

**ASSEMBLY BILL**

**No. 322**

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**Introduced by Assembly Member Silva**

February 18, 2009

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An act to amend Sections 171b, 171.5, 245.5, 626.10, 11160, and 12650 of the Penal Code, relating to electronic control devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 322, as introduced, Silva. Electronic control devices.

Existing law generally regulates dangerous weapons, including stun guns and tasers, and establishes offenses committed with stun guns and tasers.

This bill would replace the term “taser” with “electronic control device” for these purposes.

By changing the definition of existing crimes, this bill would impose a state-mandated local program.

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 171b of the Penal Code is amended to  
2     read:

171b. (a) Any person who brings or possesses within any state or local public building or at any meeting required to be open to the public pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, any of the following is guilty of a public offense punishable by imprisonment in a county jail for not more than one year, or in the state prison:

(1) Any firearm.

(2) Any deadly weapon described in Section 653k or 12020.

(3) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.

(4) Any unauthorized tear gas weapon.

(5) Any ~~taser~~ *electronic control device* or stun gun, as defined in Section 244.5.

(6) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO<sub>2</sub> pressure, or spring action, or any spot marker gun or paint gun.

(b) Subdivision (a) shall not apply to, or affect, any of the following:

(1) A person who possesses weapons in, or transports weapons into, a court of law to be used as evidence.

(2) (A) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person who brings or possesses any weapon specified therein within any courtroom if he or she is a party to an action pending before the court.

(3) A person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

1 (4) A person who has permission to possess that weapon granted  
2 in writing by a duly authorized official who is in charge of the  
3 security of the state or local government building.

4 (5) A person who lawfully resides in, lawfully owns, or is in  
5 lawful possession of, that building with respect to those portions  
6 of the building that are not owned or leased by the state or local  
7 government.

8 (6) A person licensed or registered in accordance with, and  
9 acting within the course and scope of, Chapter 11.5 (commencing  
10 with Section 7512) or Chapter 11.6 (commencing with Section  
11 7590) of Division 3 of the Business and Professions Code who  
12 has been hired by the owner or manager of the building if the  
13 person has permission pursuant to paragraph (5).

14 (7) (A) A person who, for the purpose of sale or trade, brings  
15 any weapon that may otherwise be lawfully transferred, into a gun  
16 show conducted pursuant to Sections 12071.1 and 12071.4.

17 (B) A person who, for purposes of an authorized public  
18 exhibition, brings any weapon that may otherwise be lawfully  
19 possessed, into a gun show conducted pursuant to Sections 12071.1  
20 and 12071.4.

21 (c) As used in this section, “state or local public building” means  
22 a building that meets all of the following criteria:

23 (1) It is a building or part of a building owned or leased by the  
24 state or local government, if state or local public employees are  
25 regularly present for the purposes of performing their official  
26 duties. A state or local public building includes, but is not limited  
27 to, a building that contains a courtroom.

28 (2) It is not a building or facility, or a part thereof, that is referred  
29 to in Section 171c, 171d, 626.9, 626.95, or 626.10 of this code, or  
30 in Section 18544 of the Elections Code.

31 (3) It is a building not regularly used, and not intended to be  
32 used, by state or local employees as a place of residence.

33 SEC. 2. Section 171.5 of the Penal Code is amended to read:  
34 171.5. (a) For purposes of this section:

35 (1) “Airport” means an airport, with a secured area, that  
36 regularly serves an air carrier holding a certificate issued by the  
37 United States Secretary of Transportation.

38 (2) “Passenger vessel terminal” means only that portion of a  
39 harbor or port facility, as described in Section 105.105(a)(2) of

1 Title 33 of the Code of Federal Regulations, with a secured area  
2 that regularly serves scheduled commuter or passenger operations.

3 (3) “Sterile area” means a portion of an airport defined in the  
4 airport security program to which access generally is controlled  
5 through the screening of persons and property, as specified in  
6 Section 1540.5 of Title 49 of the Code of Federal Regulations, or  
7 a portion of any passenger vessel terminal to which, pursuant to  
8 the requirements set forth in Sections 105.255(a)(1), 105.255(c)(1),  
9 and 105.260(a) of Title 33 of the Code of Federal Regulations,  
10 access is generally controlled in a manner consistent with the  
11 passenger vessel terminal’s security plan and the MARSEC level  
12 in effect at the time.

13 (b) It is unlawful for any person to knowingly possess, within  
14 any sterile area of an airport or a passenger vessel terminal, any  
15 of the items listed in subdivision (c).

