

AMENDED IN SENATE JUNE 15, 1999

AMENDED IN ASSEMBLY APRIL 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 491

Introduced by Assembly Member Scott

(Principal Coauthor: Assembly Member Aroner)

(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

An act to amend Sections 12025 and 12031 of the Penal Code, *and to amend Section 8103 of the Welfare and Institutions Code*, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as amended, Scott. Firearms.

(1) 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. One of these circumstances includes a person who is not in lawful possession of the firearm. "Lawful possession" is defined to mean a person who owns the firearm or has permission of the owner or a person with apparent authority.

This bill would punish as a misdemeanor or a felony, possession of a pistol, revolver, or other firearm capable of being concealed upon the person and unexpended ammunition capable of being discharged from that firearm where the person in possession is not the registered owner of the firearm, as specified. The bill would also redefine the term “lawful possession” to mean one who lawfully owns or has permission of the lawful owner. In addition, the bill would require the district attorney of each county to submit an annual report to the Attorney General consisting of profiles of persons charged with felonies or misdemeanors under this concealable firearm provision. Under the bill, the Attorney General would be required to submit an annual report to the Legislature compiling all of the reports submitted by the district attorneys. By increasing the punishment for a crime and increasing the duties of local officials, this bill would impose 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 except in specified circumstances where this offense is punishable as a felony.

This bill would punish as a misdemeanor or a felony, possession of a loaded pistol, revolver, or other firearm capable of being concealed upon the person where the person in possession is not the registered owner of the firearm, as specified. The bill would also incorporate in this provision the changes described in (1) above regarding the definition of “lawful possession” and the requirement imposed upon the district attorney.

(3) Existing law provides that no person who has been taken into custody or admitted to a designated facility because that person is a danger to himself, herself, or others shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of 5 years after the person is released from the facility unless, upon petition to the superior court, the person is found by a preponderance of the evidence likely to use firearms in a safe and lawful manner.



This bill instead would provide that the person may request a hearing from the court and provide that the People of the State of California shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. If the court at the hearing fails to find that the people have met their burden, the court shall order that the person may own, control, receive, possess, or purchase firearms.

(4) Existing law provides that no person who has been certified for intensive treatment related to mental disorder or impairment by chronic alcoholism shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of 5 years unless upon petition to the superior court the person is found by a preponderance of the evidence likely to use firearms in a safe and lawful manner, as described above.

This bill would permit the person to petition the superior court of his or her county of residence that he or she may own, possess, control, receive, or purchase a firearm and would prescribe the procedures for a hearing on the petition.

(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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.

35 (5) Where the person has been convicted of a crime
36 against a person or property, or of a narcotics or
37 dangerous drug violation, by imprisonment in the state
38 prison, or by imprisonment in a county jail not to exceed

1 one year, by a fine not to exceed one thousand dollars
2 (\$1,000), or by both that imprisonment and fine.

3 (6) By imprisonment in the state prison, or by
4 imprisonment in a county jail not to exceed one year, by
5 a fine not to exceed one thousand dollars (\$1,000), or by
6 both that fine and imprisonment if both of the following
7 conditions are met:

8 (A) Both the pistol, revolver, or other firearm capable
9 of being concealed upon the person and the unexpended
10 ammunition capable of being discharged from that
11 firearm are either in the immediate possession of the
12 person or readily accessible to that person.

13 (B) The person is not listed with the Department of
14 Justice pursuant to paragraph (1) of subdivision (c) of
15 Section 11106, as the registered owner of that pistol,
16 revolver, or other firearm capable of being concealed
17 upon the person.

18 (7) In all cases other than those specified in paragraphs
19 (1) to (6), inclusive, by imprisonment in a county jail not
20 to exceed one year, by a fine not to exceed one thousand
21 dollars (\$1,000), or by both that imprisonment and fine.

