

KAMALA D. HARRIS  
Attorney General of California  
JULIE L. GARLAND  
Senior Assistant Attorney General  
State Bar No. 179657  
110 West A Street, Suite 1100  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2604  
Fax: (619) 645-2581  
E-mail: Julie.Garland@doj.ca.gov  
*Attorneys for Plaintiff and Respondent*

SUPREME COURT  
**FILED**

OCT 30 2014

Frank A. McGuire Clerk

---

Deputy

**In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

v.

**EMMANUEL CASTILLOLOPEZ,**

Defendant and Appellant.

S218861

Fourth Appellate District,  
Division One No. D063394

San Diego Superior Court  
No. D063394

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

Respondent respectfully moves this court, pursuant to Evidence Code sections 452 and 459 and California Rules of Court, rules 8.252(a) and 8.630(h), to take judicial notice of the relevant legislative history of Penal Code section 16470, which includes 1997 amendment to former Penal Code section 12020 (the precursor statute to Penal Code section 16470). The relevant documents, which are appended to this motion as Exhibit A, include the following:

1. Penal Code section 16470;



2. Former Penal Code Section 12020;
3. Statutes, 1997, Chapter 158;
4. Legislative Counsel's 1997 Summary Digest;
5. Senate Final History;
6. Versions of Assembly Bill 78;
7. Assembly Committee on Public Safety;
8. Senate Committee on Public Safety;
9. Senate Rules Committee, Office of Senate Floor Analyses;
10. Governor's Chaptered Bill File; and
11. Statements by Author of Bill, Assemblyman Brett Granlund.

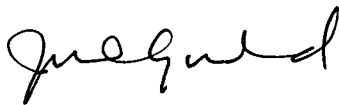
Each of the above attached is the proper subject of judicial notice under Evidence Code section 452. Subdivision (c) of that provision provides that judicial notice may be taken of "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States."

Pursuant to this authority, it is appropriate to take judicial notice of committee analyses and reports. (*People v. Snyder* (2000) 22 Cal.4th 304, 309 [judicial notice of senate committee analysis]; *People v. Ledesma* (1997) 16 Cal.4th 90, 98 [judicial notice of assembly bill analysis]; *People v. Eubanks* (1997) 14 Cal.4th 580, 591, fn. 3 [judicial notice of committee reports].)

Dated: October 29, 2014

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California



JULIE L. GARLAND  
Senior Assistant Attorney General  
*Attorneys for Plaintiff and Respondent*



# **EXHIBIT A**



ID# 5798

LEGISLATIVE INTENT

Requester: Meagan Beale/Julie Garland  
Telephone:  
City/Room: San Diego

Date received: 7 May 2014  
Needed by:  
Completed: 9 May 2014

STATS: 1997                      CHAPTER: 158                      CODE: former Penal § 12020  
BILL: AB 78                      AUTHOR: Assemblyman Granlund  
Summary Digest: X              Final History: X              Bill Forms: X

LEGISLATIVE POLICY COMMITTEE ANALYSES:

Assembly Committee: Public Safety  
Senate Committee: Public Safety; Rules

THIRD READING ANALYSES:

Assembly Republican Caucus (ARC) (1973- ): X  
Senate Floor Analyses (SFA) (1985- ): X

GOVERNOR'S CHAPTERED BILL FILE (GCBF): Gov. Pete Wilson donated his file for AB 78 (1997) to the California State Archives.

AUTHOR'S FILE: The author of the bill, Assemblyman Brett Granlund, also provided a file for the bill to the Calif. State Archives. This file includes statements by Granlund, correspondence and background information.

Other: 3<sup>rd</sup> reading analyses (AG's Law Library)

NOTES:

Stats 1997 Ch. 158 (AB 78) made a variety of changes to California's firearms and weapons laws.

The enacted law amended former Penal § 12020.

Current Penal § 16470 (added by Stats 2010 Ch. 711) continues former Penal § 12020(c) (24) without substantive change.

This legislative history includes a copies of former Penal § 12020 before the passage of AB 78 (1997).

All of the committees that worked on the legislation provided their bill files to the California State Archives.

Committee analyses and information about the bill can also be found at the Legislative Counsel's web site at <http://www.leginfo.ca.gov/bilinfo.html>

The pdf for this legislative history has been OCR'd (press Ctrl and F to keyword search within pdf document).

By

  
Joe Tochterman (916) 322-3375

Rev. 9-1-2011

\*\* RUSH \*\*

00001

The first section of this legislative history contains these items in the order listed:

- the code sections of interest to the requestor
- the statute/chaptered version of the legislation
- the legislative counsel's summary digest of the statute
- the Senate or Assembly final history of the legislation
- versions of the legislative bill



This is the current  
code section  
of interest.

West's  
ANNOTATED  
CALIFORNIA CODES



PENAL CODE

Sections 13800 to 18709

---

*Official  
California Penal Code  
Classification*

---

**WEST®**

A Thomson Reuters business

MAT #41146885

00004

© 2012  
Thomson Reuters

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

West's and Westlaw are registered in the U.S. Patent and Trademark Office.  
ANNOTATED CALIFORNIA CODES is a trademark of West Publishing Corporation.

**§ 16470. Dirk defined; dagger defined**

As used in this part, "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. A nonlocking folding knife, a folding knife that is not prohibited by Section 21510, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position. (Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

**Law Revision Commission Comments**

**2010 Addition**

Section 16470 continues former Section 12020(c)(24) without substantive change. See also former Section 12028(a), which referred to former Section 12020. [38 Cal.L.Rev.Comm. Reports 217 (2009)].

**Historical and Statutory Notes**

Section 10 of Stats.2010, c. 711 (S.B.1080), provides:

"SEC. 10. Sections 7 and 9 of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012."

**Derivation**

Former § 12020, added by Stats.1953, c. 36, p. 653, § 1, amended by Stats.1961, c. 996, p. 2645, § 1; Stats.1965, c. 36, p. 915, § 2; Stats.1973, c. 732, p. 1316, § 2, eff. Sept. 25, 1973; Stats.1974, c. 141, p. 283, § 1, eff. April 4, 1974; Stats.1975, c. 1161, p. 2876, § 1; Stats.1976, c. 1139, p. 5160, § 302, operative July 1, 1977; Stats.1976, c. 1140, § 2; Stats.1976, c. 1140, § 3, operative July 1, 1977; Stats.1977, c. 857, p. 2596, § 1; Stats.1978, c. 70, p. 193, § 1, eff. March 29, 1978; Stats.1979, c. 78, p. 187, § 1, eff. May 22, 1979; Stats.1983, c. 1129, § 1; Stats.1984, c. 1414, § 3; Stats.1984, c. 1562,

§ 1.1; Stats.1986, c. 1421, § 1; Stats.1987, c. 1461, § 1; Stats.1988, c. 512, § 1; Stats.1988, c. 1191, § 1; Stats.1988, c. 1269, § 2.7; Stats.1989, c. 358, § 1; Stats.1990, c. 350 (S.B.2084), § 17; Stats.1990, c. 1690 (A.B.376), § 1; Stats.1993, c. 357 (A.B.1266), § 1; Stats.1993, c. 1139 (S.B.180), § 2; Stats.1994, c. 23 (A.B.482), § 4; Stats.1995, c. 128 (A.B.1222), § 2; Stats.1997, c. 158 (A.B.78), § 1; Stats.1997, c. 593 (A.B.202), § 1.5; Stats.1999, c. 111 (S.B.359), § 2, eff. July 13, 1999; Stats.1999, c. 129 (S.B.23), § 3.5; Stats.2000, c. 287 (S.B.1955), § 22; Stats.2001, c. 130 (S.B.578), § 1; Stats.2001, c. 937 (S.B.626), § 1; Stats.2004, c. 247 (A.B.1232), § 7, eff. Aug. 23, 2004; Stats.2008, c. 699 (S.B.1241), § 18.

Stats.1917, c. 145, p. 221, § 1; Stats.1923, c. 339, p. 696, § 1; Stats.1925, c. 323, p. 542, § 1; Stats.1935, c. 753, p. 2120, § 1.

**Cross References**

Penalty for possession of deadly weapon described in this section within State Capitol, legislative offices, etc., see Penal Code § 171c.

Possession of deadly weapons with intent to assault, see Penal Code § 17500.

Unlawful concealed carrying of dirk or dagger deemed nuisance, see Penal Code § 21390.

**Law Review and Journal Commentaries**

Applicability of statutes prohibiting carrying of concealed weapons, concealment in automobile. 2 S. Cal. L. Rev. 83 (1928).

Carrying concealed weapons, prohibited places for carrying weapons. 17 Cal. L. Rev. 312 (1929).

**Research References**

**Encyclopedias**

Cal. Jur. 3d Criminal Law: Crimes Against Justice § 211, Knives, Stabbing, or Bludgeoning Instruments.

**Treatises and Practice Aids**

California Jury Instructions - Criminal, 6th Ed. 12.41, Carrying a Concealed Dagger or Explosive Substance--Weapon Defined.  
2 Witkin Cal. Crim. L. 3d Crimes Against Peace Welf § 162, (S 162) Concealed Dirks or Explosives.

**PRELIMINARY PROVISIONS**

**§ 16490**

Title 1

**United States Supreme Court**

Weapons, unlawful possession, knowledge, 1793, 511 U.S. 600, 128 L.Ed.2d 608, on re-  
see Staples v. U.S., U.S.Okla.1994, 114 S.Ct. mand 30 F.3d 108.

**§ 16480. DOJ Certified Instructor defined**

Use of the term "DOJ Certified Instructor" is governed by Section 16370.  
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

**Law Revision Commission Comments**

**2010 Addition**

Section 16480 is new. It is intended to help persons locate the definition of "DOJ Certified Instructor," which is the same as the definition of "certified instructor." [38 Cal.L.Rev.Comm. Reports 217 (2009)].

**Historical and Statutory Notes**

Section 10 of Stats.2010, c. 711 (S.B.1080), provides: "SEC. 10. Sections 7 and 9 of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012."

**§ 16490. Domestic violence defined**

As used in this part, "domestic violence" means abuse perpetrated against any of the following persons:

- (a) A spouse or former spouse.
- (b) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.
- (c) A person with whom the respondent is having or has had a dating or engagement relationship.
- (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).
- (e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- (f) Any other person related by consanguinity or affinity within the second degree.

(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

**Law Revision Commission Comments**

**2010 Addition**

Section 16490 continues former Section 12028.5(a)(2) without substantive change. [38 Cal.L.Rev.Comm. Reports 217 (2009)].



1 of 1 DOCUMENT

DEERING'S CALIFORNIA CODES ANNOTATED  
Copyright (c) 2014 by Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved.

\*\*\* This document is current through Chapter 13 of \*\*\*  
the 2014 Regular Session of the 2013-2014 Legislature.

PENAL CODE  
Part 6. Control of Deadly Weapons  
Title 1. Preliminary Provisions  
Division 2. Definitions

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Pen Code § 16470 (2014)*

**§ 16470. "Dirk"; "Dagger"**

As used in this part, "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. A nonlocking folding knife, a folding knife that is not prohibited by Section 21510, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

**HISTORY:**

Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012.

**NOTES:**

**Note**

Stats 2010 ch 711 provides:

SEC. 10. Sections 7 and 9 of this act become operative on January 1, 2011. The remainder of this act becomes operative on January 1, 2012.

**Law Revision Commission Comments:**

## Cal Pen Code § 16470

2010

Section 16470 continues former Section 12020(c)(24) without substantive change. See also former Section 12028(a), which referred to former Section 12020.

**Collateral References:**

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), *CALCRIM No. 2501*, Carrying Concealed Explosive or Dirk or Dagger.

**Hierarchy Notes:**

Pt. 6 Note

Pt. 6, Tit. 1 Note

Pt. 6, Tit. 1, Div. 2 Note

## NOTES OF DECISIONS 1. Constitutionality 2. Evidence

**Decisions Under Current Section**

1. Constitutionality

**Decisions Under Former Pen C § 12020**

1. Generally 2. Construction 3. Construction with Other Law 4. Instructions

**Editor's Notes**

For additional Decisions Under Former Pen C § 12020, see current *Pen C § 16590*.

**1. Constitutionality**

Phrase "locked into position," when given its plain and commonsense meaning, is sufficiently definite to provide fair notice to people of ordinary intelligence that in order for a concealed folding knife or pocketknife to be a dirk or dagger within the meaning of *Pen C §§ 16470 & 21310*, the blade must be not only exposed, but also firmly fixed in place or securely attached so as to be immovable. *People v. Castillolopez (2014, 4th Dist) 2014 Cal App LEXIS 334*.

Phrase "locked into position," when given its plain and commonsense meaning, is sufficiently definite to provide fair notice to people of ordinary intelligence regarding what constitutes a prohibited dirk or dagger within the meaning of *Pen C §§ 16470 & 21310*. *People v. Castillolopez (2014, 4th Dist) 2014 Cal App LEXIS 334*.

Statutory definition of dirk or dagger - including the phrase "locked into position", codified in *Pen C § 16470*, is not unconstitutionally vague. *People v. Castillolopez (2014, 4th Dist) 2014 Cal App LEXIS 334*.

**2. Evidence**

Because there was no substantial evidence from which a rational trier of fact could reasonably find beyond a reasonable doubt that the fully opened or exposed blade of the concealed folding Swiss Army knife defendant was carrying at the time of his arrest was firmly fixed in place or securely attached so as to be immovable, such that it was locked into position within the meaning of *Pen C § 16470*, there was no substantial evidence to support the jury's verdict that defendant carried a concealed dirk or dagger in violation of *Pen C § 21310*. *People v. Castillolopez* (2014, 4th Dist) 2014 Cal App LEXIS 334.

#### Decisions Under Current Section 1. Constitutionality

No facial violation of the Second Amendment right to bear arms in self-defense arises from the prohibition on carrying a concealed dirk or dagger. The court reasoned in part that, under the definition of "dirk or dagger" in former *Pen C § 12020(c)(24)*, the prohibition is narrowly restricted to concealed stabbing instruments that pose a serious threat to physical safety. *People v. Mitchell* (2012, 4th Dist) 208 Cal App 4th 1213, 146 Cal Rptr 3d 224, 2012 Cal App LEXIS 922, superseded, (2012, 4th Dist) 209 Cal App 4th 1364, 148 Cal Rptr 3d 33, 2012 Cal App LEXIS 1064.

#### Decisions Under Former Pen C § 12020 1. Generally

*Pen C § 12020(a)* [Repealed], proscribes some weapons that are inherently dangerous, and some instruments that are not designed for use as weapons but can be used to wound or kill. The Legislature sought to outlaw the classic instruments of violence and their homemade equivalents. The Legislature sought likewise to outlaw possession of the sometimes-useful object when the attendant circumstances, including the time, place, destination of the possessor, the alteration of the object from standard form, and other relevant facts indicated that the possessor would use the object for a dangerous, not harmless, purpose. *People v. Mowatt* (1997, Cal App 1st Dist) 56 Cal App 4th 713, 65 Cal Rptr 2d 722, 1997 Cal App LEXIS 585.

#### 2. Construction

A belt buckle knife worn by defendant with a fixed blade of two and one-half to three inches in length and a handle doubling as a belt buckle, whose only practical use was for stabbing, was a dirk or dagger as set forth in *Pen C § 12020(a)* [Repealed], as a matter of law, and when worn as intended presented a threat to public order. *People v. McClure* (1979, Cal App Dep't Super Ct) 98 Cal App 3d Supp 31, 160 Cal Rptr 83, 1979 Cal App LEXIS 2350.

In order to constitute a "dirk or dagger" within the meaning of *Pen C § 12020(a)* [Repealed] (concealed weapons), a knife must possess certain minimum characteristics, including a straight, locking blade; a handguard to prevent the hand of the user slipping onto the blade if the knife is used for stabbing; a handle; a symmetrical, tapering blade with two, three, or even four edges and a sharp point; and, perhaps, a blade of more than a certain minimum length. Accordingly, a juvenile was improperly found to have unlawfully carried a concealed dirk or dagger in violation of *§ 12020 (a)* [Repealed], where the knife-like instrument he had, although dangerous, was sharpened on only one side of its curved blade, had no handguard, and had only a one and one-half inch blade. *In re Conrad V.* (1986, Cal App 2d Dist) 176 Cal App 3d 775, 222 Cal Rptr 552, 1986 Cal App LEXIS 2478.

It was not error to revoke defendant's probation for violating *Pen C § 12020(a)* [Repealed] (carrying concealed dirk or dagger), even though the knife he was wearing had no handguard, had a short blade, and was sharpened on only one side. The knife was wedge-shaped and was two and one-quarter inches long. One side was sharper than the other, but both sides narrowed to an edge that was thinner than at the center. The handle was on the same plane as the blade and was positioned so that it fitted into the palm of the hand with the blade protruding from between the middle fingers. The knife was a dagger, as matter of law, within the meaning of the statute; not only was it fitted primarily for stabbing, it was fitted for practically no other use. *People v. Pettway* (1991, Cal App 1st Dist) 233 Cal App 3d 1067, 285 Cal Rptr 147, 1991 Cal App LEXIS 992, review denied, (1991, Cal) 1991 Cal LEXIS 5143.

In a prosecution for possession of a concealed dirk or dagger (*Pen C § 12020(a)* [Repealed]), the trial court erred in



denying defendant's motion to exclude the knife from evidence, which motion was made on the ground that the knife was not a "dirk or dagger" as a matter of law. The terms "dirk or dagger" are to be strictly construed, but in allowing the jury to consider defendant's intent in possessing the knife, the court permitted a common bread knife to be transformed into a dirk or dagger. The knife had characteristics that substantially limited its effectiveness as a stabbing instrument; it had no sharp edges, no stabbing point, no handguards, and no stiff blade. It was not a dirk or dagger as a matter of law. *People v. Barrios* (1992, Cal App 5th Dist) 7 Cal App 4th 501, 8 Cal Rptr 2d 666, 1992 Cal App LEXIS 776.

Defendant was improperly convicted of possession of a dirk or dagger in violation of *Pen C § 12020(c)(24)* [Repealed], which proscribes only instruments "capable of ready use as a stabbing weapon," where the device possessed by defendant required some degree of assembly to be used as a knife, and was thus not so "capable." The device had to be unscrewed a full five revolutions to expose the blade, then screwed five revolutions to attach the blade to the handle. For the entire period of time necessary for assembly, the device was useless as a stabbing weapon; the blade could not realistically be used unless it was attached to the handle. The "capable of ready use" requirement excludes from the definition of dirk or dagger a device carried in a configuration that requires assembly before it can be utilized as a weapon. *People v. Sisneros* (1997, Cal App 2d Dist) 57 Cal App 4th 1454, 67 Cal Rptr 2d 782, 1997 Cal App LEXIS 783, review denied, (1997, Cal) 1997 Cal LEXIS 8568.

Defendant's conviction under *Pen C § 12020* [Repealed], for carrying a concealed dirk or dagger required reversal, since the hunting knife he was charged with carrying was not a "dirk or dagger" as defined by the statute at the time of his alleged offense. In 1993, the Legislature enacted the definition governing defendant's case, defining "dirk or dagger" to mean a "knife or other instrument...primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death" (*Pen C § 12020(c)(24)* [Repealed]). Although the 1995 Legislature changed the definition to encompass both inherently dangerous stabbing weapons and instruments intended for harmless use but also capable of inflicting serious harm, defendant was prosecuted under the 1994 statute, and the court was bound to apply the earlier law. The Legislature intended the term "dirk or dagger" in *Pen C § 12020* [Repealed], to be strictly construed. A hunting knife like defendant's was primarily designed for use as a cutting implement in recreational activities, not as a stabbing weapon. Moreover, although defendant attempted to use the knife as a weapon, the trial court properly instructed the jury it was not to consider defendant's intent in possessing the knife. The statutory definition focused solely on the design of the dirk or dagger, and *Pen C § 12020 (a)* [Repealed], proscribes possession of a concealed dirk or dagger, not its use. *People v. Mowatt* (1997, Cal App 1st Dist) 56 Cal App 4th 713, 65 Cal Rptr 2d 722, 1997 Cal App LEXIS 585.

The unlawful carrying of a concealed dirk or dagger (*Pen C § 12020* [Repealed]) is not a specific intent crime that imposes a sua sponte duty on trial courts to instruct with *CALJIC No. 12.42*. The relevant language of *§ 12020* [Repealed] is unambiguous and establishes that carrying a concealed dirk or dagger does not require an intent to use the concealed instrument as a stabbing weapon. Accordingly, defendant's intended use is not an element of the crime and no further mental state beyond willing commission of the act proscribed by law is necessary. However, this does not make the crime a strict liability offense or eliminate the mens rea requirement; a defendant who does not know that he is carrying a stabbing weapon or that the concealed instrument may be used as a stabbing weapon is not guilty of violating the statute. *People v. Rubalcava* (2000) 23 Cal 4th 322, 96 Cal Rptr 2d 735, 1 P3d 52, 2000 Cal LEXIS 4550.

A minor on probation was improperly found to have had in his possession a dirk or dagger, where the object at issue, which functioned like a classic pocketknife but resembled a cassette tape, fell within the pocketknife exception to *Pen C § 12020(a)* [Repealed]. The intent of the Legislature in enacting the pocketknife exception was to avoid criminalizing the carrying of knives that were not capable of ready use because they were carried in a closed, secured state and the knife blade here could not be extracted from its slot without using both hands. *In re Luke W.* (2001, Cal App 1st Dist) 88 Cal App 4th 650, 105 Cal Rptr 2d 905, 2001 Cal App LEXIS 300.

### 3. Construction with Other Law

Switchblade knife as defined in *Pen C § 653k* [Repealed] can also be a dirk or dagger concealed on the person as

defined in *Pen C § 12020* [Repealed], even if it is concealed in its closed position. *People v. Plumlee* (2008, 5th Dist) 166 Cal App 4th 935, 83 Cal Rptr 3d 172, 2008 Cal App LEXIS 1410, review denied, *People v. Plumlee (Gary)* (2008, Cal.) 2008 Cal. LEXIS 14104.

#### 4. Instructions

In a prosecution for possession of a concealed dirk or dagger (*Pen C § 12020(a)* [Repealed]), the trial court did not err by refusing to instruct the jurors that they could consider defendant's intent in possessing the weapon when deciding whether he possessed a dirk or dagger within the meaning of the statute. The terms "dirk" and "dagger" are to be strictly construed, and evidence relating to the possessor's intended use of the weapon, whether used to expand or constrict the class of weapons that qualify as dirks or daggers, is irrelevant and should not be considered by the trier of fact when deciding whether a given knife qualifies. The California Supreme Court has both approved the definition of the terms as written and consistently decided this type of case based solely on the physical characteristics of the weapon. It is not the use of the weapon that is being proscribed by statute, but its possession. Moreover, although defendant asserted that the shortness of the blade and the fact that it was sharpened on only one side limited its use as a stabbing instrument, the jury found otherwise, and defendant did not challenge the sufficiency of the evidence to support the jury's determination, nor did he claim the knife was not a dirk or dagger as a matter of law. *People v. Gonzales* (1995, Cal App 5th Dist) 32 Cal App 4th 229, 38 Cal Rptr 2d 52, 1995 Cal App LEXIS 110.

In a prosecution for carrying a concealed "dirk or dagger," (*Pen C § 12020(a), (c)(24)*), the trial court's failure to instruct the jury sua sponte regarding intent to use a concealed instrument as a "stabbing weapon" was not prejudicial error. The trial court's failure to do so, though erroneous, was harmless. During his closing argument, defendant's trial counsel clearly conceded that the knives found on defendant's person met the statutory definition of "dirk or dagger." This concession placed the "dirk or dagger" element outside the scope of matters the trier of fact had to decide. In such a situation, it is certain there is no possibility the trial court's failure to instruct affected the result. *People v. Aubrey* (1999, Cal App 1st Dist) 70 Cal App 4th 1088, 83 Cal Rptr 2d 209, 1999 Cal App LEXIS 224, overruled in part *People v. Rubalcava* (2000) 23 Cal 4th 322, 96 Cal Rptr 2d 735, 1 P3d 52, 2000 Cal LEXIS 4550.

This is the code section  
as it was prior to the  
passage of the bill.

**SUPERSEDED**  
**West's California Codes**

**PENAL CODE**

**1996 Compact Edition**

---

*With Selected Penal Provisions From California Constitution,  
Business and Professions Code, Code of Civil Procedure,  
Health and Safety Code, Vehicle Code, Welfare and  
Institutions Code, and California Rules of Court*

CALIF. ATTY. GEN'L  
LIBRARY

JAN - 2 1996

LOS ANGELES

**OFFICIAL CLASSIFICATION**

**Includes Laws through the 1995 portion of the 1995-1996  
Regular and First and Second Extraordinary Sessions**

WEST PUBLISHING CO.  
ST. PAUL, MINN.

00014

Section	
12026.	Persons exempt; weapons at residence, place of business, or private property owned or possessed by citizen.
12026.1.	Authority to transport or carry concealable firearms.
12026.2.	Carrying concealed firearms offenses; exemptions.
12027.	Persons exempt.
12027.1.	Retired peace officer; revocation of authorization for concealed firearm; hearing; retirement due to psychological disability.
12028.	Firearms and other weapons as nuisance; surrender of weapon; sale at public auction; restoration to owner; destruction.
12028.5.	Family violence incidents; temporary custody of firearms by officers; receipt; release to owner; attorney fees; restoring firearms to lawful owners; notice; hearing; default; immunities.
12029.	Blackjacks, etc., as nuisances; confiscation and destruction; preparation as evidence.
12030.	Firearms; delivery to armed forces or law enforcement agency.
12031.	Carrying loaded firearms; misdemeanor; punishment; exceptions.
12031.1.	Devices designed for emergency or distress signaling.
12031.5.	Prior conviction of § 12031 violation; carrying loaded firearm; recreational sports requiring firearms.
12032.	Destruction of firearms otherwise subject to sale as abandoned, etc., property.
12033.	Security and armored vehicle guards; private investigators and patrol operators; completion of courses in firearms and powers of arrest; certificate.
12034.	Driver or owner of motor vehicle permitting firearms in vehicle, or discharge of firearms from vehicle; punishment; willful or malicious discharge of firearms from motor vehicle; felony or public offense.
12035.	Storage of firearms accessible to children; offense; punishment; legislative intent.
12040.	Criminal possession of firearms; punishment; exclusions.

#### Cross References

Force, right to use, see Civil Code § 50.  
 Reports by hospitals or health facilities of injuries inflicted by a knife, gun, pistol or other deadly weapon, see Penal Code § 11160.  
 Right to defend life and property, see Const. Art. 1, § 1.

#### § 12020. Manufacture, import, sale, supply or possession of certain weapons and explosives; punishment; exceptions; definitions

(a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition, or who carries concealed upon his or her person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or in the state prison. A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sher-

iffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(c)(1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if such firearm may be fired while mounted or enclosed in such case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if such firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 2½ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made

or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "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.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section. (*Added by Stats.1953, c. 36, p. 653, § 1. Amended by Stats.1961, c. 996, p. 2645, § 1; Stats.1965, c. 36, p. 915, § 2; Stats.1973, c. 732, p. 1316, § 2, eff. Sept. 25, 1973; Stats.1974, c. 141, p. 283, § 1, eff. April 4, 1974; Stats.1975, c. 1161, p. 2876, § 1; Stats.1976, c. 1139, p. 5160, § 302, operative July 1, 1977; Stats.1976, c. 1140, § 2; Stats. 1976, c. 1140, § 3, operative July 1, 1977; Stats.1977, c. 857, p. 2596, § 1; Stats.1978, c. 70, p. 193, § 1, eff. March 29, 1978; Stats.1979, c. 78, p. 187, § 1, eff. May 22, 1979; Stats.1983, c. 1129, § 1; Stats.1984, c. 1414, § 3; Stats.1984, c. 1562, § 1.1; Stats.1986, c. 1421, § 1; Stats.1987, c. 1461, § 1; Stats.1988, c. 512, § 1; Stats.1988, c. 1191, § 1; Stats.1988, c. 1269, § 2.7; Stats.1989, c. 358, § 1; Stats.1990, c. 350 (S.B.2084), § 17; Stats.1990, c. 1690 (A.B.376), § 1; Stats.1993, c. 357 (A.B. 1266), § 1; Stats.1993, c. 1139 (S.B.180), § 2; Stats.1994, c. 23 (A.B.482), § 4; Stats.1995, c. 128 (A.B.1222), § 2.)*

#### Cross References

Defendant armed with dangerous or concealed weapons, allegations as to possession, see Penal Code § 969c.

Felony,

Additional punishment for commission or attempt while armed, see Penal Code § 12022.

Defined, see Penal Code § 17.

