 from, a lawful, recreational sport, including, but not
9 limited to, competitive shooting, or agricultural,
10 ranching, or hunting activity, the nature of which
11 involves the use of a firearm.

12 (c) Every minor who violates this section shall be
13 punished as follows:

14 (1) By imprisonment in the state prison or in a county
15 jail if one of the following applies:

16 (A) The minor has been found guilty previously of
17 violating this section.

18 (B) The minor has been found guilty previously of an
19 offense specified in subdivision (b) of Section 12021.1 or
20 in Section 12020, 12220, 12520, or 12560.

21 (C) The minor has been found guilty of a violation of
22 paragraph (1) of subdivision (a).

23 (2) Violations of this section other than those violations
24 specified in paragraph (1) shall be punishable as a
25 misdemeanor.

26 (d) In a proceeding to enforce this section brought
27 pursuant to Article 14 (commencing with Section 601) of
28 Chapter 2 of Part 1 of the Welfare and Institutions Code,
29 the court may require the custodial parent or legal
30 guardian of a minor who violates this section to
31 participate in classes on parenting education that meet
32 the requirements established in Section 16507.7 of the
33 Welfare and Institutions Code.

34 (e) As used in this section, “responsible adult” means
35 a person at least 21 years of age who is not within a class
36 of persons prohibited from owning or possessing firearms
37 by virtue of Section 12021 or 12021.1 of this code, or
38 Section 8100 or 8103 of the Welfare and Institutions Code.

39 (f) It is not the intent of the Legislature in enacting the
40 amendments to this section or to Section 12078 to expand



1 or narrow the application of current statutory or judicial
2 authority as to the rights of minors to be loaned or to
3 possess live ammunition or a firearm for the purpose of
4 self-defense or the defense of others.

5 ~~SEC. 4.~~

6 *SEC. 3.* Section 12323 of the Penal Code is amended
7 to read:

8 12323. As used in this chapter, the following
9 definitions shall apply:

10 (a) “Handgun ammunition” means ammunition
11 principally for use in pistols, revolvers, and other firearms
12 capable of being concealed upon the person, as defined
13 in subdivision (a) of Section 12001, notwithstanding that
14 the ammunition may also be used in some rifles.

15 (b) “Handgun ammunition designed primarily to
16 penetrate metal or armor” means any ammunition,
17 except a shotgun shell or ammunition primarily designed
18 for use in rifles, that is designed primarily to penetrate a
19 body vest or body shield, and has either of the following
20 characteristics:

21 (1) Has projectile or projectile core constructed
22 entirely, excluding the presence of traces of other
23 substances, from one or a combination of tungsten alloys,
24 steel, iron, brass, beryllium copper, or depleted uranium,
25 or any equivalent material of similar density or hardness.

26 (2) Is primarily manufactured or designed, by virtue
27 of its shape, cross-sectional density, or any coating applied
28 thereto, including, but not limited to, ammunition
29 commonly known as “KTW ammunition,” to breach or
30 penetrate a body vest or body shield when fired from a
31 pistol, revolver, or other firearm capable of being
32 concealed upon the person.

33 (c) “Body vest or shield” means any bullet-resistant
34 material intended to provide ballistic and trauma
35 protection for the wearer or holder.

36 (d) “Rifle” shall have the same meaning as defined in
37 paragraph (20) of subdivision (c) of Section 12020.

38 ~~SEC. 5.~~



1 *SEC. 4.* The Legislature finds and declares that the
2 changes made in Section 12323 of the Penal Code by
3 Section 43 of this act are declaratory of existing law.

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