

AMENDED IN SENATE JUNE 24, 1999

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~~ *carrying a concealed firearm if both the* pistol, revolver, or other firearm capable of being concealed upon the person and *the* unexpended ammunition capable of being discharged from that firearm *are in the immediate possession of the person or are readily accessible, or the firearm is loaded, as defined by law,* 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, *or the pistol,*  
13 *revolver, or other firearm capable of being concealed*  
14 *upon the person is loaded as defined in subdivision (g) of*  
15 *Section 12031.*

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

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

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

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

39 (d) The court shall apply the three-month minimum  
40 sentence as specified in subdivision (c), except in unusual

1 cases where the interests of justice would best be served  
2 by granting probation or suspending the imposition or  
3 execution of sentence without the minimum  
4 imprisonment required in subdivision (c) or by granting  
5 probation or suspending the imposition or execution of  
6 sentence with conditions other than those set forth in  
7 subdivision (c), in which case, the court shall specify on  
8 the record and shall enter on the minutes the  
9 circumstances indicating that the interests of justice  
10 would best be served by that disposition.

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

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

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

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

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

35 SEC. 2. Section 12031 of the Penal Code is amended  
36 to read:

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

1 place or on any public street in a prohibited area of  
2 unincorporated territory.

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

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

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

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

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

22 (E) Where the person has been convicted of a crime  
23 against a person or property, or of a narcotics or  
24 dangerous drug violation, by imprisonment in the state  
25 prison, or by imprisonment in a county jail not to exceed  
26 one year, by a fine not to exceed one thousand dollars  
27 (\$1,000), or by both that imprisonment and fine.

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

36 (G) In all cases other than those specified in  
37 subparagraphs (A) to (F), 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 (H) 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 lawfully acquired and  
4 lawfully owns the firearm or has the permission of the  
5 lawful owner or person who otherwise has apparent  
6 authority to possess or have custody of the firearm. A  
7 person who takes a firearm without the permission of the  
8 lawful owner or without the permission of a person who  
9 has lawful custody of the firearm does not have lawful  
10 possession of the firearm.

11 (3) Nothing in this section shall preclude prosecution  
12 under Sections 12021 and 12021.1 of this code, Section  
13 8100 or 8103 of the Welfare and Institutions Code, or any  
14 other law with a greater penalty than this section.

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

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

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

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

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



1 minutes the circumstances indicating that the interests of  
2 justice would best be served by that disposition.

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

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

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

31 Any officer, except an officer listed in Section 830.1 or  
32 830.2, subdivision (a) of Section 830.33, or subdivision (c)  
33 of Section 830.5 who retired prior to January 1, 1981, shall  
34 have an endorsement on the identification certificate  
35 stating that the issuing agency approves the officer's  
36 carrying of a loaded firearm.

37 No endorsement or renewal endorsement issued  
38 pursuant to paragraph (2) shall be effective unless it is in  
39 the format set forth in subparagraph (D) of paragraph  
40 (1) of subdivision (a) of Section 12027, except that any

1 peace officer listed in subdivision (f) of Section 830.2 or  
2 in subdivision (c) of Section 830.5, who is retired between  
3 January 2, 1981, and on or before December 31, 1988, and  
4 who is authorized to carry a loaded firearm pursuant to  
5 this section, shall not be required to have an endorsement  
6 in the format set forth in subparagraph (D) of paragraph  
7 (1) of subdivision (a) of Section 12027 until the time of the  
8 issuance, on or after January 1, 1989, of a renewal  
9 endorsement pursuant to paragraph (2).

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

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

1 peace officers listed in subdivision (c) of Section 830.5 to  
2 the agency from which the officer has retired.

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

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

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

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

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

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

1 Upon approval, the sheriff shall issue a permit to the  
2 retired federal officer or agent indicating that he or she  
3 may carry a loaded firearm in accordance with this  
4 paragraph. The permit shall be valid for a period not  
5 exceeding five years, shall be carried by the retiree while  
6 carrying a loaded firearm, and may be revoked for good  
7 cause.