- Manufacture,
  - Sale, or possession of short-barreled shotgun or short-barreled rifle, see Penal Code § 12001.5.
  - Sale or possession of short-barreled shotguns or short-barreled rifles, permits, see Penal Code § 12095.
- Nuisance,
  - Blackjacks, stung shots, billies, sandclubs, sandbags and metal knuckles, see Penal Code § 12029.
  - Unlawful carrying on person or within vehicle of dirk, dagger, pistol, firearm capable of being concealed on person, see Penal Code § 12028.
- Pardoned person, restoration of right to own, possess and keep certain firearms and persons excepted from restoration of right, see Penal Code § 4852.17.
- Possession of deadly weapons with intent to assault, see Penal Code § 12024.
- Printing of fish and game regulations, prohibition of advertising of certain tobacco, alcohol, firearm, and other devices, see Fish and Game Code § 211.
- Public housing authority, access to criminal history for convictions under this section, see Penal Code § 11105.03.
- Right of peace officers to carry wooden clubs, baton or equipment authorized for enforcement of law, see Penal Code § 12002.
- Switch-blade knives having blades longer than two inches, see Penal Code § 653k.
- Verdict of jury upon charge of being armed, see Penal Code § 1158a.

**§ 12020.5. Advertising unlawful weapons prohibited**

It shall be unlawful for any person, as defined in Section 12277, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of any weapon or device whose possession is prohibited by Section 12020, 12220, or 12280 or to advertise the sale of handgun ammunition designed primarily to penetrate metal or armor, as defined in subdivision (b) of Section 12323. (Added by Stats.1976, c. 1127, p. 5043, § 1. Amended by Stats.1989, c. 18, § 1.5; Stats.1989, c. 19, § 1.5; Stats.1990, c. 81 (A.B.2046), § 1; Stats.1995, c. 263 (A.B.99), § 1.)

**§ 12021. Specified convictions; narcotic addiction; condition of probation; restrictions on firearm possession; punishment; employment needs; relief from prohibition**

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

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

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

(c)(1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9, 646.9, \* \* \* 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of

former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in \* \* \* a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

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

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

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

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

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction prior to January 1, 1991, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the





2 of 2 DOCUMENTS

DEERING'S CALIFORNIA CODES ANNOTATED  
Copyright (c) 1996 by Matthew Bender & Company, Inc.  
a member of the LexisNexis Group.  
All rights reserved Company

\*\*\*ARCHIVED DATA\*\*\*

\*\*\* THIS SECTION IS CURRENT THROUGH THE 1996 SUPPLEMENT (1995 SESSION) \*\*\*  
\*\*\* INCLUDING URGENCY LEGISLATION THROUGH CHAPTER 196, 7/22/96 \*\*\*

PENAL CODE  
PART 4. Prevention of Crimes and Apprehension of Criminals  
TITLE 2. Control of Deadly Weapons  
CHAPTER 1. Firearms  
ARTICLE 2. Unlawful Carrying and Possession of Weapons

*Cal Pen Code § 12020 (1996)*

§ 12020. Manufacture, importation, sale, possession; Exceptions

(a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition, or who carries concealed upon his or her person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or in the state prison. A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when

## Cal Pen Code § 12020

authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or *Section 8100 or 8103 of the Welfare and Institutions Code* from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or *Section 8100 or 8103 of the Welfare and Institutions Code*. Within the year the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or *Section 8100 or 8103 of the Welfare and Institutions Code* from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or *Section 8100 or 8103 of the Welfare and Institutions Code*. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred in paragraphs (9) and (10) when engaging in transactions with those entities.

## Cal Pen Code § 12020

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

## Cal Pen Code § 12020

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if such firearm may be fired while mounted or enclosed in such case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if such firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "flechette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a

## Cal Pen Code § 12020

barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 2 1/2 inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

## Cal Pen Code § 12020

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "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.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

**HISTORY:** Added Stats 1953 ch 36 § 1. Amended Stats 1961 ch 996 § 1; Stats 1965 ch 36 § 2; Stats 1973 ch 732 § 2, effective September 25, 1973; Stats 1974 ch 141 § 1, effective April 4, 1974; Stats 1975 ch 1161 § 1; Stats 1976 ch 1140 §§ 2, 3; Stats 1977 ch 857 § 1; Stats 1978 ch 70 § 1, effective March 29, 1978; Stats 1979 ch 78 § 1, effective May 22, 1979; Stats 1983 ch 1129 § 1; Stats 1984 ch 1414 § 3, ch 1562 § 1.1; Stats 1986 ch 1421 § 1; Stats 1987 ch 1461 § 1; Stats 1988 ch 512 § 1, ch 1191 § 1, ch 1269 § 2.7; Stats 1989 ch 358 § 1; Stats 1990 ch 350 § 17 (SB 2084) (ch 1690 prevails), ch 1690 § 1 (AB 376).

Amended Stats 1993 ch 357 § 1 (AB 1266), ch 1139 § 2 (SB 180); Stats 1994 ch 23 § 4 (AB 482); Stats 1995 ch 128 § 2 (AB 1222).

**NOTES: AMENDMENTS:**

1961 Amendment: Added (1) "sawed-off shotgun," after "sandbag"; and (2) the second paragraph.

1965 Amendment: Added "or a rifle having a barrel or barrels of less than 16 inches in length" in the second paragraph.

1973 Amendment: (1) Designated the former first paragraph to be subd (a); (2) added the second paragraph of subd (a); and (3) designated the former second paragraph to be subd (b).

1974 Amendment: (1) Added "nunchaku," in subd (a); (2) designated the former second paragraph of subd (a) to be subd (b)(1); (3) added the introductory clause of subd (b); (4) deleted "This section shall not apply to" at the beginning of subd (b)(1); (5) added subds (b)(2), (b)(3) and (c); (6) redesignated former subd (b) to be subd (d)(1); and (6) added subd (d)(2).

1975 Amendment: Substituted "three" for "five" before "years" at the end of the subds (a) and (c).

1976 Amendment (ch 1140 § 2): (1) Added "any cane gun or wallet gun, any firearm which is not immediately recognizable as a firearm, any ammunition which contains or consists of any flechette dart, or" before "instrument or" in subd (a); (2) added subd (b)(4); (3) amended subd (d)(1) by (a) substituting "any firearm (including any revolver) manufactured, designed, or converted to fire shotgun ammunition" for "a shotgun" after "means"; and (b) adding "manufacture," before "alteration"; and (4) added subds (d)(3)--(d)(5).

1976 Amendment (ch 1140 § 3): Deleted "for not less than one year nor more than three years" after "a state prison" wherever it appears in subds (a) and (c).

1977 Amendment: (1) Amended subd (b)(4) by (a) substituting "section" for "paragraph" after "For purposes of this"; (b) deleting the comma after "ammunition"; (c) deleting the comma after "before 1898"; and (d) adding all that part following "similar type of ignition system"; and (2) deleted the comma before "or offers or" in subd (c).

1978 Amendment: (1) Amended subd (a) by adding (a) "any bullet containing or carrying an explosive agent,"; and (b) the second sentence; and (2) added subd (b)(5).

1979 Amendment: Added subds (b)(6) and (b)(7).

1983 Amendment: Added subd (e).

1984 Amendment: In addition to making technical changes, (1) deleted "the term" after "section," in subd (a)(4); (2) substituted "federal Gun Control Act of 1968 (Public Law 90-618)" for "Gun Control Act of 1968 (P.L. 90-618; 82 Stat. 1213)" in subd (b)(7); (3) added the last sentence of subd (b)(7); and (4) added subd (d)(6). (As amended by Stats

## Cal Pen Code § 12020

1984, ch 1562, compared to the section as it read prior to 1984. This section was also amended by an earlier chapter, ch 1414. See *Gov C § 9605*.)

1986 Amendment: Added (1) "any ballistic knife," in the first sentence of subd (a); and (2) subd (d)(7).

1987 Amendment: Added (1) "any camouflaging firearm container," after "as a firearm," in the first sentence of subd (a); and (2) subd (d)(8).

1988 Amendment: (1) Amended the first sentence of subd (a) by (a) adding "plastic firearm, and"; and (b) substituting "any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife any writing pen knife, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, nunchaku, sandclub, sap, or sandbag" for "or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, nunchaku, sandclub, sandbag, sawed-off shotgun, or metal knuckles"; (2) added subd (b)(1); (3) redesignated former subds (b)(1)-(b)(7) to be subds (b)(2)-(b)(8); (4) substituted "sale of short-barreled shotguns or short-barreled rifles" for "use, with blank cartridges, of sawed-off shotguns solely as props for motion picture film or television program production" in subd (b)(2); (5) added subds (b)(9)-(b)(14); (6) deleted former subd (c) which read: "(c) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing is guilty of a felony, and upon conviction shall be punishable by imprisonment in the county jail not exceeding one year or in a state prison."; (7) redesignated former subds (d) and (e) to be subds (c) and (d); and (8) amended subd (c) by (a) substituting subds (1) and (2) for former subd (1) which read: "(1) As used in this section, a 'sawed-off shotgun' means any firearm (including any revolver) manufactured, designed, or converted to fire shotgun ammunition having a barrel or barrels of less than 18 inches in length, or a rifle having a barrel or barrels of less than 16 inches in length, or any weapon made from a rifle or shotgun (whether by manufacture, alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches."; (b) redesignating former subds (2)-(8) to be subds (3)-(9); and (c) adding subds (10)-(22). (As amended by Stats 1988 ch 1269, compared to the section as it read prior to 1988. This section was also amended by two earlier chapters, ch 512, ch 1191. See *Gov C § 9605*.)

1989 Amendment: Substituted "any" for "and" after "plastic firearm," in the first sentence of subd (a); and the first paragraph of subd (c)(22) for the former first paragraph subd (c)(22), which read: "(22) As used in this section, plastic firearm means any weapon (including a starter gun) which will or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, and which meets one of the following requirements:

"(A) It contains less than 3.7 ounces of electromagnetically detectable metal.

"(B) One of its major components, which includes the barrel, slide, cylinder, frame, or receiver, does not generate an image that accurately depicts the shape of the component when subjected to inspection by X-ray machines commonly used at airports. The purpose of this requirement is satisfied if the required image results from the infusion into the component of barium sulfate or other compound."

1990 Amendment: In addition to making technical changes, (1) amended the first sentence of subd (a) by (a) adding "any multiburst trigger activator, any nunchaku,"; and (b) deleting "nunchaku," after "slungshot, billy,"; (2) deleted "city" before "marshals' offices," in subd (b)(1); (3) substituted "Section 12021, 12021.1, or 12101" for "Section 12021 and 12021.5" and "Section 8100 or 8103" for "Section 8103" wherever it appears in subds (b)(7) and (b)(8); (4) added subd (b)(15); (5) substituted "Title 18" for "Title 44" in subds (c)(10)(A) and (c)(10)(B); and (6) added subd (c)(23).

1993 Amendment: (1) Amended the first sentence of subd (a) by (a) substituting "undetectable firearm" for "plastic firearm"; and (b) deleting ", is guilty of a felony, and upon conviction" after "dirk or dagger"; (2) amended subd (b) by (a) making technical changes; (b) substituting "is" for "shall be" before "punishable pursuant to Section 12021" in the second sentence of subd (b)(7); (c) substituting "rifle or short-barreled shotgun, by peace officers thereof" for "rifles and shotguns," in subd (b)(12); (d) substituting "a short-barreled short-barreled shotgun" for "short-barreled rifles and short-barreled shotguns" in subd (b)(13); and (e) deleting former subd (b)(15) which read: "(15) Prior to January 1, 1992, the possession of a multiburst trigger activator by a person who is not prohibited by Section 12021, 12021.1, or 12101 of this code or *Section 8100 or 8103 of the Welfare and Institutions Code* from possessing firearms."; and (3) amended subd (c) by (a) adding "criteria" in the introductory clause of subd (c)(9); (b) deleting former subd (c)(10)(E)

which read: "(E) It has a barrel or barrels less than 18 inches in length or an overall length of less than 26 inches."; (c) substituting "firearm" for "pistol or revolver" in subd (c)(12); (d) substituting "an undetectable firearm" for "a plastic firearm" in the introductory clause of subd (c)(22) and in the second paragraph of subd (c)(22)(C); (e) substituting subd (c)(23) for former subd (c)(23) which read: "(23) As used in this section, a 'multiburst trigger activator' means a device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device."; and (f) adding subd (c)(24). (As amended Stats 1993 ch 1139, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 357. See *Gov C § 9605*.)

1994 Amendment: (1) Substituted "is" for "shall be" after "dirk or dagger" near the end of the first sentence of subd (a); and (2) added "rifle or" after "a short-barreled" in subd (b)(13).

1995 Amendment: Substituted "capable of ready use as a stabbing weapon that may" for "primarily designed, constructed, or altered to be a stabbing instrument designed to" in subd (c)(24).

#### HISTORICAL DERIVATION:

(a) Stats 1923 ch 339 § 1, as amended Stats 1925 ch 323 § 1, Stats 1935 ch 753 § 1.

(b) Stats 1917 ch 145 § 1.

#### NOTE-

Stats 1976 ch 1140 provides:

SEC. 5. It is the intention of the Legislature that the words "any firearm which is not immediately recognizable as a firearm," as used in subdivision (a) of *Section 12020 of the Penal Code* shall not be interpreted to include a weapon which is capable of inflicting an electrical charge of such magnitude that the victim can be or is temporarily immobilized, a stungun, a taser, or other such instrument.

#### CROSS REFERENCES:

Felony defined: *Pen C § 17*.

Punishment for felony: *Pen C § 18*.

Combat with deadly weapons: *Pen C §§ 225 et seq.*

Having possession of deadly weapon with intent to commit assault: *Pen C § 467*.

Carrying, etc., of "switch-blade": *Pen C § 653k*.

Charging that defendant was armed at time of commission of offense or arrest: *Pen C § 969c*.

Verdict on charge of being armed with weapon: *Pen C § 1158a*.

Firearms deemed capable of being concealed on person: *Pen C § 12001*.

Committing felony while carrying dangerous weapon: *Pen C § 12022*.

"Assault weapon": *Pen C § 12276*.

#### COLLATERAL REFERENCES:

Witkin & Epstein, *Criminal Law* (2d ed) §§ 60, 229, 495, 1091-1093, 1098-1100, 1103, 1106, 1143, 1314, 1389, 1422, 1470.

Cal Jur 3d (Rev) *Criminal Law* §§ 1593, 1615--1617, 1621, 1623, 1694, 2787, 3260.

Cal Digest of Official Reports 3d Series, *Weapons* §§ 5 et seq.

*Am Jur 2d Weapons and Firearms* §§ 4, 5, 8--10, 12, 15, 16, 27.

Federal regulation of firearms: *18 USCS §§ 921 et seq.*

Nonmailable firearms: *18 USCS § 1715*.

Importation of firearms: *26 USCS §§ 5844 et seq.*

#### FORMS:

See form set out below, following Notes of Decisions.

#### LAW REVIEW ARTICLES:

Manner of concealment. *17 Cal LR 312*.



## Cal Pen Code § 12020

Manner of concealment. 2 *SCLR* 83.

## ATTORNEY GENERAL'S OPINIONS:

"Nunchaka", a karate martial instrument, as proscribed by this section. 56 *Ops Atty Gen* 506.

California peace officer may lawfully possess a billy club, blackjack, or policeman's baton if the head of his law enforcement agency has authorized such possession; the sale of a billy club, blackjack, or policeman's baton to a peace officer authorized by the head of the officer's law enforcement agency to carry the same is lawful in California. 65 *Op Atty Gen* 120.

A California peace officer may carry a sawed-off shotgun for law enforcement purposes if authorized by the agency that employs the officer. 65 *Ops Atty Gen* 674.

## ANNOTATIONS:

Liability of seller of firearm, explosive, or highly inflammable substance to child. 20 *ALR2d* 119; 75 *ALR3d* 825.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment. 43 *ALR2d* 492.

Burden of proof as to lack of license in criminal prosecution for carrying or possession of weapon without license. 69 *ALR3d* 1054.

Statutory presumption of possession of weapon by occupants of place or vehicle where it was found. 87 *ALR3d* 949.

What constitutes a "bludgeon," "blackjack," or "billy" within meaning of criminal possession statute. 11 *ALR4th* 1272.

Validity of state statute proscribing possession or carrying of knife. 47 *ALR4th* 651.

## NOTES OF DECISIONS

1. In General
2. Constitutionality
3. Construction and Application
4. Definitions
5. Possession
6. Instructions
7. Evidence
8. -Sufficiency
9. -Admissibility
10. Appeal

## NOTES OF DECISIONS

## 1. In General

Board of supervisors has authority in exercise of its police power to prohibit carrying of concealed deadly weapons about person in public places. *Ex parte Luening* (1906) 3 *Cal App* 76, 84 P 445.

Statute making it felony to attempt to use unlawfully against another, or carry with intent so to use, any dangerous or deadly weapon, is valid exercise of legislative power. *Re Application of Dare* (1917) 176 *Cal* 83, 168 P 19.

It is well-recognized function of legislature in exercise of police power to restrain dangerous practices and to regulate carrying and use of firearms and other weapons in interest of public safety. *Re Application of Rameriz* (1924) 193 *Cal* 633, 226 P 914, 34 *ALR* 51.

No one can acquire vested right to continue in possession of that which is menace to public safety. *People v McCloskey* (1926) 76 *Cal App* 227, 244 P 930.

Crime of carrying concealed weapon is separate and distinct from crime of robbery, defendant is subject to separate indictment, conviction and punishment for carrying concealed weapon, irrespective of result of robbery prosecution, and notwithstanding that both crimes may have grown out of same continuous transaction and been committed at same time. *People v Perry* (1929) 99 *Cal App* 90, 277 P 1080.

The legislature may employ the police power to absolutely prohibit the possession of the items named in this statute.

## Cal Pen Code § 12020

*People v Ferguson (1933) 129 Cal App 300, 18 P2d 741.*

It is within the province of the court to determine in the first instance whether the instruments in question are such weapons as fall within the purview of the statute. *People v Canales (1936) 12 Cal App 2d 215, 55 P2d 289.*

The fact that the allegation of the information charging possession of a blackjack or billy is in the alternative does not render it demurrable. *People v Canales (1936) 12 Cal App 2d 215, 55 P2d 289.*

The element of concealment is not involved in a prosecution for possession of a blackjack or a billy. *People v Canales (1936) 12 Cal App 2d 215, 55 P2d 289.*

In prosecution for unlawful possession of metal knuckles, although offense was committed on Indian reservation and defendant was Indian living thereon in tribal relations, superior court had jurisdiction to try defendant, where he was owner of land in said reservation by patent from United States government which, under federal statutes, had effect of emancipating him from tribal relations and conferred upon him all rights, privileges and immunities of citizen of United States, rendering him amenable to civil and criminal laws. *People v Pratt (1938) 26 Cal App 2d 618, 80 P2d 87 (ovrld on other grounds by People v Carmen, 43 Cal 2d 342, 273 P2d 521).*

A fine may be imposed upon the defendant convicted under this statute by virtue of § 672, the language of which is broad enough to cover all crimes punishable by imprisonment for which no fine is specifically prescribed. *People v Shah (1949) 91 Cal App 2d 716, 205 P2d 1081.*

Deadly weapon does not cease to be one by becoming temporarily inefficient; nor is its essential character changed by dismemberment where parts may be easily assembled so as to become effective. *People v Guyette (1964, 5th Dist) 231 Cal App 2d 460, 41 Cal Rptr 875.*

Where defendant was convicted and sentenced for attempted armed robbery and possession of a concealable weapon, which weapon defendant used in the robbery, the possession and use of the revolver at the time of the robbery was indivisible from the attempted robbery, and sentences for both offenses constituted multiple punishment proscribed by *Pen Code, § 654. People v Burnett (1967, 1st Dist) 251 Cal App 2d 651, 59 Cal Rptr 652.*

A habeas corpus petitioner was sentenced for two offenses arising out of a single course of conduct contrary to the proscription of *Pen Code, § 654*, where he was sentenced for both an attempted burglary while in possession of a deadly weapon, and for possession of the deadly weapon which occurred during the attempted burglary. *Re McWhinney (1968, 4th Dist) 267 Cal App 2d 691, 73 Cal Rptr 291.*

In a prosecution on firearms charges, the trial court properly exercised its discretion in finding that the identity of an informant was not material to the defense, where an in-camera hearing conducted by the court pursuant to *Evid. Code, §§ 915, subd. (b), 1042, subd. (d)*, relating to determination of claims of privilege as to confidential informants, developed nothing beyond what was contained in the affidavit upon which a warrant for the search of defendant's house was based, where defendant failed to show with any specificity how nondisclosure would affect his defense, where the portion of the affidavit setting forth the information furnished by the informant made no mention of the particular weapons involved in the prosecution or the bedroom panel behind which they were found, where the informant was not a participant in, nor an eyewitness to, the crime of possession of the weapons forming the basis for the prosecution, and where the overwhelming evidence pointed to defendant's possession of the weapons and there was not the slightest possibility that the informant had planted them. *People v Kilpatrick (1973, 2nd Dist) 31 Cal App 3d 431, 107 Cal Rptr 367.*

The trial court, in imposing sentence on defendant following a plea of guilty to a violation of *Pen. Code, § 12020, subd. (a)*, (possession of a sawed-off shotgun) pursuant to a plea bargain, did not err in relying on an uncharged offense and on the facts of an offense that had been dismissed as the result of the plea bargain as circumstances in aggravation of the offense to which defendant had plead guilty, where the other offenses considered were transactionally related to the offense for which sentence was being imposed. *People v Gaskill (1980, 3rd Dist) 110 Cal App 3d 1, 167 Cal Rptr 549.*

Defendant's conviction of both possession of a sawed-off shotgun (*Pen. Code, § 12020, subd. (a)*), and possession of a concealable firearm as felon (*Pen. Code, § 12021.1*), involving the same weapon, did not violate the rule precluding multiple convictions of lesser included offenses, even though the second count of the information alleged a violation of *Pen. Code, § 12021.1* in language encompassing a violation of *Pen. Code, § 12020*. The rule precluding multiple convictions of lesser included offenses applies only to statutorily lesser included offenses which, as a matter of legal definition, a defendant necessarily commits when he commits the greater offense, and not to offenses, such as those of

## Cal Pen Code § 12020

which defendant was convicted, that are classified as lesser included offenses simply because the accusatory pleading alleges one offense in language that encompasses the other charged offense. *People v Scheidt* (1991, 5th Dist) 231 Cal App 3d 162, 282 Cal Rptr 228.

## 2. Constitutionality

This statute is not violative of the state or federal constitutions. *People v Ferguson* (1933) 129 Cal App 300, 18 P2d 741.

A specification that this statute is invalid as an ex post facto law cannot be sustained. *People v Ferguson* (1933) 129 Cal App 300, 18 P2d 741.

Proscription of possession of instrument of kind commonly known as "billy" is not unconstitutionally vague for employing term "billy." *People v Grubb* (1965) 63 Cal 2d 614, 47 Cal Rptr 772, 408 P2d 100.

The statute on illegal manufacture, sale or possession of metal knuckles (*Pen Code, § 12020*) is not too vague to meet constitutional standards. *People v Deane* (1968, 2nd Dist) 259 Cal App 2d 82, 66 Cal Rptr 177.

*Pen. Code, § 12020*, subd. (a), prohibiting the possession of certain instruments, including a weapon of the kind commonly known as a "billy," is not unconstitutionally vague, and it outlaws other instruments besides those specifically enumerated. The enactment must be construed in the light of the legislative design and purpose, which was to condemn weapons common to the criminal's arsenal; the Legislature meant as well to outlaw instruments which are ordinarily used for criminal and unlawful purposes. The terms of the statute gain content and definition by reference to this purpose. A statute will be upheld if its terms may be made reasonably certain by reference to its legislative history or purpose. This statute also decrees as criminal the possession of ordinarily harmless objects when the circumstances of possession demonstrate an immediate atmosphere of danger. *People v Mercer* (1995) 42 Cal App 4th Supp 1, 49 Cal Rptr 2d 728.

## 3. Construction and Application

Sections 517 and 467 do not repeal this statute, since those sections concern the use rather than the possession of certain weapons. *People v Ferguson* (1933) 129 Cal App 300, 18 P2d 741.

This statute is to be given a liberal construction, so long as no injustice results. *People v Mulherin* (1934) 140 Cal App 212, 35 P2d 174.

Dangerous Weapons Control Law does not occupy entire field so as to preclude local legislation, such as city ordinance regulating or prohibiting carrying of deadly weapons, even though not concealed. *People v Commons* (1944) 64 Cal App 2d Supp 925, 148 P2d 724.

The purpose of *Pen Code, § 12020*, is to outlaw a class of instruments (blackjack, sawed-off shotgun, metal knuckles) normally used only for criminal purposes. *People v Wasley* (1966, 1st Dist) 245 Cal App 2d 383, 53 Cal Rptr 877.

*Pen Code, § 12021*, which bars a class of persons (aliens, arrested felons and narcotic addicts) from possession of concealable firearms, has an obviously different public purpose from *Pen Code, § 12020*, which outlaws instruments normally used only for criminal purposes. *People v Wasley* (1966, 1st Dist) 245 Cal App 2d 383, 53 Cal Rptr 877.

Close connection in time of two acts does not alone prevent their separate punishment, and there was no reason for a different rule where defendant possessed simultaneously a sawed-off shotgun in violation of *Pen. Code, § 12020*, and a pistol, in violation of § 12021, proscribing his possession, as a convicted felon, of a firearm capable of being concealed. *People v Wasley* (1966, 1st Dist) 245 Cal App 2d 383, 53 Cal Rptr 877.

As a matter of law, a knife was not a dirk or dagger within the meaning of *Pen. Code, § 12020*, (prohibiting the carrying of a concealed dirk or dagger), in that it was not designed primarily for stabbing, where it was constructed like an ordinary pocket knife, containing two blades, the longer of which was about 6 inches in the length measured from the tip of the blade to the hand guard, and where the blades both folded into the handle and when opened did not lock into place. *People v Forrest* (1967) 67 Cal 2d 478, 62 Cal Rptr 766, 432 P2d 374.

In the trial of an accused on charges including forcible rape, oral copulation, and possession of a concealed dirk or dagger (*Pen. Code, § 12020*), it was for the jury to determine whether a folding knife, found, according to the prosecution testimony, in the open position in his pocket at the time of his arrest at the scene of the alleged crimes, was a pocket knife or whether it was a dirk or dagger within the meaning of the statute. The symmetrical blade, with a point and dull beveled sides, was slightly less than 5 inches long and locked into place when opened; the knife had guards to

## Cal Pen Code § 12020

prevent the hand from slipping onto the blade when used as a stabbing weapon, and when folded could lie flat on the bottom of the pocket of a man's pants. *People v Bain* (1971) 5 Cal 3d 839, 97 Cal Rptr 684, 489 P2d 564.

*Pen. Code, § 12020*, making it a felony to possess a concealed dirk or dagger, but not defining such weapons, must be strictly construed. *People v Bain* (1971) 5 Cal 3d 839, 97 Cal Rptr 684, 489 P2d 564.

*Pen. Code, § 654*, proscribing double punishment, prohibited a defendant from receiving concurrent sentences on being convicted of possession of a concealable firearm by a felon (*Pen. Code, § 12021*) and of possession of a sawed-off rifle (*Pen. Code, § 12020*), since it was the single possession of a sawed-off rifle that was made punishable to two different statutes. *People v Perry* (1974, 4th Dist) 42 Cal App 3d 451, 116 Cal Rptr 853.

In the case of a defendant who was 18 years old at the time of the offense and trial, who was tried as an adult and convicted of possession of a sawed-off shotgun, a potential felony, in violation of the dangerous weapons control law (*Pen. Code, § 12020*), which was an optional sentence statute providing for punishment either as a misdemeanor or as a felony by imprisonment in state prison for not more than three years, defendant was properly committed to the Youth Authority for a period of not in excess of three years. The fact that a Youth Authority commitment is to be treated in all respects thereafter as a misdemeanor (*Pen. Code, § 17, subd. (b)*), did not mean the misdemeanor jail term superseded the maximum term to which defendant might have been sentenced had a felony sentence to state prison been imposed, and defendant was not denied that equal protection of the law which results when a youthful defendant is threatened with an extension of incarceration to the Youth Authority beyond the maximum to which he could be subjected if he were sentenced as an adult. *People v Herron* (1976, 2nd Dist) 62 Cal App 3d 643, 133 Cal Rptr 287.

