

AMENDED IN ASSEMBLY APRIL 12, 2000
AMENDED IN ASSEMBLY MARCH 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2523

Introduced by Assembly Member Thomson

February 24, 2000

An act to amend Sections 417, ~~417.6, and 1170.1~~ and 417.6 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2523, as amended, Thomson. Firearms: unlawful display.

(1) Existing law provides that every person who, except in self-defense, in the presence of another draws or exhibits any firearm, loaded or unloaded, in a rude, angry or threatening manner, or who in any manner unlawfully uses a firearm in any fight or quarrel, is guilty of a misdemeanor punishable by imprisonment in a county jail for not less than 3 months.

This bill would provide that if the violation occurs in a public place, as defined, and the firearm is a pistol, revolver, or other firearm capable of being concealed upon the person and is not an antique firearm, as defined, ~~and the person is not listed with the Department of Justice as the registered owner of the firearm,~~ a the violation of these provisions is punishable ~~by imprisonment in the state prison, or~~ by imprisonment in a county jail *not exceeding one year*, by a fine not to exceed \$1,000, or by both that fine and imprisonment. This bill would

also make technical, nonsubstantive changes to these and related provisions. ~~The bill would provide that when a consecutive term of imprisonment is imposed for a person convicted of this crime or the crime of drawing or exhibiting a weapon with intent to resist or prevent their own arrest or the arrest of another by a peace officer, the aggregate term may consist of the full term for each violation for which a consecutive term of imprisonment is imposed.~~ By creating a new crime, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 417 of the Penal Code is
2 amended to read:

3 417. (a) (1) Every person who, except in
4 self-defense, in the presence of any other person, draws
5 or exhibits any deadly weapon whatsoever, other than a
6 firearm, in a rude, angry, or threatening manner, or who
7 in any manner, unlawfully uses a deadly weapon other
8 than a firearm in any fight or quarrel is guilty of a
9 misdemeanor, punishable by imprisonment in a county
10 jail for not less than 30 days.

11 (2) Every person who, except in self-defense, in the
12 presence of any other person, draws or exhibits any
13 firearm, whether loaded or unloaded, in a rude, angry, or
14 threatening manner, or who in any manner, unlawfully
15 uses a firearm in any fight or quarrel is punishable as
16 follows:

17 (A) If the violation occurs in a public place and the
18 firearm is a pistol, revolver, or other firearm capable of
19 being concealed upon the person which is not an antique

1 firearm as defined in paragraph (16) of subsection (a) of
2 Section 921 of Title 18 of the United States Code ~~and that~~
3 ~~person is not listed with the Department of Justice~~
4 ~~pursuant to Section 11106 as the registered owner of that~~
5 ~~firearm, by imprisonment in the state prison, or by~~
6 imprisonment in a county jail *not exceeding one year*, by
7 a fine not to exceed one thousand dollars (\$1,000), or by
8 both that fine and imprisonment.

9 (B) In all cases other than that set forth in
10 subparagraph (A), a misdemeanor, punishable by
11 imprisonment in a county jail for not less than three
12 months.

13 (b) Every person who, except in self-defense, in the
14 presence of any other person, draws or exhibits any
15 loaded firearm in a rude, angry, or threatening manner,
16 or who, in any manner, unlawfully uses any loaded
17 firearm in any fight or quarrel upon the grounds of any
18 day care center, as defined in Section 1596.76 of the
19 Health and Safety Code, or any facility where programs,
20 including day care programs or recreational programs,
21 are being conducted for persons under 18 years of age,
22 including programs conducted by a nonprofit
23 organization, during the hours in which the center or
24 facility is open for use, shall be punished by imprisonment
25 in the state prison for one, two, or three years, or by
26 imprisonment in a county jail for not less than three
27 months, nor more than one year.

28 (c) Every person who, in the immediate presence of
29 a peace officer, draws or exhibits any firearm, whether
30 loaded or unloaded, in a rude, angry, or threatening
31 manner, and who knows, or reasonably should know, by
32 the officer's uniformed appearance or other action of
33 identification by the officer, that he or she is a peace
34 officer engaged in the performance of his or her duties,
35 and that peace officer is engaged in the performance of
36 his or her duties, shall be punished by imprisonment in a
37 county jail for not less than nine months and not to exceed
38 one year, or in the state prison.

39 (d) Except where a different penalty applies, every
40 person who violates this section when the other person is

1 in the process of cleaning up graffiti or vandalism is guilty
2 of a misdemeanor, punishable by imprisonment in a
3 county jail for not less than three months nor more than
4 one year.

5 (e) As used in this section, “peace officer” means any
6 person designated as a peace officer pursuant to Chapter
7 4.5 (commencing with Section 830) of Title 3 of Part 2.

8 (f) As used in this section, “public place” means any of
9 the following:

10 (1) A public place in an incorporated city.

11 (2) A public street in an incorporated city.

12 (3) A public street in an unincorporated area.

13 ~~(4) Any place where it is unlawful to discharge a~~
14 ~~firearm in an unincorporated area.~~

15 SEC. 2. Section 417.6 of the Penal Code is amended to
16 read:

17 417.6. (a) If, in the commission of a violation of
18 Section 417 or 417.8, serious bodily injury is intentionally
19 inflicted by the person drawing or exhibiting the firearm
20 or deadly weapon, the offense shall be punished by
21 imprisonment in the county jail not exceeding one year
22 or by imprisonment in the state prison.