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

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

36 (d) The court shall apply the three-month minimum
37 sentence as specified in subdivision (c), except in unusual
38 cases where the interests of justice would best be served
39 by granting probation or suspending the imposition or
40 execution of sentence without the minimum

1 imprisonment required in subdivision (c) or by granting
2 probation or suspending the imposition or execution of
3 sentence with conditions other than those set forth in
4 subdivision (c), in which case, the court shall specify on
5 the record and shall enter on the minutes the
6 circumstances indicating that the interests of justice
7 would best be served by ~~such a~~ *that* disposition.

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

10 (f) For purposes of this section, “lawful possession of
11 the firearm” means that the person who has possession or
12 custody of the firearm either lawfully owns the firearm or
13 has the permission of the lawful owner or a person who
14 otherwise has apparent authority to possess or have
15 custody of the firearm. A person who takes a firearm
16 without the permission of the lawful owner or without the
17 permission of a person who has lawful custody of the
18 firearm does not have lawful possession of the firearm.

19 (g) (1) The district attorney of each county shall
20 submit annually a report on or before June 30, to the
21 Attorney General consisting of profiles by race, age,
22 gender, and ethnicity of any person charged with a felony
23 or a misdemeanor under this section and any other
24 offense charged in the same complaint, indictment, or
25 information.

26 (2) The Attorney General shall submit annually, a
27 report on or before December 31, to the Legislature
28 compiling all of the reports submitted pursuant to
29 paragraph (1).

30 (3) This subdivision shall remain operative until
31 January 1, 2005, and as of that date shall be repealed.

32 SEC. 2. Section 12031 of the Penal Code is amended
33 to read:

34 12031. (a) (1) A person is guilty of carrying a loaded
35 firearm when he or she carries a loaded firearm on his or
36 her person or in a vehicle while in any public place or on
37 any public street in an incorporated city or in any public
38 place or on any public street in a prohibited area of
39 unincorporated territory.

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

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

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

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

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

(E) 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.

(F) Where the person is not listed with the Department of Justice pursuant to Section 11106, as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

(G) In all cases other than those specified in subparagraphs (A) to (F), inclusive, as a misdemeanor, punishable 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.

(H) For purposes of this section, “lawful possession of the firearm” means that the person who has possession or

1 custody of the firearm either lawfully acquired and
2 lawfully owns the firearm or has the permission of the
3 lawful owner or person who otherwise has apparent
4 authority to possess or have custody of the firearm. A
5 person who takes a firearm without the permission of the
6 lawful owner or without the permission of a person who
7 has lawful custody of the firearm does not have lawful
8 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 probation
27 or if the execution or imposition of sentence is suspended,
28 it shall be a condition thereof that he or she be imprisoned
29 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.

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

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

(1) Peace officers listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between

1 January 2, 1981, and on or before December 31, 1988, and
2 who is authorized to carry a loaded firearm pursuant to
3 this section, shall not be required to have an endorsement
4 in the format set forth in subparagraph (D) of paragraph
5 (1) of subdivision (a) of Section 12027 until the time of the
6 issuance, on or after January 1, 1989, of a renewal
7 endorsement pursuant to paragraph (2).

8 (2) A retired peace officer, except an officer listed in
9 Section 830.1 or 830.2, subdivision (a) of Section 830.33, or
10 subdivision (c) of Section 830.5 who retired prior to
11 January 1, 1981, shall petition the issuing agency for
12 renewal of his or her privilege to carry a loaded firearm
13 every five years. An honorably retired peace officer listed
14 in Section 830.1 or 830.2, subdivision (a) of Section 830.33,
15 or subdivision (c) of Section 830.5 who retired prior to
16 January 1, 1981, shall not be required to obtain an
17 endorsement from the issuing agency to carry a loaded
18 firearm. The agency from which a peace officer is
19 honorably retired may, upon initial retirement of the
20 peace officer, or at any time subsequent thereto, deny or
21 revoke for good cause the retired officer's privilege to
22 carry a loaded firearm. A peace officer who is listed in
23 Section 830.1 or 830.2, subdivision (a) of Section 830.33, or
24 subdivision (c) of Section 830.5 who is retired prior to
25 January 1, 1981, shall have his or her privilege to carry a
26 loaded firearm denied or revoked by having the agency
27 from which the officer retired stamp on the officer's
28 identification certificate "No CCW privilege."

