

AMENDED IN SENATE SEPTEMBER 2, 1999

AMENDED IN SENATE AUGUST 25, 1999

AMENDED IN SENATE AUGUST 16, 1999

AMENDED IN SENATE JULY 12, 1999

AMENDED IN SENATE JULY 6, 1999

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

**(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 11106, 12025, and 12031 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as amended, Scott. Firearms.

(1) Existing law requires the Attorney General to maintain a registry of specified information concerning pistols,

revolvers, and other firearms capable of being concealed on the person and to include in the registry specified data provided to the Department of Justice on the Dealers' Record of Sale.

This bill would require the Attorney General, at the written request of any person listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, to store and keep that record electronically and to provide the person written notice of its compliance with the request.

This bill would also incorporate additional changes in Section 11106 of the Penal Code proposed by SB 29, to be operative only if that bill and this bill are enacted and become effective on or before January 1, 2000, and this bill is enacted last.

(2) 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, 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. This bill would allow a peace officer to arrest a person for violating this provision if the officer had probable cause to believe the person was not the registered owner of the firearms and the other elements of this offense exist. 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.

(3) 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 allow a peace officer to arrest a person for violating this provision if the officer had probable cause to believe the person was not the registered owner of the firearms and the other elements of this offense exist. The bill would also incorporate in this provision the changes described in (2) above regarding the definition of “lawful possession” and the requirement imposed upon the district attorney.

(4) 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 11106 of the Penal Code is
2 amended to read:
3 11106. (a) In order to assist in the investigation of
4 crime, the arrest and prosecution of criminals, and the
5 recovery of lost, stolen, or found property, the Attorney
6 General shall keep and properly file a complete record of
7 all copies of fingerprints, copies of applications for
8 licenses to carry firearms issued pursuant to Section
9 12050, information reported to the Department of Justice
10 pursuant to Section 12053, dealers' records of sales of
11 firearms, reports provided pursuant to Section 12072 or
12 12078, forms provided pursuant to Section 12084, reports
13 provided pursuant to Section 12071 that are not dealers'
14 records of sales of firearms, and reports of stolen, lost,
15 found, pledged, or pawned property in any city or county
16 of this state, and shall, upon proper application therefor,
17 furnish to the officers mentioned in Section 11105, hard
18 copy printouts of those records as photographic,
19 photostatic, and nonerasable optically stored
20 reproductions.
21 (b) (1) Notwithstanding subdivision (a), the
22 Attorney General shall not retain or compile any
23 information from reports filed pursuant to subdivision (a)
24 of Section 12078 for firearms that are not pistols,
25 revolvers, or other firearms capable of being concealed
26 upon the person, from forms submitted pursuant to
27 Section 12084 for firearms that are not pistols, revolvers,
28 or other firearms capable of being concealed upon the
29 person, or from dealers' records of sales for firearms that
30 are not pistols, revolvers, or other firearms capable of
31 being concealed upon the person. All copies of the forms
32 submitted, or any information received in electronic
33 form, pursuant to Section 12084 for firearms that are not
34 pistols, revolvers, or other firearms capable of being
35 concealed upon the person, or of the dealers' records of



1 sales for firearms that are not pistols, revolvers, or other
2 firearms capable of being concealed upon the person shall
3 be destroyed within five days of the clearance by the
4 Attorney General, unless the purchaser or transferor is
5 ineligible to take possession of the firearm. All copies of
6 the reports filed, or any information received in
7 electronic form, pursuant to subdivision (a) of Section
8 12078 for firearms that are not pistols, revolvers, or other
9 firearms capable of being concealed upon the person shall
10 be destroyed within five days of the receipt by the
11 Attorney General, unless retention is necessary for use in
12 a criminal prosecution.

13 (2) A peace officer, the Attorney General, a
14 Department of Justice employee designated by the
15 Attorney General, or any authorized local law
16 enforcement employee shall not retain or compile any
17 information from a firearms transaction record, as
18 defined in paragraph (5) of subdivision (c) of Section
19 12071, for firearms that are not pistols, revolvers, or other
20 firearms capable of being concealed upon the person
21 unless retention or compilation is necessary for use in a
22 criminal prosecution or in a proceeding to revoke a
23 license issued pursuant to Section 12071.

24 (3) A violation of this subdivision is a misdemeanor.

