

**ASSEMBLY BILL**

**No. 2129**

**Introduced by Assembly Member Spitzer**

February 21, 2006

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An act to amend Section 527.9 of the Code of Civil Procedure, relating to restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 2129, as introduced, Spitzer. Restraining orders: relinquishment of firearms.

Existing law requires a person who is subject to a temporary restraining order or injunction that prohibits certain forms of harassment, violence, harm, intimidation, or abuse to relinquish a firearm. If the person is present in court at a duly noticed hearing, the court must order that person to relinquish the firearm, by either surrendering the firearm to the control of local law enforcement or selling the firearm to a licensed gun dealer, within 24 hours of the order. If the person is not present in court, the respondent is required to relinquish the firearm within 48 hours after being served with the order.

The bill would instead require the person to surrender the firearm within 24 hours of being served with the order without regard to whether the person is present in court.

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

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

- 1 SECTION 1. Section 527.9 of the Code of Civil Procedure is
- 2 amended to read:

1 527.9. (a) A person subject to a temporary restraining order  
2 or injunction issued pursuant to Section 527.6 or 527.8 of the  
3 Code of Civil Procedure, or subject to a restraining order issued  
4 pursuant to Section 136.2 of the Penal Code, or Section 15657.03  
5 of the Welfare and Institutions Code, shall relinquish the firearm  
6 pursuant to this section.

7 ~~(b) If the person subject to the order or injunction is present in~~  
8 ~~court at a duly noticed hearing. Upon issuance of a protective~~  
9 ~~order pursuant to subdivision (a), the court shall order the person~~  
10 ~~to relinquish any firearm in that person's immediate possession~~  
11 ~~or control, or subject to that person's immediate possession or~~  
12 ~~control, within 24 hours of being served with the order, by either~~  
13 ~~by surrendering the firearm to the control of local law~~  
14 ~~enforcement officials, or by selling the firearm to a licensed gun~~  
15 ~~dealer, as specified in Section 12071 of the Penal Code. If the~~  
16 ~~respondent is not present at the hearing, the respondent shall~~  
17 ~~relinquish the firearm within 48 hours after being served with the~~  
18 ~~order. A person ordered to relinquish any firearm pursuant to this~~  
19 ~~subdivision shall file with the court a receipt showing the firearm~~  
20 ~~was surrendered to the local law enforcement agency or sold to a~~  
21 ~~licensed gun dealer within 72 hours after receiving the order. In~~  
22 ~~the event that it is necessary to continue the date of any hearing~~  
23 ~~due to a request for a relinquishment order pursuant to this~~  
24 ~~section, the court shall ensure that all applicable protective orders~~  
25 ~~described in Section 6218 of the Family Code remain in effect or~~  
26 ~~bifurcate the issues and grant the permanent restraining order~~  
27 ~~pending the date of the hearing.~~

28 (c) A local law enforcement agency may charge the person  
29 subject to the order or injunction a fee for the storage of any  
30 firearm relinquished pursuant to this section. The fee shall not  
31 exceed the actual cost incurred by the local law enforcement  
32 agency for the storage of the firearm. For purposes of this  
33 subdivision, "actual cost" means expenses directly related to  
34 taking possession of a firearm, storing the firearm, and  
35 surrendering possession of the firearm to a licensed dealer as  
36 defined in Section 12071 of the Penal Code or to the person  
37 relinquishing the firearm.

38 (d) The restraining order requiring a person to relinquish a  
39 firearm pursuant to subdivision (b) shall state on its face that the  
40 respondent is prohibited from owning, possessing, purchasing, or

1 receiving a firearm while the protective order is in effect and that  
2 the firearm shall be relinquished to the local law enforcement  
3 agency for that jurisdiction or sold to a licensed gun dealer, and  
4 that proof of surrender or sale shall be filed with the court within  
5 a specified period of receipt of the order. The order shall also  
6 state on its face the expiration date for relinquishment. Nothing  
7 in this section shall limit a respondent's right under existing law  
8 to petition the court at a later date for modification of the order.

9 (e) The restraining order requiring a person to relinquish a  
10 firearm pursuant to subdivision (b) shall prohibit the person from  
11 possessing or controlling any firearm for the duration of the  
12 order. At the expiration of the order, the local law enforcement  
13 agency shall return possession of any surrendered firearm to the  
14 respondent, within five days after the expiration of the  
15 relinquishment order, unless the local law enforcement agency  
16 determines that (1) the firearm has been stolen, (2) the  
17 respondent is prohibited from possessing a firearm because the  
18 respondent is in any prohibited class for the possession of  
19 firearms, as defined in Sections 12021 and 12021.1 of the Penal  
20 Code and Sections 8100 and 8103 of the Welfare and Institutions  
21 Code, or (3) another successive restraining order is used against  
22 the respondent under this section. If the local law enforcement  
23 agency determines that the respondent is the legal owner of any  
24 firearm deposited with the local law enforcement agency and is  
25 prohibited from possessing any firearm, the respondent shall be  
26 entitled to sell or transfer the firearm to a licensed dealer as  
27 defined in Section 12071 of the Penal Code. If the firearm has  
28 been stolen, the firearm shall be restored to the lawful owner  
29 upon his or her identification of the firearm and proof of  
30 ownership.

31 (f) The court may, as part of the relinquishment order, grant an  
32 exemption from the relinquishment requirements of this section  
33 for a particular firearm if the respondent can show that a  
34 particular firearm is necessary as a condition of continued  
35 employment and that the current employer is unable to reassign  
36 the respondent to another position where a firearm is  
37 unnecessary. If an exemption is granted pursuant to this  
38 subdivision, the order shall provide that the firearm shall be in  
39 the physical possession of the respondent only during scheduled  
40 work hours and during travel to and from his or her place of

1 employment. In any case involving a peace officer who as a  
2 condition of employment and whose personal safety depends on  
3 the ability to carry a firearm, a court may allow the peace officer  
4 to continue to carry a firearm, either on duty or off duty, if the  
5 court finds by a preponderance of the evidence that the officer  
6 does not pose a threat of harm. Prior to making this finding, the  
7 court shall require a mandatory psychological evaluation of the  
8 peace officer and may require the peace officer to enter into  
9 counseling or other remedial treatment program to deal with any  
10 propensity for domestic violence.

11 (g) During the period of the relinquishment order, a  
12 respondent is entitled to make one sale of all firearms that are in  
13 the possession of a local law enforcement agency pursuant to this  
14 section. A licensed gun dealer, who presents a local law  
15 enforcement agency with a bill of sale indicating that all firearms  
16 owned by the respondent that are in the possession of the local  
17 law enforcement agency have been sold by the respondent to the  
18 licensed gun dealer, shall be given possession of those firearms,  
19 at the location where a respondent's firearms are stored, within  
20 five days of presenting the local law enforcement agency with a  
21 bill of sale.