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

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

3 (5) Persons who are using target ranges for the
4 purpose of practice shooting with a firearm or who are
5 members of shooting clubs while hunting on the premises
6 of those clubs.

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

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

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

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

38 Upon approval, the sheriff shall issue a permit to the
39 retired federal officer or agent indicating that he or she
40 may carry a loaded firearm in accordance with this

1 paragraph. The permit shall be valid for a period not
2 exceeding five years, shall be carried by the retiree while
3 carrying a loaded firearm, and may be revoked for good
4 cause.

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

10 (c) Subdivision (a) shall not apply to any of the
11 following who have completed a regular course in
12 firearms training approved by the Commission on Peace
13 Officer Standards and Training:

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

25 (2) The carrying of weapons by animal control officers
26 or zookeepers, regularly compensated as such by a
27 governmental agency when acting in the course and
28 scope of their employment and when designated by a
29 local ordinance or, if the governmental agency is not
30 authorized to act by ordinance, by a resolution, either
31 individually or by class, to carry the weapons, or by
32 persons who are authorized to carry the weapons
33 pursuant to Section 14502 of the Corporations Code, while
34 actually engaged in the performance of their duties
35 pursuant to that section.

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

38 (d) Subdivision (a) shall not apply to any of the
39 following who have been issued a certificate pursuant to
40 Section 12033. The certificate shall not be required of any

1 person who is a peace officer, who has completed all
2 training required by law for the exercise of his or her
3 power as a peace officer, and who is employed while not
4 on duty as a peace officer.

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

10 (2) Guards of contract carriers operating armored
11 vehicles pursuant to California Highway Patrol and
12 Public Utilities Commission authority (A) if hired prior
13 to January 1, 1977, or (B) if hired on or after January 1,
14 1977, if they have completed a course in the carrying and
15 use of firearms which meets the standards prescribed by
16 the Department of Consumer Affairs.

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

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

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

39 (6) Uniformed employees of private patrol operators
40 and private investigators licensed pursuant to Chapter

1 11.5 (commencing with Section 7512) of Division 3 of the
2 Business and Professions Code, while acting within the
3 course and scope of their employment.

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

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

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

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

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

37 (j) (1) Nothing in this section is intended to preclude
38 the carrying of any loaded firearm, under circumstances
39 where it would otherwise be lawful, by a person who
40 reasonably believes that the person or property of himself

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

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

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

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

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

33 (m) (1) The district attorney of each county shall
34 submit annually a report on or before June 30, to the
35 Attorney General consisting of profiles by race, age,
36 gender, and ethnicity of any person charged with a felony
37 or a misdemeanor under this section and any other
38 offense charged in the same complaint, indictment, or
39 information.

1 (2) The Attorney General shall submit annually, a
2 report on or before December 31, to the Legislature
3 compiling all of the reports submitted pursuant to
4 paragraph (1).

5 (3) This subdivision shall remain operative only until
6 January 1, 2005.

7 SEC. 3. *Section 8103 of the Welfare and Institutions*
8 *Code is amended to read:*

9 8103. (a) (1) No person who after October 1, 1955,
10 has been adjudicated by a court of any state to be a danger
11 to others as a result of a mental disorder or mental illness,
12 or who has been adjudicated to be a mentally disordered
13 sex offender, shall purchase or receive, or attempt to
14 purchase or receive, or have in his or her possession,
15 custody, or control any firearm or any other deadly
16 weapon unless there has been issued to the person a
17 certificate by the court of adjudication upon release from
18 treatment or at a later date stating that the person may
19 possess a firearm or any other deadly weapon without
20 endangering others, and the person has not, subsequent
21 to the issuance of the certificate, again been adjudicated
22 by a court to be a danger to others as a result of a mental
23 disorder or mental illness.