25 (c) (1) The Attorney General shall permanently keep
26 and properly file and maintain all information reported
27 to the Department of Justice pursuant to Sections 12071,
28 12072, 12078, 12082, and 12084 or any other law, as to
29 pistols, revolvers, or other firearms capable of being
30 concealed upon the person and maintain a registry
31 thereof.

32 (2) The registry shall consist of all of the following:

33 (A) The name, address, identification of, place of birth
34 (state or country), complete telephone number,
35 occupation, sex, description, and all legal names and
36 aliases ever used by the owner or person being loaned the
37 particular pistol, revolver, or other firearm capable of
38 being concealed upon the person as listed on the
39 information provided to the department on the Dealers'
40 Record of Sale, the Law Enforcement Firearms Transfer

1 (LEFT), as defined in Section 12084, or reports made to
2 the department pursuant to Section 12078 or any other
3 law.

4 (B) The name and address of, and other information
5 about, any person (whether a dealer or a private party)
6 from whom the owner acquired or the person being
7 loaned the particular pistol, revolver, or other firearm
8 capable of being concealed upon the person and when
9 the firearm was acquired or loaned as listed on the
10 information provided to the department on the Dealers'
11 Record of Sale, the LEFT, or reports made to the
12 department pursuant to Section 12078 or any other law.

13 (C) Any waiting period exemption applicable to the
14 transaction which resulted in the owner of or the person
15 being loaned the particular pistol, revolver, or other
16 firearm capable of being concealed upon the person
17 acquiring or being loaned that firearm.

18 (D) The manufacturer's name if stamped on the
19 firearm; model name or number if stamped on the
20 firearm; and, if applicable, the serial number, other
21 number (if more than one serial number is stamped on
22 the firearm), caliber, type of firearm, if the firearm is new
23 or used, barrel length, and color of the firearm.

24 (3) Information in the registry referred to in this
25 subdivision shall, upon proper application therefor, be
26 furnished to the officers referred to in Section 11105 or to
27 the person listed in the registry as the owner or person
28 who is listed as being loaned the particular pistol,
29 revolver, or other firearm capable of being concealed
30 upon the person in the form of hard copy printouts of that
31 information as photographic, photostatic, and
32 nonerasable optically stored reproductions.

33 (4) If any person is listed in the registry as the owner
34 of a firearm through a Dealers' Record of Sale prior to
35 1979, and the person listed in the registry requests by
36 letter that the Attorney General store and keep the
37 record electronically, as well as in the record's existing
38 photographic, photostatic, or nonerasable optically
39 stored form, the Attorney General shall do so within three
40 working days of receipt of the request. The Attorney

1 General shall, in writing, and as soon as practicable, notify
2 the person requesting electronic storage of the record
3 that the request has been honored as required by this
4 paragraph.

5 SEC. 1.5. Section 11106 of the Penal Code is amended
6 to read:

7 11106. (a) In order to assist in the investigation of
8 crime, the arrest and prosecution of criminals, and the
9 recovery of lost, stolen, or found property, the Attorney
10 General shall keep and properly file a complete record of
11 all copies of fingerprints, copies of applications for
12 licenses to carry firearms issued pursuant to Section
13 12050, information reported to the Department of Justice
14 pursuant to Section 12053, dealers' records of sales of
15 firearms, reports provided pursuant to Section 12072 or
16 12078, forms provided pursuant to Section 12084, reports
17 provided pursuant to Section 12071 that are not dealers'
18 records of sales of firearms, and reports of stolen, lost,
19 found, pledged, or pawned property in any city or county
20 of this state, and shall, upon proper application therefor,
21 furnish to the officers mentioned in Section 11105, hard
22 copy printouts of those records as photographic,
23 photostatic, and nonerasable optically stored
24 reproductions.

