

AMENDED IN ASSEMBLY JUNE 2, 1995
AMENDED IN ASSEMBLY MAY 31, 1995
AMENDED IN ASSEMBLY MAY 3, 1995
AMENDED IN ASSEMBLY APRIL 18, 1995
AMENDED IN ASSEMBLY MARCH 30, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 632

**Introduced by Assembly Member Katz
(Coauthors: Assembly Members Boland, Caldera, Rainey,
and Rogan)**

February 21, 1995

An act to amend Sections 12025 and 12031 of, and to repeal Section 12031.5 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 632, as amended, Katz. Firearms.

(1) Under existing law, a person who carries a concealed firearm on his or her person, as specified, or within any vehicle, as specified, is guilty of carrying a concealed firearm punishable as a misdemeanor or a felony. This offense is punishable only as a felony where the person previously has been convicted of a felony or a specified firearms offense.

This bill would also make this offense punishable only as a felony in the circumstance where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, or the person is an active participant in a criminal

street gang, as defined, or the person is not in lawful possession of the firearm, *as defined*, or is within a class of persons prohibited by specified provisions from possessing or acquiring a firearm. By increasing the punishment of an existing crime, this bill would create a state-mandated local program.

(2) Existing law provides that every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street, as specified, is guilty of a misdemeanor.

This bill would provide that a person who violates this provision is guilty of carrying a loaded firearm. The bill would make this offense punishable as a felony if the violation involves any circumstance described in (1) above, thereby imposing a state-mandated local program by increasing the punishment of an existing crime.

(3) Under existing law, every person who has been convicted previously of carrying a loaded firearm in violation of (2) and who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street, as specified, is guilty of a public offense punishable by imprisonment in the state prison or in a county jail not exceeding one year. Existing law also specifies that, notwithstanding this provision, any person who has been convicted previously of violating (2) and who violates this provision and is actively engaged in, or going to or from, a recreational sport, including competitive shooting that may require the use of a firearm is guilty of a misdemeanor.

This bill would repeal and recast these provisions for purposes of (2) above.

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. This act shall be known and may be cited
2 as the Anti-Street Crimes Act of 1995.

3 SEC. 2. Section 12025 of the Penal Code is amended
4 to read:

5 12025. (a) A person is guilty of carrying a concealed
6 firearm when he or she does any of the following:

7 (1) Carries concealed within any vehicle which is
8 under his or her control or direction any pistol, revolver,
9 or other firearm capable of being concealed upon the
10 person.

11 (2) Carries concealed upon his or her person any
12 pistol, revolver, or other firearm capable of being
13 concealed upon the person.

14 (b) Carrying a concealed firearm in violation of this
15 section is punishable, as follows:

16 (1) Where the person previously has been convicted
17 of any felony, or of any crime made punishable by this
18 chapter, as a felony.

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

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

27 (4) Where the person is not in lawful possession of the
28 firearm, *as defined in this section*, or the person is within
29 a class of persons prohibited from possessing or acquiring
30 a firearm pursuant to Section 12021 or 12021.1 of this code
31 or Section 8100 or 8103 of the Welfare and Institutions
32 Code, as a felony.

33 (5) Where the person has been convicted of a crime
34 against a person or property, or of a narcotics or
35 dangerous drug violation, by imprisonment in the state
36 prison, or by imprisonment in a county jail not to exceed
37 one year, by a fine not to exceed one thousand dollars
38 (\$1,000), or by both that imprisonment and fine.



1 (6) In all cases other than those specified in paragraphs
2 (1) to (5), inclusive, as a misdemeanor, punishable by
3 imprisonment in a county jail not to exceed one year, by
4 a fine not to exceed one thousand dollars (\$1,000), or by
5 both that imprisonment and fine.

6 (c) (1) Every person convicted under this section
7 who previously has been convicted of a misdemeanor
8 offense enumerated in Section 12001.6 shall be punished
9 by imprisonment in a county jail for at least three months
10 and not exceeding six months, or, if granted probation, or
11 if the execution or imposition of sentence is suspended, it
12 shall be a condition thereof that he or she be imprisoned
13 in a county jail for at least three months.

14 (2) Every person convicted under this section who has
15 previously been convicted of any felony, or of any crime
16 made punishable by this chapter, if probation is granted,
17 or if the execution or imposition of sentence is suspended,
18 it shall be a condition thereof that he or she be imprisoned
19 in a county jail for not less than three months.