24 (2) The court shall immediately notify the
25 Department of Justice of the court order finding the
26 individual to be a person described in paragraph (1). The
27 court shall also notify the Department of Justice of any
28 certificate issued as described in paragraph (1).

29 (b) (1) No person who has been found, pursuant to
30 Section 1026 of the Penal Code or the law of any other
31 state or the United States, not guilty by reason of insanity
32 of murder, mayhem, a violation of Section 207, 209, or
33 209.5 of the Penal Code in which the victim suffers
34 intentionally inflicted great bodily injury, carjacking or
35 robbery in which the victim suffers great bodily injury, a
36 violation of Section 451 or 452 of the Penal Code involving
37 a trailer coach, as defined in Section 635 of the Vehicle
38 Code, or any dwelling house, a violation of paragraph (1)
39 or (2) of subdivision (a) of Section 262 or paragraph (2)
40 or (3) of subdivision (a) of Section 261 of the Penal Code,

1 a violation of Section 459 of the Penal Code in the first
2 degree, assault with intent to commit murder, a violation
3 of Section 220 of the Penal Code in which the victim
4 suffers great bodily injury, a violation of Section 12303.1,
5 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code,
6 or of a felony involving death, great bodily injury, or an
7 act which poses a serious threat of bodily harm to another
8 person, or a violation of the law of any other state or the
9 United States that includes all the elements of any of the
10 above felonies as defined under California law, shall
11 purchase or receive, or attempt to purchase or receive, or
12 have in his or her possession or under his or her custody
13 or control any firearm or any other deadly weapon.

14 (2) The court shall immediately notify the
15 Department of Justice of the court order finding the
16 person to be a person described in paragraph (1).

17 (c) (1) No person who has been found, pursuant to
18 Section 1026 of the Penal Code or the law of any other
19 state or the United States, not guilty by reason of insanity
20 of any crime other than those described in subdivision (b)
21 shall purchase or receive, or attempt to purchase or
22 receive, or shall have in his or her possession, custody, or
23 control any firearm or any other deadly weapon unless
24 the court of commitment has found the person to have
25 recovered sanity, pursuant to Section 1026.2 of the Penal
26 Code or the law of any other state or the United States.

27 (2) The court shall immediately notify the
28 Department of Justice of the court order finding the
29 person to be a person described in paragraph (1). The
30 court shall also notify the Department of Justice when it
31 finds that the person has recovered his or her sanity.

32 (d) (1) No person found by a court to be mentally
33 incompetent to stand trial, pursuant to Section 1370 or
34 1370.1 of the Penal Code or the law of any other state or
35 the United States, shall purchase or receive, or attempt to
36 purchase or receive, or shall have in his or her possession,
37 custody, or control any firearm or any other deadly
38 weapon, unless there has been a finding with respect to
39 the person of restoration to competence to stand trial by
40 the committing court, pursuant to Section 1372 of the

1 Penal Code or the law of any other state or the United
2 States.

3 (2) The court shall immediately notify the
4 Department of Justice of the court order finding the
5 person to be mentally incompetent as described in
6 paragraph (1). The court shall also notify the Department
7 of Justice when it finds that the person has recovered his
8 or her competence.

9 (e) (1) No person who has been placed under
10 conservatorship by a court, pursuant to Section 5350 or
11 the law of any other state or the United States, because
12 the person is gravely disabled as a result of a mental
13 disorder or impairment by chronic alcoholism shall
14 purchase or receive, or attempt to purchase or receive, or
15 shall have in his or her possession, custody, or control any
16 firearm or any other deadly weapon while under the
17 conservatorship if, at the time the conservatorship was
18 ordered or thereafter, the court which imposed the
19 conservatorship found that possession of a firearm or any
20 other deadly weapon by the person would present a
21 danger to the safety of the person or to others. Upon
22 placing any person under conservatorship, and
23 prohibiting firearm or any other deadly weapon
24 possession by the person, the court shall notify the person
25 of this prohibition.