An accused need not be totally successful in concealing a dirk to be guilty of violation of *Pen. Code, § 12020, subd. (a)*; the mere fact that some portion of the handle may not have been visible does not make it any less a concealed weapon. Hence, defendant was properly convicted of carrying a concealed weapon where a dirk was carried in his waistband. *People v Fuentes* (1976, 2nd Dist) 64 Cal App 3d 953, 134 Cal Rptr 885.

*Pen. Code, § 12020, subd. (c)*, making it a felony to possess an instrument known as a "Chinese Throwing Star," the modifying phrase "for use as a weapon for throwing," refers to the design of the implement and not the intent of the possessor. Accordingly, in a prosecution under that statute, proof of possession alone was sufficient to convict, and it was not necessary to prove malicious intent or wrongful use of the instrument. Moreover, even if the weapon were to be regarded as having a communicative aspect, by being made for an ornamental purpose, the control of deadly weapons is a sufficiently important governmental interest to justify the incidental limitation on First Amendment freedoms without requiring proof of specific intent to possess the weapon for some criminal purpose. *People v Johnson* (1977, 5th Dist) 72 Cal App 3d 52, 139 Cal Rptr 811.

*Pen. Code, § 12020*, proscribing the carrying of concealed weapons, embraces instruments other than those specifically manufactured for criminal purposes, and decrees as criminal the possession of ordinarily harmless objects when the circumstances of possession demonstrate an immediate atmosphere of danger. The purpose of the Legislature was to condemn weapons common to the criminal's arsenal and to outlaw instruments that are ordinarily used for unlawful purposes. Moreover, the term "dirk or dagger" is to be strictly construed. Thus, an unaltered pair of barber scissors carried inside a glove was not a dirk or dagger common to a criminal's arsenal and, therefore, was not within the purview of the statute. *Bills v Superior Court of Solano County* (1978, 1st Dist) 86 Cal App 3d 855, 150 Cal Rptr 582.

Though at common law an honest and reasonable belief in the existence of circumstances which, if true, would make the act for which the person is indicted an innocent act, has always been held to be a good defense, there are numerous instances in which culpability has been completely eliminated as a necessary element of criminal conduct. With respect to *Pen. Code, § 12020, subd. (a)*, which bars possession of a sawed-off shotgun, since the Legislature repeatedly and selectively used the word "knowingly" throughout the Dangerous Weapons Control Law (*Pen. Code, §§ 12000-12601*) the absence of the word "knowingly" in § 12020, subd. (a) reflects the Legislature's intent that possessing a sawed-off shotgun is a crime, even though the defendant does not know the dimensions of the weapon or reasonably believes those dimensions bring the weapon within lawful limits. In this case, the public policy considerations relating to the substantial harm associated with possessing a dangerous or deadly weapon prompted the Legislature to delete the need for a person to know the contraband character of that weapon. *People v Azevedo* (1984, 4th Dist) 161 Cal App 3d 235, 207 Cal Rptr 270.

The purpose of *Pen. Code, § 12020*, which makes it a felony to possess various deadly weapons, is to outlaw

## Cal Pen Code § 12020

possession of weapons common to the criminal's arsenal. The statute outlaws a class of instruments normally used only for criminal purposes. *People v Garrett (1987, 2nd Dist) 195 Cal App 3d 795, 241 Cal Rptr 10.*

Defendant should not have been convicted of multiple violations of former Pen. Code, § 12020, for his contemporaneous possession in one place of two sawed-off shotguns, since the statutory language, proscribing possession of "any" such weapon, was facially ambiguous as to the unit of prosecution. That one weapon was actually a sawed-off rifle was irrelevant under the statute. Also, even though the guns had been stolen from two different places, they were not sawed when stolen and the only evidence of possession was that they were located in two rooms of defendant's residence when he was arrested. *People v Kirk (1989, 3rd Dist) 211 Cal App 3d 58, 259 Cal Rptr 44.*

In a prosecution for possession of a short-barreled firearm (*Pen. Code, § 12020, subd. (c)(2)(B)*), the trial court properly measured defendant's rifle without extending its folding stock, notwithstanding that the rifle with its stock extended would have exceeded the minimum legal length, where the trial court's measurement was consistent with the legislative purpose of *Pen. Code, § 12020*. A major purpose of the minimum limitations on gun lengths is to prevent possession of guns suitable for unlawful purposes due to their concealability and ease of handling. Nothing in the record suggested that, when folded, the rifle in question was any more difficult to conceal than a weapon that was short for some other reason. It would have defeated the purpose of the statute to allow possession of a weapon that could be concealed during part of a criminal enterprise and only extended for more reliable use when needed. Moreover, the court was not required to interpret the statute's alleged ambiguity in favor of defendant. The principle of lenient construction does not require a court to ignore the obvious intention of the Legislature in enacting the statute. *People v Rooney (1993, 1st Dist) 17 Cal App 4th 1207, 21 Cal Rptr 2d 900.*

In a prosecution for possession of a short-barreled firearm (*Pen. Code, § 12020, subd. (c)(2)(B)*), the trial court properly measured defendant's rifle without extending the folding stock, despite his claim that the rifle was meant to be used with the stock extended, where the rifle was capable of being fired with the stock folded. The stock did not have to be included simply because the statutory definition of "rifle" refers to a weapon intended to be fired from the shoulder (*Pen. Code, § 12020, subd. (c)(20)*). In keeping with the statutory purpose, a weapon that need not be fired exclusively from the shoulder but that readily can be is still a rifle. Moreover, the fact that a fixed stock is included in the measurement of a conventional rifle does not compel the conclusion that a detachable or folding stock must be so included. Such a conclusion would have been contrary to *Pen. Code, § 12020, subd. (c)(2)(C)*, which defines short-barreled rifle as "any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length." Further, defendant's position was not supported by cases in which a folding or detachable stock was included in the measurement of a firearm; those cases do not stand for the proposition that detachable or folding stocks must always be included in the measurement of a firearm. *People v Rooney (1993, 1st Dist) 17 Cal App 4th 1207, 21 Cal Rptr 2d 900.*

Defendant was properly convicted of violating *Pen. Code, § 12020, subd. (a)*, possessing an instrument or weapon of the kind commonly known as a "billy," for possessing a collapsible baton. A police officer testified that he immediately recognized defendant's baton as a weapon commonly known as a collapsible baton, a weapon which, when extended by a flick of the wrist, is extended and used as a club, and that he had seen the weapon on several occasions, and that it is used by police and martial arts as an offensive weapon used to strike. Also, the arresting officers had responded to a call regarding an apparent burglary and found defendant either exiting the building or in the vicinity thereof, detained him, and found the baton in a patdown search for weapons. Thus, even if the instrument was not initially meant to be a weapon, the attendant circumstances indicated that the item was to be used as a weapon at the time of arrest. *People v Mercer (1995) 42 Cal App 4th Supp 1, 49 Cal Rptr 2d 728.*

#### 4. Definitions

Dirk and dagger are used synonymously and consist of any straight stabbing weapon, as a dirk, stiletto, etc. *People v Ruiz (1928) 88 Cal App 502, 263 P 836.*

A deadly weapon does not cease to be such by becoming temporarily inefficient, nor is its essential character changed by dismemberment, if the parts may be easily assembled so as to become effective. *People v Williams (1929) 100 Cal App 149, 279 P 1040.*

A sling shot is defined as a small mass of metal or stone fixed on a flexible handle, strap or the like, used as a weapon. *People v Williams (1929) 100 Cal App 149, 279 P 1040.*

A flat steel wrench about six inches in length and weighing approximately five ounces, and a looped leather strap about twelve inches long so contrived by means of wire and leather thongs as to allow the wrench to be placed in a pocket at one end, while the end forming the loop could be slipped over the wrist of the user and held in the hand, were designated as a slung shot although both were not combined at the time they were found. *People v Williams (1929) 100 Cal App 149, 279 P 1040.*

Blackjack used by defendant in knocking to pavement another person, with whom he admits altercation, is deadly weapon. *People v Duncan (1945) 72 Cal App 2d 423, 164 P2d 510.*

A sawed-off shotgun is contraband. Its possession by anyone is a crime (*Pen. Code, § 12020*). *People v Wasley (1966, 1st Dist) 245 Cal App 2d 383, 53 Cal Rptr 877.*

The term "sawed-off shotgun" is not prejudicial in and of itself, and has a well-established meaning in California law. *People v De Arkland (1968, 2nd Dist) 262 Cal App 2d 802, 69 Cal Rptr 144* (ovrld on other grounds by *People v Beamon, 8 Cal 3d 625, 105 Cal Rptr 681, 504 P2d 905*).

An ordinary kitchen knife, having a wooden handle and a steel blade eight inches long, with a point and one cutting edge, was a "dirk or dagger" within the meaning of *Pen. Code, § 12020*, listing weapons for which a convicted defendant may receive additional punishment under *Pen. Code, § 12022*, and one convicted of first degree burglary was properly found to have been armed within the meaning of the statute where he carried such weapon, it having the characteristics of a stabbing and cutting weapon, and capable of inflicting a fatal wound. *People v Ferguson (1970, 2nd Dist) 7 Cal App 3d 13, 86 Cal Rptr 383.*

Under *Pen. Code, § 12020*, proscribing possession of any weapon made from a rifle or shotgun if such weapon as modified has an overall length of less than 26 inches, a determination of "overall length" by a single straight line best comports with a legislative purpose of outlawing possession of weapons common to the "criminal's arsenal." *People v Stinson (1970, 4th Dist) 8 Cal App 3d 497, 87 Cal Rptr 537.*

The test of a "dirk or dagger" for the purposes of *Pen. Code, § 12020*, subd. (a), proscribing the concealed carrying of such a weapon, is whether the instrument is designed primarily for stabbing. The fact that the weapon can be used to stab and is capable of inflicting death is not determinative. Thus, an unaltered pair of barber scissors carried inside a right glove did not constitute a dirk or dagger within the purview of *Pen. Code, § 12020*, subd. (a), even though it was capable of being used as a stabbing weapon, where it was designed only for use as a cutting tool and not primarily for stabbing. *Bills v Superior Court of Solano County (1978, 1st Dist) 86 Cal App 3d 855, 150 Cal Rptr 582.*

*Pen C § 12020*, which proscribes the concealed carrying of a "dirk or dagger" does not encompass every sharpened tool which can stab within the definition of dirk or dagger. An unaltered awl, which is a pointed instrument for marking surfaces or piercing small holes, is not a dirk or dagger as a matter of law within the meaning of § 12020, and the dismissal of an information charging defendant, who carried an awl in his pants waistband, with a violation of § 12020 for carrying a dirk or dagger concealed upon his person was proper. *People v La Grande (1979, 1st Dist) 98 Cal App 3d 871, 159 Cal Rptr 709.*

A belt buckle knife worn by defendant with a fixed blade of two and one-half to three inches in length and a handle doubling as a belt buckle, whose only practical use was for stabbing, was a dirk or dagger as set forth in *Pen C § 12020* subd (a), as a matter of law, and when worn as intended presented a threat to public order. *People v McClure (1979) 98 Cal App 3d Supp 31, 160 Cal Rptr 83.*

In a prosecution of defendant for carrying a concealed dirk or dagger (*Pen. Code, § 12020*, subd. (a)), the trial court properly left it to the jury to determine whether the knife defendant was carrying was a dirk or dagger within the meaning of the statute, where the knife had a three and three-fourth inch long steel handle and a four and three-eighths inch long relatively straight blade, with one cutting edge and a slight curve toward the tip, where it was substantially made incapable of inflicting a fatal wound, where the knife had a hand guard to prevent the hand from slipping onto the blade, and where there was evidence before the jury that the knife had been used as a stabbing weapon. *People v Villagren (1980, 2nd Dist) 106 Cal App 3d 720, 165 Cal Rptr 470.*

*Pen. Code, § 12020*, subd. (a), providing that any person who carries a concealed dirk or dagger is guilty of a felony, was intended by the Legislature to control possession of instruments not limited to those specifically created or manufactured as weapons, when the attendant circumstances indicate the possessor intends the instrument for a dangerous and not a harmless purpose. Thus, in a juvenile proceeding, the trial court was justified in its determination that an ice pick of ordinary commercial manufacture fell within the statutory proscription where it was discovered by

## Cal Pen Code § 12020

police during the course of a precautionary pat-down search, concealed in the waistband of a juvenile who had been detained for a traffic violation, and where the juvenile stated to the detaining officer that he carried the ice pick for protection. *Re L. (1980, 2nd Dist) 112 Cal App 3d 401, 169 Cal Rptr 354.*

In a proceeding in which a juvenile was found guilty of carrying a concealed dirk or dagger (*Pen. Code, § 12020, subd. (a)*) and was adjudicated to be a ward of the court, the trial court properly ruled that a kitchen knife which had been seized by a police officer from the juvenile's person was a "dirk or dagger" within the meaning of *Pen. Code, § 12020, subd. (a)*, where the knife, which had a blade four and five eighths inches in length and which had been concealed in the juvenile's back pocket, possessed the characteristics of a stabbing and cutting weapon and was capable of inflicting a fatal wound, and where the juvenile, in a statement made immediately after the police officer's seizure of the knife, had revealed his intention to employ the knife as a weapon. *Re W. (1981, 2nd Dist) 120 Cal App 3d 640, 175 Cal Rptr 30.*

Generally the provisions of a penal statute are to be construed according to the fair import of their terms, with a view to effecting its object and to promoting justice. When the statute is susceptible of two reasonable constructions, however, the defendant is ordinarily entitled to that construction which is favorable to him. Under these principles, the term "barrel" in *Pen. Code, § 12020, subd. (d)(1)*, which defines "sawed-off shotgun" in part by reference to the length of a firearm's barrel, can be defined without regard to whether the bolt is forward or back, which would give a longer or shorter measurement, respectively, since the barrel can be measured separately, apart from the bolt or any other part of the gun. Separate measurement represents a practical construction of the statute which is consistent with the functional definition the average person would likely ascribe to the term "barrel" as applied to a weapon; it also advances the protective purposes of the Legislature intended the statute to serve. *People v Azevedo (1984, 4th Dist) 161 Cal App 3d 235, 207 Cal Rptr 270.*

Under *Pen. Code, § 12020, subd. (a)*, providing that knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed, a hunting knife with a four-inch locking blade openly suspended from the waist below a folded-up sweatshirt from an ordinary, commercially available knife sheath was not concealed. *In re Alfredo S. (1984, 2nd Dist) 162 Cal App 3d 800, 208 Cal Rptr 794.*

In order to constitute a "dirk or dagger" within the meaning of *Pen. Code, § 12020, subd. (a)* (concealed weapons), a knife must possess certain minimum characteristics, including a straight, locking blade; a handguard to prevent the hand of the user slipping onto the blade if the knife is used for stabbing; a handle; a symmetrical, tapering blade with two, three, or even four edges and a sharp point; and, perhaps, a blade of more than a certain minimum length. Accordingly, a juvenile was improperly found to have unlawfully carried a concealed dirk or dagger in violation of § 12020, subd. (a), where the knife-like instrument he had, although dangerous, was sharpened on only one side of its curved blade, had no handguard, and had only a one and one-half inch blade. *In re Conrad V. (1986, 2nd Dist) 176 Cal App 3d 775, 222 Cal Rptr 552.*

It was not error to revoke defendant's probation for violating *Pen. Code, § 12020, subd. (a)* (carrying concealed dirk or dagger), even though the knife he was wearing had no handguard, had a short blade, and was sharpened on only one side. The knife was wedge-shaped and was two and one-quarter inches long. One side was sharper than the other, but both sides narrowed to an edge that was thinner than at the center. The handle was on the same plane as the blade and was positioned so that it fitted into the palm of the hand with the blade protruding from between the middle fingers. The knife was a dagger, as matter of law, within the meaning of the statute; not only was it fitted primarily for stabbing, it was fitted for practically no other use. *People v Pettway (1991, 1st Dist) 233 Cal App 3d 1067, 285 Cal Rptr 147.*

In a prosecution for possession of a concealed dirk or dagger (*Pen. Code, § 12020, subd. (a)*), the trial court erred in denying defendant's motion to exclude the knife from evidence, which motion was made on the ground that the knife was not a "dirk or dagger" as a matter of law. The terms "dirk or dagger" are to be strictly construed, but in allowing the jury to consider defendant's intent in possessing the knife, the court permitted a common bread knife to be transformed into a dirk or dagger. The knife had characteristics that substantially limited its effectiveness as a stabbing instrument; it had no sharp edges, no stabbing point, no handguards, and no stiff blade. It was not a dirk or dagger as a matter of law. *People v Barrios (1992, 5th Dist) 7 Cal App 4th 501, 8 Cal Rptr 2d 666.*

In a prosecution for possession of a concealed dirk or dagger (*Pen. Code, § 12020, subd. (a)*), the trial court did not err by refusing to instruct the jurors that they could consider defendant's intent in possessing the weapon when deciding whether he possessed a dirk or dagger within the meaning of the statute. The terms "dirk" and "dagger" are to be strictly

construed, and evidence relating to the possessor's intended use of the weapon, whether used to expand or constrict the class of weapons that qualify as dirks or daggers, is irrelevant and should not be considered by the trier of fact when deciding whether a given knife qualifies. The California Supreme Court has both approved the definition of the terms as written and consistently decided this type of case based solely on the physical characteristics of the weapon. It is not the use of the weapon that is being proscribed by statute, but its possession. Moreover, although defendant asserted that the shortness of the blade and the fact that it was sharpened on only one side limited its use as a stabbing instrument, the jury found otherwise, and defendant did not challenge the sufficiency of the evidence to support the jury's determination, nor did he claim the knife was not a dirk or dagger as a matter of law. *People v Gonzales (1995, 5th Dist) 32 Cal App 4th 229, 38 Cal Rptr 2d 52.*

#### 5. Possession

This statute does not prohibit possession of the named weapons as such, but of all weapons of the same class. *People v Mulherin (1934) 140 Cal App 212, 35 P2d 174.*

In a prosecution for possession of a blackjack, where the instrument is found in a suitcase under the bed in a room occupied jointly by the defendant and another man and, although the defendant denied he had ever seen the instrument before it was produced at his preliminary hearing, police officers testified that he admitted to them at or shortly after his arrest that it belonged to him, the question of the defendant's possession of the instrument was one of fact, and the jury's determination of the defendant's guilt was conclusive on appeal. *People v McKinney (1935) 9 Cal App 2d 523, 50 P2d 827.*

Proof of possession alone is sufficient to convict, and it is not necessary to prove malicious intention on the part of the possessor of the interdicted weapon, or actual or wrongful use of it. *People v McKinney (1935) 9 Cal App 2d 523, 50 P2d 827.*

The possession of a "money fist" is not made illegal by this statute, this object not being commonly known as a blackjack, slung shot, billy, sand club, sandbag, or metal knuckle which are mentioned in the statute. *People v Golden (1946) 76 Cal App 2d 769, 174 P2d 32.*

Defendant's arrest without warrant was reasonable when he advised officer in his hotel room that pair of brass knuckles was under his bed mattress. *People v Bouchard (1958, 2nd Dist) 161 Cal App 2d 302, 326 P2d 646.*

Arrest of defendant convicted of robbery was lawful where at time of his arrest he was stopped by officers for driving vehicle on public highway with one license plate missing and had on floor of car a straight steel bar and capped conical bar; under such circumstances officers could have honest and strong suspicion that defendant was in possession of instruments or weapons described in this section. *People v Odegard (1962, 2nd Dist) 203 Cal App 2d 427, 21 Cal Rptr 515 (disapproved on other grounds by Mozzetti v Superior Court of Sacramento County, 4 Cal 3d 699, 94 Cal Rptr 412, 484 P2d 84).*

In prosecution for possession of sawed-off shotgun, fact that gun was broken down into three component parts thus was not ready for immediate use did not negate crime where evidence indicated that gun could be assembled and used in matter of seconds. *People v Guyette (1964, 5th Dist) 231 Cal App 2d 460, 41 Cal Rptr 875.*

Possession of altered baseball bat, taped at smaller broken end and heavier at unbroken end, carried about in car, obviously usable as "billy," and clearly not transported for purpose of playing baseball violated prohibition of possession of dangerous objects in this section. *People v Grubb (1965) 63 Cal 2d 614, 47 Cal Rptr 772, 408 P2d 100.*

The purpose of the Legislature in proscribing the mere possession (as distinguished from actual use) of weapons such as sawed-off shotguns was to outlaw the possession of weapons common to the criminal's arsenal. *People v Satchell (1971) 6 Cal 3d 28, 98 Cal Rptr 33, 489 P2d 1361, 50 ALR3d 383.*

Those who perpetrate homicide while engaged merely in the commission of the felony of violating either *Pen. Code, § 12020* (possession by any person of a weapon such as a sawed-off shotgun) or *Pen. Code, § 12021* (possession of a concealable firearm by an ex-felon) may not be convicted of murder unless the existence of the crucial mental state of malice aforethought is actually demonstrated to the trier of fact. *People v Satchell (1971) 6 Cal 3d 28, 98 Cal Rptr 33, 489 P2d 1361, 50 ALR3d 383.*

The mere fact that a "sawed-off shotgun," as the term is used in *Pen. Code, § 12020*, is inoperable does not put it outside of the statutory proscription of possession of such a device. Thus, the fact that the bolt was not in a sawed-off rifle found in defendant's possession did not preclude his conviction under the statute. *People v Favalora (1974, 1st*



*Dist) 42 Cal App 3d 988, 117 Cal Rptr 291.*

In a prosecution for possession of heroin and amphetamines, and possession of a sawed-off shotgun, an inference of defendant's knowledge and possession of the contraband was properly drawn, where, though defendant's girl friend and two others had keys to defendant's house, the premises were nonetheless in his possession and control on the day of his arrest, with only his girl friend sharing his bedroom in which the contraband was found, where defendant admitted constructing a waterbed frame with concealed compartments within which the contraband was found, and admitted using shotguns for hunting and having in his possession live shotgun shells, and where there was no direct evidence that others having access to the house had knowledge of the secret storage area. *People v Rice (1976, 3rd Dist) 59 Cal App 3d 998, 131 Cal Rptr 330.*

A defendant convicted of robbery while armed with a sawed-off rifle, and assault with a deadly weapon with a firearm use enhancement was improperly sentenced to a consecutive term for possession of the same sawed-off rifle (*Pen. Code, § 12020, subd. (a)*), where the evidence showed only a possession of the weapon in conjunction with the primary offenses and did not show possession at any other time or for any other purpose. In order to satisfy *Pen. Code, § 654* (prohibition against multiple punishment), the evidence must show a possession distinctly antecedent and separate from the primary offense. *People v Hays (1983, 4th Dist) 147 Cal App 3d 534, 195 Cal Rptr 252.*

#### 6. Instructions

The court is justified in instructing the jury that possession is the essence of the offense and in refusing to give instructions that the use or lack of use of the weapon, or its being kept as a keepsake or curio, would affect the guilt or innocence of the defendant. *People v Ferguson (1933) 129 Cal App 300, 18 P2d 741.*

There is no error in refusing to give an instruction that a blackjack is a leather covered billy or club weighted at the head and having a flexible shaft, and that the defendant should be found not guilty unless the instrument in evidence is such a weapon, or in giving instructions that the defendant should be found guilty if he had possessed a weapon of the kind commonly known as a blackjack or billy, that a billy is a bludgeon, as one for carrying in the pocket, or a policeman's club, and that a blackjack is a short bludgeon consisting of a heavy head on an elastic shaft with a flexible handle, in view of the fact that a blackjack, while usually covered with leather, is not necessarily covered at all. *People v Mulherin (1934) 140 Cal App 212, 35 P2d 174.*

There is no error in giving an instruction which conforms to the statute and is to the effect that the statute provides that every person who possesses any instrument or weapon of the kind commonly known as a blackjack, slung shot, or billy shall be guilty of a felony. *People v Mulherin (1934) 140 Cal App 212, 35 P2d 174.*

Where the jury is instructed that the instruments in question are "within the purview of the instruments announced in the code," the jury is not thereby told that the instruments in evidence are weapons prohibited by the act, but are merely told that such instruments are within the field or scope of the act, it being one for the jury to declare whether these particular clubs actually were illegal weapons. *People v Canales (1936) 12 Cal App 2d 215, 55 P2d 289.*

In a prosecution for carrying a concealed weapon in the form of a spring blade knife, it is not necessary that the court give on its own motion an instruction on circumstantial evidence, or that if there are two inconsistent theories the jury could adopt the one favorable to the defendant, where an instruction is given to the effect that the defendant is not to be found guilty unless the jury believes to a moral certainty that the knife was fitted primarily for stabbing and was capable of inflicting death. *People v Shah (1949) 91 Cal App 2d 716, 205 P2d 1081.*

In a prosecution for carrying a concealed weapon in the form of a spring blade knife, an instruction defining dirks or daggers and sub-species thereof, and telling the jury that they are to find the defendant guilty only if the knife comes within such category, is a sufficient definition. *People v Shah (1949) 91 Cal App 2d 716, 205 P2d 1081.*

In a prosecution for illegal possession of metal knuckles (*Pen. Code, § 12020*), though the statute itself was not too vague to satisfy constitutional standards, the jury was entitled to some guidance by the trial court as to the meaning of the statutory terms, where the knuckles were unlike those ordinarily described in the dictionaries and the statute fails to define the term "metal knuckles". *People v Deane (1968, 2nd Dist) 259 Cal App 2d 82, 66 Cal Rptr 177.*

In a prosecution for illegal possession of metal knuckles (*Pen. Code, § 12020*), the jury, in addition to being instructed to the effect that, although the statute names several types of weapons specifically, the law embodied in the statute includes all other weapons of the same kind, and they should determine from the evidence whether defendant possessed any instrument or object so named or of the same kind, as charged, should also have been instructed to the

## Cal Pen Code § 12020

effect that the possession of a sometimes-useful object may be unlawful where the attendant circumstances indicate that the defendant would use the object for a dangerous purpose, where there was evidence that the object in question, though alleged by the prosecution to be a form of metal knuckles, was used legitimately and lawfully as a toolbox handle, and, there was conflicting testimony as to defendant's admission that he kept the object in his car for protection. *People v Deane (1968, 2nd Dist) 259 Cal App 2d 82, 66 Cal Rptr 177.*

In a prosecution for possession of a sawed-off rifle (*Pen. Code, § 12020*), the trial court did not err in refusing defendant's offered instruction to the effect that there must be evidence showing that the possessor contemplated an unlawful use of the weapon, where the illegal nature of defendant's rifle was unambiguous; it was a "sawed-off" rifle and nothing else. *People v Stinson (1970, 4th Dist) 8 Cal App 3d 497, 87 Cal Rptr 537.*

In a prosecution for possession of a sawed-off shotgun (*Pen. Code, § 12020*), testimony that defendant appeared to be reaching for the shotgun's trigger was properly admitted as factual and within the witness' personal knowledge (*Evid. Code, § 702*). *People v Phillips (1970, 4th Dist) 10 Cal App 3d 488, 89 Cal Rptr 142.*

In a prosecution for possession of a sawed-off shotgun (*Pen. Code, § 12020*), the trial court properly admitted a witness' testimony that after the gun in question was taken from defendant in a cafe tussle, she asked him why he had come to the cafe with a gun, and that defendant answered some people had tried to rob him that night; defendant's answer was admissible as an admission he intended to exercise dominion and control over the weapon (*Evid. Code, § 1220*). *People v Phillips (1970, 4th Dist) 10 Cal App 3d 488, 89 Cal Rptr 142.*

In a prosecution for assault with a deadly weapon and carrying a concealed dirk or dagger, the trial court's error, if any, in failing to define "dirk," "dagger," and "deadly weapon," was not prejudicial. Examination of the weapon established that it was designed and could be used only to stab, and it was therefore a dirk or dagger as a matter of law. Moreover, the instrument was obviously a deadly weapon in that it was used to stab the victim who was hospitalized as a result of its use. *People v Cabral (1975, 2nd Dist) 51 Cal App 3d 707, 124 Cal Rptr 418.*

A defendant's intent in possessing a copper cable identified by police officers as a billy club was irrelevant to the offense of possession of a billy club (*Pen. Code, § 12020, subd. (a)*); it was enough that he was in possession of an item meeting the description of a billy club. *People v Molina (1994, 1st Dist) 25 Cal App 4th 1038, 30 Cal Rptr 2d 805.*

## 7. Evidence

There is no merit in the contention that there was no evidence to show that the instruments alleged to have been sold were billies, where they were produced at the trial and where there was ample evidence to show that they were commonly known as billies. *People v Makovsky (1935) 3 Cal 2d 366, 44 P2d 536.*

In prosecution for possession of sawed-off shotgun, it was proper to prove that defendant conspired with two others to obtain sawed-off shotgun and to rob bank to show that every act of conspirators in furtherance of common plan was act of each; and apart from that factor, proof of motive for possession was proper. *People v Guyette (1964, 5th Dist) 231 Cal App 2d 460, 41 Cal Rptr 875.*

In a prosecution for possession of an illegal weapon (*Pen. Code, § 12020*), in order to sustain conviction, there must be evidence tending to show that, at the time and place of the illegal possession, the possessor contemplated an unlawful use of the weapon, where there is also evidence that the alleged illegal weapon has a legitimate and lawful use as well as an illegal use. *People v Deane (1968, 2nd Dist) 259 Cal App 2d 82, 66 Cal Rptr 177.*

Sawed-off shotguns and other patently dangerous weapons, unlike narcotics, are not ambiguous in appearance, so that one would not be surprised to learn that their possession is regulated by the government. The Legislature could rationally conclude that anyone who sees such a device may be assumed to recognize its potentially lethal character, that anyone proposing to take possession of such a device must ascertain the legality of its possession, and that anyone who takes possession without confirming the legal right to do so runs the risk of a felony conviction. This is what the Legislature apparently intended by *Pen. Code, § 12020, subd. (a)* (prohibiting possession of sawed-off shotguns), and, therefore, in prosecuting defendant under that statute the only mental state the prosecution was required to prove was that defendant knew she had possession of the item in question. Defendant was thus properly convicted where she did not contest the sufficiency of the evidence on that issue. *People v Valencia (1989, 1st Dist) 214 Cal App 3d 1410, 263 Cal Rptr 301.*

In a prosecution for possession of a bullet carrying or containing an explosive agent (*Pen. Code, § 12020, subd. (a)*), the trial court did not err in failing to give a sua sponte jury instruction that knowledge of the contraband nature of the

bullet is an element of the offense, since the only mental state the prosecution must prove to sustain a conviction is that the defendant knew that he possessed the bullet. In enacting the statute, which proscribes possession of any bullet containing or carrying an explosive agent, rather than knowing possession of such a bullet, the Legislature was aware of previous case law holding that under the Machine Gun Law of 1927, the possessor of a machine gun need not have known the gun was a machine gun, since the Legislature did not include the word "knowingly" before "possession" in the statute. The Legislature has continued selectively to employ the term "knowingly," and has demonstrated, by not qualifying the term "possession," that it intended to require only knowledge of the bullet's presence. *People v Lanham* (1991, 4th Dist) 230 Cal App 3d 1396, 282 Cal Rptr 62.