20 (d) The court shall apply the three-month minimum
21 sentence as specified in subdivision (c), except in unusual
22 cases where the interests of justice would best be served
23 by granting probation or suspending the imposition or
24 execution of sentence without the minimum
25 imprisonment required in subdivision (c) or by granting
26 probation or suspending the imposition or execution of
27 sentence with conditions other than those set forth in
28 subdivision (c), in which case, the court shall specify on
29 the record and shall enter on the minutes the
30 circumstances indicating that the interests of justice
31 would best be served by such a disposition.

32 (e) Firearms carried openly in belt holsters are not
33 concealed within the meaning of this section.

34 (f) *For purposes of this section, "lawful possession of*
35 *the firearm" means that the person who has possession or*
36 *custody of the firearm either owns the firearm or has the*
37 *permission of the owner or a person who otherwise has*
38 *apparent authority to possess or have custody of the*
39 *firearm. A person who takes a firearm without the*



1 *permission of the owner or a person who has custody of*
2 *the firearm does not have lawful possession of the firearm.*

3 SEC. 3. Section 12031 of the Penal Code is amended
4 to read:

5 12031. (a) (1) A person is guilty of carrying a loaded
6 firearm when he or she carries a loaded firearm on his or
7 her person or in a vehicle while in any public place or on
8 any public street in an incorporated city or in any public
9 place or on any public street in a prohibited area of
10 unincorporated territory.

11 (2) Carrying a loaded firearm in violation of this
12 section is punishable, as follows:

13 (A) Where the person previously has been convicted
14 of any felony, or of any crime made punishable by this
15 chapter, as a felony.

16 (B) Where the firearm is stolen and the person knew
17 or had reasonable cause to believe that it was stolen, as a
18 felony.

19 (C) Where the person is an active participant in a
20 criminal street gang, as defined in subdivision (a) of
21 Section 186.22, under the Street Terrorism Enforcement
22 and Prevention Act (Chapter 11 (commencing with
23 Section 18620) of Title 7 of Part 1), as a felony.

24 (D) Where the person is not in lawful possession of the
25 firearm, *as defined in this section*, or is within a class of
26 persons prohibited from possessing or acquiring a firearm
27 pursuant to Section 12021 or 12021.1 of this code or
28 Section 8100 or 8103 of the Welfare and Institutions Code,
29 as a felony.

30 (E) Where the person has been convicted of a crime
31 against a person or property, or of a narcotics or
32 dangerous drug violation, by imprisonment in the state
33 prison, or by imprisonment in a county jail not to exceed
34 one year, by a fine not to exceed one thousand dollars
35 (\$1,000), or by both that imprisonment and fine.

36 (F) In all cases other than those specified in
37 subparagraphs (A) to (E), inclusive, as a misdemeanor,
38 punishable by imprisonment in a county jail not to exceed
39 one year, by a fine not to exceed one thousand dollars
40 (\$1,000), or by both that imprisonment and fine.

1 (G) For purposes of this section, “lawful possession of
 2 the firearm” means that the person who has possession or
 3 custody of the firearm either owns the firearm or has the
 4 permission of the owner or a person who otherwise has
 5 apparent authority to possess or have custody of the
 6 firearm. A person who takes a firearm without the
 7 permission of the owner or a person who has custody of
 8 the firearm does not have lawful possession of the firearm.

9 (3) Nothing in this section shall preclude prosecution
 10 under Sections 12021 and 12021.1 of this code, Section
 11 8100 or 8103 of the Welfare and Institutions Code, or any
 12 other law with a greater penalty than this section.

13 (4) Notwithstanding paragraphs (2) and (3) of
 14 subdivision (a) of Section 836, a peace officer may make
 15 an arrest without a warrant:

16 (A) When the person arrested has violated this
 17 section, although not in the officer’s presence.

18 (B) Whenever the officer has reasonable cause to
 19 believe that the person to be arrested has violated this
 20 section, whether or not this section has, in fact, been
 21 violated.

22 (5) (A) Every person convicted under this section
 23 who has previously been convicted of an offense
 24 enumerated in Section 12001.6, or of any crime made
 25 punishable under this chapter, shall serve a term of at
 26 least three months in a county jail, or, if granted
 27 probation, or if the execution or imposition of sentence is
 28 suspended, it shall be a condition thereof that he or she
 29 be imprisoned for a period of at least three months.