25 (b) (1) Notwithstanding subdivision (a), the
26 Attorney General shall not retain or compile any
27 information from reports filed pursuant to subdivision (a)
28 of Section 12078 for firearms that are not pistols,
29 revolvers, or other firearms capable of being concealed
30 upon the person, from forms submitted pursuant to
31 Section 12084 for firearms that are not pistols, revolvers,
32 or other firearms capable of being concealed upon the
33 person, or from dealers' records of sales for firearms that
34 are not pistols, revolvers, or other firearms capable of
35 being concealed upon the person. All copies of the forms
36 submitted, or any information received in electronic
37 form, pursuant to Section 12084 for firearms that are not
38 pistols, revolvers, or other firearms capable of being
39 concealed upon the person, or of the dealers' records of
40 sales for firearms that are not pistols, revolvers, or other

1 firearms capable of being concealed upon the person shall
2 be destroyed within five days of the clearance by the
3 Attorney General, unless the purchaser or transferor is
4 ineligible to take possession of the firearm. All copies of
5 the reports filed, or any information received in
6 electronic form, pursuant to subdivision (a) of Section
7 12078 for firearms that are not pistols, revolvers, or other
8 firearms capable of being concealed upon the person shall
9 be destroyed within five days of the receipt by the
10 Attorney General, unless retention is necessary for use in
11 a criminal prosecution.

12 (2) A peace officer, the Attorney General, a
13 Department of Justice employee designated by the
14 Attorney General, or any authorized local law
15 enforcement employee shall not retain or compile any
16 information from a firearms transaction record, as
17 defined in paragraph (5) of subdivision (c) of Section
18 12071, for firearms that are not pistols, revolvers, or other
19 firearms capable of being concealed upon the person
20 unless retention or compilation is necessary for use in a
21 criminal prosecution or in a proceeding to revoke a
22 license issued pursuant to Section 12071.

23 (3) A violation of this subdivision is a misdemeanor.

24 (c) (1) The Attorney General shall permanently keep
25 and properly file and maintain all information reported
26 to the Department of Justice pursuant to Sections 12071,
27 12072, 12078, 12082, and 12084 or any other law, as to
28 pistols, revolvers, or other firearms capable of being
29 concealed upon the person and maintain a registry
30 thereof.

31 (2) The registry shall consist of all of the following:

32 (A) The name, address, identification of, place of birth
33 (state or country), complete telephone number,
34 occupation, sex, description, and all legal names and
35 aliases ever used by the owner or person being loaned the
36 particular pistol, revolver, or other firearm capable of
37 being concealed upon the person as listed on the
38 information provided to the department on the Dealers'
39 Record of Sale, the Law Enforcement Firearms Transfer
40 (LEFT), as defined in Section 12084, or reports made to

1 the department pursuant to Section 12078 or any other
2 law.

3 (B) The name and address of, and other information
4 about, any person (whether a dealer or a private party)
5 from whom the owner acquired or the person being
6 loaned the particular pistol, revolver, or other firearm
7 capable of being concealed upon the person and when
8 the firearm was acquired or loaned as listed on the
9 information provided to the department on the Dealers'
10 Record of Sale, the LEFT, or reports made to the
11 department pursuant to Section 12078 or any other law.

12 (C) Any waiting period exemption applicable to the
13 transaction which resulted in the owner of or the person
14 being loaned the particular pistol, revolver, or other
15 firearm capable of being concealed upon the person
16 acquiring or being loaned that firearm.

17 (D) The manufacturer's name if stamped on the
18 firearm; model name or number if stamped on the
19 firearm; and, if applicable, the serial number, other
20 number (if more than one serial number is stamped on
21 the firearm), caliber, type of firearm, if the firearm is new
22 or used, barrel length, and color of the firearm.

23 (E) Information provided pursuant to paragraphs (19
24 and (20) of subdivision (b) of Section 12071.

25 (F) Information provided pursuant to paragraph (8)
26 of subdivision (d) of Section 12084.

27 (3) Information in the registry referred to in this
28 subdivision shall, upon proper application therefor, be
29 furnished to the officers referred to in Section 11105 or to
30 the person listed in the registry as the owner or person
31 who is listed as being loaned the particular pistol,
32 revolver, or other firearm capable of being concealed
33 upon the person in the form of hard copy printouts of that
34 information as photographic, photostatic, and
35 nonerasable optically stored reproductions.

36 (4) If any person is listed in the registry as the owner
37 of a firearm through a Dealers' Record of Sale prior to
38 1979, and the person listed in the registry requests by
39 letter that the Attorney General store and keep the
40 record electronically, as well as in the record's existing

1 photographic, photostatic, or nonerasable optically
2 stored form, the Attorney General shall do so within three
3 working days of receipt of the request. The Attorney
4 General shall, in writing, and as soon as practicable, notify
5 the person requesting electronic storage of the record
6 that the request has been honored as required by this
7 paragraph.