#### 8. -Sufficiency

In a prosecution for possession of metal knuckles, the evidence is sufficient to establish the existence of the instrument, even though the instrument is not all metal, where it consists of alternate strips of sheet lead and gum tape, making it a set of knuckles somewhat in the shape of a bracelet and of size to fit over four finger knuckles, and an expert, an inspector of the police department, described the instrument as a "pair of metal knuckles." *People v Quinones* (1934) 140 Cal App 609, 35 P2d 638.

The evidence was sufficient to show a joint possession or control of a blackjack by all three defendants where they admitted being involved in a fight, where the blackjack covered with blood and empty bottles were found in the automobile in which they were driving away from the scene, where one defendant had wanted "to whip a man," where thereafter there was a breaking of glass and the man was struck over the head with a blunt instrument which did not break the skin, and where the hands of two of the defendants were cut, while the other defendant's hands were not cut, thereby indicating that this defendant wielded the blackjack and that the other defendants wielded the bottles. *People v Felix* (1943) 58 Cal App 2d 646, 137 P2d 472.

In prosecution for unlawful possession of deadly weapon, corpus delicti was established by testimony of arresting officers that defendant was armed with blackjack, and by defendant's testimony admitting such possession. *People v Sparks* (1947) 82 Cal App 2d 145, 185 P2d 652.

A conviction was supported by evidence of two police officers that they observed an object about seven inches long in the pocket of the defendant's lightweight coat and upon taking it from his pocket found it to be a knife with a spring blade opening by pressure on a button to constitute a dirk or dagger. *People v Shah* (1949) 91 Cal App 2d 716, 205 P2d 1081.

Proof of possession alone of any instrument known as black-jack, slug shot, billy, sandclub, sandbag, or metal knuckles is sufficient for conviction under this section; it is not necessary to prove malicious intent or wrongful use of them. *People v Odegard* (1962, 2nd Dist) 203 Cal App 2d 427, 21 Cal Rptr 515 (disapproved on other grounds by *Mozzetti v Superior Court of Sacramento County*, 4 Cal 3d 699, 94 Cal Rptr 412, 484 P2d 84).

Evidence sufficed to hold defendant responsible for possession of sawed-off shotgun where there was proof that it was his idea to purchase shotgun and convert it to sawed-off weapon, that he participated with two others in selecting and buying gun, that with hacksaw he converted it into sawed-off shotgun, and that he placed it in suitcase containing his clothing. *People v Guyette* (1964, 5th Dist) 231 Cal App 2d 460, 41 Cal Rptr 875.

The court's determination that the accused, a felon, was in possession of a .32 caliber automatic pistol, narcotics, and a sawed-off shotgun found in the automobile that he was driving, which constituted the basis of the crimes with which he was charged, was supported by circumstantial evidence that the accused was the driver of the vehicle, and that the key to the glove compartment and trunk containing the contraband was partially hidden under the floor mat of the vehicle, and that a suitcase found in the trunk belonged to the accused. *People v Prochnau* (1967, 2nd Dist) 251 Cal App 2d 22, 59 Cal Rptr 265.

There was sufficient evidence for conviction for possession of a blackjack (*Pen. Code, § 12020*), and a concealable firearm (*Pen. Code, § 12021*), where both weapons were found in the automobile defendant was driving at the time of his arrest, and where defendant was in the exclusive possession of the automobile for a period of two weeks and had the use of it for at least one month. *People v Burnett* (1967, 1st Dist) 251 Cal App 2d 651, 59 Cal Rptr 652.

In a prosecution for possession of an illegal weapon (*Pen. Code, § 12020*), evidence that the object in evidence falls within the definition of the statute and is usable only as an illegal weapon meets any requirement of evidentiary support therefor, and this may be provided by the testimony of an expert. *People v Deane* (1968, 2nd Dist) 259 Cal App 2d 82,

66 Cal Rptr 177.

Defendant's conviction under the Dangerous Weapons Control Law was supported by substantial evidence, where a witness testified that he saw defendant with the rifle in question, hit him on the head, and took the rifle from him, where the rifle was turned over to the police and booked into evidence, and where an adequate chain of possession was established to allow admission of the weapon in evidence. *People v Sims* (1970, 2nd Dist) 8 Cal App 3d 599, 88 Cal Rptr 225.

Under *Pen. Code, § 12020*, possessing a sawed-off shotgun is a crime; the statute does not require proof of criminal use of the weapon. *People v Phillips* (1970, 4th Dist) 10 Cal App 3d 488, 89 Cal Rptr 142.

Where defendant volunteered to a police officer that a sawed-off shotgun found by police in an alley two days before belonged to him, evidence established sufficient cause to hold him to answer on the charge of possession of a sawed-off shotgun (*Pen. Code, § 12020*) on the date it was found, since the existence of the shotgun alone established the corpus delicti of the offense independently of defendant's extrajudicial statement, and the statement, in which defendant admitted that he and a codefendant went to get the gun shortly before it was used and found in the alley, supported the inference that defendant possessed the gun at the time charged in the information. *People v Reeves* (1974, 2nd Dist) 39 Cal App 3d 944, 114 Cal Rptr 574.

The evidence was adequate to sustain defendant's conviction of violating the dangerous weapons control law (*Pen. Code, § 12020*), where it appeared that police officers, who had been notified of a disturbance, observed defendant in a vacant lot with his hands in the air, over his head, as though he was throwing something behind him; where the sound of something striking the ground was heard by the officers, although no article was specifically observed to have been thrown; where, on investigation, a sawed-off shotgun was found some 25 to 30 feet from defendant and in the direction of the throw; where the weapon was dry and loaded, determined to be operable, while the area in which the gun was located was covered with matted down, long grass, and was wet with dew. *People v Herron* (1976, 2nd Dist) 62 Cal App 3d 643, 133 Cal Rptr 287.

In a prosecution for carrying a concealed dirk or dagger (*Pen. Code, § 12020, subd. (a)*), there was sufficient evidence of substantial concealment even though the tip of the knife had been protruding from defendant's pocket. The jury was permitted to examine the knife, which was approximately seven and three-eighths inches long, and was apprised that only one and one-half to two inches of the blade were protruding from defendant's pocket. Those facts supported a finding of substantial concealment. A defendant need not be totally successful in concealing a knife to be guilty of violating § 12020, subd. (a). *People v Wharton* (1992, 3rd Dist) 5 Cal App 4th 72, 6 Cal Rptr 2d 673.

In juvenile proceedings, the trial court properly found that the object the subject minor was carrying when detained by the police was a dirk or dagger within the meaning of *Pen. Code, § 12020, subd. (a)*. The only evidence presented was that the instrument started as a tire repair tool but had been altered to resemble an ice pick or other tool for stabbing. The fact the actual shaft of the object was less than two inches, was not dispositive, as the statute has no length requirement. The terms "dirk" and "dagger" are used synonymously. They consist in a straight stabbing weapon, and the object need not fit the common perception of a knife. Since the object was redesigned to have a sharp point, the trial court was entitled to conclude its primary purpose was to serve as a stabbing instrument, and the minor had admitted to the police officer that he carried it for "protection." *In re Victor B.* (1994, 4th Dist) 24 Cal App 4th 521, 29 Cal Rptr 2d 362.

#### 9. -Admissibility

The fact that the defendant prior to the sale in question had made sales of weapons of the type sold to the special officer, or that he was suspected of dealing in such weapons, would be inadmissible, but the fact that the officer was sent to the defendant's place of business by the police department for the purpose of ascertaining whether he could buy a billy from the defendant was quite persuasive that the defendant was not entirely free from suspicions by the police officers, and there was no merit in the defendant's contention on appeal that there was no evidence that he was engaged in selling weapons, the sale of which was forbidden by law, or that he was even suspected of dealing in such weapons. *People v Makovsky* (1935) 3 Cal 2d 366, 44 P2d 536.

Where the defendant denies possession or ownership of the weapons, intimating they had been planted in his car, any evidence which tends to show a motive or reason to possess such an instrument is admissible as bearing upon the fact of possession. *People v Canales* (1936) 12 Cal App 2d 215, 55 P2d 289.

## Cal Pen Code § 12020

In a prosecution for carrying a concealed spring blade knife, testimony of an officer as to the nature and operation of the weapon was admissible, since the character of the weapon was in itself concealed until a spring thereon was pressed, and testimony of the defendant as to his knowledge of its nature and character was properly elicited, in order to show that the carrying of the weapon was not justifiable or excusable. *People v Shah (1949) 91 Cal App 2d 716, 205 P2d 1081.*

Officers lawfully entering suspect's premises to search for narcotics are not required to blind themselves to what is in plain sight simply because it is disconnected with purpose for which they entered, and fact that such search discloses another crime, such as illegal possession of blackjack, does not render blackjack inadmissible in evidence. *People v Shafer (1960, 2nd Dist) 183 Cal App 2d 127, 6 Cal Rptr 594.*

Where possession of weapon is denied, any evidence that tends to show motive or reason to possess it is admissible as bearing on possession. *People v Guyette (1964, 5th Dist) 231 Cal App 2d 460, 41 Cal Rptr 875.*

In prosecution for possession of sawed-off shotgun, where it appeared that three persons conspired to purchase shotgun and to convert it into forbidden weapon, anything done in furtherance of conspiracy by any of three was properly admissible as against each of them. *People v Guyette (1964, 5th Dist) 231 Cal App 2d 460, 41 Cal Rptr 875.*

In a prosecution for illegal possession of metal knuckles (*Pen. Code, § 12020*), the submission to the jury of the object in question to which was tied a form of the city police department entitled "Recovered Property" with handwritten words thereon identifying the attached object as "one home-made brass knuckle" may have been prejudicial to defendant, where defendant introduced evidence that the object was used by him as a tool box handle, and where the object introduced added nothing to the people's proof. *People v Deane (1968, 2nd Dist) 259 Cal App 2d 82, 66 Cal Rptr 177.*

In prosecutions for possession of narcotics and marijuana (*Health & Saf. Code, §§ 11500, 11530, 11530.5*) and possession of and carrying a blackjack and a loaded, concealed firearm in a vehicle (*Pen. Code, §§ 12020, 12022, 12025(a), 12031(a)*), the defendants' petition for writ of mandate brought under *Pen. Code, § 1538.5* to compel suppression of evidence on the ground the search occurred during an unlawful detention was granted where a police officer had approached a legally parked car by the roadside in the middle of the night, had seen a family asleep inside, awakened one of the occupants but did not have any reason to suspect illegal behavior, asked him if "everything was all right" and received an affirmative answer, and then, prompted only by general curiosity and without probable cause, requested further identification, continued the detention, radioed for warrant checks, and upon learning of five outstanding misdemeanor counts, conducted an extensive search of the vehicle and its contents. *Barber v Superior Court of San Diego County (1973, 4th Dist) 30 Cal App 3d 326, 106 Cal Rptr 304.*

A search warrant authorizing a search of a person does not permit a search for that person at a residence not described in the warrant, even though the police officers may have a reasonable basis to believe the person to be search is present, and such a search is per se unreasonable in the absence of exigent circumstances. Thus, in a prosecution for possessing a sawed-off shotgun and possessing marijuana, defendant was entitled to suppress all evidence of those charges, where the police, in connection with a homicide investigation and armed with a search warrant authorizing the search of a ranch and the person of a named individual for certain enumerated objects, had entered the residence of the named individuals' brother which was located next to, but not on, the ranch named in the warrant, and in searching the residence for the named individual, who was not there, saw the marijuana and sawed-off shotgun in plain view, where the officers, then obtained a telephonic search warrant authorizing a search for the shotgun and narcotics and drugs and then executed the warrant, and where the brother of the named individual had not voluntarily consented to the search of his residence. *Lohman v Superior Court of San Diego County (1977, 4th Dist) 69 Cal App 3d 894, 138 Cal Rptr 403.*

A juvenile was not given his Miranda (*Miranda v. Arizona (1966) 384 U.S. 436 [16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974]*) rights before being questioned concerning his possession of illegal karate sticks, and thus a statement made by him to a police officer that the sticks belonged to him was inadmissible at his hearing on whether he should be declared a ward of the court, where the evidence indicated that the minor was sitting in the passenger seat of a vehicle and another juvenile was in the driver's seat, that two police officers saw a beer can on the dashboard, approached the vehicle, and while one officer was detaining the minors near his car, the other found two illegal karate sticks on the floor of the vehicle on the driver's side and asked to whom they belonged, obtaining a reply from the minor that they were his. *Re M. (1977, 2nd Dist) 72 Cal App 3d 133, 139 Cal Rptr 902.*

Only rather slight or prima facie proof is necessary to establish the corpus delicti necessary before the admission of a

confession. Thus in a proceeding in which a juvenile was found guilty of carrying a concealed dirk or dagger (*Pen. Code, § 12020*, subd. (a)) and was adjudicated to be a ward of the court, the trial court properly admitted a statement in which the juvenile revealed his intent to use a certain kitchen knife as a weapon where the state had previously established the corpus delicti of the crime of carrying a concealed dirk or dagger by demonstrating that during a pat-down search a police officer had discovered the knife concealed in the juvenile's back pocket, and where the statement, that the juvenile carried the knife for his protection, was material to show that he carried the knife knowingly and with the intent to use it for a dangerous purpose. *Re W. (1981, 2nd Dist) 120 Cal App 3d 640, 175 Cal Rptr 30.*

#### 10. Appeal

In a prosecution for the possession of a blackjack or slung shot, the error of the trial court in defining a slung shot as a blackjack was not prejudicial, where the jury properly disregarded the instruction and found that the weapon was a slung shot. *People v Williams (1929) 100 Cal App 149, 279 P 1040.*

In a prosecution for possession of "what is commonly known as a blackjack," the verdict of conviction is not contrary to and unsupported by the evidence although it appears that the weapon would have been more correctly described as a slung shot and that it consisted of a mass of metal fixed on a flexible handle, strap or the like. *People v Mulherin (1934) 140 Cal App 212, 35 P2d 174.*

In prosecution under provision making possession of "billy" unlawful, admission into evidence of defendant's statements as to his possession and use of broken baseball bat, which set forth very elements that converted bat, usable for peaceable purposes, into kind of instrument proscribed by statute was prejudicial and reversible error. *People v Grubb (1965) 63 Cal 2d 614, 47 Cal Rptr 772, 408 P2d 100.*

The question of knowledge of the presence of weapons in an automobile used by defendant is for the jury and its determination will not be disturbed on appeal. *People v Burnett (1967, 1st Dist) 251 Cal App 2d 651, 59 Cal Rptr 652.*

In a prosecution for illegal possession of metal knuckles (*Pen. Code, § 12020*), the jury verdict could not stand, where the appellate court could only speculate as to whether the verdict was based on defendant's admission of an improper purpose for the object in question, or on a non-expert opinion as to the possible use and nature of the object, or on an anonymous classification of the object when presented to the jury, or on some definition of the object evolved by the jury without proper guiding instructions. *People v Deane (1968, 2nd Dist) 259 Cal App 2d 82, 66 Cal Rptr 177.*

On appeal from a conviction of possession of a sawed-off rifle (*Pen. Code, § 12020*) defendant could not successfully contend that the rifle involved was of legal length, where such contention involved measuring the weapon from its tip to the back of the barrel and thence down along the stock to its back, and where either of two single straight line measurements made by police officers showed the weapon to be a sawed-off rifle within the meaning of the statute. *People v Stinson (1970, 4th Dist) 8 Cal App 3d 497, 87 Cal Rptr 537.*

In a prosecution of defendant for possession of a sawed-off rifle (*Pen. Code, § 12020*) and of being in possession of a concealable firearm after he had previously been convicted of a felony (*Pen. Code, § 12021*), the finding that defendant had previously been convicted of a felony for a 1971 violation of *Pen. Code, § 12021*, was required to be set aside where the minutes of the prior prosecution admitted into evidence showed on its face that defendant had received a misdemeanor jail sentence for that violation, but there was no reasonable ground to believe the findings of guilt as to the substantive crimes was prejudicially affected thereby, since the evidence of defendant's guilt was unquestioned and there was unquestioned evidence of a 1967 conviction for robbery to supply the necessary proof that defendant was an ex-felon. *People v Perry (1974, 4th Dist) 42 Cal App 3d 451, 116 Cal Rptr 853* (superseded by statute as stated in *People v Levell (6th Dist) 201 Cal App 3d 749, 247 Cal Rptr 489*).

On appeal of defendant's conviction of possession of a dirk or dagger in violation of *Pen. Code, § 12020*, the court was not required to consider the claim that a folding knife found on defendant was not a dirk or dagger within the meaning of the statute, where defendant conclusively admitted that it was by his plea of guilty to that offense. *People v Jones (1979, 1st Dist) 95 Cal App 3d 403, 157 Cal Rptr 51:*

On appeal by a gang member from convictions for being an accessory to a felony (*Pen. Code, § 32*) by disposing of murder weapons used in gang warfare, and for possessing a sawed-off shotgun (*Pen. Code, § 12020*), defendant was precluded from contending that expert testimony regarding his membership in a youth gang should have been excluded as inadmissible hearsay, where defendant failed to preserve such issue for appeal by a timely and specific objection in the trial court. Defendant should have moved to strike the relevant portions of the expert's testimony once it was

## Cal Pen Code § 12020

determined on cross-examination that his opinion regarding defendant's membership in the gang was based in part on having been so informed by other admitted gang members. *People v Szeto (1981) 29 Cal 3d 20, 171 Cal Rptr 652, 623 P2d 213.*

## SUGGESTED FORMS

## ALLEGATION CHARGING POSSESSION OF DEADLY WEAPON

The ---- [Grand Jury or District Attorney] of the County of ---- accuses ---- of a felony, that is: A violation of Section 12020 of the Penal Code of the State of California, in that on or about ---- [date], in the County of ----, State of California, ---- [he or she] ---- [---- (did wilfully, unlawfully and feloniously possess an instrument and weapon or possessed an instrument or weapon) of a kind commonly known as a ---- or specify other act denounced by statute].

Volume 1

# STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1997

Constitution of 1879 as Amended

General Laws, Amendments to the Codes,  
and Resolutions passed by the  
California Legislature

**1997-98 Regular Session**  
**1997-98 First Extraordinary Session**



*Compiled by*  
BION M. GREGORY  
*Legislative Counsel*



benefit at any other time for purposes of the planned absence authorized by this section.

(c) The employee, if requested by the employer, shall provide documentation from the school or licensed child day care facility as proof that he or she participated in school or licensed child day care facility activities on a specific date and at a particular time. For purposes of this subdivision, "documentation" means whatever written verification of parental participation the school or licensed child day care facility deems appropriate and reasonable.

(d) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in terms and conditions of employment by his or her employer because the employee has taken time off to participate in school or licensed child day care facility activities as described in this section shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law shall be subject to a civil penalty in an amount equal to three times the amount of the employee's lost wages and work benefits.

## CHAPTER 158

An act to amend Sections 12020, 12021, 12026.2, 12092, 12094, 12201, 12316, and 12322 of the Penal Code, relating to firearms.

[Approved by Governor August 2, 1997. Filed with  
Secretary of State August 4, 1997.]

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

SECTION 1. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, or any instrument or weapon of the kind commonly known as a

blackjack, slungshot, billy, sandclub, sap, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition, or who carries concealed upon his or her person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or in the state prison. A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more

than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(16) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

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

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(17) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be

or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least  $2\frac{1}{2}$  inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "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. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

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

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

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has



in his or her possession or under his or her custody or control any firearm is guilty of a felony.

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

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

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

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

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

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

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

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

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

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

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in

which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

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

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

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

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

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

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

(g) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to Division 7 (commencing with Section 2500) of the Family Code.

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

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

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

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

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

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

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

SEC. 2.5. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any

other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

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

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition,

impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

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

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

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

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

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

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

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

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

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

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

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

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to

this subdivision may be used to determine eligibility to acquire a firearm.

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

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

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

(g) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to Division 7 (commencing with Section 2500) of the Family Code.

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

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

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

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

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

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



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

SEC. 3. Section 12026.2 of the Penal Code is amended to read:

12026.2. (a) Section 12025 does not apply to, or affect, any of the following:

(1) The possession of a firearm by an authorized participant in a motion picture, television, or video production or entertainment event when the participant lawfully uses the firearm as part of that production or event or while going directly to, or coming directly from, that production or event.

(2) The possession of a firearm in a locked container by a member of any club or organization, organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other firearms, while the member is at meetings of the clubs or organizations or while going directly to, and coming directly from, those meetings.

(3) The transportation of a firearm by a participant when going directly to, or coming directly from, a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

(4) The transportation of a firearm by a person listed in Section 12026 directly between any of the places mentioned in Section 12026.

(5) The transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful transfer, sale, or loan of that firearm.

(6) The transportation of a firearm by a person listed in Section 12026 when going directly from the place where that person lawfully received that firearm to that person's place of residence or place of business or to private property owned or lawfully possessed by that person.

(7) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purpose of displaying that firearm in a lawful manner.

(8) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production or entertainment event for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

(9) The transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

(10) The transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 12050 when done at the request of the issuing agency so that the issuing agency can

determine whether or not a license should be issued to that person to carry that firearm.

(11) The transportation of a firearm by a person when going directly to, or coming directly from, a law enforcement agency for the purpose of a lawful transfer, sale, or loan of that firearm pursuant to Section 12084.

(12) The transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for the purpose of having that firearm available for lawful personal protection while at the lawful campsite. This paragraph shall not be construed to override the statutory authority granted to the Department of Parks and Recreation or any other state or local governmental agencies to promulgate rules and regulations governing the administration of parks and campgrounds.

(13) The transportation of a firearm by a person in order to comply with subdivision (c) or (i) of Section 12078 as it pertains to that firearm.

(14) The transportation of a firearm by a person in order to utilize subdivision (l) of Section 12078 as it pertains to that firearm.

(15) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, for the purpose of lawfully transferring, selling, or loaning that firearm in accordance with subdivision (d) of Section 12072.

(16) The transportation of a firearm by a person in order to utilize paragraph (3) of subdivision (a) of Section 12078 as it pertains to that firearm.

(17) The transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and if that firearm is being transported to a law enforcement agency, the person gives prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency.

(18) The transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law, if he or she gives prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(b) In order for a firearm to be exempted under subdivision (a), while being transported to or from a place, the firearm shall be unloaded, kept in a locked container, as defined in subdivision (d), and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(c) This section does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm

capable of being concealed upon the person in accordance with this chapter.

(d) As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

SEC. 4. Section 12092 of the Penal Code is amended to read:

12092. The Department of Justice upon request may assign a distinguishing number or mark of identification to any firearm whenever it is without a manufacturer's number, or other mark of identification or whenever the manufacturer's number or other mark of identification or the distinguishing number or mark assigned by the department has been destroyed or obliterated.

SEC. 5. Section 12094 of the Penal Code is amended to read:

12094. (a) Any person with knowledge of any change, alteration, removal, or obliteration described herein, who buys, receives, disposes of, sells, offers for sale, or has in his or her possession any pistol, revolver, or other firearm which has had the name of the maker, model, or the manufacturer's number or other mark of identification including any distinguishing number or mark assigned by the Department of Justice changed, altered, removed, or obliterated is guilty of a misdemeanor.

(b) Subdivision (a) does not apply to any of the following:

(1) The acquisition or possession of a firearm described in subdivision (a) by any member of the military forces of the this state or of the United States, while on duty and acting within the scope and course of his or her employment.

(2) The acquisition or possession of a firearm described in subdivision (a) by any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, while on duty and acting within the scope and course of his or her employment.

(3) The acquisition or possession of a firearm described in subdivision (a) by any employee of a forensic laboratory, while on duty and acting within the scope and course of his or her employment.

(4) The possession and disposition of a firearm described in subdivision (a) by a person who meets, all of the following:

(A) He or she is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

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

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency in order to

deliver the firearm to the law enforcement agency for the agency's disposition according to law.

(D) If the person is transporting the firearm to a law enforcement agency, he or she has given prior notice to the law enforcement agency that he or she is transporting the firearm to that law enforcement agency for that agency's disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

SEC. 6. Section 12201 of the Penal Code is amended to read:

12201. Nothing in this chapter shall affect or apply to any of the following:

(a) The sale to, purchase by, or possession of machineguns by police departments, sheriffs' offices, marshals' offices, district attorneys' offices, the California Highway Patrol, the Department of Justice, the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit, or the military or naval forces of this state or of the United States for use in the discharge of their official duties.

(b) The possession of machineguns by regular, salaried, full-time peace officer members of a police department, sheriff's office, marshal's office, district attorney's office, the California Highway Patrol, the Department of Justice, or the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit when on duty and if the use is within the scope of their duties.

SEC. 7. Section 12316 of the Penal Code is amended to read:

12316. (a) Any person, corporation, or dealer who sells ammunition or reloaded ammunition to a person knowing that person to be a minor under 18 years of age shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both the imprisonment and fine.

Proof that a person, corporation, or dealer, or his or her agent or employee, demanded, was shown, and acted in reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this subdivision. As used in this subdivision, "bona fide evidence of majority and identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, California state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(b) (1) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under

his or her custody or control, any ammunition or reloaded ammunition.

(2) For purposes of this subdivision, "ammunition" shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

(3) A violation of this subdivision is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.

(c) Unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under subparagraph (A) of paragraph (1) of subdivision (a) of Section 12027. This subdivision shall not apply to 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 California, any person summoned by any of these officers to assist in making an arrest or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, 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, or an armored vehicle guard, who is engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code. A violation of this subdivision is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars (\$1,000), or both the imprisonment and fine.

(d) (1) A violation of paragraph (1) of subdivision (b) is justifiable where all of the following conditions are met:

(A) The person found the ammunition or reloaded ammunition or took the ammunition or reloaded ammunition from a person who was committing a crime against him or her.

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

(C) The person is prohibited from possessing any ammunition or reloaded ammunition solely because that person is prohibited from owning or possessing a firearm only by virtue of Section 12021.

(2) Upon the trial for violating paragraph (1) of subdivision (b), the trier of fact shall determine whether the defendant is subject to the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she is subject to the exemption provided by this subdivision.

SEC. 8. Section 12316 of the Penal Code is amended to read:

12316. (a) (1) Any person, corporation, or dealer who does either of the following shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both the imprisonment and fine:

(A) Sells any ammunition or reloaded ammunition to a person knowing that person to be under 18 years of age.

