

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 814

Introduced by Assembly Member Krekorian

February 26, 2009

An act to amend ~~Section~~ *Sections 12010 and 12021* of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 814, as amended, Krekorian. Firearms: surrender.

Existing law directs the Attorney General to establish a Prohibited Armed Persons File, as specified.

This bill would urge local law enforcement agencies to obtain a secured mailbox from the Department of Justice in order to receive information from the Prohibited Armed Persons File, and would encourage review of the file in connection with the relinquishment of firearms by defendants subsequent to conviction, as specified.

Existing law makes it an offense for a person convicted of a felony, who is addicted to narcotics, or, for a period of 10 years, for a person who is convicted of specified misdemeanors, to own, purchase, receive, have in their possession or under their custody or control any firearm, as specified. Existing law provides for a notice to a defendant of these provisions, as specified.

This bill would establish a procedure for a defendant who owns, has possession, custody, or control of a firearm, to sell the firearm to a firearms dealer or relinquish the firearm to a law enforcement agency in order to comply with the prohibitions described above. The procedure

would in part require the defendant to disclose whether the defendant owns or has possession, custody, or control of any firearms and to list those firearms. The bill would provide procedures for persons in or out of custody to relinquish their firearms, including designating a law enforcement agency or a person as the defendant's designee, and would require the defendant or the defendant's designee to file a form showing, among other things, the date the firearm was relinquished. Failure to timely file the form would, subject to exception, be an infraction punishable by a fine not exceeding \$500.

By creating a new infraction, this bill would impose a state-mandated local program. By imposing additional duties on local law enforcement agencies, 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 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 12010 of the Penal Code is amended to
2 read:
3 12010. (a) The Attorney General shall establish and maintain
4 an online database to be known as the Prohibited Armed Persons
5 File. The purpose of the file is to cross-reference persons who have
6 ownership or possession of a firearm on or after January 1, 1991,
7 as indicated by a record in the Consolidated Firearms Information
8 System, and who, subsequent to the date of that ownership or
9 possession of a firearm, fall within a class of persons who are
10 prohibited from owning or possessing a firearm.
11 (b) The information contained in the Prohibited Armed Persons
12 File shall only be available to those entities specified in, and
13 pursuant to, subdivision (b) or (c) of Section 11105, through the
14 California Law Enforcement Telecommunications System, for the

1 purpose of determining if persons are armed and prohibited from
2 possessing firearms.

3 *(c) Local law enforcement agencies are urged to obtain a*
4 *secured mailbox from the Department of Justice in order to receive*
5 *updated information from the Prohibited Armed Persons File.*
6 *Local law enforcement is further encouraged to review this*
7 *information against the declarations in any Prohibited Persons*
8 *Relinquishment Form received in accordance with paragraph (2)*
9 *of subdivision (d) of Section 12021 and to retrieve any illegally*
10 *possessed firearms whenever possible.*

11 **SECTION 1.**

12 **SEC. 2.** Section 12021 of the Penal Code is amended to read:

13 12021. (a) (1) Any person who has been convicted of a felony
14 under the laws of the United States, the State of California, or any
15 other state, government, or country or of an offense enumerated
16 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
17 to the use of any narcotic drug, and who owns, purchases, receives,
18 or has in his or her possession or under his or her custody or control
19 any firearm is guilty of a felony.

20 (2) Any person who has two or more convictions for violating
21 paragraph (2) of subdivision (a) of Section 417 and who owns,
22 purchases, receives, or has in his or her possession or under his or
23 her custody or control any firearm is guilty of a felony.

24 (b) Notwithstanding subdivision (a), any person who has been
25 convicted of a felony or of an offense enumerated in Section
26 12001.6, when that conviction results from certification by the
27 juvenile court for prosecution as an adult in an adult court under
28 Section 707 of the Welfare and Institutions Code, and who owns
29 or has in his or her possession or under his or her custody or control
30 any firearm is guilty of a felony.