30 (B) The court shall apply the three-month minimum
 31 sentence except in unusual cases where the interests of
 32 justice would best be served by granting probation or
 33 suspending the imposition or execution of sentence
 34 without the minimum imprisonment required in this
 35 subdivision or by granting probation or suspending the
 36 imposition or execution of sentence with conditions other
 37 than those set forth in this subdivision, in which case, the
 38 court shall specify on the record and shall enter on the
 39 minutes the circumstances indicating that the interests of
 40 justice would best be served by that disposition.



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

8 (b) Subdivision (a) shall not apply to any of the
9 following:

10 (1) Peace officers listed in Section 830.1 or 830.2,
11 whether active or honorably retired, other duly
12 appointed peace officers, honorably retired peace
13 officers listed in subdivision (c) of Section 830.5, other
14 honorably retired peace officers who during the course
15 and scope of their employment as peace officers were
16 authorized to, and did, carry firearms, full-time paid
17 peace officers of other states and the federal government
18 who are carrying out official duties while in California, or
19 any person summoned by any of those officers to assist in
20 making arrests or preserving the peace while the person
21 is actually engaged in assisting that officer. Any peace
22 officer described in this paragraph who has been
23 honorably retired shall be issued an identification
24 certificate by the law enforcement agency from which
25 the officer has retired. The issuing agency may charge a
26 fee necessary to cover any reasonable expenses incurred
27 by the agency in issuing certificates pursuant to this
28 paragraph and paragraph (3).

29 Any officer, except an officer listed in Section 830.1,
30 830.2, or subdivision (c) of Section 830.5 who retired prior
31 to January 1, 1981, shall have an endorsement on the
32 identification certificate stating that the issuing agency
33 approves the officer's carrying of a loaded firearm.

34 No endorsement or renewal endorsement issued
35 pursuant to paragraph (2) shall be effective unless it is in
36 the format set forth in subparagraph (D) of paragraph
37 (1) of subdivision (a) of Section 12027, except that any
38 peace officer listed in subdivision (f) of Section 830.2 or
39 in subdivision (c) of Section 830.5, who is retired between
40 January 2, 1981, and on or before December 31, 1988, and



1 who is authorized to carry a loaded firearm pursuant to
2 this section, shall not be required to have an endorsement
3 in the format set forth in subparagraph (D) of paragraph
4 (1) of subdivision (a) of Section 12027 until the time of the
5 issuance, on or after January 1, 1989, of a renewal
6 endorsement pursuant to paragraph (2).

7 (2) A retired peace officer, except an officer listed in
8 Section 830.1, 830.2, or subdivision (c) of Section 830.5
9 who retired prior to January 1, 1981, shall petition the
10 issuing agency for renewal of his or her privilege to carry
11 a loaded firearm every five years. An honorably retired
12 peace officer listed in Section 830.1 or 830.2 or subdivision
13 (c) of Section 830.5 who retired prior to January 1, 1981,
14 shall not be required to obtain an endorsement from the
15 issuing agency to carry a loaded firearm. The agency from
16 which a peace officer is honorably retired may, upon
17 initial retirement of the peace officer, or at any time
18 subsequent thereto, deny or revoke, for good cause, the
19 retired officer's privilege to carry a loaded firearm. A
20 peace officer who is listed in Section 830.1 or 830.2 or
21 subdivision (c) of Section 830.5 who is retired prior to
22 January 1, 1981, shall have his or her privilege to carry a
23 loaded firearm denied or revoked by having the agency
24 from which the officer retired stamp on the officer's
25 identification certificate "No CCW privilege."

26 (3) An honorably retired peace officer who is listed in
27 subdivision (c) of Section 830.5 and authorized to carry
28 loaded firearms by this subdivision shall meet the training
29 requirements of Section 832 and shall qualify with the
30 firearm at least annually. The individual retired peace
31 officer shall be responsible for maintaining his or her
32 eligibility to carry a loaded firearm. The Department of
33 Justice shall provide subsequent arrest notification
34 pursuant to Section 11105.2 regarding honorably retired
35 peace officers listed in subdivision (c) of Section 830.5 to
36 the agency from which the officer has retired.

37 (4) Members of the military forces of this state or of the
38 United States engaged in the performance of their duties.

39 (5) Persons who are using target ranges for the
40 purpose of practice shooting with a firearm or who are



1 members of shooting clubs while hunting on the premises
2 of those clubs.

3 (6) The carrying of pistols, revolvers, or other firearms
4 capable of being concealed upon the person by persons
5 who are authorized to carry those weapons pursuant to
6 Article 3 (commencing with Section 12050) of Chapter 1
7 of Title 2 of Part 4.