23 (b) As used in this section, “serious bodily injury”
24 means a serious impairment of physical condition,
25 including, but not limited to, the following: loss of
26 consciousness; concussion; bone fracture; protracted loss
27 or impairment of function of any bodily member or
28 organ; a wound requiring extensive suturing; and serious
29 disfigurement.

30 (c) When a person is convicted of a violation of Section
31 417 or 417.8 and the deadly weapon or firearm used by the
32 person is owned by that person, the court shall order that
33 the weapon or firearm be deemed a nuisance and
34 disposed of in the manner provided by Section 12028.

35 ~~(d) The penalty prescribed in this section is in addition~~
36 ~~to the punishment prescribed by Section 417 or 417.8.~~

37 SEC. 3. ~~Section 1170.1 of the Penal Code is amended~~
38 ~~to read:~~

39 ~~1170.1. (a) Except as provided in subdivisions (b)~~
40 ~~and (c), and subject to Section 654, when any person is~~

1 convicted of two or more felonies, whether in the same
2 proceeding or court or in different proceedings or courts,
3 and whether by judgment rendered by the same or by a
4 different court, and a consecutive term of imprisonment
5 is imposed under Sections 669 and 1170, the aggregate
6 term of imprisonment for all these convictions shall be
7 the sum of the principal term, the subordinate term, and
8 any additional term imposed for applicable
9 enhancements for prior convictions, prior prison terms,
10 and Section 12022.1. The principal term shall consist of
11 the greatest term of imprisonment imposed by the court
12 for any of the crimes, including any term imposed for
13 applicable specific enhancements. The subordinate term
14 for each consecutive offense which is not a “violent
15 felony,” as defined in subdivision (c) of Section 667.5,
16 shall consist of one-third of the middle term of
17 imprisonment prescribed for each other felony
18 conviction for an offense that is not a violent felony for
19 which a consecutive term of imprisonment is imposed,
20 and shall exclude any specific enhancements. The
21 subordinate term for each consecutive offense which is a
22 “violent felony,” as defined in any paragraph of
23 subdivision (c) of Section 667.5, shall consist of one-third
24 of the middle term of imprisonment prescribed for each
25 other felony conviction for an offense that is a violent
26 felony for which a consecutive term of imprisonment is
27 imposed, and shall include one-third of the term imposed
28 for any specific enhancements applicable to those
29 subordinate offenses.

30 (b) (1) When a consecutive term of imprisonment is
31 imposed under Sections 669 and 1170 for two or more
32 convictions for kidnapping, as defined in Section 207,
33 involving separate victims, the aggregate term shall be
34 calculated as provided in subdivision (a), except that the
35 subordinate term for each subordinate kidnapping
36 conviction shall consist of the full middle term for each
37 kidnapping conviction for which a consecutive term of
38 imprisonment is imposed and shall include the full term
39 imposed for specific enhancements applicable to those
40 subordinate offenses.

~~(2) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for a person convicted of a violation of Section 417 or 417.8, the aggregate term may consist of the full term for each violation for which a consecutive term of imprisonment is imposed.~~

~~(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a). This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.~~

~~(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided for any applicable enhancements. The court shall also impose any other additional term that the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.~~

~~(e) All enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.~~

~~(f) When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that~~

1 ~~offense, including an enhancement for the infliction of~~
2 ~~great bodily injury.~~

3 ~~(g) When two or more enhancements may be imposed~~
4 ~~for the infliction of great bodily injury in the commission~~
5 ~~of a single offense, only the greatest of those~~
6 ~~enhancements shall be imposed for that offense. This~~
7 ~~subdivision shall not limit the imposition of any other~~
8 ~~enhancements applicable to that offense, including an~~
9 ~~enhancement for being armed with or using a dangerous~~
10 ~~or deadly weapon or a firearm.~~

11 ~~(h) For any violation of paragraph (2), (3), or (6) of~~
12 ~~subdivision (a) of Section 261, paragraph (1) or (4) of~~
13 ~~subdivision (a) of Section 262, Section 264.1, subdivision~~
14 ~~(b) of Section 288, subdivision (a) of Section 289, or~~
15 ~~sodomy or oral copulation by force, violence, duress,~~
16 ~~menace, or fear of immediate and unlawful bodily injury~~
17 ~~on the victim or another person as provided in Section 286~~
18 ~~or 288a, the number of enhancements that may be~~
19 ~~imposed shall not be limited, regardless of whether the~~
20 ~~enhancements are pursuant to this section, Section 667.6,~~
21 ~~or some other section of law. Each of the enhancements~~
22 ~~shall be a full and separately served enhancement and~~
23 ~~shall not be merged with any term or with any other~~
24 ~~enhancement.~~

25 ~~SEC. 4.~~

26 ~~SEC. 3. No reimbursement is required by this act~~
27 ~~pursuant to Section 6 of Article XIII B of the California~~
28 ~~Constitution because the only costs that may be incurred~~
29 ~~by a local agency or school district will be incurred~~
30 ~~because this act creates a new crime or infraction,~~
31 ~~eliminates a crime or infraction, or changes the penalty~~
32 ~~for a crime or infraction, within the meaning of Section~~
33 ~~17556 of the Government Code, or changes the definition~~
34 ~~of a crime within the meaning of Section 6 of Article~~
35 ~~XIII B of the California Constitution.~~