16 (c) The following items are unlawful to possess as provided in  
17 subdivision (b):

18 (1) Any firearm.

19 (2) Any knife with a blade length in excess of four inches, the  
20 blade of which is fixed, or is capable of being fixed, in an  
21 unguarded position by the use of one or two hands.

22 (3) Any box cutter or straight razor.

23 (4) Any metal military practice hand grenade.

24 (5) Any metal replica hand grenade.

25 (6) Any plastic replica hand grenade.

26 (7) Any imitation firearm as defined in Section 417.4.

27 (8) Any frame, receiver, barrel, or magazine of a firearm.

28 (9) Any unauthorized tear gas weapon.

29 (10) Any ~~taser~~ *electronic control device* or stun gun, as defined  
30 in Section 244.5.

31 (11) Any instrument that expels a metallic projectile, such as a  
32 BB or pellet, through the force of air pressure, CO<sub>2</sub> pressure, or  
33 spring action, or any spot marker gun or paint gun.

34 (12) Any ammunition as defined in Section 12316.

35 (d) Subdivision (b) shall not apply to, or affect, any of the  
36 following:

37 (1) A duly appointed peace officer, as defined in Chapter 4.5  
38 (commencing with Section 830) of Title 3 of Part 2, a retired peace  
39 officer with authorization to carry concealed weapons as described  
40 in subdivision (a) of Section 12027, a full-time paid peace officer

1 of another state or the federal government who is carrying out  
2 official duties while in California, or any person summoned by  
3 any of these officers to assist in making arrests or preserving the  
4 peace while he or she is actually engaged in assisting the officer.

5 (2) A person who has authorization to possess a weapon  
6 specified in subdivision (c), granted in writing by an airport  
7 security coordinator who is designated as specified in Section  
8 1542.3 of Title 49 of the Code of Federal Regulations, and who is  
9 responsible for the security of the airport.

10 (3) A person, including an employee of a licensed contract guard  
11 service, who has authorization to possess a weapon specified in  
12 subdivision (c) granted in writing by a person discharging the  
13 duties of Facility Security Officer or Company Security Officer  
14 pursuant to an approved United States Coast Guard facility security  
15 plan, and who is responsible for the security of the passenger vessel  
16 terminal.

17 (e) A violation of this section is punishable by imprisonment  
18 in a county jail for a period not exceeding six months, or by a fine  
19 not exceeding one thousand dollars (\$1,000), or by both that fine  
20 and imprisonment.

21 (f) The provisions of this section are cumulative, and shall not  
22 be construed as restricting the application of any other law.  
23 However, an act or omission that is punishable in different ways  
24 by this and any other provision of law shall not be punished under  
25 more than one provision.

26 (g) Nothing in this section is intended to affect existing state or  
27 federal law regarding the transportation of firearms on airplanes  
28 in checked luggage, or the possession of the items listed in  
29 subdivision (c) in areas that are not “sterile areas.”

30 SEC. 3. Section 245.5 of the Penal Code is amended to read:

31 245.5. (a) Every person who commits an assault with a deadly  
32 weapon or instrument, other than a firearm, or by any means likely  
33 to produce great bodily injury upon the person of a school  
34 employee, and who knows or reasonably should know that the  
35 victim is a school employee engaged in the performance of his or  
36 her duties, when that school employee is engaged in the  
37 performance of his or her duties, shall be punished by  
38 imprisonment in the state prison for three, four, or five years, or  
39 in a county jail not exceeding one year.

(b) Every person who commits an assault with a firearm upon the person of a school employee, and who knows or reasonably should know that the victim is a school employee engaged in the performance of his or her duties, when the school employee is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years, or in a county jail for not less than six months and not exceeding one year.

(c) Every person who commits an assault upon the person of a school employee with a stun gun or ~~taser~~ *electronic control device*, and who knows or reasonably should know that the person is a school employee engaged in the performance of his or her duties, when the school employee is engaged in the performance of his or her duties, shall be punished by imprisonment in a county jail for a term not exceeding one year or by imprisonment in the state prison for two, three, or four years.

This subdivision shall not be construed to preclude or in any way limit the applicability of Section 245 in any criminal prosecution.

(d) As used in the section, “school employee” means any person employed as a permanent or probationary certificated or classified employee of a school district on a part-time or full-time basis, including a substitute teacher. “School employee,” as used in this section, also includes a student teacher, or a school board member. “School,” as used in this section, has the same meaning as that term is defined in Section 626.