26 (2) The court shall immediately notify the
27 Department of Justice of the court order placing the
28 person under conservatorship and prohibiting firearm or
29 any other deadly weapon possession by the person as
30 described in paragraph (1). The notice shall include the
31 date the conservatorship was imposed and the date the
32 conservatorship is to be terminated. If the
33 conservatorship is subsequently terminated before the
34 date listed in the notice to the Department of Justice or
35 the court subsequently finds that possession of a firearm
36 or any other deadly weapon by the person would no
37 longer present a danger to the safety of the person or
38 others, the court shall immediately notify the
39 Department of Justice.



1 (3) All information provided to the Department of
2 Justice pursuant to paragraph (2) shall be kept
3 confidential, separate, and apart from all other records
4 maintained by the department, and shall be used only to
5 determine eligibility to purchase or possess firearms or
6 other deadly weapons. Any person who knowingly
7 furnishes that information for any other purpose is guilty
8 of a misdemeanor. All the information concerning any
9 person shall be destroyed upon receipt by the
10 Department of Justice of notice of the termination of
11 conservatorship as to that person pursuant to paragraph
12 (2).

13 (f) (1) No person who has been (A) taken into
14 custody as provided in Section 5150 because that person
15 is a danger to himself, herself, or to others, (B) assessed
16 within the meaning of Section 5151, and (C) admitted to
17 a designated facility within the meaning of Sections 5151
18 and 5152 because that person is a danger to himself,
19 herself, or others, shall own, possess, control, receive, or
20 purchase, or attempt to own, possess, control, receive, or
21 purchase any firearm for a period of five years after the
22 person is released from the facility. A person described in
23 the preceding sentence, however, may own, possess,
24 control, receive, or purchase, or attempt to own, possess,
25 control, receive, or purchase any firearm if the superior
26 court has, pursuant to paragraph (4), ~~upon petition of the~~
27 ~~person, found, by a preponderance of the evidence,~~ that
28 the person is likely to use firearms in a safe and lawful
29 manner.

30 (2) For each person subject to this subdivision, the
31 facility shall immediately, on the date of admission,
32 submit a report to the Department of Justice, on a form
33 prescribed by the department, containing information
34 that includes, but is not limited to, the identity of the
35 person and the legal grounds upon which the person was
36 admitted to the facility.

37 Any report prescribed by this subdivision shall be
38 confidential, except for purposes of the court proceedings
39 described in this subdivision and for determining the

1 eligibility of the person to own, possess, control, receive,
2 or purchase a firearm.

3 (3) Prior to, or concurrent with, the discharge, the
4 facility shall inform a person subject to this subdivision
5 that he or she is prohibited from owning, possessing,
6 controlling, receiving, or purchasing any firearm for a
7 period of five years. Simultaneously, the facility shall
8 inform the person that he or she may ~~petition~~ *request a*
9 *hearing from* a court, as provided in this subdivision, for
10 an order permitting the person to own, possess, control,
11 receive, or purchase a firearm.