(B) Sells any ammunition or reloaded ammunition designed and intended for use in a pistol, revolver, or other firearm capable of being concealed upon the person to a person knowing that person to be under 21 years of age. As used in this subparagraph, "ammunition" means handgun ammunition as defined in subdivision (a) of Section 12323. Where ammunition or reloaded ammunition may be used in both a rifle and a handgun, federal law shall be considered for purposes of enforcing this subparagraph.

(2) Proof that a person, corporation, or dealer, or his or her agent or employee, demanded, was shown, and acted in reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this subdivision. As used in this subdivision, "bona fide evidence of majority and identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, California state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(b) (1) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

(2) For purposes of this subdivision, "ammunition" shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

(3) A violation of this subdivision is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.

(c) Unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under subparagraph (A) of paragraph (1) of subdivision (a) of Section 12027. This

subdivision shall not apply to 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 California, any person summoned by any of these officers to assist in making an arrest or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, 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, or an armored vehicle guard, who is engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code. A violation of this subdivision is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars (\$1,000), or both the imprisonment and fine.

(d) (1) A violation of paragraph (1) of subdivision (b) is justifiable where all of the following conditions are met:

(A) The person found the ammunition or reloaded ammunition or took the ammunition or reloaded ammunition from a person who was committing a crime against him or her.

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

(C) The person is prohibited from possessing any ammunition or reloaded ammunition solely because that person is prohibited from owning or possessing a firearm only by virtue of Section 12021.

(2) Upon the trial for violating paragraph (1) of subdivision (b), the trier of fact shall determine whether the defendant is subject to the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she is subject to the exemption provided by this subdivision.

SEC. 9. Section 12322 of the Penal Code is amended to read:

12322. Nothing in this chapter shall apply to or affect either of the following:

(a) The sale to, purchase by, possession of, or use of any ammunition by any member of the Army, Navy, Air Force, or Marine Corps of the United States, or the National Guard, while on duty and acting within the scope and course of his or her employment, or any police agency or forensic laboratory or any person who is the holder of a valid permit issued pursuant to Section 12305.

(b) The possession of handgun ammunition designed primarily to penetrate metal or armor by a person who found the ammunition, if he or she is not prohibited from possessing firearms or ammunition pursuant to Section 12021, 12021.1, or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare

and Institutions Code and is transporting the ammunition to a law enforcement agency for disposition according to law.

SEC. 10. Section 2.5 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 688. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 12021 of the Penal Code, and (3) this bill is enacted after AB 688, in which case Section 2 of this bill shall not become operative.

SEC. 11. Section 8 of this bill incorporates amendments to Section 12316 of the Penal Code proposed by both this bill and AB 1221. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 12316 of the Penal Code, and (3) this bill is enacted after AB 1221, in which case Section 7 of this bill shall not become operative.

---

## CHAPTER 159

An act to add Article 9 (commencing with Section 2838) to Chapter 6 of Division 2 of, and to repeal Section 2718 of, the Business and Professions Code, relating to nursing, and making an appropriation therefor.

[Approved by Governor August 2, 1997. Filed with  
Secretary of State August 4, 1997.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Various and conflicting definitions of "clinical nurse specialists" are being created and applied by public agencies and private employers within the State of California.

(b) The public is harmed by conflicting usage of the title "clinical nurse specialist" and lack of correspondence between the use of the title and the qualifications of the registered nurse using that title.

(c) These findings are documented by the Board of Registered Nursing in the "Clinical Nurse Specialist Survey," December 1994, conducted pursuant to Chapter 77 of the Statutes of 1993.

(d) Therefore, the public interest would be served by determining the legitimate uses of the title "clinical nurse specialist" by registered nurses.

SEC. 2. Section 2718 of the Business and Professions Code is repealed.

SEC. 3. Article 9 (commencing with Section 2838) is added to Chapter 6 of Division 2 of the Business and Professions Code, to read:



CALIFORNIA LEGISLATURE  
1997-98 REGULAR SESSION  
1997-98 FIRST EXTRAORDINARY SESSION

# SUMMARY DIGEST

*of*

Statutes Enacted and Resolutions Adopted in 1997

*and*

1989-1997 Statutory Record

VOLUME ONE



GREGORY SCHMIDT  
*Secretary of the Senate*

E. DOTSON WILSON  
*Chief Clerk of the Assembly*

Compiled by  
BION M. GREGORY  
*Legislative Counsel*

00067

in school activities, subject to specified conditions including a limitation of 8 hours in any calendar month of the school year.

This bill would extend the applicability of these provisions to an employee who is a parent, guardian, or grandparent having custody of a child attending a licensed child day care facility who takes time off for the purpose of participating in activities of the licensed child day care facility. The bill would revise the maximum hours that may be taken off by an employee under these provisions from 40 hours each school year to 40 hours each year, subject to specified conditions including a limitation of 8 hours in any calendar month of the year.

**Ch. 158 (AB 78). Granlund. Firearms: transporting exemption.**

(1) Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. Existing law also provides exemptions for the possession of handgun ammunition.

This bill would add to these exemptions all of the following:

(a) The circumstance where any instrument, ammunition, weapon, or device listed in these prohibitions that is not a firearm is found and possessed for a specified period of time by a person who is not in a specified prohibited class and is transporting the weapon or device to a law enforcement agency for disposition according to law.

(b) Any firearm, other than a short-barrelled rifle or short-barrelled shotgun, that is found and possessed by a person under the circumstance described in (a) above who additionally has given prior notice to the law enforcement agency and is transporting the firearm in a locked container.

(c) The possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(2) Under existing law, one of the weapons subject to the prohibition described in (1) above is a dirk or dagger that is carried concealed upon the person. For purposes of this prohibition, a dirk or dagger is defined as 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.

This bill would specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(3) Under existing law, any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill would instead permit any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.

(4) Existing law provides that no person prohibited by state law from owning or possessing a firearm shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

This bill would specify conditions that justify a violation of this prohibition.

(5) Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill would exempt from this provision persons in specified classes, including certain on-duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

(6) This bill would incorporate additional changes in Section 12021 of the Penal Code proposed by AB 688, to be operative if AB 688 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.

(7) This bill would incorporate additional changes in Section 12316 of the Penal Code proposed by AB 1221, to be operative if AB 1221 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.

VOLUME 1  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1997-98 REGULAR SESSION

# ASSEMBLY FINAL HISTORY

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,  
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 2, 1996

Recessed December 2, 1996  
Recessed March 21, 1997  
Recessed August 12, 1997  
Recessed September 13, 1997  
Recessed April 2, 1998

Reconvened January 6, 1997  
Reconvened March 31, 1997  
Reconvened August 25, 1997  
Reconvened January 5, 1998  
Reconvened April 13, 1998

Adjourned September 1, 1998  
Adjourned Sine Die November 30, 1998

Legislative Days ..... 268  
Calendar Days ..... 729

HON. ANTONIO R. VILLARAIGOSA  
*Speaker*

HON. SHEILA JAMES KUEHL  
*Speaker pro Tempore*

HON. KEVIN SHELLEY  
*Majority Floor Leader*

HON. JOE BACA  
*Speaker pro Tempore*

HON. ROD PACHECO  
*Minority Floor Leader*

*Compiled Under the Direction of*  
E. DOTSON WILSON  
*Chief Clerk*

AMY DUARTE  
*History Clerk*

DARCI KING  
*Assistant History Clerk*

00069

## A.B. No. 78—Granlund.

An act to amend Sections 12020, 12021, 12026.2, 12092, 12094, 12201, 12316, and 12322 of the Penal Code, relating to firearms.

1996

Dec. 18—Introduced. To print.

Dec. 19—From printer. May be heard in committee January 18.

1997

Jan. 6—Read first time.

Feb. 7—Referred to Com. on PUB. S.

Mar. 17—From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.

Mar. 18—Re-referred to Com. on PUB. S.

Mar. 20—From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.

Mar. 31—Re-referred to Com. on PUB. S.

April 10—From committee: Do pass. (Ayes 12. Noes 0.) (April 8).

April 14—Read second time. To third reading.

April 17—Read third time, passed, and to Senate. (Ayes 76. Noes 0. Page 1116.)

April 17—In Senate. Read first time. To Com. on RLS. for assignment.

April 22—Referred to Com. on PUB. S.

May 29—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.

June 16—From committee: Amend, and do pass as amended. (Ayes 8. Noes 0.)

June 17—Read second time, amended, and to third reading.

June 23—Read third time, amended. To second reading.

June 24—Read second time. To third reading.

June 30—Read third time, amended. To second reading.

July 1—Read second time. To third reading.

July 7—Read third time, amended. To second reading.

July 8—Read second time. To third reading.

July 17—Read third time, passed, and to Assembly. (Ayes 26. Noes 5. Page 2266.)

July 17—In Assembly. Concurrence in Senate amendments pending. May be considered on or after July 19 pursuant to Assembly Rule 77.

July 21—Senate amendments concurred in. To enrollment. (Ayes 76. Noes 1. Page 3310.)

July 24—Enrolled and to the Governor at 10:30 a.m.

Aug. 2—Approved by the Governor.

Aug. 4—Chaptered by Secretary of State - Chapter 158, Statutes of 1997.

## COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 78  
 AUTHOR : Granlund  
 TOPIC : Firearms: transporting exemption.

## TYPE OF BILL :

Inactive  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required  
 Non-State-Mandated Local Program  
 Non-Fiscal  
 Non-Tax Levy

## BILL HISTORY

1997

Aug. 4 Chaptered by Secretary of State - Chapter 158, Statutes of 1997.  
 Aug. 2 Approved by the Governor.  
 July 24 Enrolled and to the Governor at 10:30 a.m.  
 July 21 Senate amendments concurred in. To enrollment. (Ayes 76. Noes 1. Page 3310.)  
 July 17 In Assembly. Concurrence in Senate amendments pending. May be considered on July 19 pursuant to Assembly Rule 77.  
 July 17 Read third time, passed, and to Assembly. (Ayes 26. Noes 5. Page 2266.)  
 July 8 Read second time. To third reading.  
 July 7 Read third time, amended. To second reading.  
 July 1 Read second time. To third reading.  
 June 30 Read third time, amended. To second reading.  
 June 24 Read second time. To third reading.  
 June 23 Read third time, amended. To second reading.  
 June 17 Read second time, amended, and to third reading.  
 June 16 From committee: Amend, and do pass as amended. (Ayes 8. Noes 0.).  
 May 29 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.  
 Apr. 22 Referred to Com. on PUB. S.  
 Apr. 17 In Senate. Read first time. To Com. on RLS. for assignment.  
 Apr. 17 Read third time, passed, and to Senate. (Ayes 76. Noes 0. Page 1116.)  
 Apr. 14 Read second time. To third reading.  
 Apr. 10 From committee: Do pass. (Ayes 12. Noes 0.) (April 8).  
 Mar. 31 Re-referred to Com. on PUB. S.  
 Mar. 20 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.  
 Mar. 18 Re-referred to Com. on PUB. S.  
 Mar. 17 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.  
 Feb. 7 Referred to Com. on PUB. S.  
 Jan. 6 Read first time.  
 1996  
 Dec. 19 From printer. May be heard in committee January 18.  
 Dec. 18 Introduced. To print.

00071

**ASSEMBLY BILL**

**No. 78**

**Introduced by Assembly Member Granlund**

December 18, 1996

---

An act to amend Sections 12020, 12021, 12026.2, 12201, and 12322 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 78, as introduced, Granlund. Firearms: transporting exemption.

(1) Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. Existing law also provides exemptions for the possession of handgun ammunition.

This bill would add to these exemptions the circumstance where any of these weapons, firearms other than a short-barreled rifle or short-barreled shotgun, or ammunition is found and possessed by a person who is not in a specified prohibited class and is transporting the weapon, firearm, or device to a law enforcement agency for disposition according to law.

(2) Under existing law, any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill would instead permit any person who is subject to the prohibition because of a conviction of an offense prior to

the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.

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 12020 of the Penal Code is  
2 amended to read:

3 12020. (a) Any person in this state who manufactures  
4 or causes to be manufactured, imports into the state,  
5 keeps for sale, or offers or exposes for sale, or who gives,  
6 lends, or possesses any cane gun or wallet gun, any  
7 undetectable firearm, any firearm which is not  
8 immediately recognizable as a firearm, any camouflaging  
9 firearm container, any ammunition which contains or  
10 consists of any fléchette dart, any bullet containing or  
11 carrying an explosive agent, any ballistic knife, any  
12 multiburst trigger activator, any nunchaku, any  
13 short-barreled shotgun, any short-barreled rifle, any  
14 metal knuckles, any belt buckle knife, any leaded cane,  
15 any zip gun, any shuriken, any unconventional pistol, any  
16 lipstick case knife, any cane sword, any shobi-zue, any air  
17 gauge knife, any writing pen knife, or any instrument or  
18 weapon of the kind commonly known as a blackjack,  
19 slungshot, billy, sandclub, sap, or sandbag, or who carries  
20 concealed upon his or her person any explosive substance,  
21 other than fixed ammunition, or who carries concealed  
22 upon his or her person any dirk or dagger is punishable  
23 by imprisonment in a county jail not exceeding one year  
24 or in the state prison. A bullet containing or carrying an  
25 explosive agent is not a destructive device as that term is  
26 used in Section 12301.

27 (b) Subdivision (a) does not apply to any of the  
28 following:

29 (1) The sale to, purchase by, or possession of  
30 short-barreled shotguns or short-barreled rifles by police  
31 departments, sheriffs' offices, marshals' offices, the  
32 California Highway Patrol, the Department of Justice, or

1 the military or naval forces of this state or of the United  
2 States for use in the discharge of their official duties or the  
3 possession of short-barreled shotguns and short-barreled  
4 rifles by regular, salaried, full-time members of a police  
5 department, sheriff's office, marshal's office, the  
6 California Highway Patrol, or the Department of Justice  
7 when on duty and the use is authorized by the agency and  
8 is within the course and scope of their duties.

9 (2) The manufacture, possession, transportation or  
10 sale of short-barreled shotguns or short-barreled rifles  
11 when authorized by the Department of Justice pursuant  
12 to Article 6 (commencing with Section 12095) of this  
13 chapter and not in violation of federal law.

14 (3) The possession of a nunchaku on the premises of a  
15 school which holds a regulatory or business license and  
16 teaches the arts of self-defense.

17 (4) The manufacture of a nunchaku for sale to, or the  
18 sale of a nunchaku to, a school which holds a regulatory  
19 or business license and teaches the arts of self-defense.

20 (5) Any antique firearm. For purposes of this section,  
21 "antique firearm" means any firearm not designed or  
22 redesigned for using rimfire or conventional center fire  
23 ignition with fixed ammunition and manufactured in or  
24 before 1898 (including any matchlock, flintlock,  
25 percussion cap, or similar type of ignition system or  
26 replica thereof, whether actually manufactured before or  
27 after the year 1898) and also any firearm using fixed  
28 ammunition manufactured in or before 1898, for which  
29 ammunition is no longer manufactured in the United  
30 States and is not readily available in the ordinary channels  
31 of commercial trade.

32 (6) Tracer ammunition manufactured for use in  
33 shotguns.

34 (7) Any firearm or ammunition which is a curio or relic  
35 as defined in Section 178.11 of Title 27 of the Code of  
36 Federal Regulations and which is in the possession of a  
37 person permitted to possess the items pursuant to  
38 Chapter 44 (commencing with Section 921) of Title 18 of  
39 the United States Code and the regulations issued  
40 pursuant thereto. Any person prohibited by Section



1 12021, 12021.1, or 12101 of this code or Section 8100 or 8103  
2 of the Welfare and Institutions Code from possessing  
3 firearms or ammunition who obtains title to these items  
4 by bequest or intestate succession may retain title for not  
5 more than one year, but actual possession of these items  
6 at any time is punishable pursuant to Section 12021,  
7 12021.1, or 12101 of this code or Section 8100 or 8103 of the  
8 Welfare and Institutions Code. Within the year the  
9 person shall transfer title to the firearms or ammunition  
10 by sale, gift, or other disposition. Any person who violates  
11 this paragraph is in violation of subdivision (a).

12 (8) Any other weapon as defined in subsection (e) of  
13 Section 5845 of Title 26 of the United States Code and  
14 which is in the possession of a person permitted to possess  
15 the weapons pursuant to the federal Gun Control Act of  
16 1968 (Public Law 90-618), as amended, and the  
17 regulations issued pursuant thereto. Any person  
18 prohibited by Section 12021, 12021.1, or 12101 of this code  
19 or Section 8100 or 8103 of the Welfare and Institutions  
20 Code from possessing these weapons who obtains title to  
21 these weapons by bequest or intestate succession may  
22 retain title for not more than one year, but actual  
23 possession of these weapons at any time is punishable  
24 pursuant to Section 12021, 12021.1, or 12101 of this code or  
25 Section 8100 or 8103 of the Welfare and Institutions Code.  
26 Within the year, the person shall transfer title to the  
27 weapons by sale, gift, or other disposition. Any person  
28 who violates this paragraph is in violation of subdivision  
29 (a). The exemption provided in this subdivision does not  
30 apply to pen guns.

31 (9) Instruments or devices that are possessed by  
32 federal, state, and local historical societies, museums, and  
33 institutional collections which are open to the public,  
34 provided that these instruments or devices are properly  
35 housed, secured from unauthorized handling, and, if the  
36 instrument or device is a firearm, unloaded.

37 (10) Instruments or devices, other than short-barreled  
38 shotguns or short-barreled rifles, that are possessed or  
39 utilized during the course of a motion picture, television,  
40 or video production or entertainment event by an

1 authorized participant therein in the course of making  
2 that production or event or by an authorized employee  
3 or agent of the entity producing that production or event.

4 (11) Instruments or devices, other than short-barreled  
5 shotguns or short-barreled rifles, that are sold by,  
6 manufactured by, exposed or kept for sale by, possessed  
7 by, imported by, or lent by persons who are in the  
8 business of selling instruments or devices listed in  
9 subdivision (a) solely to the entities referred in  
10 paragraphs (9) and (10) when engaging in transactions  
11 with those entities.

12 (12) The sale to, possession of, or purchase of any  
13 weapon, device, or ammunition, other than a  
14 short-barreled rifle or short-barreled shotgun, by any  
15 federal, state, county, city and county, or city agency that  
16 is charged with the enforcement of any law for use in the  
17 discharge of their official duties, or the possession of any  
18 weapon, device, or ammunition, other than a  
19 short-barreled rifle or short-barreled shotgun, by peace  
20 officers thereof when on duty and the use is authorized  
21 by the agency and is within the course and scope of their  
22 duties.

23 (13) Weapons, devices, and ammunition, other than a  
24 short-barreled rifle or short-barreled shotgun, that are  
25 sold by, manufactured by, exposed, or kept for sale by,  
26 possessed by, imported by, or lent by, persons who are in  
27 the business of selling weapons, devices, and ammunition  
28 listed in subdivision (a) solely to the entities referred to  
29 in paragraph (12) when engaging in transactions with  
30 those entities.

31 (14) The manufacture for, sale to, exposing or keeping  
32 for sale to, importation of, or lending of wooden clubs or  
33 batons to special police officers or uniformed security  
34 guards authorized to carry any wooden club or baton  
35 pursuant to Section 12002 by entities that are in the  
36 business of selling wooden batons or clubs to special police  
37 officers and uniformed security guards when engaging in  
38 transactions with those persons.

39 (15) *Any instrument, ammunition, weapon, or device*  
40 *listed in subdivision (a), other than a short-barreled rifle*

1 or short-barreled shotgun, that is found and possessed by  
2 a person who is not prohibited from possessing firearms  
3 or ammunition pursuant to Section 12021, 12021.1, or  
4 paragraph (1) of subdivision (b) of Section 12316 of this  
5 code or Section 8100 or 8103 of the Welfare and  
6 Institutions Code and is transporting the listed item to a  
7 law enforcement agency for disposition according to law.

8 (c) (1) As used in this section, a "short-barreled  
9 shotgun" means any of the following:

10 (A) A firearm which is designed or redesigned to fire  
11 a fixed shotgun shell and having a barrel or barrels of less  
12 than 18 inches in length.

13 (B) A firearm which has an overall length of less than  
14 26 inches and which is designed or redesigned to fire a  
15 fixed shotgun shell.

16 (C) Any weapon made from a shotgun (whether by  
17 alteration, modification, or otherwise) if that weapon, as  
18 modified, has an overall length of less than 26 inches or a  
19 barrel or barrels of less than 18 inches in length.

20 (D) Any device which may be readily restored to fire  
21 a fixed shotgun shell which, when so restored, is a device  
22 defined in subparagraphs (A) to (C), inclusive.

23 (E) Any part, or combination of parts, designed and  
24 intended to convert a device into a device defined in  
25 subparagraphs (A) to (C), inclusive, or any combination  
26 of parts from which a device defined in subparagraphs  
27 (A) to (C), inclusive, can be readily assembled if those  
28 parts are in the possession or under the control of the  
29 same person.

30 (2) As used in this section, a "short-barreled rifle"  
31 means any of the following:

32 (A) A rifle having a barrel or barrels of less than 16  
33 inches in length.

34 (B) A rifle with an overall length of less than 26 inches.

35 (C) Any weapon made from a rifle (whether by  
36 alteration, modification, or otherwise) if that weapon as  
37 modified has an overall length of less than 26 inches or a  
38 barrel or barrels of less than 16 inches in length.

1 (D) Any device which may be readily restored to fire  
2 a fixed cartridge which, when so restored, is a device  
3 defined in subparagraphs (A) to (C), inclusive.

4 (E) Any part, or combination of parts, designed and  
5 intended to convert a device into a device defined in  
6 subparagraphs (A) to (C), inclusive, or any combination  
7 of parts from which a device defined in subparagraphs  
8 (A) to (C), inclusive, may be readily assembled if those  
9 parts are in the possession or under the control of the  
10 same person.

11 (3) As used in this section, a "nunchaku" means an  
12 instrument consisting of two or more sticks, clubs, bars or  
13 rods to be used as handles, connected by a rope, cord,  
14 wire, or chain, in the design of a weapon used in  
15 connection with the practice of a system of self-defense  
16 such as karate.

17 (4) As used in this section, a "wallet gun" means any  
18 firearm mounted or enclosed in a case, resembling a  
19 wallet, designed to be or capable of being carried in a  
20 pocket or purse, if such firearm may be fired while  
21 mounted or enclosed in such case.

22 (5) As used in this section, a "cane gun" means any  
23 firearm mounted or enclosed in a stick, staff, rod, crutch,  
24 or similar device, designed to be, or capable of being used  
25 as, an aid in walking, if such firearm may be fired while  
26 mounted or enclosed therein.

27 (6) As used in this section, a "fléchette dart" means a  
28 dart, capable of being fired from a firearm, which  
29 measures approximately one inch in length, with tail fins  
30 which take up five-sixteenths of an inch of the body.

31 (7) As used in this section, "metal knuckles" means  
32 any device or instrument made wholly or partially of  
33 metal which is worn for purposes of offense or defense in  
34 or on the hand and which either protects the wearer's  
35 hand while striking a blow or increases the force of impact  
36 from the blow or injury to the individual receiving the  
37 blow. The metal contained in the device may help  
38 support the hand or fist, provide a shield to protect it, or  
39 consist of projections or studs which would contact the  
40 individual receiving a blow.

1 (8) As used in this section, a "ballistic knife" means a  
2 device that propels a knifelike blade as a projectile by  
3 means of a coil spring, elastic material, or compressed gas.  
4 Ballistic knife does not include any device which propels  
5 an arrow or a bolt by means of any common bow,  
6 compound bow, crossbow, or underwater spear gun.

7 (9) As used in this section, a "camouflaging firearm  
8 container" means a container which meets all of the  
9 following criteria:

10 (A) It is designed and intended to enclose a firearm.

11 (B) It is designed and intended to allow the firing of  
12 the enclosed firearm by external controls while the  
13 firearm is in the container.

14 (C) It is not readily recognizable as containing a  
15 firearm.

16 "Camouflaging firearm container" does not include  
17 any camouflaging covering used while engaged in lawful  
18 hunting or while going to or returning from a lawful  
19 hunting expedition.

20 (10) As used in this section, a "zip gun" means any  
21 weapon or device which meets all of the following  
22 criteria:

23 (A) It was not imported as a firearm by an importer  
24 licensed pursuant to Chapter 44 (commencing with  
25 Section 921) of Title 18 of the United States Code and the  
26 regulations issued pursuant thereto.

27 (B) It was not originally designed to be a firearm by a  
28 manufacturer licensed pursuant to Chapter 44  
29 (commencing with Section 921) of Title 18 of the United  
30 States Code and the regulations issued pursuant thereto.

31 (C) No tax was paid on the weapon or device nor was  
32 an exemption from paying tax on that weapon or device  
33 granted under Section 4181 and subchapters F  
34 (commencing with Section 4216) and G (commencing  
35 with Section 4221) of Chapter 32 of Title 26 of the United  
36 States Code, as amended, and the regulations issued  
37 pursuant thereto.

38 (D) It is made or altered to expel a projectile by the  
39 force of an explosion or other form of combustion.

1 (11) As used in this section, a "shuriken" means any  
2 instrument, without handles, consisting of a metal plate  
3 having three or more radiating points with one or more  
4 sharp edges and designed in the shape of a polygon,  
5 trefoil, cross, star, diamond, or other geometric shape for  
6 use as a weapon for throwing.

7 (12) As used in this section, an "unconventional pistol"  
8 means a firearm that does not have a rifled bore and has  
9 a barrel or barrels of less than 18 inches in length or has  
10 an overall length of less than 26 inches.

11 (13) As used in this section, a "belt buckle knife" is a  
12 knife which is made an integral part of a belt buckle and  
13 consists of a blade with a length of at least 2<sup>1</sup>/<sub>2</sub> inches.

14 (14) As used in this section, a "lipstick case knife"  
15 means a knife enclosed within and made an integral part  
16 of a lipstick case.

17 (15) As used in this section, a "cane sword" means a  
18 cane, swagger stick, stick, staff, rod, pole, umbrella, or  
19 similar device, having concealed within it a blade that  
20 may be used as a sword or stiletto.

21 (16) As used in this section, a "shobi-zue" means a staff,  
22 crutch, stick, rod, or pole concealing a knife or blade  
23 within it which may be exposed by a flip of the wrist or  
24 by a mechanical action.

25 (17) As used in this section, a "leaded cane" means a  
26 staff, crutch, stick, rod, pole, or similar device,  
27 unnaturally weighted with lead.

28 (18) As used in this section, an "air gauge knife" means  
29 a device that appears to be an air gauge but has concealed  
30 within it a pointed, metallic shaft that is designed to be a  
31 stabbing instrument which is exposed by mechanical  
32 action or gravity which locks into place when extended.

33 (19) As used in this section, a "writing pen knife"  
34 means a device that appears to be a writing pen but has  
35 concealed within it a pointed, metallic shaft that is  
36 designed to be a stabbing instrument which is exposed by  
37 mechanical action or gravity which locks into place when  
38 extended or the pointed, metallic shaft is exposed by the  
39 removal of the cap or cover on the device.

1 (20) As used in this section, a "rifle" means a weapon  
2 designed or redesigned, made or remade, and intended  
3 to be fired from the shoulder and designed or redesigned  
4 and made or remade to use the energy of the explosive in  
5 a fixed cartridge to fire only a single projectile through a  
6 rifled bore for each single pull of the trigger.

7 (21) As used in this section, a "shotgun" means a  
8 weapon designed or redesigned, made or remade, and  
9 intended to be fired from the shoulder and designed or  
10 redesigned and made or remade to use the energy of the  
11 explosive in a fixed shotgun shell to fire through a smooth  
12 bore either a number of projectiles (ball shot) or a single  
13 projectile for each pull of the trigger.

14 (22) As used in this section, an "undetectable firearm"  
15 means any weapon which meets one of the following  
16 requirements:

17 (A) When, after removal of grips, stocks, and  
18 magazines, it is not as detectable as the Security  
19 Exemplar, by walk-through metal detectors calibrated  
20 and operated to detect the Security Exemplar.

21 (B) When any major component of which, when  
22 subjected to inspection by the types of X-ray machines  
23 commonly used at airports, does not generate an image  
24 that accurately depicts the shape of the component.  
25 Barium sulfate or other compounds may be used in the  
26 fabrication of the component.

27 (C) For purposes of this paragraph, the terms  
28 "firearm," "major component," and "Security Exemplar"  
29 have the same meanings as those terms are defined in  
30 Section 922 of Title 18 of the United States Code.

31 All firearm detection equipment newly installed in  
32 nonfederal public buildings in this state shall be of a type  
33 identified by either the United States Attorney General,  
34 the Secretary of Transportation, or the Secretary of the  
35 Treasury, as appropriate, as available state-of-the-art  
36 equipment capable of detecting an undetectable firearm,  
37 as defined, while distinguishing innocuous metal objects  
38 likely to be carried on one's person sufficient for  
39 reasonable passage of the public.