8 SEC. 2. Section 12025 of the Penal Code is amended
9 to read:

10 12025. (a) A person is guilty of carrying a concealed
11 firearm when he or she does any of the following:

12 (1) Carries concealed within any vehicle which is
13 under his or her control or direction any pistol, revolver,
14 or other firearm capable of being concealed upon the
15 person.

16 (2) Carries concealed upon his or her person any
17 pistol, revolver, or other firearm capable of being
18 concealed upon the person.

19 (3) Causes to be carried concealed within any vehicle
20 in which he or she is an occupant any pistol, revolver, or
21 other firearm capable of being concealed upon the
22 person.

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

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

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

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

36 (4) Where the person is not in lawful possession of the
37 firearm, as defined in this section, or the person is within
38 a class of persons prohibited from possessing or acquiring
39 a firearm pursuant to Section 12021 or 12021.1 of this code



1 or Section 8100 or 8103 of the Welfare and Institutions
2 Code, as a felony.

3 (5) Where the person has been convicted of a crime
4 against a person or property, or of a narcotics or
5 dangerous drug violation, by imprisonment in the state
6 prison, or by imprisonment in a county jail not to exceed
7 one year, by a fine not to exceed one thousand dollars
8 (\$1,000), or by both that imprisonment and fine.

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

14 (A) Both the pistol, revolver, or other firearm capable
15 of being concealed upon the person and the unexpended
16 ammunition capable of being discharged from that
17 firearm are either in the immediate possession of the
18 person or readily accessible to that person, or the pistol,
19 revolver, or other firearm capable of being concealed
20 upon the person is loaded as defined in subdivision (g) of
21 Section 12031.

22 (B) The person is not listed with the Department of
23 Justice pursuant to paragraph (1) of subdivision (c) of
24 Section 11106, as the registered owner of that pistol,
25 revolver, or other firearm capable of being concealed
26 upon the person.

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

31 (c) A peace officer may arrest a person for a violation
32 of paragraph (6) of subdivision (b) if the peace officer has
33 probable cause to believe that the person is not listed with
34 the Department of Justice pursuant to paragraph (1) of
35 subdivision (c) of Section 11106 as the registered owner
36 of the pistol, revolver, or other firearm capable of being
37 concealed upon the person, and one or more of the
38 conditions in subparagraph (A) of paragraph (6) of
39 subdivision (b) is met.

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

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

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

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

29 (g) For purposes of this section, “lawful possession of
30 the firearm” means that the person who has possession or
31 custody of the firearm either lawfully owns the firearm or
32 has the permission of the lawful owner or a person who
33 otherwise has apparent authority to possess or have
34 custody of the firearm. A person who takes a firearm
35 without the permission of the lawful owner or without the
36 permission of a person who has lawful custody of the
37 firearm does not have lawful possession of the firearm.

38 (h) (1) The district attorney of each county shall
39 submit annually a report on or before June 30, to the
40 Attorney General consisting of profiles by race, age,

gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

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

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

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

12031. (a) (1) A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of 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 ~~186.20~~) 186.20) 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

1 prison, or by imprisonment in a county jail not to exceed
2 one year, by a fine not to exceed one thousand dollars
3 (\$1,000), or by both that imprisonment and fine.

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

12 (G) In all cases other than those specified in
13 subparagraphs (A) to (F), inclusive, as a misdemeanor,
14 punishable by imprisonment in a county jail not to exceed
15 one year, by a fine not to exceed one thousand dollars
16 (\$1,000), or by both that imprisonment and fine.

17 (3) For purposes of this section, “lawful possession of
18 the firearm” means that the person who has possession or
19 custody of the firearm either lawfully acquired and
20 lawfully owns the firearm or has the permission of the
21 lawful owner or person who otherwise has apparent
22 authority to possess or have custody of the firearm. A
23 person who takes a firearm without the permission of the
24 lawful owner or without the permission of a person who
25 has lawful custody of the firearm does not have lawful
26 possession of the firearm.

27 (4) Nothing in this section shall preclude prosecution
28 under Sections 12021 and 12021.1 of this code, Section
29 8100 or 8103 of the Welfare and Institutions Code, or any
30 other law with a greater penalty than this section.

31 (5) (A) Notwithstanding paragraphs (2) and (3) of
32 subdivision (a) of Section 836, a peace officer may make
33 an arrest without a warrant:

34 (i) When the person arrested has violated this section,
35 although not in the officer’s presence.