31 (c) (1) Except as provided in subdivision (a) or paragraph (2)
32 of this subdivision, any person who has been convicted of a
33 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
34 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
35 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5,
36 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision
37 (b) or (d) of Section 12034, Section 12040, subdivision (b) of
38 Section 12072, subdivision (a) of former Section 12100, Section
39 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the
40 Welfare and Institutions Code, any firearm-related offense pursuant

1 to Sections 871.5 and 1001.5 of the Welfare and Institutions Code,
2 or of the conduct punished in paragraph (3) of subdivision (g) of
3 Section 12072, and who, within 10 years of the conviction, owns,
4 purchases, receives, or has in his or her possession or under his or
5 her custody or control, any firearm is guilty of a public offense,
6 which shall be punishable by imprisonment in a county jail not
7 exceeding one year or in the state prison, by a fine not exceeding
8 one thousand dollars (\$1,000), or by both that imprisonment and
9 fine. The court, on forms prescribed by the Department of Justice,
10 shall notify the department of persons subject to this subdivision.
11 However, the prohibition in this paragraph may be reduced,
12 eliminated, or conditioned as provided in paragraph (2) or (3).

13 (2) Any person employed as a peace officer described in Section
14 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
15 or livelihood is dependent on the ability to legally possess a
16 firearm, who is subject to the prohibition imposed by this
17 subdivision because of a conviction under Section 273.5, 273.6,
18 or 646.9, may petition the court only once for relief from this
19 prohibition. The petition shall be filed with the court in which the
20 petitioner was sentenced. If possible, the matter shall be heard
21 before the same judge who sentenced the petitioner. Upon filing
22 the petition, the clerk of the court shall set the hearing date and
23 shall notify the petitioner and the prosecuting attorney of the date
24 of the hearing. Upon making each of the following findings, the
25 court may reduce or eliminate the prohibition, impose conditions
26 on reduction or elimination of the prohibition, or otherwise grant
27 relief from the prohibition as the court deems appropriate:

28 (A) Finds by a preponderance of the evidence that the petitioner
29 is likely to use a firearm in a safe and lawful manner.

30 (B) Finds that the petitioner is not within a prohibited class as
31 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
32 and the court is not presented with any credible evidence that the
33 petitioner is a person described in Section 8100 or 8103 of the
34 Welfare and Institutions Code.

35 (C) (i) Finds that the petitioner does not have a previous
36 conviction under this subdivision no matter when the prior
37 conviction occurred.

38 (ii) In making its decision, the court shall consider the
39 petitioner's continued employment, the interest of justice, any
40 relevant evidence, and the totality of the circumstances. The court

1 shall require, as a condition of granting relief from the prohibition
2 under this section, that the petitioner agree to participate in
3 counseling as deemed appropriate by the court. Relief from the
4 prohibition shall not relieve any other person or entity from any
5 liability that might otherwise be imposed. It is the intent of the
6 Legislature that courts exercise broad discretion in fashioning
7 appropriate relief under this paragraph in cases in which relief is
8 warranted. However, nothing in this paragraph shall be construed
9 to require courts to grant relief to any particular petitioner. It is
10 the intent of the Legislature to permit persons who were convicted
11 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
12 relief from the prohibition imposed by this subdivision.

13 (3) Any person who is subject to the prohibition imposed by
14 this subdivision because of a conviction of an offense prior to that
15 offense being added to paragraph (1) may petition the court only
16 once for relief from this prohibition. The petition shall be filed
17 with the court in which the petitioner was sentenced. If possible,
18 the matter shall be heard before the same judge that sentenced the
19 petitioner. Upon filing the petition, the clerk of the court shall set
20 the hearing date and notify the petitioner and the prosecuting
21 attorney of the date of the hearing. Upon making each of the
22 following findings, the court may reduce or eliminate the
23 prohibition, impose conditions on reduction or elimination of the
24 prohibition, or otherwise grant relief from the prohibition as the
25 court deems appropriate:

26 (A) Finds by a preponderance of the evidence that the petitioner
27 is likely to use a firearm in a safe and lawful manner.

28 (B) Finds that the petitioner is not within a prohibited class as
29 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
30 and the court is not presented with any credible evidence that the
31 petitioner is a person described in Section 8100 or 8103 of the
32 Welfare and Institutions Code.

33 (C) (i) Finds that the petitioner does not have a previous
34 conviction under this subdivision, no matter when the prior
35 conviction occurred.

36 (ii) In making its decision, the court may consider the interest
37 of justice, any relevant evidence, and the totality of the
38 circumstances. It is the intent of the Legislature that courts exercise
39 broad discretion in fashioning appropriate relief under this
40 paragraph in cases in which relief is warranted. However, nothing

1 in this paragraph shall be construed to require courts to grant relief
2 to any particular petitioner.