SEC. 4. Section 626.10 of the Penal Code is amended to read:

626.10. (a) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches, folding knife with a blade that locks into place, a razor with an unguarded blade, ~~a taser~~ *an electronic control device*, or a stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a

1 metallic projectile such as a BB or a pellet, through the force of  
2 air pressure, CO<sub>2</sub> pressure, or spring action, or any spot marker  
3 gun, upon the grounds of, or within, any public or private school  
4 providing instruction in kindergarten or any of grades 1 to 12,  
5 inclusive, is guilty of a public offense, punishable by imprisonment  
6 in a county jail not exceeding one year, or by imprisonment in the  
7 state prison.

8 (b) Any person, except a duly appointed peace officer as defined  
9 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part  
10 2, a full-time paid peace officer of another state or the federal  
11 government who is carrying out official duties while in this state,  
12 a person summoned by any officer to assist in making arrests or  
13 preserving the peace while the person is actually engaged in  
14 assisting any officer, or a member of the military forces of this  
15 state or the United States who is engaged in the performance of  
16 his or her duties, who brings or possesses any dirk, dagger, ice  
17 pick, or knife having a fixed blade longer than 2½ inches upon  
18 the grounds of, or within, any private university, the University of  
19 California, the California State University, or the California  
20 Community Colleges is guilty of a public offense, punishable by  
21 imprisonment in a county jail not exceeding one year, or by  
22 imprisonment in the state prison.

23 (c) Subdivisions (a) and (b) do not apply to any person who  
24 brings or possesses a knife having a blade longer than 2½ inches  
25 or a razor with an unguarded blade upon the grounds of, or within,  
26 a public or private school providing instruction in kindergarten or  
27 any of grades 1 to 12, inclusive, or any private university, state  
28 university, or community college at the direction of a faculty  
29 member of the private university, state university, or community  
30 college, or a certificated or classified employee of the school for  
31 use in a private university, state university, community college,  
32 or school-sponsored activity or class.

33 (d) Subdivisions (a) and (b) do not apply to any person who  
34 brings or possesses an ice pick, a knife having a blade longer than  
35 2½ inches, or a razor with an unguarded blade upon the grounds  
36 of, or within, a public or private school providing instruction in  
37 kindergarten or any of grades 1 to 12, inclusive, or any private  
38 university, state university, or community college for a lawful  
39 purpose within the scope of the person's employment.

(e) Subdivision (b) does not apply to any person who brings or possesses an ice pick or a knife having a fixed blade longer than 2 ½ inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) does not apply to any person who brings an instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO<sub>2</sub> pressure, or spring action, or any spot marker gun upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, “dirk” or “dagger” means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.

(i) Any person who, without the written permission of the college or university president or chancellor or his or her designee, brings or possesses a less lethal weapon, as defined in Section 12601, or a stun gun, as defined in Section 12650, upon the grounds of or within, a public or private college or university campus is guilty of a misdemeanor.

SEC. 5. Section 11160 of the Penal Code is amended to read:

11160. (a) Any health practitioner employed in a health facility, clinic, physician’s office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides

1 medical services for a physical condition to a patient whom he or  
2 she knows or reasonably suspects is a person described as follows,  
3 shall immediately make a report in accordance with subdivision  
4 (b):

5 (1) Any person suffering from any wound or other physical  
6 injury inflicted by his or her own act or inflicted by another where  
7 the injury is by means of a firearm.

8 (2) Any person suffering from any wound or other physical  
9 injury inflicted upon the person where the injury is the result of  
10 assaultive or abusive conduct.

11 (b) Any health practitioner employed in a health facility, clinic,  
12 physician's office, local or state public health department, or a  
13 clinic or other type of facility operated by a local or state public  
14 health department shall make a report regarding persons described  
15 in subdivision (a) to a local law enforcement agency as follows:

16 (1) A report by telephone shall be made immediately or as soon  
17 as practically possible.

18 (2) A written report shall be prepared on the standard form  
19 developed in compliance with paragraph (4) of this subdivision,  
20 and Section 11160.2, and adopted by the agency or agencies  
21 designated by the Director of Finance pursuant to Section 13820,  
22 or on a form developed and adopted by another state agency that  
23 otherwise fulfills the requirements of the standard form. The  
24 completed form shall be sent to a local law enforcement agency  
25 within two working days of receiving the information regarding  
26 the person.