36 (ii) Whenever the officer has reasonable cause to
37 believe that the person to be arrested has violated this
38 section, whether or not this section has, in fact, been
39 violated.

1 (B) A peace officer may arrest a person for a violation
2 of subparagraph (F) of paragraph (2), if the peace officer
3 has probable cause to believe that the person is carrying
4 a loaded pistol, revolver, or other firearm capable of
5 being concealed upon the person in violation of this
6 section and that person is not listed with the Department
7 of Justice pursuant to paragraph (1) of subdivision (c) of
8 Section 11106 as the registered owner of that pistol,
9 revolver, or other firearm capable of being concealed
10 upon the person.

11 (6) (A) Every person convicted under this section
12 who has previously been convicted of an offense
13 enumerated in Section 12001.6, or of any crime made
14 punishable under this chapter, shall serve a term of at
15 least three months in a county jail, or, if granted probation
16 or if the execution or imposition of sentence is suspended,
17 it shall be a condition thereof that he or she be imprisoned
18 for a period of at least three months.

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

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

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

39 (1) Peace officers listed in Section 830.1 or 830.2, or
40 subdivision (a) of Section 830.33, whether active or

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

18 Any officer, except an officer listed in Section 830.1 or
19 830.2, subdivision (a) of Section 830.33, or subdivision (c)
20 of Section 830.5 who retired prior to January 1, 1981, shall
21 have an endorsement on the identification certificate
22 stating that the issuing agency approves the officer's
23 carrying of a loaded firearm.

24 No endorsement or renewal endorsement issued
25 pursuant to paragraph (2) shall be effective unless it is in
26 the format set forth in subparagraph (D) of paragraph
27 (1) of subdivision (a) of Section 12027, except that any
28 peace officer listed in subdivision (f) of Section 830.2 or
29 in subdivision (c) of Section 830.5, who is retired between
30 January 2, 1981, and on or before December 31, 1988, and
31 who is authorized to carry a loaded firearm pursuant to
32 this section, shall not be required to have an endorsement
33 in the format set forth in subparagraph (D) of paragraph
34 (1) of subdivision (a) of Section 12027 until the time of the
35 issuance, on or after January 1, 1989, of a renewal
36 endorsement pursuant to paragraph (2).

37 (2) A retired peace officer, except an officer listed in
38 Section 830.1 or 830.2, subdivision (a) of Section 830.33, or
39 subdivision (c) of Section 830.5 who retired prior to
40 January 1, 1981, shall petition the issuing agency for

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

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

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

31 (5) Persons who are using target ranges for the
 32 purpose of practice shooting with a firearm or who are
 33 members of shooting clubs while hunting on the premises
 34 of those clubs.

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

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

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

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

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

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

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in

1 firearms training approved by the Commission on Peace
2 Officer Standards and Training:

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

14 (2) The carrying of weapons by animal control officers
15 or zookeepers, regularly compensated as such by a
16 governmental agency when acting in the course and
17 scope of their employment and when designated by a
18 local ordinance or, if the governmental agency is not
19 authorized to act by ordinance, by a resolution, either
20 individually or by class, to carry the weapons, or by
21 persons who are authorized to carry the weapons
22 pursuant to Section 14502 of the Corporations Code, while
23 actually engaged in the performance of their duties
24 pursuant to that section.

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

27 (d) Subdivision (a) shall not apply to any of the
28 following who have been issued a certificate pursuant to
29 Section 12033. The certificate shall not be required of any
30 person who is a peace officer, who has completed all
31 training required by law for the exercise of his or her
32 power as a peace officer, and who is employed while not
33 on duty as a peace officer.

34 (1) Guards or messengers of common carriers, banks,
35 and other financial institutions while actually employed
36 in and about the shipment, transportation, or delivery of
37 any money, treasure, bullion, bonds, or other thing of
38 value within this state.

39 (2) Guards of contract carriers operating armored
40 vehicles pursuant to California Highway Patrol and

1 Public Utilities Commission authority (A) if hired prior
2 to January 1, 1977, or (B) if hired on or after January 1,
3 1977, if they have completed a course in the carrying and
4 use of firearms which meets the standards prescribed by
5 the Department of Consumer Affairs.