3 (4) Law enforcement officials who enforce the prohibition
4 specified in this subdivision against a person who has been granted
5 relief pursuant to paragraph (2) or (3) shall be immune from any
6 liability for false arrest arising from the enforcement of this
7 subdivision unless the person has in his or her possession a certified
8 copy of the court order that granted the person relief from the
9 prohibition. This immunity from liability shall not relieve any
10 person or entity from any other liability that might otherwise be
11 imposed.

12 (d) (1) Any person who, as an express condition of probation,
13 is prohibited or restricted from owning, possessing, controlling,
14 receiving, or purchasing a firearm and who owns, purchases,
15 receives, or has in his or her possession or under his or her custody
16 or control, any firearm but who is not subject to subdivision (a) or
17 (c) is guilty of a public offense, which shall be punishable by
18 imprisonment in a county jail not exceeding one year or in the
19 state prison, by a fine not exceeding one thousand dollars (\$1,000),
20 or by both that imprisonment and fine. The court, on forms
21 provided by the Department of Justice, shall notify the department
22 of persons subject to this subdivision. The notice shall include a
23 copy of the order of probation and a copy of any minute order or
24 abstract reflecting the order and conditions of probation.

25 (2) (A) For any person who is subject to subdivision (a), (b),
26 or (c), the defendant shall, following conviction, relinquish all
27 firearms he or she owns, possesses, or has within his or her custody
28 or control in the manner described in subparagraphs ~~(C) and (D)~~
29 ~~(D) and (E)~~. Using the ~~form described in subparagraph (B)~~
30 *Prohibited Persons Relinquishment Form developed by the*
31 *Department of Justice*, the defendant shall name a designee and
32 grant the designee power of attorney for the purpose of transferring
33 or disposing of any firearm. The defendant may name a consenting
34 law enforcement agency as his or her designee.

35 (B) ~~(i)~~ For any person who is subject to subdivision (a), (b), or
36 (c), the court shall, upon conviction, instruct the defendant that he
37 or she is prohibited from owning, purchasing, receiving, possessing,
38 or having under his or her custody or control any firearm, and that
39 he or she shall relinquish all firearms through a designee in the
40 manner provided in this section. The court shall provide the

1 defendant with a notice and form developed by the Department of
2 Justice which shall state the prohibition, the manner in which
3 firearms may be relinquished, and the penalty imposed for failure
4 to comply. Failure to provide the notice shall not be a defense to
5 a violation of this section. *Prohibited Persons Relinquishment*
6 *Form.*

7 (C) *The Prohibited Persons Relinquishment Form shall do all*
8 *of the following:*

9 (i) *Inform the defendant that he or she is prohibited from*
10 *owning, purchasing, receiving, possessing, or having under his or*
11 *her custody or control any firearm, and that he or she shall*
12 *relinquish all firearms through a designee within the time periods*
13 *set forth in subparagraphs (D) and (E).*

14 (ii) ~~The form shall require~~ *Require* the defendant to declare
15 whether he or she owned, possessed, or had in his or her custody
16 any firearms at the time of *his or her* conviction, and ~~shall~~ require
17 the defendant to describe the firearms with as much detail as
18 possible.

19 (iii) ~~The form shall authorize~~ *Require* the defendant to name a
20 *consenting* designee and grant the designee power of attorney for
21 the purpose of transferring or disposing of ~~any firearms pursuant~~
22 ~~to subparagraph (A).~~ The form shall require the designee to declare
23 that he or she is not prohibited from possessing firearms under
24 state or federal law. The form shall also require the designee to
25 indicate his or her consent to the designation and to state the date
26 each firearm was relinquished and the name of the party to whom
27 it was relinquished.