12 (4) Any person who is subject to paragraph (1) ~~may~~
13 ~~petition~~ *who has requested a hearing from* the superior
14 court of his or her county of residence for an order that
15 he or she may own, possess, control, receive, or purchase
16 firearms *shall be given a hearing. At the time the petition*
17 ~~is filed, the~~ *The* clerk of the court shall set a hearing date
18 and notify the person, the Department of Justice, and the
19 district attorney. The People of the State of California
20 shall be the ~~respondent~~ *plaintiff* in the proceeding and
21 shall be represented by the district attorney. Upon
22 motion of the district attorney, or on its own motion, the
23 superior court may transfer the ~~petition~~ *hearing* to the
24 county in which the person resided at the time of his or
25 her detention, the county in which the person was
26 detained, or the county in which the person was
27 evaluated or treated. Within seven days after ~~receiving~~
28 ~~notice of the petition~~ *the request for a hearing*, the
29 Department of Justice shall file copies of the reports
30 described in this section with the superior court. The
31 reports shall be disclosed upon request to the person and
32 to the district attorney. The district attorney shall be
33 entitled to a continuance of the hearing to a date of not
34 less than 14 days after the district attorney was notified of
35 the hearing date by the clerk of the court. The district
36 attorney may notify the county mental health director of
37 the ~~petition~~ *hearing* who shall provide information about
38 the detention of the person that may be relevant to the
39 court and shall file that information with the superior
40 court. That information shall be disclosed to the person

1 and to the district attorney. The court, upon motion of the
2 person subject to paragraph (1) establishing that
3 confidential information is likely to be discussed during
4 the hearing that would cause harm to the person, shall
5 conduct the hearing in camera with only the relevant
6 parties present, unless the court finds that the public
7 interest would be better served by conducting the
8 hearing in public. Notwithstanding any other law,
9 declarations, police reports, including criminal history
10 information, and any other material and relevant
11 evidence that is not excluded under Section 352 of the
12 Evidence Code, shall be admissible at the hearing under
13 this section.~~¶~~

14 (5) *The People of the State of California shall bear the*
15 *burden of showing by a preponderance of the evidence*
16 *that the person would not be likely to use firearms in a*
17 *safe and lawful manner.*

18 ~~(6) If the court finds by a preponderance of the~~
19 ~~evidence that the person would be likely to use firearms~~
20 ~~in a safe and lawful manner at the hearing set forth in~~
21 ~~paragraph (4) fails to find that the people have met their~~
22 ~~burden as set forth in paragraph (5), the court may shall~~
23 order that the person may own, control, receive, possess,
24 or purchase firearms. A copy of the order shall be
25 submitted to the Department of Justice. Upon receipt of
26 the order, the Department of Justice shall delete any
27 reference to the prohibition against firearms from the
28 person's state summary criminal history information.

29 ~~(5)~~

30 (7) Nothing in this subdivision shall prohibit the use of
31 reports filed pursuant to this section to determine the
32 eligibility of persons to own, possess, control, receive, or
33 purchase a firearm if the person is the subject of a
34 criminal investigation, a part of which involves the
35 ownership, possession, control, receipt, or purchase of a
36 firearm.

37 (g) (1) No person who has been certified for intensive
38 treatment under Section 5250, 5260, or 5270.15 shall own,
39 possess, control, receive, or purchase, or attempt to own,

1 possess, control, receive, or purchase any firearm for a
2 period of five years.

3 Any person who meets the criteria contained in
4 subdivision (e) or (f) who is released from intensive
5 treatment shall nevertheless, if applicable, remain
6 subject to the prohibition contained in subdivision (e) or
7 (f).

8 (2) For each person certified for intensive treatment
9 under paragraph (1), the facility shall immediately
10 submit a report to the Department of Justice, on a form
11 prescribed by the department, containing information
12 regarding the person, including, but not limited to, the
13 legal identity of the person and the legal grounds upon
14 which the person was certified. Any report submitted
15 pursuant to this paragraph shall only be used for the
16 purposes specified in paragraph (2) of subdivision (f).

17 (3) Prior to, or concurrent with, the discharge of each
18 person certified for intensive treatment under paragraph
19 (1), the facility shall inform the person of that
20 information specified in paragraph (3) of subdivision (f).