6 (3) Private investigators and private patrol operators
7 who are licensed pursuant to Chapter 11.5 (commencing
8 with Section 7512) of, and alarm company operators who
9 are licensed pursuant to Chapter 11.6 (commencing with
10 Section 7590) of, Division 3 of the Business and
11 Professions Code, while acting within the course and
12 scope of their employment.

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

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

28 (6) Uniformed employees of private patrol operators
29 and private investigators licensed pursuant to Chapter
30 11.5 (commencing with Section 7512) of Division 3 of the
31 Business and Professions Code, while acting within the
32 course and scope of their employment.

33 (e) In order to determine whether or not a firearm is
34 loaded for the purpose of enforcing this section, peace
35 officers are authorized to examine any firearm carried by
36 anyone on his or her person or in a vehicle while in any
37 public place or on any public street in an incorporated
38 city or prohibited area of an unincorporated territory.
39 Refusal to allow a peace officer to inspect a firearm

1 pursuant to this section constitutes probable cause for
2 arrest for violation of this section.

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

5 (g) A firearm shall be deemed to be loaded for the
6 purposes of this section when there is an unexpended
7 cartridge or shell, consisting of a case that holds a charge
8 of powder and a bullet or shot, in, or attached in any
9 manner to, the firearm, including, but not limited to, in
10 the firing chamber, magazine, or clip thereof attached to
11 the firearm; except that a muzzle-loader firearm shall be
12 deemed to be loaded when it is capped or primed and has
13 a powder charge and ball or shot in the barrel or cylinder.

14 (h) Nothing in this section shall prevent any person
15 engaged in any lawful business, including a nonprofit
16 organization, or any officer, employee, or agent
17 authorized by that person for lawful purposes connected
18 with that business, from having a loaded firearm within
19 the person’s place of business, or any person in lawful
20 possession of private property from having a loaded
21 firearm on that property.

22 (i) Nothing in this section shall prevent any person
23 from carrying a loaded firearm in an area within an
24 incorporated city while engaged in hunting, provided
25 that the hunting at that place and time is not prohibited
26 by the city council.

27 (j) (1) Nothing in this section is intended to preclude
28 the carrying of any loaded firearm, under circumstances
29 where it would otherwise be lawful, by a person who
30 reasonably believes that the person or property of himself
31 or herself or of another is in immediate, grave danger and
32 that the carrying of the weapon is necessary for the
33 preservation of that person or property. As used in this
34 subdivision, “immediate” means the brief interval before
35 and after the local law enforcement agency, when
36 reasonably possible, has been notified of the danger and
37 before the arrival of its assistance.

38 (2) A violation of this section is justifiable when a
39 person who possesses a firearm reasonably believes that
40 he or she is in grave danger because of circumstances

1 forming the basis of a current restraining order issued by
2 a court against another person or persons who has or have
3 been found to pose a threat to his or her life or safety. This
4 paragraph may not apply when the circumstances
5 involve a mutual restraining order issued pursuant to
6 Division 10 (commencing with Section 6200) of the
7 Family Code absent a factual finding of a specific threat
8 to the person's life or safety. It is not the intent of the
9 Legislature to limit, restrict, or narrow the application of
10 current statutory or judicial authority to apply this or
11 other justifications to defendants charged with violating
12 Section 12025 or of committing other similar offenses.

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

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

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

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

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

34 (3) This subdivision shall remain operative only until
35 January 1, 2005.

36 SEC. 3.5. Section 1.5 of this bill incorporates
37 amendments to Section 11106 of the Penal Code proposed
38 by both this bill and Senate Bill 29. It shall only become
39 operative if (1) both bills are enacted and become
40 effective on or before January 1, 2000, (2) each bill

1 amends Section 11106 of the Penal Code, and (3) this bill
2 is enacted after Senate Bill 29, in which case Section 1 of
3 this bill shall not become operative.

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

14 However, notwithstanding Section 17610 of the
15 Government Code, if the Commission on State Mandates
16 determines that this act contains other costs mandated by
17 the state, reimbursement to local agencies and school
18 districts for those costs shall be made pursuant to Part 7
19 (commencing with Section 17500) of Division 4 of Title
20 2 of the Government Code. If the statewide cost of the
21 claim for reimbursement does not exceed one million
22 dollars (\$1,000,000), reimbursement shall be made from
23 the State Mandates Claims Fund.