28 (iv) ~~The form shall require the defendant to explain in detail the~~
29 ~~circumstances surrounding the loss or theft of any firearm the~~
30 ~~defendant previously owned, possessed, or had under his or her~~
31 ~~custody or control, the loss or theft of which renders him or her~~
32 ~~unable to fully comply with these provisions. The form shall further~~
33 ~~require the defendant to explain in detail any action taken to report~~
34 ~~the loss or theft to any law enforcement agency or insurance~~
35 ~~provider. The form shall require the defendant to notify both the~~
36 ~~arresting law enforcement agency and the Department of Justice~~
37 ~~that he or she no longer owns or possesses the firearm.~~ *all firearms.*

38 (iv) *Require the designee to declare that he or she is not*
39 *prohibited from possessing all firearms under state or federal law*
40 *and indicate his or her consent to the designation.*

1 (v) *Require the designee to state the date each firearm was*
2 *relinquished and the name of the party to whom it was relinquished.*

3 ~~(C)~~

4 (D) The following procedures shall apply to any defendant who
5 is not in custody following conviction:

6 (i) The designee shall dispose of any firearm the defendant
7 owns, possesses, or has within his or her custody or control within
8 five days of the conviction by surrendering the firearm to the
9 control of local law enforcement officials, selling the firearm to a
10 firearms dealer, or selling or transferring the firearm to a third
11 party by completing the sale or transfer through a firearms dealer.

12 (ii) During the five-day period following conviction, the
13 defendant shall not be prosecuted ~~under~~ *for violating* subdivision
14 (a), (b), or (c) ~~for prior to relinquishment based upon~~ his or her
15 ownership, custody or control, or possession of a firearm within
16 his or her home, provided the firearm was owned ~~by~~ *or possessed*
17 *by, or in the custody or control of,* the defendant prior to *the date*
18 *of his or her* conviction. This provision shall not apply to a
19 defendant who was, prior to conviction, already prohibited from
20 owning, purchasing, receiving, possessing, or having under his or
21 her custody or control ~~any firearm by subdivision (a), (b), or (c)~~
22 *all firearms by state or federal law.*

23 (iii) If the defendant does not own, possess, or have within his
24 or her custody or control any firearms to relinquish, ~~the defendant~~
25 *he or she* shall, within five days following conviction, submit the
26 ~~completed form described in subparagraph (B)~~ *Prohibited Persons*
27 *Relinquishment Form* to the arresting law enforcement agency.

28 (iv) If the defendant owns, possesses, or has within his or her
29 custody or control any firearms to relinquish, following
30 relinquishment, but within five days following the conviction, the
31 *defendant's* designee shall submit the ~~completed form described~~
32 ~~in subparagraph (A)~~ *Prohibited Persons Relinquishment Form* to
33 the arresting law enforcement agency. ~~Pursuant to clause (iv) of~~
34 ~~subparagraph (B), the defendant shall, within the five days~~
35 ~~following conviction, notify both the arresting law enforcement~~
36 ~~agency and the Department of Justice regarding any lost or stolen~~
37 ~~firearms.~~

38 ~~(D)~~

39 (E) The following procedures shall apply to any defendant who
40 remains in custody following conviction:

1 (i) The designee shall dispose of any firearm the defendant
2 owns, possesses, or has within his or her custody or control within
3 14 days of the conviction, by surrendering the firearm to the control
4 of local law enforcement officials, selling the firearm to a firearms
5 dealer, or selling or transferring the firearm to a third party by
6 completing the sale or transfer through a firearms dealer.

7 (ii) During the 14-day period following the conviction, a
8 defendant who remains in custody shall not be prosecuted under
9 subdivision (a), (b), or (c) for his or her ownership of a firearm to
10 be relinquished, provided the firearm was owned by the defendant
11 prior to conviction. This provision shall not apply to a defendant
12 who was, prior to conviction, already prohibited from owning,
13 purchasing, receiving, possessing, or having under his or her
14 custody or control any firearm by subdivision (a), (b), or (c).

15 (iii) If the defendant does not own, possess, or have within his
16 or her custody or control any firearms to relinquish, ~~the defendant~~
17 *he or she* shall, within 14 days following conviction, submit the
18 ~~completed form described in subparagraph (B)~~ *Prohibited Persons*
19 *Relinquishment Form* to the arresting law enforcement agency.

