

AMENDED IN SENATE JUNE 21, 2006

AMENDED IN SENATE JUNE 5, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2129

Introduced by Assembly Member Spitzer

(Coauthor: ~~Assembly Member Cohn~~ Coauthors: Assembly Members Cohn, Daucher, Garcia, Haynes, Maze, Mountjoy, and Wyland)

(Coauthor: Senator Dutton)

February 21, 2006

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2129, as amended, 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 person must file a surrender receipt with the court within 72 hours after receipt of 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. *This bill would also require the person to present a surrender receipt to the court within 48 hours after receipt of the order.*

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:

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

9 (b) Upon the issuance of a protective order pursuant to
10 subdivision (a), the court shall order the person to relinquish any
11 firearm in that person's immediate possession or control, or
12 subject to that person's immediate possession or control, within
13 24 hours of being served with the order, either by surrendering
14 the firearm to the control of local law enforcement officials, or
15 by selling the firearm to a licensed gun dealer, as specified in
16 Section 12071 of the Penal Code. A person ordered to relinquish
17 any firearm pursuant to this subdivision shall file with the court a
18 receipt showing the firearm was surrendered to the local law
19 enforcement agency or sold to a licensed gun dealer within ~~72~~ 48
20 hours after receiving the order. In the event that it is necessary to
21 continue the date of any hearing due to a request for a
22 relinquishment order pursuant to this section, the court shall
23 ensure that all applicable protective orders described in Section
24 6218 of the Family Code remain in effect or bifurcate the issues
25 and grant the permanent restraining order pending the date of the
26 hearing.

27 (c) A local law enforcement agency may charge the person
28 subject to the order or injunction a fee for the storage of any
29 firearm relinquished pursuant to this section. The fee shall not
30 exceed the actual cost incurred by the local law enforcement

1 agency for the storage of the firearm. For purposes of this
2 subdivision, “actual cost” means expenses directly related to
3 taking possession of a firearm, storing the firearm, and
4 surrendering possession of the firearm to a licensed dealer as
5 defined in Section 12071 of the Penal Code or to the person
6 relinquishing the firearm.

7 (d) The restraining order requiring a person to relinquish a
8 firearm pursuant to subdivision (b) shall state on its face that the
9 respondent is prohibited from owning, possessing, purchasing, or
10 receiving a firearm while the protective order is in effect and that
11 the firearm shall be relinquished to the local law enforcement
12 agency for that jurisdiction or sold to a licensed gun dealer, and
13 that proof of surrender or sale shall be filed with the court within
14 a specified period of receipt of the order. The order shall also
15 state on its face the expiration date for relinquishment. Nothing
16 in this section shall limit a respondent’s right under existing law
17 to petition the court at a later date for modification of the order.

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

1 (f) The court may, as part of the relinquishment order, grant an
2 exemption from the relinquishment requirements of this section
3 for a particular firearm if the respondent can show that a
4 particular firearm is necessary as a condition of continued
5 employment and that the current employer is unable to reassign
6 the respondent to another position where a firearm is
7 unnecessary. If an exemption is granted pursuant to this
8 subdivision, the order shall provide that the firearm shall be in
9 the physical possession of the respondent only during scheduled
10 work hours and during travel to and from his or her place of
11 employment. In any case involving a peace officer who as a
12 condition of employment and whose personal safety depends on
13 the ability to carry a firearm, a court may allow the peace officer
14 to continue to carry a firearm, either on duty or off duty, if the
15 court finds by a preponderance of the evidence that the officer
16 does not pose a threat of harm. Prior to making this finding, the
17 court shall require a mandatory psychological evaluation of the
18 peace officer and may require the peace officer to enter into
19 counseling or other remedial treatment program to deal with any
20 propensity for domestic violence.

21 (g) During the period of the relinquishment order, a
22 respondent is entitled to make one sale of all firearms that are in
23 the possession of a local law enforcement agency pursuant to this
24 section. A licensed gun dealer, who presents a local law
25 enforcement agency with a bill of sale indicating that all firearms
26 owned by the respondent that are in the possession of the local
27 law enforcement agency have been sold by the respondent to the
28 licensed gun dealer, shall be given possession of those firearms,
29 at the location where a respondent's firearms are stored, within
30 five days of presenting the local law enforcement agency with a
31 bill of sale.