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

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

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

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

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

1 (d) Subdivision (a) shall not apply to any of the  
2 following who have been issued a certificate pursuant to  
3 Section 12033. The certificate shall not be required of any  
4 person who is a peace officer, who has completed all  
5 training required by law for the exercise of his or her  
6 power as a peace officer, and who is employed while not  
7 on duty as a peace officer.

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

13 (2) Guards of contract carriers operating armored  
14 vehicles pursuant to California Highway Patrol and  
15 Public Utilities Commission authority (A) if hired prior  
16 to January 1, 1977, or (B) if hired on or after January 1,  
17 1977, if they have completed a course in the carrying and  
18 use of firearms which meets the standards prescribed by  
19 the Department of Consumer Affairs.

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

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

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

1 counties from enacting ordinances requiring alarm  
2 agents to register their names.

3 (6) Uniformed employees of private patrol operators  
4 and private investigators licensed pursuant to Chapter  
5 11.5 (commencing with Section 7512) of Division 3 of the  
6 Business and Professions Code, while acting within the  
7 course and scope of their employment.

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

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

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

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

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

1 (j) (1) Nothing in this section is intended to preclude  
 2 the carrying of any loaded firearm, under circumstances  
 3 where it would otherwise be lawful, by a person who  
 4 reasonably believes that the person or property of himself  
 5 or herself or of another is in immediate, grave danger and  
 6 that the carrying of the weapon is necessary for the  
 7 preservation of that person or property. As used in this  
 8 subdivision, “immediate” means the brief interval before  
 9 and after the local law enforcement agency, when  
 10 reasonably possible, has been notified of the danger and  
 11 before the arrival of its assistance.

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

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

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

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

37 (m) (1) The district attorney of each county shall  
 38 submit annually a report on or before June 30, to the  
 39 Attorney General consisting of profiles by race, age,  
 40 gender, and ethnicity of any person charged with a felony



1 or a misdemeanor under this section and any other  
2 offense charged in the same complaint, indictment, or  
3 information.

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

8 (3) This subdivision shall remain operative only until  
9 January 1, 2005.

10 ~~SEC. 3. Section 8103 of the Welfare and Institutions~~  
11 ~~Code is amended to read:~~

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

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

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



~~Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.~~

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

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

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

~~(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly~~

~~1 weapon, unless there has been a finding with respect to~~  
~~2 the person of restoration to competence to stand trial by~~  
~~3 the committing court, pursuant to Section 1372 of the~~  
~~4 Penal Code or the law of any other state or the United~~  
~~5 States.~~

~~6 (2) The court shall immediately notify the~~  
~~7 Department of Justice of the court order finding the~~  
~~8 person to be mentally incompetent as described in~~  
~~9 paragraph (1). The court shall also notify the Department~~  
~~10 of Justice when it finds that the person has recovered his~~  
~~11 or her competence.~~

~~12 (e) (1) No person who has been placed under~~  
~~13 conservatorship by a court, pursuant to Section 5350 or~~  
~~14 the law of any other state or the United States, because~~  
~~15 the person is gravely disabled as a result of a mental~~  
~~16 disorder or impairment by chronic alcoholism shall~~  
~~17 purchase or receive, or attempt to purchase or receive, or~~  
~~18 shall have in his or her possession, custody, or control any~~  
~~19 firearm or any other deadly weapon while under the~~  
~~20 conservatorship if, at the time the conservatorship was~~  
~~21 ordered or thereafter, the court which imposed the~~  
~~22 conservatorship found that possession of a firearm or any~~  
~~23 other deadly weapon by the person would present a~~  
~~24 danger to the safety of the person or to others. Upon~~  
~~25 placing any person under conservatorship, and~~  
~~26 prohibiting firearm or any other deadly weapon~~  
~~27 possession by the person, the court shall notify the person~~  
~~28 of this prohibition.~~

~~29 (2) The court shall immediately notify the~~  
~~30 Department of Justice of the court order placing the~~  
~~31 person under conservatorship and prohibiting firearm or~~  
~~32 any other deadly weapon possession by the person as~~  
~~33 described in paragraph (1). The notice shall include the~~  
~~34 date the conservatorship was imposed and the date the~~  
~~35 conservatorship is to be terminated. If the~~  
~~36 conservatorship is subsequently terminated before the~~  
~~37 date listed in the notice to the Department of Justice or~~  
~~38 the court subsequently finds that possession of a firearm~~  
~~39 or any other deadly weapon by the person would no~~  
~~40 longer present a danger to the safety of the person or~~

1 others, the court shall immediately notify the  
2 Department of Justice.