20 (iv) If the defendant owns, possesses, or has within his or her
21 custody or control any firearms to relinquish, the *defendant's*
22 designee shall, following relinquishment, but within 14 days
23 following conviction, submit the ~~completed form described in~~
24 ~~subparagraph (A)~~ *Prohibited Persons Relinquishment Form* to the
25 arresting law enforcement agency. ~~Pursuant to clause (iv) of~~
26 ~~subparagraph (B), the defendant shall, within the 14 days following~~
27 ~~conviction, notify both the arresting law enforcement agency and~~
28 ~~the Department of Justice regarding any lost or stolen firearms.~~

29 (v) If the defendant is released from custody during the 14 days
30 following conviction and a designee has not yet taken temporary
31 possession of ~~any~~ every firearm to be relinquished as described
32 above, the defendant shall, within five days following his or her
33 release, relinquish ~~any firearm in the manner described~~ every
34 *firearm required to be relinquished, as specified* in subparagraph
35 ~~(C)~~ *(D)*.

36 ~~(E)~~

37 *(F)* Pursuant to Section 1324, no information directly or
38 indirectly derived from the ~~form described in subparagraph (B) or~~
39 ~~from a relinquished firearm~~ *defendant's statement on the Prohibited*
40 *Persons Relinquishment Form* shall be used in ~~a~~ any criminal

1 prosecution for illegal possession of that firearm—prior to
2 relinquishment. This protection shall not extend to any prosecution
3 for the unlawful use of ~~any~~ a firearm.

4 (F)

5 (G) Failure by a defendant or a designee, except a designee that
6 is a consenting law enforcement agency, to timely file the
7 completed form described in subparagraph (A) *Prohibited Persons*
8 *Relinquishment Form* with the arresting law enforcement agency
9 shall constitute an infraction punishable by a fine not exceeding
10 five hundred dollars (\$500).

11 ~~(G) Local law enforcement agencies are urged to obtain a~~
12 ~~secured mailbox from the Department of Justice in order to receive~~
13 ~~updated information from the Prohibited Armed Persons File, as~~
14 ~~described in Sections 12010 to 12012, inclusive. Local law~~
15 ~~enforcement is further encouraged to review this information~~
16 ~~against the declarations in the submitted forms described in~~
17 ~~subparagraph (A) and to retrieve illegally possessed firearms~~
18 ~~whenever possible.~~

19 (H) A law enforcement agency shall not be required to retain a
20 firearm that was relinquished to the law enforcement agency
21 pursuant to this subdivision for more than 30 days after the date
22 on which the firearm was relinquished. After the 30-day period
23 has expired, the law enforcement agency shall destroy the firearm;
24 ~~unless the firearm is retained for official purposes~~ *firearm is subject*
25 *to destruction, retention, or transfer by the agency* pursuant to
26 Section 12030.

27 (e) Any person who (1) is alleged to have committed an offense
28 listed in subdivision (b) of Section 707 of the Welfare and
29 Institutions Code, an offense described in subdivision (b) of Section
30 1203.073, any offense enumerated in paragraph (1) of subdivision
31 (c), or any offense described in subdivision (a) of Section 12025,
32 subdivision (a) of Section 12031, or subdivision (a) of Section
33 12034, and (2) is subsequently adjudged a ward of the juvenile
34 court within the meaning of Section 602 of the Welfare and
35 Institutions Code because the person committed an offense listed
36 in subdivision (b) of Section 707 of the Welfare and Institutions
37 Code, an offense described in subdivision (b) of Section 1203.073,
38 any offense enumerated in paragraph (1) of subdivision (c), or any
39 offense described in subdivision (a) of Section 12025, subdivision
40 (a) of Section 12031, or subdivision (a) of Section 12034, shall

1 not own, or have in his or her possession or under his or her
2 custody or control, any firearm until the age of 30 years. A
3 violation of this subdivision shall be punishable by imprisonment
4 in a county jail not exceeding one year or in the state prison, by a
5 fine not exceeding one thousand dollars (\$1,000), or by both that
6 imprisonment and fine. The juvenile court, on forms prescribed
7 by the Department of Justice, shall notify the department of persons
8 subject to this subdivision. Notwithstanding any other law, the
9 forms required to be submitted to the department pursuant to this
10 subdivision may be used to determine eligibility to acquire a
11 firearm.

12 (f) Subdivision (a) shall not apply to a person who has been
13 convicted of a felony under the laws of the United States unless
14 either of the following criteria is satisfied:

15 (1) Conviction of a like offense under California law can only
16 result in imposition of felony punishment.

17 (2) The defendant was sentenced to a federal correctional facility
18 for more than 30 days, or received a fine of more than one thousand
19 dollars (\$1,000), or received both punishments.