1 (23) As used in this section, a "multiburst trigger  
2 activator" means one of the following devices:

3 (A) A device designed or redesigned to be attached to  
4 a semiautomatic firearm which allows the firearm to  
5 discharge two or more shots in a burst by activating the  
6 device.

7 (B) A manual or power-driven trigger activating  
8 device constructed and designed so that when attached  
9 to a semiautomatic firearm it increases the rate of fire of  
10 that firearm.

11 (24) As used in this section, a "dirk" or "dagger" means  
12 a knife or other instrument with or without a handguard  
13 that is capable of ready use as a stabbing weapon that may  
14 inflict great bodily injury or death. *A folding knife is*  
15 *capable of ready use as a stabbing weapon that may inflict*  
16 *great bodily injury or death only if the blade of the knife*  
17 *is exposed and locked into position.*

18 (d) Knives carried in sheaths which are worn openly  
19 suspended from the waist of the wearer are not concealed  
20 within the meaning of this section.

21 SEC. 2. Section 12021 of the Penal Code is amended  
22 to read:

23 12021. (a) (1) Any person who has been convicted  
24 of a felony under the laws of the United States, of the State  
25 of California, or any other state, government, or country,  
26 or of an offense enumerated in subdivision (a), (b), or (d)  
27 of Section 12001.6, or who is addicted to the use of any  
28 narcotic drug, who owns or has in his or her possession or  
29 under his or her custody or control any firearm is guilty  
30 of a felony.

31 (2) Any person who has two or more convictions for  
32 violating paragraph (2) of subdivision (a) of Section 417  
33 and who owns or has in his or her possession or under his  
34 or her custody or control any firearm is guilty of a felony.

35 (b) Notwithstanding subdivision (a), any person who  
36 has been convicted of a felony or of an offense  
37 enumerated in Section 12001.6, when that conviction  
38 results from certification by the juvenile court for  
39 prosecution as an adult in an adult court under Section  
40 707 of the Welfare and Institutions Code, who owns or has



1 in his or her possession or under his or her custody or  
2 control any firearm is guilty of a felony.

3 (c) (1) Except as provided in subdivision (a) or  
4 paragraph (2) of this subdivision, any person who has  
5 been convicted of a misdemeanor violation of Section 71,  
6 76, 136.5, or 140, subdivision (d) of Section 148, Section  
7 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,  
8 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9,  
9 646.9, 12023, or 12024, subdivision (b) or (d) of Section  
10 12034, Section 12040, subdivision (b) of Section 12072,  
11 subdivision (a) of former Section 12100, Section 12220,  
12 12320, or 12590, or Section 8100, 8101, or 8103 of the  
13 Welfare and Institutions Code, any firearm-related  
14 offense pursuant to Sections 871.5 and 1001.5 of the  
15 Welfare and Institutions Code, or of the conduct  
16 punished in paragraph (3) of subdivision (g) of Section  
17 12072, and who, within 10 years of the conviction, owns,  
18 or has in his or her possession or under his or her custody  
19 or control, any firearm is guilty of a public offense, which  
20 shall be punishable by imprisonment in a county jail not  
21 exceeding one year or in the state prison, by a fine not  
22 exceeding one thousand dollars (\$1,000), or by both that  
23 imprisonment and fine. The court, on forms prescribed  
24 by the Department of Justice, shall notify the department  
25 of persons subject to this subdivision. However, the  
26 prohibition in this paragraph may be reduced,  
27 eliminated, or conditioned as provided in paragraph (2)  
28 or (3).

29 (2) Any person employed as a peace officer described  
30 in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5  
31 whose employment or livelihood is dependent on the  
32 ability to legally possess a firearm, who is subject to the  
33 prohibition imposed by this subdivision because of a  
34 conviction under Section 273.5, 273.6, or 646.9, may  
35 petition the court only once for relief from this  
36 prohibition. The petition shall be filed with the court in  
37 which the petitioner was sentenced. If possible, the  
38 matter shall be heard before the same judge that  
39 sentenced the petitioner. Upon filing the petition, the  
40 clerk of the court shall set the hearing date and shall

1 notify the petitioner and the prosecuting attorney of the  
2 date of the hearing. Upon making each of the following  
3 findings, the court may reduce or eliminate the  
4 prohibition, impose conditions on reduction or  
5 elimination of the prohibition, or otherwise grant relief  
6 from the prohibition as the court deems appropriate:

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

10 (B) Finds that the petitioner is not within a prohibited  
11 class as specified in subdivision (a), (b), (d), (e), or (g)  
12 or Section 12021.1, and the court is not presented with any  
13 credible evidence that the petitioner is a person  
14 described in Section 8100 or 8103 of the Welfare and  
15 Institutions Code.

16 (C) Finds that the petitioner does not have a previous  
17 conviction under this subdivision no matter when the  
18 prior conviction occurred.

19 In making its decision, the court shall consider the  
20 petitioner's continued employment, the interest of  
21 justice, any relevant evidence, and the totality of the  
22 circumstances. The court shall require, as a condition of  
23 granting relief from the prohibition under this section,  
24 that the petitioner agree to participate in counseling as  
25 deemed appropriate by the court. Relief from the  
26 prohibition shall not relieve any other person or entity  
27 from any liability that might otherwise be imposed. It is  
28 the intent of the Legislature that courts exercise broad  
29 discretion in fashioning appropriate relief under this  
30 paragraph in cases in which relief is warranted. However,  
31 nothing in this paragraph shall be construed to require  
32 courts to grant relief to any particular petitioner. It is the  
33 intent of the Legislature to permit persons who were  
34 convicted of an offense specified in Section 273.5, 273.6,  
35 or 646.9 to seek relief from the prohibition imposed by this  
36 subdivision.

37 (3) Any person who is subject to the prohibition  
38 imposed by this subdivision because of a conviction of an  
39 offense prior to ~~January 1, 1991~~ that offense being added  
40 to paragraph (1), may petition the court only once for

1 relief from this prohibition. The petition shall be filed  
2 with the court in which the petitioner was sentenced. If  
3 possible, the matter shall be heard before the same judge  
4 that sentenced the petitioner. Upon filing the petition,  
5 the clerk of the court shall set the hearing date and notify  
6 the petitioner and the prosecuting attorney of the date of  
7 the hearing. Upon making each of the following findings,  
8 the court may reduce or eliminate the prohibition,  
9 impose conditions on reduction or elimination of the  
10 prohibition, or otherwise grant relief from the prohibition  
11 as the court deems appropriate:

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

15 (B) Finds that the petitioner is not within a prohibited  
16 class as specified in subdivision (a), (b), (d), (e), or (g)  
17 or Section 12021.1, and the court is not presented with any  
18 credible evidence that the petitioner is a person  
19 described in Section 8100 or 8103 of the Welfare and  
20 Institutions Code.

21 (C) Finds that the petitioner does not have a previous  
22 conviction under this subdivision, no matter when the  
23 prior conviction occurred.

24 In making its decision, the court may consider the  
25 interest of justice, any relevant evidence, and the totality  
26 of the circumstances. It is the intent of the Legislature  
27 that courts exercise broad discretion in fashioning  
28 appropriate relief under this paragraph in cases in which  
29 relief is warranted. However, nothing in this paragraph  
30 shall be construed to require courts to grant relief to any  
31 particular petitioner.

32 (4) Law enforcement officials who enforce the  
33 prohibition specified in this subdivision against a person  
34 who has been granted relief pursuant to paragraph (2) or  
35 (3), shall be immune from any liability for false arrest  
36 arising from the enforcement of this subdivision unless  
37 the person has in his or her possession a certified copy of  
38 the court order that granted the person relief from the  
39 prohibition. This immunity from liability shall not relieve

1 any person or entity from any other liability that might  
2 otherwise be imposed.

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

18 (e) Any person who (1) is alleged to have committed  
19 an offense listed in subdivision (b) of Section 707 of the  
20 Welfare and Institutions Code, an offense described in  
21 subdivision (b) of Section 1203.073, or any offense  
22 enumerated in paragraph (1) of subdivision (c), (2) is  
23 found to be a fit and proper subject to be dealt with under  
24 the juvenile court law, and (3) is subsequently adjudged  
25 a ward of the juvenile court within the meaning of Section  
26 602 of the Welfare and Institutions Code because the  
27 person committed an offense listed in subdivision (b) of  
28 Section 707 of the Welfare and Institutions Code, an  
29 offense described in subdivision (b) of Section 1203.073,  
30 or any offense enumerated in paragraph (1) of  
31 subdivision (c) shall not own, or have in his or her  
32 possession or under his or her custody or control, any  
33 firearm until the age of 30 years. A violation of this  
34 subdivision shall be punishable by imprisonment in a  
35 county jail not exceeding one year or in the state prison,  
36 by a fine not exceeding one thousand dollars (\$1,000), or  
37 by both that imprisonment and fine. The juvenile court,  
38 on forms prescribed by the Department of Justice, shall  
39 notify the department of persons subject to this  
40 subdivision. Notwithstanding any other law, the forms

1 required to be submitted to the department pursuant to  
2 this subdivision may be used to determine eligibility to  
3 acquire a firearm.

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

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

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

13 (g) Every person who purchases or receives, or  
14 attempts to purchase or receive, a firearm knowing that  
15 he or she is subject to a protective order as defined in  
16 Section 6218 of the Family Code, or a temporary  
17 restraining order or injunction issued pursuant to Section  
18 527.6 or 527.8 of the Code of Civil Procedure, is guilty of  
19 a public offense, which shall be punishable by  
20 imprisonment in a county jail not exceeding one year or  
21 in the state prison, by a fine not exceeding one thousand  
22 dollars (\$1,000), or by both that imprisonment and fine.  
23 This subdivision does not apply unless the copy of the  
24 restraining order personally served on the person against  
25 whom the restraining order is issued contains a notice in  
26 bold print stating (1) that the person is prohibited from  
27 purchasing or receiving or attempting to purchase or  
28 receive a firearm and (2) specifying the penalties for  
29 violating this subdivision, or a court has provided actual  
30 verbal notice of the firearm prohibition and penalty as  
31 provided in Section 6304 of the Family Code. However,  
32 this subdivision does not apply if the firearm is received  
33 as part of the disposition of community property pursuant  
34 to Division 7 (commencing with Section 2500) of the  
35 Family Code.

36 SEC. 3. Section 12026.2 of the Penal Code is amended  
37 to read:

38 12026.2. (a) Section 12025 does not apply to, or affect,  
39 any of the following:

1 (1) The possession of a firearm by an authorized  
2 participant in a motion picture, television, or video  
3 production or entertainment event when the participant  
4 lawfully uses the firearm as part of that production or  
5 event or while going directly to, or coming directly from,  
6 that production or event.

7 (2) The possession of a firearm in a locked container by  
8 a member of any club or organization, organized for the  
9 purpose of lawfully collecting and lawfully displaying  
10 pistols, revolvers, or other firearms, while the member is  
11 at meetings of the clubs or organizations or while going  
12 directly to, and coming directly from, those meetings.

13 (3) The transportation of a firearm by a participant  
14 when going directly to, or coming directly from, a  
15 recognized safety or hunter safety class, or a recognized  
16 sporting event involving that firearm.

17 (4) The transportation of a firearm by a person listed  
18 in Section 12026 directly between any of the places  
19 mentioned in Section 12026.

20 (5) The transportation of a firearm by a person when  
21 going directly to, or coming directly from, a fixed place  
22 of business or private residential property for the purpose  
23 of the lawful repair or the lawful transfer, sale, or loan of  
24 that firearm.

25 (6) The transportation of a firearm by a person listed  
26 in Section 12026 when going directly from the place  
27 where that person lawfully received that firearm to that  
28 person's place of residence or place of business or to  
29 private property owned or lawfully possessed by that  
30 person.

31 (7) The transportation of a firearm by a person when  
32 going directly to, or coming directly from, a gun show,  
33 swap meet, or similar event to which the public is invited,  
34 for the purpose of displaying that firearm in a lawful  
35 manner.

36 (8) The transportation of a firearm by an authorized  
37 employee or agent of a supplier of firearms when going  
38 directly to, or coming directly from, a motion picture,  
39 television, or video production or entertainment event  
40 for the purpose of providing that firearm to an authorized

1 participant to lawfully use as a part of that production or  
2 event.

3 (9) The transportation of a firearm by a person when  
4 going directly to, or coming directly from, a target range,  
5 which holds a regulatory or business license, for the  
6 purposes of practicing shooting at targets with that  
7 firearm at that target range.

8 (10) The transportation of a firearm by a person when  
9 going directly to, or coming directly from, a place  
10 designated by a person authorized to issue licenses  
11 pursuant to Section 12050 when done at the request of the  
12 issuing agency so that the issuing agency can determine  
13 whether or not a license should be issued to that person  
14 to carry that firearm.

15 (11) The transportation of a firearm by a person when  
16 going directly to, or coming directly from, a law  
17 enforcement agency for the purpose of a lawful transfer,  
18 sale, or loan of that firearm pursuant to Section 12084.

19 (12) The transportation of a firearm by a person when  
20 going directly to, or coming directly from, a lawful  
21 camping activity for the purpose of having that firearm  
22 available for lawful personal protection while at the  
23 lawful campsite. This paragraph shall not be construed to  
24 override the statutory authority granted to the  
25 Department of Parks and Recreation or any other state  
26 or local governmental agencies to promulgate rules and  
27 regulations governing the administration of parks and  
28 campgrounds.

29 (13) The transportation of a firearm by a person in  
30 order to comply with subdivision (c) or (i) of Section  
31 12078 as it pertains to that firearm.

32 (14) The transportation of a firearm by a person in  
33 order to utilize subdivision (j) of Section 12078 as it  
34 pertains to that firearm.

35 (15) The transportation of a firearm by a person when  
36 going directly to, or coming directly from, a gun show or  
37 event, as defined in Section 178.100 of Title 27 of the Code  
38 of Federal Regulations, for the purpose of lawfully  
39 transferring, selling, or loaning that firearm in  
40 accordance with subdivision (d) of Section 12072.

1 (16) The transportation of a firearm by a person in  
2 order to utilize paragraph (3) of subdivision (a) of  
3 Section 12078 as it pertains to that firearm.

4 (17) *The transportation of a firearm by a person who*  
5 *finds the firearm in order to comply with Article 1*  
6 *(commencing with Section 2080) of Chapter 4 of Division*  
7 *3 of the Civil Code as it pertains to that firearm.*

8 (18) *The transportation of a firearm by a person who*  
9 *finds the firearm and is transporting it to a law*  
10 *enforcement agency for disposition according to law.*

11 (b) In order for a firearm to be exempted under  
12 subdivision (a), while being transported to or from a  
13 place, the firearm shall be unloaded, kept in a locked  
14 container, as defined in subdivision (d), and the course of  
15 travel shall include only those deviations between  
16 authorized locations as are reasonably necessary under  
17 the circumstances.

18 (c) This section does not prohibit or limit the  
19 otherwise lawful carrying or transportation of any pistol,  
20 revolver, or other firearm capable of being concealed  
21 upon the person in accordance with this chapter.

22 (d) As used in this section, "locked container" means  
23 a secure container which is fully enclosed and locked by  
24 a padlock, key lock, combination lock, or similar locking  
25 device. The term "locked container" does not include the  
26 utility or glove compartment of a motor vehicle.

27 SEC. 4. Section 12201 of the Penal Code is amended  
28 to read:

29 12201. Nothing in this chapter shall ~~prohibit the~~ *affect*  
30 *or apply to any of the following:*

31 (a) *The sale to, purchase by, or possession of*  
32 *machineguns by police departments, sheriffs' offices,*  
33 *marshals' offices, district attorneys' offices, the California*  
34 *Highway Patrol, the Department of Justice, the*  
35 *Department of Corrections for use by the department's*  
36 *Special Emergency Response Teams and Law*  
37 *Enforcement Liaison/Investigations Unit, or the military*  
38 *or naval forces of this state or of the United States for use*  
39 *in the discharge of their official duties. ~~Nothing in this~~*  
40 *chapter shall prohibit the*



1 (b) The possession of machineguns by regular,  
2 salaried, full-time peace officer members of a police  
3 department, sheriff's office, marshal's office, district  
4 attorney's office, the California Highway Patrol, the  
5 Department of Justice, or the Department of Corrections  
6 for use by the department's Special Emergency Response  
7 Teams and Law Enforcement Liaison/Investigations  
8 Unit when on duty and if the use is within the scope of  
9 their duties.

10 SEC. 5. Section 12322 of the Penal Code is amended  
11 to read:

12 12322. Nothing in this chapter shall ~~prohibit~~ *the apply*  
13 *to or affect either of the following:*

14 (a) The sale to, purchase by, possession of, or use of any  
15 ammunition by any member of the Army, Navy, Air  
16 Force, or Marine Corps of the United States, or the  
17 National Guard, while on duty and acting within the  
18 scope and course of his or her employment, or any police  
19 agency or forensic laboratory or any person who is the  
20 holder of a valid permit issued pursuant to Section 12305.

21 (b) *The possession of handgun ammunition designed*  
22 *primarily to penetrate metal or armor by a person who*  
23 *found the ammunition, if he or she is not prohibited from*  
24 *possessing firearms or ammunition pursuant to Section*  
25 *12021, 12021.1, or paragraph (1) of subdivision (b) of*  
26 *Section 12316 of this code or Section 8100 or 8103 of the*  
27 *Welfare and Institutions Code and is transporting the*  
28 *ammunition to a law enforcement agency for disposition*  
29 *according to law.*

AMENDED IN ASSEMBLY MARCH 17, 1997

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 78**

**Introduced by Assembly Member Granlund**

December 18, 1996

---

An act to amend Sections 12020, 12021, 12026.2, 12201, and 12322 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 78, as amended, Granlund. Firearms: transporting exemption.

(1) Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. Existing law also provides exemptions for the possession of handgun ammunition.

This bill would add to these exemptions the *all of the following*:

(a) *The circumstance where any of these weapons, firearms other than a short-barreled rifle or short-barreled shotgun, or ammunition is found and possessed by a person who is not in a specified prohibited class and is transporting the weapon, firearm, or device to a law enforcement agency for disposition according to law.*

(b) *The possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.*

(c) A knife that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.

(2) Under existing law, one of the weapons subject to the prohibition described in (1) above is a dirk or dagger that is carried concealed upon the person. For purposes of this prohibition, a dirk or dagger is defined as 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.

This bill would specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(3) Under existing law, any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill would instead permit any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.

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 12020 of the Penal Code is  
2 amended to read:  
3 12020. (a) Any person in this state who manufactures  
4 or causes to be manufactured, imports into the state,  
5 keeps for sale, or offers or exposes for sale, or who gives,  
6 lends, or possesses any cane gun or wallet gun, any  
7 undetectable firearm, any firearm which is not  
8 immediately recognizable as a firearm, any camouflaging  
9 firearm container, any ammunition which contains or

1 consists of any fléchette dart, any bullet containing or  
2 carrying an explosive agent, any ballistic knife, any  
3 multiburst trigger activator, any nunchaku, any  
4 short-barreled shotgun, any short-barreled rifle, any  
5 metal knuckles, any belt buckle knife, any leaded cane,  
6 any zip gun, any shuriken, any unconventional pistol, any  
7 lipstick case knife, any cane sword, any shobi-zue, any air  
8 gauge knife, any writing pen knife, or any instrument or  
9 weapon of the kind commonly known as a blackjack,  
10 slungshot, billy, sandclub, sap, or sandbag, or who carries  
11 concealed upon his or her person any explosive substance,  
12 other than fixed ammunition, or who carries concealed  
13 upon his or her person any dirk or dagger is punishable  
14 by imprisonment in a county jail not exceeding one year  
15 or in the state prison. A bullet containing or carrying an  
16 explosive agent is not a destructive device as that term is  
17 used in Section 12301.

18 (b) Subdivision (a) does not apply to any of the  
19 following:

20 (1) The sale to, purchase by, or possession of  
21 short-barreled shotguns or short-barreled rifles by police  
22 departments, sheriffs' offices, marshals' offices, the  
23 California Highway Patrol, the Department of Justice, or  
24 the military or naval forces of this state or of the United  
25 States for use in the discharge of their official duties or the  
26 possession of short-barreled shotguns and short-barreled  
27 rifles by regular, salaried, full-time members of a police  
28 department, sheriff's office, marshal's office, the  
29 California Highway Patrol, or the Department of Justice  
30 when on duty and the use is authorized by the agency and  
31 is within the course and scope of their duties.

32 (2) The manufacture, possession, transportation or  
33 sale of short-barreled shotguns or short-barreled rifles  
34 when authorized by the Department of Justice pursuant  
35 to Article 6 (commencing with Section 12095) of this  
36 chapter and not in violation of federal law.

37 (3) The possession of a nunchaku on the premises of a  
38 school which holds a regulatory or business license and  
39 teaches the arts of self-defense.

1 (4) The manufacture of a nunchaku for sale to, or the  
2 sale of a nunchaku to, a school which holds a regulatory  
3 or business license and teaches the arts of self-defense.

4 (5) Any antique firearm. For purposes of this section,  
5 "antique firearm" means any firearm not designed or  
6 redesigned for using rimfire or conventional center fire  
7 ignition with fixed ammunition and manufactured in or  
8 before 1898 (including any matchlock, flintlock,  
9 percussion cap, or similar type of ignition system or  
10 replica thereof, whether actually manufactured before or  
11 after the year 1898) and also any firearm using fixed  
12 ammunition manufactured in or before 1898, for which  
13 ammunition is no longer manufactured in the United  
14 States and is not readily available in the ordinary channels  
15 of commercial trade.

16 (6) Tracer ammunition manufactured for use in  
17 shotguns.

18 (7) Any firearm or ammunition which is a curio or relic  
19 as defined in Section 178.11 of Title 27 of the Code of  
20 Federal Regulations and which is in the possession of a  
21 person permitted to possess the items pursuant to  
22 Chapter 44 (commencing with Section 921) of Title 18 of  
23 the United States Code and the regulations issued  
24 pursuant thereto. Any person prohibited by Section  
25 12021, 12021.1, or 12101 of this code or Section 8100 or 8103  
26 of the Welfare and Institutions Code from possessing  
27 firearms or ammunition who obtains title to these items  
28 by bequest or intestate succession may retain title for not  
29 more than one year, but actual possession of these items  
30 at any time is punishable pursuant to Section 12021,  
31 12021.1, or 12101 of this code or Section 8100 or 8103 of the  
32 Welfare and Institutions Code. Within the year the  
33 person shall transfer title to the firearms or ammunition  
34 by sale, gift, or other disposition. Any person who violates  
35 this paragraph is in violation of subdivision (a).

36 (8) Any other weapon as defined in subsection (e) of  
37 Section 5845 of Title 26 of the United States Code and  
38 which is in the possession of a person permitted to possess  
39 the weapons pursuant to the federal Gun Control Act of  
40 1968 (Public Law 90-618), as amended, and the

1 regulations issued pursuant thereto. Any person  
2 prohibited by Section 12021, 12021.1, or 12101 of this code  
3 or Section 8100 or 8103 of the Welfare and Institutions  
4 Code from possessing these weapons who obtains title to  
5 these weapons by bequest or intestate succession may  
6 retain title for not more than one year, but actual  
7 possession of these weapons at any time is punishable  
8 pursuant to Section 12021, 12021.1, or 12101 of this code or  
9 Section 8100 or 8103 of the Welfare and Institutions Code.  
10 Within the year, the person shall transfer title to the  
11 weapons by sale, gift, or other disposition. Any person  
12 who violates this paragraph is in violation of subdivision  
13 (a). The exemption provided in this subdivision does not  
14 apply to pen guns.

15 (9) Instruments or devices that are possessed by  
16 federal, state, and local historical societies, museums, and  
17 institutional collections which are open to the public,  
18 provided that these instruments or devices are properly  
19 housed, secured from unauthorized handling, and, if the  
20 instrument or device is a firearm, unloaded.

21 (10) Instruments or devices, other than short-barreled  
22 shotguns or short-barreled rifles, that are possessed or  
23 utilized during the course of a motion picture, television,  
24 or video production or entertainment event by an  
25 authorized participant therein in the course of making  
26 that production or event or by an authorized employee  
27 or agent of the entity producing that production or event.

28 (11) Instruments or devices, other than short-barreled  
29 shotguns or short-barreled rifles, that are sold by,  
30 manufactured by, exposed or kept for sale by, possessed  
31 by, imported by, or lent by persons who are in the  
32 business of selling instruments or devices listed in  
33 subdivision (a) solely to the entities referred in  
34 paragraphs (9) and (10) when engaging in transactions  
35 with those entities.

36 (12) The sale to, possession of, or purchase of any  
37 weapon, device, or ammunition, other than a  
38 short-barreled rifle or short-barreled shotgun, by any  
39 federal, state, county, city and county, or city agency that  
40 is charged with the enforcement of any law for use in the

1 discharge of their official duties, or the possession of any  
2 weapon, device, or ammunition, other than a  
3 short-barreled rifle or short-barreled shotgun, by peace  
4 officers thereof when on duty and the use is authorized  
5 by the agency and is within the course and scope of their  
6 duties.

7 (13) Weapons, devices, and ammunition, other than a  
8 short-barreled rifle or short-barreled shotgun, that are  
9 sold by, manufactured by, exposed, or kept for sale by,  
10 possessed by, imported by, or lent by, persons who are in  
11 the business of selling weapons, devices, and ammunition  
12 listed in subdivision (a) solely to the entities referred to  
13 in paragraph (12) when engaging in transactions with  
14 those entities.

15 (14) The manufacture for, sale to, exposing or keeping  
16 for sale to, importation of, or lending of wooden clubs or  
17 batons to special police officers or uniformed security  
18 guards authorized to carry any wooden club or baton  
19 pursuant to Section 12002 by entities that are in the  
20 business of selling wooden batons or clubs to special police  
21 officers and uniformed security guards when engaging in  
22 transactions with those persons.

23 (15) Any instrument, ammunition, weapon, or device  
24 listed in subdivision (a), other than a short-barreled rifle  
25 or short-barreled shotgun, that is found and possessed by  
26 a person who is not prohibited from possessing firearms  
27 or ammunition pursuant to Section 12021, 12021.1, or  
28 paragraph (1) of subdivision (b) of Section 12316 of this  
29 code or Section 8100 or 8103 of the Welfare and  
30 Institutions Code and is transporting the listed item to a  
31 law enforcement agency for disposition according to law.

32 (16) *The possession of any weapon, device, or*  
33 *ammunition, by a forensic laboratory or any authorized*  
34 *agent or employee thereof in the course and scope of his*  
35 *or her authorized activities.*

36 (17) *A knife that is carried in a backpack, tool belt,*  
37 *tackle box, briefcase, purse, or similar container that is*  
38 *used to carry or transport possessions.*

39 (c) (1) As used in this section, a "short-barreled  
40 shotgun" means any of the following:

- 1 (A) A firearm which is designed or redesigned to fire  
2 a fixed shotgun shell and having a barrel or barrels of less  
3 than 18 inches in length.
- 4 (B) A firearm which has an overall length of less than  
5 26 inches and which is designed or redesigned to fire a  
6 fixed shotgun shell.
- 7 (C) Any weapon made from a shotgun (whether by  
8 alteration, modification, or otherwise) if that weapon, as  
9 modified, has an overall length of less than 26 inches or a  
10 barrel or barrels of less than 18 inches in length.
- 11 (D) Any device which may be readily restored to fire  
12 a fixed shotgun shell which, when so restored, is a device  
13 defined in subparagraphs (A) to (C), inclusive.
- 14 (E) Any part, or combination of parts, designed and  
15 intended to convert a device into a device defined in  
16 subparagraphs (A) to (C), inclusive, or any combination  
17 of parts from which a device defined in subparagraphs  
18 (A) to (C), inclusive, can be readily assembled if those  
19 parts are in the possession or under the control of the  
20 same person.
- 21 (2) As used in this section, a "short-barreled rifle"  
22 means any of the following:
- 23 (A) A rifle having a barrel or barrels of less than 16  
24 inches in length.
- 25 (B) A rifle with an overall length of less than 26 inches.
- 26 (C) Any weapon made from a rifle (whether by  
27 alteration, modification, or otherwise) if that weapon as  
28 modified has an overall length of less than 26 inches or a  
29 barrel or barrels of less than 16 inches in length.
- 30 (D) Any device which may be readily restored to fire  
31 a fixed cartridge which, when so restored, is a device  
32 defined in subparagraphs (A) to (C), inclusive.
- 33 (E) Any part, or combination of parts, designed and  
34 intended to convert a device into a device defined in  
35 subparagraphs (A) to (C), inclusive, or any combination  
36 of parts from which a device defined in subparagraphs  
37 (A) to (C), inclusive, may be readily assembled if those  
38 parts are in the possession or under the control of the  
39 same person.