27 (3) A local law enforcement agency shall be notified and a  
28 written report shall be prepared and sent pursuant to paragraphs  
29 (1) and (2) even if the person who suffered the wound, other injury,  
30 or assaultive or abusive conduct has expired, regardless of whether  
31 or not the wound, other injury, or assaultive or abusive conduct  
32 was a factor contributing to the death, and even if the evidence of  
33 the conduct of the perpetrator of the wound, other injury, or  
34 assaultive or abusive conduct was discovered during an autopsy.

35 (4) The report shall include, but shall not be limited to, the  
36 following:

37 (A) The name of the injured person, if known.

38 (B) The injured person's whereabouts.

39 (C) The character and extent of the person's injuries.

1 (D) The identity of any person the injured person alleges  
2 inflicted the wound, other injury, or assaultive or abusive conduct  
3 upon the injured person.

4 (c) For the purposes of this section, “injury” shall not include  
5 any psychological or physical condition brought about solely  
6 through the voluntary administration of a narcotic or restricted  
7 dangerous drug.

8 (d) For the purposes of this section, “assaultive or abusive  
9 conduct” shall include any of the following offenses:

- 10 (1) Murder, in violation of Section 187.
- 11 (2) Manslaughter, in violation of Section 192 or 192.5.
- 12 (3) Mayhem, in violation of Section 203.
- 13 (4) Aggravated mayhem, in violation of Section 205.
- 14 (5) Torture, in violation of Section 206.
- 15 (6) Assault with intent to commit mayhem, rape, sodomy, or  
16 oral copulation, in violation of Section 220.
- 17 (7) Administering controlled substances or anesthetic to aid in  
18 commission of a felony, in violation of Section 222.
- 19 (8) Battery, in violation of Section 242.
- 20 (9) Sexual battery, in violation of Section 243.4.
- 21 (10) Incest, in violation of Section 285.
- 22 (11) Throwing any vitriol, corrosive acid, or caustic chemical  
23 with intent to injure or disfigure, in violation of Section 244.
- 24 (12) Assault with a stun gun or ~~taser~~ *electronic control device*,  
25 in violation of Section 244.5.
- 26 (13) Assault with a deadly weapon, firearm, assault weapon, or  
27 machinegun, or by means likely to produce great bodily injury, in  
28 violation of Section 245.
- 29 (14) Rape, in violation of Section 261.
- 30 (15) Spousal rape, in violation of Section 262.
- 31 (16) Procuring any female to have sex with another man, in  
32 violation of Section 266, 266a, 266b, or 266c.
- 33 (17) Child abuse or endangerment, in violation of Section 273a  
34 or 273d.
- 35 (18) Abuse of spouse or cohabitant, in violation of Section  
36 273.5.
- 37 (19) Sodomy, in violation of Section 286.
- 38 (20) Lewd and lascivious acts with a child, in violation of  
39 Section 288.
- 40 (21) Oral copulation, in violation of Section 288a.

1 (22) Sexual penetration, in violation of Section 289.

2 (23) Elder abuse, in violation of Section 368.

3 (24) An attempt to commit any crime specified in paragraphs  
4 (1) to (23), inclusive.

5 (e) When two or more persons who are required to report are  
6 present and jointly have knowledge of a known or suspected  
7 instance of violence that is required to be reported pursuant to this  
8 section, and when there is an agreement among these persons to  
9 report as a team, the team may select by mutual agreement a  
10 member of the team to make a report by telephone and a single  
11 written report, as required by subdivision (b). The written report  
12 shall be signed by the selected member of the reporting team. Any  
13 member who has knowledge that the member designated to report  
14 has failed to do so shall thereafter make the report.

15 (f) The reporting duties under this section are individual, except  
16 as provided in subdivision (e).

17 (g) No supervisor or administrator shall impede or inhibit the  
18 reporting duties required under this section and no person making  
19 a report pursuant to this section shall be subject to any sanction  
20 for making the report. However, internal procedures to facilitate  
21 reporting and apprise supervisors and administrators of reports  
22 may be established, except that these procedures shall not be  
23 inconsistent with this article. The internal procedures shall not  
24 require any employee required to make a report under this article  
25 to disclose his or her identity to the employer.

26 (h) For the purposes of this section, it is the Legislature's intent  
27 to avoid duplication of information.

28 SEC. 6. Section 12650 of the Penal Code is amended to read:

29 12650. "Stun gun" as used in this chapter shall include any  
30 item, except ~~a taser~~ *an electronic control device*, used or intended  
31 to be used as either an offensive or defensive weapon capable of  
32 temporarily immobilizing a person by the infliction of an electrical  
33 charge.

34 SEC. 7. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section 17556 of  
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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