8 (7) Armored vehicle guards, as defined in Section 7521
9 of the Business and Professions Code, (A) if hired prior to
10 January 1, 1977; or (B) if hired on or after that date, if they
11 have received a firearms qualification card from the
12 Department of Consumer Affairs, in each case while
13 acting within the course and scope of their employment.

14 (8) Upon approval of the sheriff of the county in which
15 they reside, honorably retired federal officers or agents of
16 federal law enforcement agencies, including, but not
17 limited to, the Federal Bureau of Investigation, the Secret
18 Service, the United States Customs Service, the Federal
19 Bureau of Alcohol, Tobacco, and Firearms, the Federal
20 Bureau of Narcotics, the Drug Enforcement
21 Administration, the United States Border Patrol, and
22 officers or agents of the Internal Revenue Service who
23 were authorized to carry weapons while on duty, who
24 were assigned to duty within the state for a period of not
25 less than one year, or who retired from active service in
26 the state.

27 Retired federal officers or agents shall provide the
28 sheriff with certification from the agency from which
29 they retired certifying their service in the state, the
30 nature of their retirement, and indicating the agency's
31 concurrence that the retired federal officer or agent
32 should be accorded the privilege of carrying a loaded
33 firearm.

34 Upon approval, the sheriff shall issue a permit to the
35 retired federal officer or agent indicating that he or she
36 may carry a loaded firearm in accordance with this
37 paragraph. The permit shall be valid for a period not
38 exceeding five years, shall be carried by the retiree while
39 carrying a loaded firearm, and may be revoked for good
40 cause.



1 The sheriff of the county in which the retired federal
2 officer or agent resides may require recertification prior
3 to a permit renewal, and may suspend the privilege for
4 cause. The sheriff may charge a fee necessary to cover any
5 reasonable expenses incurred by the county.

6 (c) Subdivision (a) shall not apply to any of the
7 following who have completed a regular course in
8 firearms training approved by the Commission on Peace
9 Officer Standards and Training:

10 (1) Patrol special police officers appointed by the
11 police commission of any city, county, or city and county
12 under the express terms of its charter who also, under the
13 express terms of the charter, (A) are subject to suspension
14 or dismissal after a hearing on charges duly filed with the
15 commission after a fair and impartial trial, (B) are not less
16 than 18 years of age or more than 40 years of age, (C)
17 possess physical qualifications prescribed by the
18 commission, and (D) are designated by the police
19 commission as the owners of a certain beat or territory as
20 may be fixed from time to time by the police commission.

21 (2) The carrying of weapons by animal control officers
22 or zookeepers, regularly compensated as such by a
23 governmental agency when acting in the course and
24 scope of their employment and when designated by a
25 local ordinance or, if the governmental agency is not
26 authorized to act by ordinance, by a resolution, either
27 individually or by class, to carry the weapons, or by
28 persons who are authorized to carry the weapons
29 pursuant to Section 607f of the Civil Code, while actually
30 engaged in the performance of their duties pursuant to
31 that section.

32 (3) Harbor police officers designated pursuant to
33 Section 663.5 of the Harbors and Navigation Code.

34 (d) Subdivision (a) shall not apply to any of the
35 following who have been issued a certificate pursuant to
36 Section 12033. The certificate shall not be required of any
37 person who is a peace officer, who has completed all
38 training required by law for the exercise of his or her
39 power as a peace officer, and who is employed while not
40 on duty as a peace officer.



1 (1) Guards or messengers of common carriers, banks,
2 and other financial institutions while actually employed
3 in and about the shipment, transportation, or delivery of
4 any money, treasure, bullion, bonds, or other thing of
5 value within this state.

6 (2) Guards of contract carriers operating armored
7 vehicles pursuant to California Highway Patrol and
8 Public Utilities Commission authority (A) if hired prior
9 to January 1, 1977; or (B) if hired on or after January 1,
10 1977, if they have completed a course in the carrying and
11 use of firearms which meets the standards prescribed by
12 the Department of Consumer Affairs.

13 (3) Private investigators and private patrol operators
14 who are licensed pursuant to Chapter 11.5 (commencing
15 with Section 7512) of, and alarm company operators who
16 are licensed pursuant to Chapter 11.6 (commencing with
17 Section 7590) of, Division 3 of the Business and
18 Professions Code, while acting within the course and
19 scope of their employment.

20 (4) Uniformed security guards or night watch persons
21 employed by any public agency, while acting within the
22 scope and course of their employment.