1 (3) As used in this section, a "nunchaku" means an  
2 instrument consisting of two or more sticks, clubs, bars or  
3 rods to be used as handles, connected by a rope, cord,  
4 wire, or chain, in the design of a weapon used in  
5 connection with the practice of a system of self-defense  
6 such as karate.

7 (4) As used in this section, a "wallet gun" means any  
8 firearm mounted or enclosed in a case, resembling a  
9 wallet, designed to be or capable of being carried in a  
10 pocket or purse, if ~~such~~ *the* firearm may be fired while  
11 mounted or enclosed in ~~such~~ *the* case.

12 (5) As used in this section, a "cane gun" means any  
13 firearm mounted or enclosed in a stick, staff, rod, crutch,  
14 or similar device, designed to be, or capable of being used  
15 as, an aid in walking, if ~~such~~ *the* firearm may be fired  
16 while mounted or enclosed therein.

17 (6) As used in this section, a "fléchette dart" means a  
18 dart, capable of being fired from a firearm, which  
19 measures approximately one inch in length, with tail fins  
20 which take up five-sixteenths of an inch of the body.

21 (7) As used in this section, "metal knuckles" means  
22 any device or instrument made wholly or partially of  
23 metal which is worn for purposes of offense or defense in  
24 or on the hand and which either protects the wearer's  
25 hand while striking a blow or increases the force of impact  
26 from the blow or injury to the individual receiving the  
27 blow. The metal contained in the device may help  
28 support the hand or fist, provide a shield to protect it, or  
29 consist of projections or studs which would contact the  
30 individual receiving a blow.

31 (8) As used in this section, a "ballistic knife" means a  
32 device that propels a knifelike blade as a projectile by  
33 means of a coil spring, elastic material, or compressed gas.  
34 Ballistic knife does not include any device which propels  
35 an arrow or a bolt by means of any common bow,  
36 compound bow, crossbow, or underwater spear gun.

37 (9) As used in this section, a "camouflaging firearm  
38 container" means a container which meets all of the  
39 following criteria:

40 (A) It is designed and intended to enclose a firearm.

1 (B) It is designed and intended to allow the firing of  
2 the enclosed firearm by external controls while the  
3 firearm is in the container.

4 (C) It is not readily recognizable as containing a  
5 firearm.

6 "Camouflaging firearm container" does not include  
7 any camouflaging covering used while engaged in lawful  
8 hunting or while going to or returning from a lawful  
9 hunting expedition.

10 (10) As used in this section, a "zip gun" means any  
11 weapon or device which meets all of the following  
12 criteria:

13 (A) It was not imported as a firearm by an importer  
14 licensed pursuant to Chapter 44 (commencing with  
15 Section 921) of Title 18 of the United States Code and the  
16 regulations issued pursuant thereto.

17 (B) It was not originally designed to be a firearm by a  
18 manufacturer licensed pursuant to Chapter 44  
19 (commencing with Section 921) of Title 18 of the United  
20 States Code and the regulations issued pursuant thereto.

21 (C) No tax was paid on the weapon or device nor was  
22 an exemption from paying tax on that weapon or device  
23 granted under Section 4181 and subchapters F  
24 (commencing with Section 4216) and G (commencing  
25 with Section 4221) of Chapter 32 of Title 26 of the United  
26 States Code, as amended, and the regulations issued  
27 pursuant thereto.

28 (D) It is made or altered to expel a projectile by the  
29 force of an explosion or other form of combustion.

30 (11) As used in this section, a "shuriken" means any  
31 instrument, without handles, consisting of a metal plate  
32 having three or more radiating points with one or more  
33 sharp edges and designed in the shape of a polygon,  
34 trefoil, cross, star, diamond, or other geometric shape for  
35 use as a weapon for throwing.

36 (12) As used in this section, an "unconventional pistol"  
37 means a firearm that does not have a rifled bore and has  
38 a barrel or barrels of less than 18 inches in length or has  
39 an overall length of less than 26 inches.

1 (13) As used in this section, a "belt buckle knife" is a  
2 knife which is made an integral part of a belt buckle and  
3 consists of a blade with a length of at least 2<sup>1</sup>/<sub>2</sub> inches.

4 (14) As used in this section, a "lipstick case knife"  
5 means a knife enclosed within and made an integral part  
6 of a lipstick case.

7 (15) As used in this section, a "cane sword" means a  
8 cane, swagger stick, stick, staff, rod, pole, umbrella, or  
9 similar device, having concealed within it a blade that  
10 may be used as a sword or stiletto.

11 (16) As used in this section, a "shobi-zue" means a staff,  
12 crutch, stick, rod, or pole concealing a knife or blade  
13 within it which may be exposed by a flip of the wrist or  
14 by a mechanical action.

15 (17) As used in this section, a "leaded cane" means a  
16 staff, crutch, stick, rod, pole, or similar device,  
17 unnaturally weighted with lead.

18 (18) As used in this section, an "air gauge knife" means  
19 a device that appears to be an air gauge but has concealed  
20 within it a pointed, metallic shaft that is designed to be a  
21 stabbing instrument which is exposed by mechanical  
22 action or gravity which locks into place when extended.

23 (19) As used in this section, a "writing pen knife"  
24 means a device that appears to be a writing pen but has  
25 concealed within it a pointed, metallic shaft that is  
26 designed to be a stabbing instrument which is exposed by  
27 mechanical action or gravity which locks into place when  
28 extended or the pointed, metallic shaft is exposed by the  
29 removal of the cap or cover on the device.

30 (20) As used in this section, a "rifle" means a weapon  
31 designed or redesigned, made or remade, and intended  
32 to be fired from the shoulder and designed or redesigned  
33 and made or remade to use the energy of the explosive in  
34 a fixed cartridge to fire only a single projectile through a  
35 rifled bore for each single pull of the trigger.

36 (21) As used in this section, a "shotgun" means a  
37 weapon designed or redesigned, made or remade, and  
38 intended to be fired from the shoulder and designed or  
39 redesigned and made or remade to use the energy of the  
40 explosive in a fixed shotgun shell to fire through a smooth

1 bore either a number of projectiles (ball shot) or a single  
2 projectile for each pull of the trigger.

3 (22) As used in this section, an "undetectable firearm"  
4 means any weapon which meets one of the following  
5 requirements:

6 (A) When, after removal of grips, stocks, and  
7 magazines, it is not as detectable as the Security  
8 Exemplar, by walk-through metal detectors calibrated  
9 and operated to detect the Security Exemplar.

10 (B) When any major component of which, when  
11 subjected to inspection by the types of X-ray machines  
12 commonly used at airports, does not generate an image  
13 that accurately depicts the shape of the component.  
14 Barium sulfate or other compounds may be used in the  
15 fabrication of the component.

16 (C) For purposes of this paragraph, the terms  
17 "firearm," "major component," and "Security Exemplar"  
18 have the same meanings as those terms are defined in  
19 Section 922 of Title 18 of the United States Code.

20 All firearm detection equipment newly installed in  
21 nonfederal public buildings in this state shall be of a type  
22 identified by either the United States Attorney General,  
23 the Secretary of Transportation, or the Secretary of the  
24 Treasury, as appropriate, as available state-of-the-art  
25 equipment capable of detecting an undetectable firearm,  
26 as defined, while distinguishing innocuous metal objects  
27 likely to be carried on one's person sufficient for  
28 reasonable passage of the public.

29 (23) As used in this section, a "multiburst trigger  
30 activator" means one of the following devices:

31 (A) A device designed or redesigned to be attached to  
32 a semiautomatic firearm which allows the firearm to  
33 discharge two or more shots in a burst by activating the  
34 device.

35 (B) A manual or power-driven trigger activating  
36 device constructed and designed so that when attached  
37 to a semiautomatic firearm it increases the rate of fire of  
38 that firearm.

39 (24) As used in this section, a "dirk" or "dagger" means  
40 a knife or other instrument with or without a handguard

1 that is capable of ready use as a stabbing weapon that may  
2 ~~inflict great bodily injury or death. A folding knife is~~  
3 ~~capable of ready use as a stabbing weapon that may inflict~~  
4 ~~great bodily injury or death only if the blade of the knife~~  
5 ~~is exposed and locked into position. inflict great bodily~~  
6 ~~injury or death. A nonlocking folding knife, a folding knife~~  
7 ~~that is not prohibited by Section 653k, or a pocketknife is~~  
8 ~~capable of ready use as a stabbing weapon that may inflict~~  
9 ~~great bodily injury or death only if the blade of the knife~~  
10 ~~is exposed and locked into position.~~

11 (d) Knives carried in sheaths which are worn openly  
12 suspended from the waist of the wearer are not concealed  
13 within the meaning of this section.

14 SEC. 2. Section 12021 of the Penal Code is amended  
15 to read:

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

24 (2) Any person who has two or more convictions for  
25 violating paragraph (2) of subdivision (a) of Section 417  
26 and who owns or has in his or her possession or under his  
27 or her custody or control any firearm is guilty of a felony.

28 (b) Notwithstanding subdivision (a), any person who  
29 has been convicted of a felony or of an offense  
30 enumerated in Section 12001.6, when that conviction  
31 results from certification by the juvenile court for  
32 prosecution as an adult in an adult court under Section  
33 707 of the Welfare and Institutions Code, who owns or has  
34 in his or her possession or under his or her custody or  
35 control any firearm is guilty of a felony.

36 (c) (1) Except as provided in subdivision (a) or  
37 paragraph (2) of this subdivision, any person who has  
38 been convicted of a misdemeanor violation of Section 71,  
39 76, 136.5, or 140, subdivision (d) of Section 148, Section  
40 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,

AMENDED IN ASSEMBLY MARCH 20, 1997

AMENDED IN ASSEMBLY MARCH 17, 1997

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 78**

**Introduced by Assembly Member Granlund**

December 18, 1996

---

An act to amend Sections 12020, 12021, 12026.2, 12201, and 12322 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 78, as amended, Granlund. Firearms: transporting exemption.

(1) Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. Existing law also provides exemptions for the possession of handgun ammunition.

This bill would add to these exemptions all of the following:

(a) The circumstance where any of these weapons, firearms other than a short-barreled rifle or short-barreled shotgun, or ammunition is found and possessed by a person who is not in a specified prohibited class and is transporting the weapon, firearm, or device to a law enforcement agency for disposition according to law.

(b) The possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee

thereof in the course and scope of his or her authorized activities.

(c) A ~~knife~~ dirk or dagger that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.

(2) Under existing law, one of the weapons subject to the prohibition described in (1) above is a dirk or dagger that is carried concealed upon the person. For purposes of this prohibition, a dirk or dagger is defined as 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.

This bill would specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(3) Under existing law, any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill would instead permit any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.

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 12020 of the Penal Code is  
2 amended to read:  
3 12020. (a) Any person in this state who manufactures  
4 or causes to be manufactured, imports into the state,  
5 keeps for sale, or offers or exposes for sale, or who gives,  
6 lends, or possesses any cane gun or wallet gun, any  
7 undetectable firearm, any firearm which is not

1 immediately recognizable as a firearm, any camouflaging  
2 firearm container, any ammunition which contains or  
3 consists of any fléchette dart, any bullet containing or  
4 carrying an explosive agent, any ballistic knife, any  
5 multiburst trigger activator, any nunchaku, any  
6 short-barreled shotgun, any short-barreled rifle, any  
7 metal knuckles, any belt buckle knife, any leaded cane,  
8 any zip gun, any shuriken, any unconventional pistol, any  
9 lipstick case knife, any cane sword, any shobi-zue, any air  
10 gauge knife, any writing pen knife, or any instrument or  
11 weapon of the kind commonly known as a blackjack,  
12 slungshot, billy, sandclub, sap, or sandbag, or who carries  
13 concealed upon his or her person any explosive substance,  
14 other than fixed ammunition, or who carries concealed  
15 upon his or her person any dirk or dagger is punishable  
16 by imprisonment in a county jail not exceeding one year  
17 or in the state prison. A bullet containing or carrying an  
18 explosive agent is not a destructive device as that term is  
19 used in Section 12301.

20 (b) Subdivision (a) does not apply to any of the  
21 following:

22 (1) The sale to, purchase by, or possession of  
23 short-barreled shotguns or short-barreled rifles by police  
24 departments, sheriffs' offices, marshals' offices, the  
25 California Highway Patrol, the Department of Justice, or  
26 the military or naval forces of this state or of the United  
27 States for use in the discharge of their official duties or the  
28 possession of short-barreled shotguns and short-barreled  
29 rifles by regular, salaried, full-time members of a police  
30 department, sheriff's office, marshal's office, the  
31 California Highway Patrol, or the Department of Justice  
32 when on duty and the use is authorized by the agency and  
33 is within the course and scope of their duties.

34 (2) The manufacture, possession, transportation or  
35 sale of short-barreled shotguns or short-barreled rifles  
36 when authorized by the Department of Justice pursuant  
37 to Article 6 (commencing with Section 12095) of this  
38 chapter and not in violation of federal law.



1 (3) The possession of a nunchaku on the premises of a  
2 school which holds a regulatory or business license and  
3 teaches the arts of self-defense.

4 (4) The manufacture of a nunchaku for sale to, or the  
5 sale of a nunchaku to, a school which holds a regulatory  
6 or business license and teaches the arts of self-defense.

7 (5) Any antique firearm. For purposes of this section,  
8 "antique firearm" means any firearm not designed or  
9 redesigned for using rimfire or conventional center fire  
10 ignition with fixed ammunition and manufactured in or  
11 before 1898 (including any matchlock, flintlock,  
12 percussion cap, or similar type of ignition system or  
13 replica thereof, whether actually manufactured before or  
14 after the year 1898) and also any firearm using fixed  
15 ammunition manufactured in or before 1898, for which  
16 ammunition is no longer manufactured in the United  
17 States and is not readily available in the ordinary channels  
18 of commercial trade.

19 (6) Tracer ammunition manufactured for use in  
20 shotguns.

21 (7) Any firearm or ammunition which is a curio or relic  
22 as defined in Section 178.11 of Title 27 of the Code of  
23 Federal Regulations and which is in the possession of a  
24 person permitted to possess the items pursuant to  
25 Chapter 44 (commencing with Section 921) of Title 18 of  
26 the United States Code and the regulations issued  
27 pursuant thereto. Any person prohibited by Section  
28 12021, 12021.1, or 12101 of this code or Section 8100 or 8103  
29 of the Welfare and Institutions Code from possessing  
30 firearms or ammunition who obtains title to these items  
31 by bequest or intestate succession may retain title for not  
32 more than one year, but actual possession of these items  
33 at any time is punishable pursuant to Section 12021,  
34 12021.1, or 12101 of this code or Section 8100 or 8103 of the  
35 Welfare and Institutions Code. Within the year the  
36 person shall transfer title to the firearms or ammunition  
37 by sale, gift, or other disposition. Any person who violates  
38 this paragraph is in violation of subdivision (a).

39 (8) Any other weapon as defined in subsection (e) of  
40 Section 5845 of Title 26 of the United States Code and

1 which is in the possession of a person permitted to possess  
2 the weapons pursuant to the federal Gun Control Act of  
3 1968 (Public Law 90-618), as amended, and the  
4 regulations issued pursuant thereto. Any person  
5 prohibited by Section 12021, 12021.1, or 12101 of this code  
6 or Section 8100 or 8103 of the Welfare and Institutions  
7 Code from possessing these weapons who obtains title to  
8 these weapons by bequest or intestate succession may  
9 retain title for not more than one year, but actual  
10 possession of these weapons at any time is punishable  
11 pursuant to Section 12021, 12021.1, or 12101 of this code or  
12 Section 8100 or 8103 of the Welfare and Institutions Code.  
13 Within the year, the person shall transfer title to the  
14 weapons by sale, gift, or other disposition. Any person  
15 who violates this paragraph is in violation of subdivision  
16 (a). The exemption provided in this subdivision does not  
17 apply to pen guns.

18 (9) Instruments or devices that are possessed by  
19 federal, state, and local historical societies, museums, and  
20 institutional collections which are open to the public,  
21 provided that these instruments or devices are properly  
22 housed, secured from unauthorized handling, and, if the  
23 instrument or device is a firearm, unloaded.

24 (10) Instruments or devices, other than short-barreled  
25 shotguns or short-barreled rifles, that are possessed or  
26 utilized during the course of a motion picture, television,  
27 or video production or entertainment event by an  
28 authorized participant therein in the course of making  
29 that production or event or by an authorized employee  
30 or agent of the entity producing that production or event.

31 (11) Instruments or devices, other than short-barreled  
32 shotguns or short-barreled rifles, that are sold by,  
33 manufactured by, exposed or kept for sale by, possessed  
34 by, imported by, or lent by persons who are in the  
35 business of selling instruments or devices listed in  
36 subdivision (a) solely to the entities referred in  
37 paragraphs (9) and (10) when engaging in transactions  
38 with those entities.

39 (12) The sale to, possession of, or purchase of any  
40 weapon, device, or ammunition, other than a

1 short-barreled rifle or short-barreled shotgun, by any  
2 federal, state, county, city and county, or city agency that  
3 is charged with the enforcement of any law for use in the  
4 discharge of their official duties, or the possession of any  
5 weapon, device, or ammunition, other than a  
6 short-barreled rifle or short-barreled shotgun, by peace  
7 officers thereof when on duty and the use is authorized  
8 by the agency and is within the course and scope of their  
9 duties.

10 (13) Weapons, devices, and ammunition, other than a  
11 short-barreled rifle or short-barreled shotgun, that are  
12 sold by, manufactured by, exposed, or kept for sale by,  
13 possessed by, imported by, or lent by, persons who are in  
14 the business of selling weapons, devices, and ammunition  
15 listed in subdivision (a) solely to the entities referred to  
16 in paragraph (12) when engaging in transactions with  
17 those entities.

18 (14) The manufacture for, sale to, exposing or keeping  
19 for sale to, importation of, or lending of wooden clubs or  
20 batons to special police officers or uniformed security  
21 guards authorized to carry any wooden club or baton  
22 pursuant to Section 12002 by entities that are in the  
23 business of selling wooden batons or clubs to special police  
24 officers and uniformed security guards when engaging in  
25 transactions with those persons.

26 (15) Any instrument, ammunition, weapon, or device  
27 listed in subdivision (a), other than a short-barreled rifle  
28 or short-barreled shotgun, that is found and possessed by  
29 a person who is not prohibited from possessing firearms  
30 or ammunition pursuant to Section 12021, 12021.1, or  
31 paragraph (1) of subdivision (b) of Section 12316 of this  
32 code or Section 8100 or 8103 of the Welfare and  
33 Institutions Code and is transporting the listed item to a  
34 law enforcement agency for disposition according to law.

35 (16) The possession of any weapon, device, or  
36 ammunition, by a forensic laboratory or any authorized  
37 agent or employeec thereof in the course and scope of his  
38 or her authorized activities.

1 (17) A ~~knife~~ *dirk or dagger* that is carried in a  
2 backpack, tool belt, tackle box, briefcase, purse, or similar  
3 container that is used to carry or transport possessions.

4 (c) (1) As used in this section, a “short-barreled  
5 shotgun” means any of the following:

6 (A) A firearm which is designed or redesigned to fire  
7 a fixed shotgun shell and having a barrel or barrels of less  
8 than 18 inches in length.

9 (B) A firearm which has an overall length of less than  
10 26 inches and which is designed or redesigned to fire a  
11 fixed shotgun shell.

12 (C) Any weapon made from a shotgun (whether by  
13 alteration, modification, or otherwise) if that weapon, as  
14 modified, has an overall length of less than 26 inches or a  
15 barrel or barrels of less than 18 inches in length.

16 (D) Any device which may be readily restored to fire  
17 a fixed shotgun shell which, when so restored, is a device  
18 defined in subparagraphs (A) to (C), inclusive.

19 (E) Any part, or combination of parts, designed and  
20 intended to convert a device into a device defined in  
21 subparagraphs (A) to (C), inclusive, or any combination  
22 of parts from which a device defined in subparagraphs  
23 (A) to (C), inclusive, can be readily assembled if those  
24 parts are in the possession or under the control of the  
25 same person.

26 (2) As used in this section, a “short-barreled rifle”  
27 means any of the following:

28 (A) A rifle having a barrel or barrels of less than 16  
29 inches in length.

30 (B) A rifle with an overall length of less than 26 inches.

31 (C) Any weapon made from a rifle (whether by  
32 alteration, modification, or otherwise) if that weapon as  
33 modified has an overall length of less than 26 inches or a  
34 barrel or barrels of less than 16 inches in length.

35 (D) Any device which may be readily restored to fire  
36 a fixed cartridge which, when so restored, is a device  
37 defined in subparagraphs (A) to (C), inclusive.

38 (E) Any part, or combination of parts, designed and  
39 intended to convert a device into a device defined in  
40 subparagraphs (A) to (C), inclusive, or any combination

1 of parts from which a device defined in subparagraphs  
2 (A) to (C), inclusive, may be readily assembled if those  
3 parts are in the possession or under the control of the  
4 same person.

5 (3) As used in this section, a "nunchaku" means an  
6 instrument consisting of two or more sticks, clubs, bars or  
7 rods to be used as handles, connected by a rope, cord,  
8 wire, or chain, in the design of a weapon used in  
9 connection with the practice of a system of self-defense  
10 such as karate.

11 (4) As used in this section, a "wallet gun" means any  
12 firearm mounted or enclosed in a case, resembling a  
13 wallet, designed to be or capable of being carried in a  
14 pocket or purse, if the firearm may be fired while  
15 mounted or enclosed in the case.

16 (5) As used in this section, a "cane gun" means any  
17 firearm mounted or enclosed in a stick, staff, rod, crutch,  
18 or similar device, designed to be, or capable of being used  
19 as, an aid in walking, if the firearm may be fired while  
20 mounted or enclosed therein.

21 (6) As used in this section, a "fléchette dart" means a  
22 dart, capable of being fired from a firearm, which  
23 measures approximately one inch in length, with tail fins  
24 which take up five-sixteenths of an inch of the body.

25 (7) As used in this section, "metal knuckles" means  
26 any device or instrument made wholly or partially of  
27 metal which is worn for purposes of offense or defense in  
28 or on the hand and which either protects the wearer's  
29 hand while striking a blow or increases the force of impact  
30 from the blow or injury to the individual receiving the  
31 blow. The metal contained in the device may help  
32 support the hand or fist, provide a shield to protect it, or  
33 consist of projections or studs which would contact the  
34 individual receiving a blow.

35 (8) As used in this section, a "ballistic knife" means a  
36 device that propels a knifelike blade as a projectile by  
37 means of a coil spring, elastic material, or compressed gas.  
38 Ballistic knife does not include any device which propels  
39 an arrow or a bolt by means of any common bow,  
40 compound bow, crossbow, or underwater spear gun.

- 1 (9) As used in this section, a "camouflaging firearm  
2 container" means a container which meets all of the  
3 following criteria:
- 4 (A) It is designed and intended to enclose a firearm.
  - 5 (B) It is designed and intended to allow the firing of  
6 the enclosed firearm by external controls while the  
7 firearm is in the container.
  - 8 (C) It is not readily recognizable as containing a  
9 firearm.
- 10 "Camouflaging firearm container" does not include  
11 any camouflaging covering used while engaged in lawful  
12 hunting or while going to or returning from a lawful  
13 hunting expedition.
- 14 (10) As used in this section, a "zip gun" means any  
15 weapon or device which meets all of the following  
16 criteria:
- 17 (A) It was not imported as a firearm by an importer  
18 licensed pursuant to Chapter 44 (commencing with  
19 Section 921) of Title 18 of the United States Code and the  
20 regulations issued pursuant thereto.
  - 21 (B) It was not originally designed to be a firearm by a  
22 manufacturer licensed pursuant to Chapter 44  
23 (commencing with Section 921) of Title 18 of the United  
24 States Code and the regulations issued pursuant thereto.
  - 25 (C) No tax was paid on the weapon or device nor was  
26 an exemption from paying tax on that weapon or device  
27 granted under Section 4181 and subchapters F  
28 (commencing with Section 4216) and G (commencing  
29 with Section 4221) of Chapter 32 of Title 26 of the United  
30 States Code, as amended, and the regulations issued  
31 pursuant thereto.
  - 32 (D) It is made or altered to expel a projectile by the  
33 force of an explosion or other form of combustion.
- 34 (11) As used in this section, a "shuriken" means any  
35 instrument, without handles, consisting of a metal plate  
36 having three or more radiating points with one or more  
37 sharp edges and designed in the shape of a polygon,  
38 trefoil, cross, star, diamond, or other geometric shape for  
39 use as a weapon for throwing.

1 (12) As used in this section, an "unconventional pistol"  
2 means a firearm that does not have a rifled bore and has  
3 a barrel or barrels of less than 18 inches in length or has  
4 an overall length of less than 26 inches.

5 (13) As used in this section, a "belt buckle knife" is a  
6 knife which is made an integral part of a belt buckle and  
7 consists of a blade with a length of at least 2<sup>1</sup>/<sub>2</sub> inches.

8 (14) As used in this section, a "lipstick case knife"  
9 means a knife enclosed within and made an integral part  
10 of a lipstick case.

11 (15) As used in this section, a "cane sword" means a  
12 cane, swagger stick, stick, staff, rod, pole, umbrella, or  
13 similar device, having concealed within it a blade that  
14 may be used as a sword or stiletto.

15 (16) As used in this section, a "shobi-zue" means a staff,  
16 crutch, stick, rod, or pole concealing a knife or blade  
17 within it which may be exposed by a flip of the wrist or  
18 by a mechanical action.

19 (17) As used in this section, a "leaded cane" means a  
20 staff, crutch, stick, rod, pole, or similar device,  
21 unnaturally weighted with lead.

22 (18) As used in this section, an "air gauge knife" means  
23 a device that appears to be an air gauge but has concealed  
24 within it a pointed, metallic shaft that is designed to be a  
25 stabbing instrument which is exposed by mechanical  
26 action or gravity which locks into place when extended.

27 (19) As used in this section, a "writing pen knife"  
28 means a device that appears to be a writing pen but has  
29 concealed within it a pointed, metallic shaft that is  
30 designed to be a stabbing instrument which is exposed by  
31 mechanical action or gravity which locks into place when  
32 extended or the pointed, metallic shaft is exposed by the  
33 removal of the cap or cover on the device.

34 (20) As used in this section, a "rifle" means a weapon  
35 designed or redesigned, made or remade, and intended  
36 to be fired from the shoulder and designed or redesigned  
37 and made or remade to use the energy of the explosive in  
38 a fixed cartridge to fire only a single projectile through a  
39 rifled bore for each single pull of the trigger.

1 (21) As used in this section, a "shotgun" means a  
2 weapon designed or redesigned, made or remade, and  
3 intended to be fired from the shoulder and designed or  
4 redesigned and made or remade to use the energy of the  
5 explosive in a fixed shotgun shell to fire through a smooth  
6 bore either a number of projectiles (ball shot) or a single  
7 projectile for each pull of the trigger.

8 (22) As used in this section, an "undetectable firearm"  
9 means any weapon which meets one of the following  
10 requirements:

11 (A) When, after removal of grips, stocks, and  
12 magazines, it is not as detectable as the Security  
13 Exemplar, by walk-through metal detectors calibrated  
14 and operated to detect the Security Exemplar.

15 (B) When any major component of which, when  
16 subjected to inspection by the types of X-ray machines  
17 commonly used at airports, does not generate an image  
18 that accurately depicts the shape of the component.  
19 Barium sulfate or other compounds may be used in the  
20 fabrication of the component.

21 (C) For purposes of this paragraph, the terms  
22 "firearm," "major component," and "Security Exemplar"  
23 have the same meanings as those terms are defined in  
24 Section 922 of Title 18 of the United States Code.

25 All firearm detection equipment newly installed in  
26 nonfederal public buildings in this state shall be of a type  
27 identified by either the United States Attorney General,  
28 the Secretary of Transportation, or the Secretary of the  
29 Treasury, as appropriate, as available state-of-the-art  
30 equipment capable of detecting an undetectable firearm,  
31 as defined, while distinguishing innocuous metal objects  
32 likely to be carried on one's person sufficient for  
33 reasonable passage of the public.

34 (23) As used in this section, a "multiburst trigger  
35 activator" means one of the following devices:

36 (A) A device designed or redesigned to be attached to  
37 a semiautomatic firearm which allows the firearm to  
38 discharge two or more shots in a burst by activating the  
39 device.



