

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 937

Introduced by Assembly Member Smyth

February 26, 2009

An act to add Section 12314 to the Penal Code, relating to destructive devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 937, as amended, Smyth. Destructive devices: registration.

Existing law requires that violators of specified arson laws register their names, addresses, and other specified information with the police or sheriff in the jurisdiction where they are residing or are located, within specified time limits, and ~~with~~ *subject to* certain conditions. Additionally, these violators must register with the campus police chief of any public college or university where they reside or are located. Failure to register is a misdemeanor. Under existing law, certain administrative duties are imposed on county probation departments and the Department of Justice relating to the collection and dissemination of information from registrants.

Existing law defines various crimes relating to the possession and use of destructive devices.

This bill would impose registration requirements parallel to those applicable in arson cases on violators of certain laws regulating the possession and use of destructive devices, as specified. Parallel obligations would be imposed on public agencies relating to the collection and dissemination of information from registrants.

By creating a new crime and requiring county officers to undertake additional duties, this bill would impose state-mandated local programs.

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 12314 is added to the Penal Code, to
2 read:

3 12314. (a) As used in this section:

4 (1) "Destructive device violation" means a violation of Section
5 11418, 11419, 12303, 12303.1, 12303.2, 12303.3, 12303.6, 12308,
6 12309, 12310, or 12312.

7 (2) For a person with no residence, "residing" means "located."

8 (b) (1) Every person described in paragraphs ~~(2) and (3)~~ (2),
9 (3), ~~and (4)~~ who is residing in California for 14 or more days shall,
10 within 14 days of entry, register as a convicted destructive device
11 violator, and shall reregister upon any change of residence or
12 location within the state, as provided in this section. Each of these
13 persons shall either register with the chief of police of the city
14 where the person is residing, or, if residing in an unincorporated
15 area or city that has no police department, register with the sheriff
16 of the county where the person is residing. In addition, each of
17 these persons shall register with the chief of police of a campus
18 of the University of California, the California State University, or
19 community college where the person is residing upon the campus
20 or any of its facilities.

21 (2) Any person who, on or after January 1, 2010, is convicted
22 in any court in this state of a destructive device violation shall be
23 required to register, in accordance with the provisions of this
24 section, for the rest of his or her life.

25 (3) Any person who has been adjudicated a ward of the juvenile
26 court pursuant to Section 602 of the Welfare and Institutions Code,

who has had a destructive device violation sustained in a petition pursuant to Section 602 of the Welfare and Institutions Code, and who is discharged or paroled from the Division of Juvenile-Justice Facilities, shall be required to register, in accordance with the provisions of this section, until that person attains the age of 25 years, or until the person has his or her records sealed pursuant to Section 781 of the Welfare and Institutions Code, whichever comes first.

(4) Any person who has been convicted in any other court, including any state, federal, or military court, of any offense that, if committed in this state, would have been punishable as one or more of the offenses listed in paragraph (1) of subdivision (a).

(c) Any person required to register pursuant to this section who is discharged or paroled from a jail, prison, school, road camp, or other penal institution, or from the Department of Corrections and Rehabilitation, Division of Juvenile-Justice Facilities, where he or she was confined because of a destructive device violation, shall, prior to the discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement. The official shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The official in charge of the place of confinement shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement shall give one copy of the form to the person, and shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; one copy to the chief fire official of a legally organized fire department or fire protection district having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall be transmitted in time so as to be received by the local law enforcement agency and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(d) All records relating specifically to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register under this subdivision for offenses adjudicated by a juvenile court attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed to require the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by the court under Section 781 of the Welfare and Institutions Code.

(e) Any person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine shall, prior to the release or discharge, be informed of his or her duty to register under this section by the probation department of the county in which he or she has been convicted, and the probation officer shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon his or her release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, and shall send one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge or release, one copy to the prosecuting agency that prosecuted the person, one copy to the chief fire official of a legally organized fire department or fire protection district having local jurisdiction where the person expects to reside upon his or her discharge or release, and one copy to the Department of Justice. The probation officer shall also retain one copy.

(f) The registration shall consist of (1) a statement in writing signed by the person, giving the information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency shall electronically forward

1 the statement, fingerprints, and photograph to the Department of
2 Justice.

3 (g) If any person required to register by this section changes his
4 or her residence address, he or she shall inform, in writing within
5 10 days, the law enforcement agency with whom he or she last
6 registered of his or her new address. The law enforcement agency
7 shall, within three days after receipt of the information,
8 electronically forward it to the Department of Justice. The
9 Department of Justice shall forward appropriate registration data
10 to the law enforcement agency having local jurisdiction of the new
11 place of residence.

12 (h) Any person required to register under this section who
13 violates any of the provisions thereof is guilty of a misdemeanor.
14 Any person who has been convicted of a destructive device
15 violation and who is required to register under this section who
16 willfully violates any of the provisions thereof is guilty of a
17 misdemeanor and shall be sentenced to serve a term of not less
18 than 90 days nor more than one year in a county jail. In no event
19 does the court have the power to absolve a person who willfully
20 violates this section from the obligation of spending at least 90
21 days of confinement in a county jail and of completing probation
22 of at least one year.

23 (i) Whenever any person is released on parole or probation and
24 is required to register under this section but fails to do so within
25 the time prescribed, the Board of Parole Hearings or the Division
26 of Juvenile ~~Justice~~ *Facilities*, or the court, as the case may be, shall
27 order the parole or probation of that person revoked.

28 (j) The statements, photographs, and fingerprints required by
29 this section shall not be open to inspection by the public or by any
30 person other than a regularly employed peace officer or other law
31 enforcement officer.

32 (k) In any case in which a person who would be required to
33 register pursuant to this section is to be temporarily sent outside
34 the institution where he or she is confined on any assignment within
35 a city or county, including, but not limited to, firefighting or
36 disaster control, the local law enforcement agency having
37 jurisdiction over the place or places where that assignment shall
38 occur shall be notified within a reasonable time prior to removal
39 from the institution. This subdivision shall not apply to any person

1 temporarily released under guard from the institution where he or
2 she is confined.

3 (I) Nothing in this section shall be construed to conflict with
4 Section 1203.4 concerning termination of probation and release
5 from penalties and disabilities of probation.

6 A person required to register under this section may initiate a
7 proceeding under Chapter 3.5 (commencing with Section 4852.01)
8 of Title 6 of Part 3 and, upon obtaining a certificate of
9 rehabilitation, shall be relieved of any further duty to register under
10 this section. This certificate shall not relieve the petitioner of the
11 duty to register under this section for any offense subject to this
12 section of which he or she is convicted in the future.

13 Any person who is required to register under this section due to
14 a misdemeanor conviction shall be relieved of the requirement to
15 register if that person is granted relief pursuant to Section 1203.4.

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution for certain
18 costs that may be incurred by a local agency or school district
19 because, in that regard, this act creates a new crime or infraction,
20 eliminates a crime or infraction, or changes the penalty for a crime
21 or infraction, within the meaning of Section 17556 of the
22 Government Code, or changes the definition of a crime within the
23 meaning of Section 6 of Article XIII B of the California
24 Constitution.

25 However, if the Commission on State Mandates determines that
26 this act contains other costs mandated by the state, reimbursement
27 to local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.