

**ASSEMBLY BILL**

**No. 491**

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**Introduced by Assembly Member Scott**

**(Coauthors: Assembly Members Aroner, Corbett, Cunneen,  
Dutra, Jackson, Keeley, Knox, Kuehl, Lempert, Longville,  
Reyes, Steinberg, and Wildman)**

**(Coauthors: Senators Bowen, Chesbro, Ortiz, Schiff, and  
Speier)**

February 18, 1999

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An act to amend Section 12025 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as introduced, Scott. Firearms.

Existing law generally provides that it is a misdemeanor for any person to carry a concealed firearm. Under specified circumstances, carrying a concealed firearm is punishable as a felony.

This bill would generally provide that it is a misdemeanor or a felony, except under the above specified circumstances when carrying a concealed firearm is punishable only as a felony. By increasing local prosecution costs, 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 12025 of the Penal Code is  
2 amended to read:  
3 12025. (a) A person is guilty of carrying a concealed  
4 firearm when he or she does any of the following:  
5 (1) Carries concealed within any vehicle which is  
6 under his or her control or direction any pistol, revolver,  
7 or other firearm capable of being concealed upon the  
8 person.  
9 (2) Carries concealed upon his or her person any  
10 pistol, revolver, or other firearm capable of being  
11 concealed upon the person.  
12 (3) Causes to be carried concealed within any vehicle  
13 in which he or she is an occupant any pistol, revolver, or  
14 other firearm capable of being concealed upon the  
15 person.  
16 (b) Carrying a concealed firearm in violation of this  
17 section is punishable, as follows:  
18 (1) Where the person previously has been convicted  
19 of any felony, or of any crime made punishable by this  
20 chapter, as a felony.  
21 (2) Where the firearm is stolen and the person knew  
22 or had reasonable cause to believe that it was stolen, as a  
23 felony.  
24 (3) Where the person is an active participant in a  
25 criminal street gang, as defined in subdivision (a) of  
26 Section 186.22, under the Street Terrorism Enforcement  
27 and Prevention Act (Chapter 11 (commencing with  
28 Section 186.20) of Title 7 of Part 1), as a felony.  
29 (4) Where the person is not in lawful possession of the  
30 firearm, as defined in this section, or the person is within  
31 a class of persons prohibited from possessing or acquiring  
32 a firearm pursuant to Section 12021 or 12021.1 of this code  
33 or Section 8100 or 8103 of the Welfare and Institutions  
34 Code, as a felony.



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

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

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

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

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

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

1 (f) 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 without the permission of a  
8 person who has custody of the firearm does not have  
9 lawful possession of the firearm.

10 SEC. 2. No reimbursement is required by this act  
11 pursuant to Section 6 of Article XIII B of the California  
12 Constitution because the only costs that may be incurred  
13 by a local agency or school district will be incurred  
14 because this act creates a new crime or infraction,  
15 eliminates a crime or infraction, or changes the penalty  
16 for a crime or infraction, within the meaning of Section  
17 17556 of the Government Code, or changes the definition  
18 of a crime within the meaning of Section 6 of Article  
19 XIII B of the California Constitution.

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