21 (4) Any person who is subject to ~~the prohibition~~
22 ~~contained in paragraph (1) may fully invoke paragraph~~
23 ~~(4) of subdivision (f)~~ *petition the superior court of his or*
24 *her county of residence for an order that he or she may*
25 *own, possess, control, receive, or purchase firearms. At*
26 *the time the petition is filed, the clerk of the court shall*
27 *set a hearing date and notify the person, the Department*
28 *of Justice, and the district attorney. The People of the*
29 *State of California shall be the respondent in the*
30 *proceeding and shall be represented by the district*
31 *attorney. Upon motion of the district attorney, or on its*
32 *own motion, the superior court may transfer the petition*
33 *to the county in which the person resided at the time of*
34 *his or her detention, the county in which the person was*
35 *detained, or the county in which the person was*
36 *evaluated or treated. Within seven days after receiving*
37 *notice of the petition, the Department of Justice shall file*
38 *copies of the reports described in this section with the*
39 *superior court. The reports shall be disclosed upon*
40 *request to the person and to the district attorney. The*

1 district attorney shall be entitled to a continuance of the
2 hearing to a date of not less than 14 days after the district
3 attorney was notified of the hearing date by the clerk of
4 the court. The district attorney may notify the county
5 mental health director of the petition, and the county
6 mental health director shall provide information about
7 the detention of the person that may be relevant to the
8 court and shall file that information with the superior
9 court. That information shall be disclosed to the person
10 and to the district attorney. The court, upon motion of the
11 person subject to paragraph (1) establishing that
12 confidential information is likely to be discussed during
13 the hearing that would cause harm to the person, shall
14 conduct the hearing in camera with only the relevant
15 parties present, unless the court finds that the public
16 interest would be better served by conducting the
17 hearing in public. Notwithstanding any other provision of
18 law, any declaration, police reports, including criminal
19 history information, and any other material and relevant
20 evidence that is not excluded under Section 352 of the
21 Evidence Code, shall be admissible at the hearing under
22 this section. If the court finds by a preponderance of the
23 evidence that the person would be likely to use firearms
24 in a safe and lawful manner, the court may order that the
25 person may own, control, receive, possess, or purchase
26 firearms. A copy of the order shall be submitted to the
27 Department of Justice. Upon receipt of the order, the
28 Department of Justice shall delete any reference to the
29 prohibition against firearms from the person's state
30 summary criminal history information.

31 (h) For all persons identified in subdivisions (f) and
32 (g), facilities shall report to the Department of Justice as
33 specified in those subdivisions, except facilities shall not
34 report persons under subdivision (g) if the same persons
35 previously have been reported under subdivision (f).

36 Additionally, all facilities shall report to the
37 Department of Justice upon the discharge of persons
38 from whom reports have been submitted pursuant to
39 subdivision (f) or (g). However, a report shall not be filed

1 for persons who are discharged within 31 days after the
2 date of admission.

3 (i) Every person who owns or possesses or has under
4 his or her custody or control, or purchases or receives, or
5 attempts to purchase or receive, any firearm or any other
6 deadly weapon in violation of this section shall be
7 punished by imprisonment in the state prison or in a
8 county jail for not more than one year.

9 (j) "Deadly weapon," as used in this section, has the
10 meaning prescribed by Section 8100.

11 *SEC. 4.* No reimbursement is required by this act
12 pursuant to Section 6 of Article XIII B of the California
13 Constitution for certain costs that may be incurred by a
14 local agency or school district because in that regard this
15 act creates a new crime or infraction, eliminates a crime
16 or infraction, or changes the penalty for a crime or
17 infraction, within the meaning of Section 17556 of the
18 Government Code, or changes the definition of a crime
19 within the meaning of Section 6 of Article XIII B of the
20 California Constitution.

21 However, notwithstanding Section 17610 of the
22 Government Code, if the Commission on State Mandates
23 determines that this act contains other costs mandated by
24 the state, reimbursement to local agencies and school
25 districts for those costs shall be made pursuant to Part 7
26 (commencing with Section 17500) of Division 4 of Title
27 2 of the Government Code. If the statewide cost of the
28 claim for reimbursement does not exceed one million
29 dollars (\$1,000,000), reimbursement shall be made from
30 the State Mandates Claims Fund.