20 (g) (1) Every person who purchases or receives, or attempts to
21 purchase or receive, a firearm knowing that he or she is prohibited
22 from doing so by a temporary restraining order or injunction issued
23 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure,
24 a protective order as defined in Section 6218 of the Family Code,
25 a protective order issued pursuant to Section 136.2 or 646.91 of
26 this code, or a protective order issued pursuant to Section 15657.03
27 of the Welfare and Institutions Code, is guilty of a public offense,
28 which shall be punishable by imprisonment in a county jail not
29 exceeding one year or in the state prison, by a fine not exceeding
30 one thousand dollars (\$1,000), or by both that imprisonment and
31 fine.

32 (2) Every person who owns or possesses a firearm knowing that
33 he or she is prohibited from doing so by a temporary restraining
34 order or injunction issued pursuant to Section 527.6 or 527.8 of
35 the Code of Civil Procedure, a protective order as defined in
36 Section 6218 of the Family Code, a protective order issued pursuant
37 to Section 136.2 or 646.91 of this code, or a protective order issued
38 pursuant to Section 15657.03 of the Welfare and Institutions Code,
39 is guilty of a public offense, which shall be punishable by
40 imprisonment in a county jail not exceeding one year, by a fine

1 not exceeding one thousand dollars (\$1,000), or by both that
2 imprisonment and fine.

3 (3) The Judicial Council shall provide notice on all protective
4 orders that the respondent is prohibited from owning, possessing,
5 purchasing, receiving, or attempting to purchase or receive a
6 firearm while the protective order is in effect. The order shall also
7 state that the firearm shall be relinquished to the local law
8 enforcement agency for that jurisdiction or sold to a licensed gun
9 dealer, and that proof of surrender or sale shall be filed within a
10 specified time of receipt of the order. The order shall state the
11 penalties for a violation of the prohibition. The order shall also
12 state on its face the expiration date for relinquishment.

13 (4) If probation is granted upon conviction of a violation of this
14 subdivision, the court shall impose probation consistent with
15 Section 1203.097.

16 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
17 justifiable where all of the following conditions are met:

18 (A) The person found the firearm or took the firearm from a
19 person who was committing a crime against him or her.

20 (B) The person possessed the firearm no longer than was
21 necessary to deliver or transport the firearm to a law enforcement
22 agency for that agency's disposition according to law.

23 (C) If the firearm was transported to a law enforcement agency,
24 it was transported in accordance with paragraph (18) of subdivision
25 (a) of Section 12026.2.

26 (D) If the firearm is being transported to a law enforcement
27 agency, the person transporting the firearm has given prior notice
28 to the law enforcement agency that he or she is transporting the
29 firearm to the law enforcement agency for disposition according
30 to law.

31 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
32 (e), the trier of fact shall determine whether the defendant was
33 acting within the provisions of the exemption created by this
34 subdivision.

35 (3) The defendant has the burden of proving by a preponderance
36 of the evidence that he or she comes within the provisions of the
37 exemption created by this subdivision.

38 (i) Subject to available funding, the Attorney General, working
39 with the Judicial Council, the California Alliance Against Domestic
40 Violence, prosecutors, and law enforcement, probation, and parole

1 officers, shall develop a protocol for the implementation of the
2 provisions of this section. The protocol shall be designed to
3 facilitate the enforcement of restrictions on firearm ownership,
4 including provisions for giving notice to defendants who are
5 restricted, provisions for informing those defendants of the
6 procedures by which defendants shall dispose of firearms when
7 required to do so, provisions explaining how defendants shall
8 provide proof of the lawful disposition of firearms, and provisions
9 explaining how defendants may obtain possession of seized
10 firearms when legally permitted to do so pursuant to this section
11 or any other provision of law. The protocol shall be completed on
12 or before January 1, 2005.

13 ~~SEC. 2.~~

14 *SEC. 3.* No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution for certain
16 costs that may be incurred by a local agency or school district
17 because, in that regard, this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty for a crime
19 or infraction, within the meaning of Section 17556 of the
20 Government Code, or changes the definition of a crime within the
21 meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 However, if the Commission on State Mandates determines that
24 this act contains other costs mandated by the state, reimbursement
25 to local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.