23 (5) Uniformed security guards, regularly employed
24 and compensated in that capacity by persons engaged in
25 any lawful business, and uniformed alarm agents
26 employed by an alarm company operator, while actually
27 engaged in protecting and preserving the property of
28 their employers or on duty or en route to or from their
29 residences or their places of employment, and security
30 guards and alarm agents en route to or from their
31 residences or employer-required range training. Nothing
32 in this paragraph shall be construed to prohibit cities and
33 counties from enacting ordinances requiring alarm
34 agents to register their names.

35 (6) Uniformed employees of private patrol operators
36 and private investigators licensed pursuant to Chapter
37 11.5 (commencing with Section 7512) of Division 3 of the
38 Business and Professions Code, while acting within the
39 course and scope of their employment.



1 (e) In order to determine whether or not a firearm is
2 loaded for the purpose of enforcing this section, peace
3 officers are authorized to examine any firearm carried by
4 anyone on his or her person or in a vehicle while in any
5 public place or on any public street in an incorporated
6 city or prohibited area of an unincorporated territory.
7 Refusal to allow a peace officer to inspect a firearm
8 pursuant to this section constitutes probable cause for
9 arrest for violation of this section.

10 (f) As used in this section, “prohibited area” means
11 any place where it is unlawful to discharge a weapon.

12 (g) A firearm shall be deemed to be loaded for the
13 purposes of this section when there is an unexpended
14 cartridge or shell, consisting of a case which holds a
15 charge of powder and a bullet or shot, in, or attached in
16 any manner to, the firearm, including, but not limited to,
17 in the firing chamber, magazine, or clip thereof attached
18 to the firearm; except that a muzzle-loader firearm shall
19 be deemed to be loaded when it is capped or primed and
20 has a powder charge and ball or shot in the barrel or
21 cylinder.

22 (h) Nothing in this section shall prevent any person
23 engaged in any lawful business, including a nonprofit
24 organization, or any officer, employee, or agent
25 authorized by that person for lawful purposes connected
26 with that business, from having a loaded firearm within
27 the person’s place of business, or any person in lawful
28 possession of private property from having a loaded
29 firearm on that property.

30 (i) Nothing in this section shall prevent any person
31 from carrying a loaded firearm in an area within an
32 incorporated city while engaged in hunting, provided
33 that the hunting at that place and time is not prohibited
34 by the city council.

35 (j) (1) Nothing in this section is intended to preclude
36 the carrying of any loaded firearm, under circumstances
37 where it would otherwise be lawful, by a person who
38 reasonably believes that the person or property of himself
39 or herself or of another is in immediate, grave danger and
40 that the carrying of the weapon is necessary for the



1 preservation of that person or property. As used in this
2 subdivision, “immediate” means the brief interval before
3 and after the local law enforcement agency, when
4 reasonably possible, has been notified of the danger and
5 before the arrival of its assistance.

6 (2) A violation of this section is justifiable when a
7 person who possesses a firearm reasonably believes that
8 he or she is in grave danger because of circumstances
9 forming the basis of a current restraining order issued by
10 a court against another person or persons who has or have
11 been found to pose a threat to his or her life or safety. This
12 paragraph may not apply when the circumstances
13 involve a mutual restraining order issued pursuant to
14 Division 10 (commencing with Section 6200) of the
15 Family Code absent a factual finding of a specific threat
16 to the person’s life or safety. It is not the intent of the
17 Legislature to limit, restrict, or narrow the application of
18 current statutory or judicial authority to apply this or
19 other justifications to defendants charged with violating
20 Section 12025 or of committing other similar offenses.

21 Upon trial for violating this section, the trier of fact shall
22 determine whether the defendant was acting out of a
23 reasonable belief that he or she was in grave danger.

24 (k) Nothing in this section is intended to preclude the
25 carrying of a loaded firearm by any person while engaged
26 in the act of making or attempting to make a lawful arrest.

27 (l) Nothing in this section shall prevent any person
28 from having a loaded weapon, if it is otherwise lawful, at
29 his or her place of residence, including any temporary
30 residence or campsite.

31 SEC. 4. Section 12031.5 of the Penal Code is repealed.

32 SEC. 5. No reimbursement is required by this act
33 pursuant to Section 6 of Article XIII B of the California
34 Constitution because the only costs that may be incurred
35 by a local agency or school district will be incurred
36 because this act creates a new crime or infraction,
37 eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section
39 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article XIII
2 B of the California Constitution.
3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.

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