3 (3) All information provided to the Department of  
4 Justice pursuant to paragraph (2) shall be kept  
5 confidential, separate, and apart from all other records  
6 maintained by the department, and shall be used only to  
7 determine eligibility to purchase or possess firearms or  
8 other deadly weapons. Any person who knowingly  
9 furnishes that information for any other purpose is guilty  
10 of a misdemeanor. All the information concerning any  
11 person shall be destroyed upon receipt by the  
12 Department of Justice of notice of the termination of  
13 conservatorship as to that person pursuant to paragraph  
14 (2).

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

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

38 Any report prescribed by this subdivision shall be  
39 confidential, except for purposes of the court proceedings  
40 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 request a hearing  
9 from a court, as provided in this subdivision, for an order  
10 permitting the person to own, possess, control, receive, or  
11 purchase a firearm.

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

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

~~12 (5) The People of the State of California shall bear the  
13 burden of showing by a preponderance of the evidence  
14 that the person would not be likely to use firearms in a  
15 safe and lawful manner.~~

~~16 (6) If the court at the hearing set forth in paragraph  
17 (4) fails to find that the people have met their burden as  
18 set forth in paragraph (5), the court shall order that the  
19 person may own, control, receive, possess, or purchase  
20 firearms. A copy of the order shall be submitted to the  
21 Department of Justice. Upon receipt of the order, the  
22 Department of Justice shall delete any reference to the  
23 prohibition against firearms from the person's state  
24 summary criminal history information.~~

~~25 (7) Nothing in this subdivision shall prohibit the use of  
26 reports filed pursuant to this section to determine the  
27 eligibility of persons to own, possess, control, receive, or  
28 purchase a firearm if the person is the subject of a  
29 criminal investigation, a part of which involves the  
30 ownership, possession, control, receipt, or purchase of a  
31 firearm.~~

~~32 (g) (1) No person who has been certified for intensive  
33 treatment under Section 5250, 5260, or 5270.15 shall own,  
34 possess, control, receive, or purchase, or attempt to own,  
35 possess, control, receive, or purchase any firearm for a  
36 period of five years.~~

~~37 Any person who meets the criteria contained in  
38 subdivision (e) or (f) who is released from intensive  
39 treatment shall nevertheless, if applicable, remain~~

1 ~~subject to the prohibition contained in subdivision (e) or~~  
2 ~~(f).~~

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

12 ~~(3) Prior to, or concurrent with, the discharge of each~~  
13 ~~person certified for intensive treatment under paragraph~~  
14 ~~(1), the facility shall inform the person of that~~  
15 ~~information specified in paragraph (3) of subdivision (f).~~

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

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

25 ~~(h) For all persons identified in subdivisions (f) and~~  
26 ~~(g), facilities shall report to the Department of Justice as~~  
27 ~~specified in those subdivisions, except facilities shall not~~  
28 ~~report persons under subdivision (g) if the same persons~~  
29 ~~previously have been reported under subdivision (f).~~

30 ~~Additionally, all facilities shall report to the~~  
31 ~~Department of Justice upon the discharge of persons~~  
32 ~~from whom reports have been submitted pursuant to~~  
33 ~~subdivision (f) or (g). However, a report shall not be filed~~  
34 ~~for persons who are discharged within 31 days after the~~  
35 ~~date of admission.~~

36 ~~(i) Every person who owns or possesses or has under~~  
37 ~~his or her custody or control, or purchases or receives, or~~  
38 ~~attempts to purchase or receive, any firearm or any other~~  
39 ~~deadly weapon in violation of this section shall be~~

~~1 punished by imprisonment in the state prison or in a  
2 county jail for not more than one year.~~

~~3 (j) "Deadly weapon," as used in this section, has the  
4 meaning prescribed by Section 8100.~~

~~5 SEC. 4.~~

*SEC. 3.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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