1 (B) A manual or power-driven trigger activating  
2 device constructed and designed so that when attached  
3 to a semiautomatic firearm it increases the rate of fire of  
4 that firearm.

5 (24) As used in this section, a "dirk" or "dagger" means  
6 a knife or other instrument with or without a handguard  
7 that is capable of ready use as a stabbing weapon that may  
8 inflict great bodily injury or death. A nonlocking folding  
9 knife, a folding knife that is not prohibited by Section  
10 653k, or a pocketknife is capable of ready use as a stabbing  
11 weapon that may inflict great bodily injury or death only  
12 if the blade of the knife is exposed and locked into  
13 position.

14 (d) Knives carried in sheaths which are worn openly  
15 suspended from the waist of the wearer are not concealed  
16 within the meaning of this section.

17 SEC. 2. Section 12021 of the Penal Code is amended  
18 to read:

19 12021. (a) (1) Any person who has been convicted  
20 of a felony under the laws of the United States, of the State  
21 of California, or any other state, government, or country,  
22 or of an offense enumerated in subdivision (a), (b), or (d)  
23 of Section 12001.6, or who is addicted to the use of any  
24 narcotic drug, who owns or has in his or her possession or  
25 under his or her custody or control any firearm is guilty  
26 of a felony.

27 (2) Any person who has two or more convictions for  
28 violating paragraph (2) of subdivision (a) of Section 417  
29 and who owns or has in his or her possession or under his  
30 or her custody or control any firearm is guilty of a felony.

31 (b) Notwithstanding subdivision (a), any person who  
32 has been convicted of a felony or of an offense  
33 enumerated in Section 12001.6, when that conviction  
34 results from certification by the juvenile court for  
35 prosecution as an adult in an adult court under Section  
36 707 of the Welfare and Institutions Code, who owns or has  
37 in his or her possession or under his or her custody or  
38 control any firearm is guilty of a felony.

39 (c) (1) Except as provided in subdivision (a) or  
40 paragraph (2) of this subdivision, any person who has

AMENDED IN SENATE MAY 29, 1997  
AMENDED IN ASSEMBLY MARCH 20, 1997  
AMENDED IN ASSEMBLY MARCH 17, 1997

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 78**

**Introduced by Assembly Member Granlund**

December 18, 1996

---

An act to amend Sections 12020, 12021, 12026.2, ~~12201~~ 12076, 12092, 12094, 12201, 12316, and 12322 of the Penal Code, and to amend Section 8103 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 78, as amended, Granlund. Firearms: transporting exemption.

(1) Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. Existing law also provides exemptions for the possession of handgun ammunition.

This bill would add to these exemptions all of the following:

(a) The circumstance where any of these weapons, firearms other than a short-barreled rifle or short-barreled shotgun, or ammunition is found and possessed by a person who is not in a specified prohibited class and is transporting the weapon, firearm, or device to a law enforcement agency for disposition according to law.

(b) The possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(c) A dirk or dagger that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.

(2) Under existing law, one of the weapons subject to the prohibition described in (1) above is a dirk or dagger that is carried concealed upon the person. For purposes of this prohibition, a dirk or dagger is defined as 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.

This bill would specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(3) Under existing law, any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill would instead permit any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.

(4) *The prohibition described in (3) above additionally includes persons who have specified felony convictions or are found to be mentally incompetent. Every person subject to this prohibition is likewise prohibited from owning, possessing, or having under his or her custody or control, any ammunition or reloaded ammunition.*

*This bill would specify conditions that justify a violation of this prohibition against owning or possessing, or having custody or control of, ammunition or reloaded ammunition.*

(5) Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill would exempt from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

(6) Under existing law, any person who, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, and is taken into custody in an evaluation facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation, is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of 5 years after release from the facility. Existing law also applies this prohibition if the person detained pursuant to this provision is certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism.

This bill would repeal this prohibition as it applies to a person who is detained for treatment and evaluation for a period not to exceed 72 hours. The bill also would make conforming changes.

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 12020 of the Penal Code is  
2 amended to read:

3 12020. (a) Any person in this state who manufactures  
4 or causes to be manufactured, imports into the state,  
5 keeps for sale, or offers or exposes for sale, or who gives,  
6 lends, or possesses any cane gun or wallet gun, any  
7 undetectable firearm, any firearm which is not  
8 immediately recognizable as a firearm, any camouflaging  
9 firearm container, any ammunition which contains or  
10 consists of any flechette dart, any bullet containing or

1 carrying an explosive agent, any ballistic knife, any  
2 multiburst trigger activator, any nunchaku, any  
3 short-barreled shotgun, any short-barreled rifle, any  
4 metal knuckles, any belt buckle knife, any leaded cane,  
5 any zip gun, any shuriken, any unconventional pistol, any  
6 lipstick case knife, any cane sword, any shobi-zue, any air  
7 gauge knife, any writing pen knife, or any instrument or  
8 weapon of the kind commonly known as a blackjack,  
9 slungshot, billy, sandclub, sap, or sandbag, or who carries  
10 concealed upon his or her person any explosive substance,  
11 other than fixed ammunition, or who carries concealed  
12 upon his or her person any dirk or dagger is punishable  
13 by imprisonment in a county jail not exceeding one year  
14 or in the state prison. A bullet containing or carrying an  
15 explosive agent is not a destructive device as that term is  
16 used in Section 12301.

17 (b) Subdivision (a) does not apply to any of the  
18 following:

19 (1) The sale to, purchase by, or possession of  
20 short-barreled shotguns or short-barreled rifles by police  
21 departments, sheriffs' offices, marshals' offices, the  
22 California Highway Patrol, the Department of Justice, or  
23 the military or naval forces of this state or of the United  
24 States for use in the discharge of their official duties or the  
25 possession of short-barreled shotguns and short-barreled  
26 rifles by regular, salaried, full-time members of a police  
27 department, sheriff's office, marshal's office, the  
28 California Highway Patrol, or the Department of Justice  
29 when on duty and the use is authorized by the agency and  
30 is within the course and scope of their duties.

31 (2) The manufacture, possession, transportation or  
32 sale of short-barreled shotguns or short-barreled rifles  
33 when authorized by the Department of Justice pursuant  
34 to Article 6 (commencing with Section 12095) of this  
35 chapter and not in violation of federal law.

36 (3) The possession of a nunchaku on the premises of a  
37 school which holds a regulatory or business license and  
38 teaches the arts of self-defense.

1 (4) The manufacture of a nunchaku for sale to, or the  
2 sale of a nunchaku to, a school which holds a regulatory  
3 or business license and teaches the arts of self-defense.

4 (5) Any antique firearm. For purposes of this section,  
5 "antique firearm" means any firearm not designed or  
6 redesigned for using rimfire or conventional center fire  
7 ignition with fixed ammunition and manufactured in or  
8 before 1898 (including any matchlock, flintlock,  
9 percussion cap, or similar type of ignition system or  
10 replica thereof, whether actually manufactured before or  
11 after the year 1898) and also any firearm using fixed  
12 ammunition manufactured in or before 1898, for which  
13 ammunition is no longer manufactured in the United  
14 States and is not readily available in the ordinary channels  
15 of commercial trade.

16 (6) Tracer ammunition manufactured for use in  
17 shotguns.

18 (7) Any firearm or ammunition which is a curio or relic  
19 as defined in Section 178.11 of Title 27 of the Code of  
20 Federal Regulations and which is in the possession of a  
21 person permitted to possess the items pursuant to  
22 Chapter 44 (commencing with Section 921) of Title 18 of  
23 the United States Code and the regulations issued  
24 pursuant thereto. Any person prohibited by Section  
25 12021, 12021.1, or 12101 of this code or Section 8100 or 8103  
26 of the Welfare and Institutions Code from possessing  
27 firearms or ammunition who obtains title to these items  
28 by bequest or intestate succession may retain title for not  
29 more than one year, but actual possession of these items  
30 at any time is punishable pursuant to Section 12021,  
31 12021.1, or 12101 of this code or Section 8100 or 8103 of the  
32 Welfare and Institutions Code. Within the year the  
33 person shall transfer title to the firearms or ammunition  
34 by sale, gift, or other disposition. Any person who violates  
35 this paragraph is in violation of subdivision (a).

36 (8) Any other weapon as defined in subsection (e) of  
37 Section 5845 of Title 26 of the United States Code and  
38 which is in the possession of a person permitted to possess  
39 the weapons pursuant to the federal Gun Control Act of  
40 1968 (Public Law 90-618), as amended, and the

1 regulations issued pursuant thereto. Any person  
2 prohibited by Section 12021, 12021.1, or 12101 of this code  
3 or Section 8100 or 8103 of the Welfare and Institutions  
4 Code from possessing these weapons who obtains title to  
5 these weapons by bequest or intestate succession may  
6 retain title for not more than one year, but actual  
7 possession of these weapons at any time is punishable  
8 pursuant to Section 12021, 12021.1, or 12101 of this code or  
9 Section 8100 or 8103 of the Welfare and Institutions Code.  
10 Within the year, the person shall transfer title to the  
11 weapons by sale, gift, or other disposition. Any person  
12 who violates this paragraph is in violation of subdivision  
13 (a). The exemption provided in this subdivision does not  
14 apply to pen guns.

15 (9) Instruments or devices that are possessed by  
16 federal, state, and local historical societies, museums, and  
17 institutional collections which are open to the public,  
18 provided that these instruments or devices are properly  
19 housed, secured from unauthorized handling, and, if the  
20 instrument or device is a firearm, unloaded.

21 (10) Instruments or devices, other than short-barreled  
22 shotguns or short-barreled rifles, that are possessed or  
23 utilized during the course of a motion picture, television,  
24 or video production or entertainment event by an  
25 authorized participant therein in the course of making  
26 that production or event or by an authorized employee  
27 or agent of the entity producing that production or event.

28 (11) Instruments or devices, other than short-barreled  
29 shotguns or short-barreled rifles, that are sold by,  
30 manufactured by, exposed or kept for sale by, possessed  
31 by, imported by, or lent by persons who are in the  
32 business of selling instruments or devices listed in  
33 subdivision (a) solely to the entities referred in  
34 paragraphs (9) and (10) when engaging in transactions  
35 with those entities.

36 (12) The sale to, possession of, or purchase of any  
37 weapon, device, or ammunition, other than a  
38 short-barreled rifle or short-barreled shotgun, by any  
39 federal, state, county, city and county, or city agency that  
40 is charged with the enforcement of any law for use in the

1 discharge of their official duties, or the possession of any  
2 weapon, device, or ammunition, other than a  
3 short-barreled rifle or short-barreled shotgun, by peace  
4 officers thereof when on duty and the use is authorized  
5 by the agency and is within the course and scope of their  
6 duties.

7 (13) Weapons, devices, and ammunition, other than a  
8 short-barreled rifle or short-barreled shotgun, that are  
9 sold by, manufactured by, exposed, or kept for sale by,  
10 possessed by, imported by, or lent by, persons who are in  
11 the business of selling weapons, devices, and ammunition  
12 listed in subdivision (a) solely to the entities referred to  
13 in paragraph (12) when engaging in transactions with  
14 those entities.

15 (14) The manufacture for, sale to, exposing or keeping  
16 for sale to, importation of, or lending of wooden clubs or  
17 batons to special police officers or uniformed security  
18 guards authorized to carry any wooden club or baton  
19 pursuant to Section 12002 by entities that are in the  
20 business of selling wooden batons or clubs to special police  
21 officers and uniformed security guards when engaging in  
22 transactions with those persons.

23 (15) Any instrument, ammunition, weapon, or device  
24 listed in subdivision (a), other than a short-barreled rifle  
25 or short-barreled shotgun, that is found and possessed by  
26 a person who is not prohibited from possessing firearms  
27 or ammunition pursuant to Section 12021, 12021.1, or  
28 paragraph (1) of subdivision (b) of Section 12316 of this  
29 code or Section 8100 or 8103 of the Welfare and  
30 Institutions Code and is transporting the listed item to a  
31 law enforcement agency for disposition according to law.

32 (16) The possession of any weapon, device, or  
33 ammunition, by a forensic laboratory or any authorized  
34 agent or employee thereof in the course and scope of his  
35 or her authorized activities.

36 (17) A dirk or dagger that is carried in a backpack, tool  
37 belt, tackle box, briefcase, purse, or similar container that  
38 is used to carry or transport possessions.

39 (c) (1) As used in this section, a "short-barreled  
40 shotgun" means any of the following:



1 (A) A firearm which is designed or redesigned to fire  
2 a fixed shotgun shell and having a barrel or barrels of less  
3 than 18 inches in length.

4 (B) A firearm which has an overall length of less than  
5 26 inches and which is designed or redesigned to fire a  
6 fixed shotgun shell.

7 (C) Any weapon made from a shotgun (whether by  
8 alteration, modification, or otherwise) if that weapon, as  
9 modified, has an overall length of less than 26 inches or a  
10 barrel or barrels of less than 18 inches in length.

11 (D) Any device which may be readily restored to fire  
12 a fixed shotgun shell which, when so restored, is a device  
13 defined in subparagraphs (A) to (C), inclusive.

14 (E) Any part, or combination of parts, designed and  
15 intended to convert a device into a device defined in  
16 subparagraphs (A) to (C), inclusive, or any combination  
17 of parts from which a device defined in subparagraphs  
18 (A) to (C), inclusive, can be readily assembled if those  
19 parts are in the possession or under the control of the  
20 same person.

21 (2) As used in this section, a "short-barreled rifle"  
22 means any of the following:

23 (A) A rifle having a barrel or barrels of less than 16  
24 inches in length.

25 (B) A rifle with an overall length of less than 26 inches.

26 (C) Any weapon made from a rifle (whether by  
27 alteration, modification, or otherwise) if that weapon as  
28 modified has an overall length of less than 26 inches or a  
29 barrel or barrels of less than 16 inches in length.

30 (D) Any device which may be readily restored to fire  
31 a fixed cartridge which, when so restored, is a device  
32 defined in subparagraphs (A) to (C), inclusive.

33 (E) Any part, or combination of parts, designed and  
34 intended to convert a device into a device defined in  
35 subparagraphs (A) to (C), inclusive, or any combination  
36 of parts from which a device defined in subparagraphs  
37 (A) to (C), inclusive, may be readily assembled if those  
38 parts are in the possession or under the control of the  
39 same person.

1 (3) As used in this section, a “nunchaku” means an  
2 instrument consisting of two or more sticks, clubs, bars or  
3 rods to be used as handles, connected by a rope, cord,  
4 wire, or chain, in the design of a weapon used in  
5 connection with the practice of a system of self-defense  
6 such as karate.

7 (4) As used in this section, a “wallet gun” means any  
8 firearm mounted or enclosed in a case, resembling a  
9 wallet, designed to be or capable of being carried in a  
10 pocket or purse, if the firearm may be fired while  
11 mounted or enclosed in the case.

12 (5) As used in this section, a “cane gun” means any  
13 firearm mounted or enclosed in a stick, staff, rod, crutch,  
14 or similar device, designed to be, or capable of being used  
15 as, an aid in walking, if the firearm may be fired while  
16 mounted or enclosed therein.

17 (6) As used in this section, a “fléchette dart” means a  
18 dart, capable of being fired from a firearm, which  
19 measures approximately one inch in length, with tail fins  
20 which take up five-sixteenths of an inch of the body.

21 (7) As used in this section, “metal knuckles” means  
22 any device or instrument made wholly or partially of  
23 metal which is worn for purposes of offense or defense in  
24 or on the hand and which either protects the wearer’s  
25 hand while striking a blow or increases the force of impact  
26 from the blow or injury to the individual receiving the  
27 blow. The metal contained in the device may help  
28 support the hand or fist, provide a shield to protect it, or  
29 consist of projections or studs which would contact the  
30 individual receiving a blow.

31 (8) As used in this section, a “ballistic knife” means a  
32 device that propels a knifelike blade as a projectile by  
33 means of a coil spring, elastic material, or compressed gas.  
34 Ballistic knife does not include any device which propels  
35 an arrow or a bolt by means of any common bow,  
36 compound bow, crossbow, or underwater spear gun.

37 (9) As used in this section, a “camouflaging firearm  
38 container” means a container which meets all of the  
39 following criteria:

40 (A) It is designed and intended to enclose a firearm.

1 (B) It is designed and intended to allow the firing of  
2 the enclosed firearm by external controls while the  
3 firearm is in the container.

4 (C) It is not readily recognizable as containing a  
5 firearm.

6 "Camouflaging firearm container" does not include  
7 any camouflaging covering used while engaged in lawful  
8 hunting or while going to or returning from a lawful  
9 hunting expedition.

10 (10) As used in this section, a "zip gun" means any  
11 weapon or device which meets all of the following  
12 criteria:

13 (A) It was not imported as a firearm by an importer  
14 licensed pursuant to Chapter 44 (commencing with  
15 Section 921) of Title 18 of the United States Code and the  
16 regulations issued pursuant thereto.

17 (B) It was not originally designed to be a firearm by a  
18 manufacturer licensed pursuant to Chapter 44  
19 (commencing with Section 921) of Title 18 of the United  
20 States Code and the regulations issued pursuant thereto.

21 (C) No tax was paid on the weapon or device nor was  
22 an exemption from paying tax on that weapon or device  
23 granted under Section 4181 and subchapters F  
24 (commencing with Section 4216) and G (commencing  
25 with Section 4221) of Chapter 32 of Title 26 of the United  
26 States Code, as amended, and the regulations issued  
27 pursuant thereto.

28 (D) It is made or altered to expel a projectile by the  
29 force of an explosion or other form of combustion.

30 (11) As used in this section, a "shuriken" means any  
31 instrument, without handles, consisting of a metal plate  
32 having three or more radiating points with one or more  
33 sharp edges and designed in the shape of a polygon,  
34 trefoil, cross, star, diamond, or other geometric shape for  
35 use as a weapon for throwing.

36 (12) As used in this section, an "unconventional pistol"  
37 means a firearm that does not have a rifled bore and has  
38 a barrel or barrels of less than 18 inches in length or has  
39 an overall length of less than 26 inches.

- 1 (13) As used in this section, a "belt buckle knife" is a  
2 knife which is made an integral part of a belt buckle and  
3 consists of a blade with a length of at least 2½ inches.
- 4 (14) As used in this section, a "lipstick case knife"  
5 means a knife enclosed within and made an integral part  
6 of a lipstick case.
- 7 (15) As used in this section, a "cane sword" means a  
8 cane, swagger stick, stick, staff, rod, pole, umbrella, or  
9 similar device, having concealed within it a blade that  
10 may be used as a sword or stiletto.
- 11 (16) As used in this section, a "shobi-zue" means a staff,  
12 crutch, stick, rod, or pole concealing a knife or blade  
13 within it which may be exposed by a flip of the wrist or  
14 by a mechanical action.
- 15 (17) As used in this section, a "leaded cane" means a  
16 staff, crutch, stick, rod, pole, or similar device,  
17 unnaturally weighted with lead.
- 18 (18) As used in this section, an "air gauge knife" means  
19 a device that appears to be an air gauge but has concealed  
20 within it a pointed, metallic shaft that is designed to be a  
21 stabbing instrument which is exposed by mechanical  
22 action or gravity which locks into place when extended.
- 23 (19) As used in this section, a "writing pen knife"  
24 means a device that appears to be a writing pen but has  
25 concealed within it a pointed, metallic shaft that is  
26 designed to be a stabbing instrument which is exposed by  
27 mechanical action or gravity which locks into place when  
28 extended or the pointed, metallic shaft is exposed by the  
29 removal of the cap or cover on the device.
- 30 (20) As used in this section, a "rifle" means a weapon  
31 designed or redesigned, made or remade, and intended  
32 to be fired from the shoulder and designed or redesigned  
33 and made or remade to use the energy of the explosive in  
34 a fixed cartridge to fire only a single projectile through a  
35 rifled bore for each single pull of the trigger.
- 36 (21) As used in this section, a "shotgun" means a  
37 weapon designed or redesigned, made or remade, and  
38 intended to be fired from the shoulder and designed or  
39 redesigned and made or remade to use the energy of the  
40 explosive in a fixed shotgun shell to fire through a smooth

1 bore either a number of projectiles (ball shot) or a single  
2 projectile for each pull of the trigger.

3 (22) As used in this section, an "undetectable firearm"  
4 means any weapon which meets one of the following  
5 requirements:

6 (A) When, after removal of grips, stocks, and  
7 magazines, it is not as detectable as the Security  
8 Exemplar, by walk-through metal detectors calibrated  
9 and operated to detect the Security Exemplar.

10 (B) When any major component of which, when  
11 subjected to inspection by the types of X-ray machines  
12 commonly used at airports, does not generate an image  
13 that accurately depicts the shape of the component.  
14 Barium sulfate or other compounds may be used in the  
15 fabrication of the component.

16 (C) For purposes of this paragraph, the terms  
17 "firearm," "major component," and "Security Exemplar"  
18 have the same meanings as those terms are defined in  
19 Section 922 of Title 18 of the United States Code.

20 All firearm detection equipment newly installed in  
21 nonfederal public buildings in this state shall be of a type  
22 identified by either the United States Attorney General,  
23 the Secretary of Transportation, or the Secretary of the  
24 Treasury, as appropriate, as available state-of-the-art  
25 equipment capable of detecting an undetectable firearm,  
26 as defined, while distinguishing innocuous metal objects  
27 likely to be carried on one's person sufficient for  
28 reasonable passage of the public.

29 (23) As used in this section, a "multiburst trigger  
30 activator" means one of the following devices:

31 (A) A device designed or redesigned to be attached to  
32 a semiautomatic firearm which allows the firearm to  
33 discharge two or more shots in a burst by activating the  
34 device.

35 (B) A manual or power-driven trigger activating  
36 device constructed and designed so that when attached  
37 to a semiautomatic firearm it increases the rate of fire of  
38 that firearm.

39 (24) As used in this section, a "dirk" or "dagger" means  
40 a knife or other instrument with or without a handguard

1 that is capable of ready use as a stabbing weapon that may  
2 inflict great bodily injury or death. A nonlocking folding  
3 knife, a folding knife that is not prohibited by Section  
4 653k, or a pocketknife is capable of ready use as a stabbing  
5 weapon that may inflict great bodily injury or death only  
6 if the blade of the knife is exposed and locked into  
7 position.

8 (d) Knives carried in sheaths which are worn openly  
9 suspended from the waist of the wearer are not concealed  
10 within the meaning of this section.

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

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

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

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

33 (c) (1) Except as provided in subdivision (a) or  
34 paragraph (2) of this subdivision, any person who has  
35 been convicted of a misdemeanor violation of Section 71,  
36 76, 136.5, or 140, subdivision (d) of Section 148, Section  
37 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,  
38 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9,  
39 646.9, 12023, or 12024, subdivision (b) or (d) of Section  
40 12034, Section 12040, subdivision (b) of Section 12072,

AMENDED IN SENATE JUNE 17, 1997  
AMENDED IN SENATE MAY 29, 1997  
AMENDED IN ASSEMBLY MARCH 20, 1997  
AMENDED IN ASSEMBLY MARCH 17, 1997

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 78**

**Introduced by Assembly Member Granlund**

December 18, 1996

---

An act to amend Sections 626.10, 12020, 12021, 12026.2, 12076, 12092, 12094, 12201, 12316, and 12322 of the Penal Code, and to amend Section 8103 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 78, as amended, Granlund. Firearms: transporting exemption.

(1) Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. Existing law also provides exemptions for the possession of handgun ammunition.

This bill would add to these exemptions ~~all~~ *both* of the following:

(a) The circumstance where any of these weapons, firearms other than a short-barreled rifle or short-barreled shotgun, or ammunition is found and possessed by a person

who is not in a specified prohibited class and is transporting the weapon, firearm, or device to a law enforcement agency for disposition according to law.

(b) The possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

~~(c) A dirk or dagger that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.~~

(2) Under existing law, one of the weapons subject to the prohibition described in (1) above is a dirk or dagger that is carried concealed upon the person. For purposes of this prohibition, a dirk or dagger is defined as 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.

This bill would specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(3) Under existing law, any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill would instead permit any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.

~~(4) The prohibition described in (3) above additionally includes persons who have specified felony convictions or are found to be mentally incompetent. Every person subject to this prohibition is likewise prohibited from owning, possessing, or having~~ Existing law provides that no person prohibited by state law from owning or processing a firearm



*shall own, possess, or have* under his or her custody or control, any ammunition or reloaded ammunition.

This bill would specify conditions that justify a violation of this prohibition ~~against owning or possessing, or having custody or control of, ammunition or reloaded ammunition.~~

(5) Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill would exempt from this provision persons in specified classes, including certain on-duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

(6) Under existing law, any person who, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, and is taken into custody in an evaluation facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation, is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of 5 years after release from the facility. Existing law also applies this prohibition if the person detained pursuant to this provision is certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism.

This bill would repeal this prohibition as it applies to a person who is detained for treatment and evaluation for a period not to exceed 72 hours. The bill also would make conforming changes.

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 626.10 of the Penal Code is*
- 2 *amended to read:*
- 3 626.10. (a) Any person, except a duly appointed
- 4 peace officer as defined in Chapter 4.5 (commencing
- 5 with Section 830) of Title 3 of Part 2, a full-time paid peace

1 officer of another state or the federal government who is  
2 carrying out official duties while in this state, a person  
3 summoned by any officer to assist in making arrests or  
4 preserving the peace while the person is actually engaged  
5 in assisting any officer, or a member of the military forces  
6 of this state or the United States who is engaged in the  
7 performance of his or her duties, who brings or possesses  
8 any dirk, dagger, ice pick, knife having a blade longer  
9 than 2<sup>1</sup>/<sub>2</sub> inches, folding knife with a blade that locks into  
10 place, a razor with an unguarded blade, a taser, or a stun  
11 gun, as defined in subdivision (a) of Section 244.5, any  
12 instrument that expels a metallic projectile such as a BB  
13 or a pellet, through the force of air pressure, CO<sub>2</sub>  
14 pressure, or spring action, or any spot marker gun, upon  
15 the grounds of, or within, any public or private school  
16 providing instruction in kindergarten or any of grades 1  
17 to 12, inclusive, is guilty of a public offense, punishable by  
18 imprisonment in a county jail not exceeding one year, or  
19 by imprisonment in the state prison.

20 (b) Any person, except a duly appointed peace officer  
21 as defined in Chapter 4.5 (commencing with Section 830)  
22 of Title 3 of Part 2, a full-time paid peace officer of another  
23 state or the federal government who is carrying out  
24 official duties while in this state, a person summoned by  
25 any officer to assist in making arrests or preserving the  
26 peace while the person is actually engaged in assisting any  
27 officer, or a member of the military forces of this state or  
28 the United States who is engaged in the performance of  
29 his or her duties, who brings or possesses any dirk, dagger,  
30 ice pick, or knife having a fixed blade longer than 2<sup>1</sup>/<sub>2</sub>  
31 inches upon the grounds of, or within, any private  
32 university, the University of California, the California  
33 State University, or the California Community Colleges  
34 is guilty of a public offense, punishable by imprisonment  
35 in a county jail not exceeding one year, or by  
36 imprisonment in the state prison.

37 (c) Subdivisions (a) and (b) do not apply to any  
38 person who brings or possesses a knife having a blade  
39 longer than 2<sup>1</sup>/<sub>2</sub> inches or a razor with an unguarded  
40 blade upon the grounds of, or within, a public or private

1 school providing instruction in kindergarten or any of  
2 grades 1 to 12, inclusive, or any private university, state  
3 university, or community college at the direction of a  
4 faculty member of the private university, state university,  
5 or community college, or a certificated or classified  
6 employee of the school for use in a private university,  
7 state university, community college, or school-sponsored  
8 activity or class.

9 (d) Subdivisions (a) and (b) do not apply to any  
10 person who brings or possesses an ice pick, a knife having  
11 a blade longer than 2<sup>1</sup>/<sub>2</sub> inches, or a razor with an  
12 unguarded blade upon the grounds of, or within, a public  
13 or private school providing instruction in kindergarten or  
14 any of grades 1 to 12, inclusive, or any private university,  
15 state university, or community college for a lawful  
16 purpose within the scope of the person's employment.

17 (e) Subdivision (b) does not apply to any person who  
18 brings or possesses an ice pick or a knife having a fixed  
19 blade longer than 2<sup>1</sup>/<sub>2</sub> inches upon the grounds of, or  
20 within, any private university, state university, or  
21 community college for lawful use in or around a residence  
22 or residential facility located upon those grounds or for  
23 lawful use in food preparation or consumption.

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

32 (g) Any certificated or classified employee or school  
33 peace officer of a public or private school providing  
34 instruction in kindergarten or any of grades 1 to 12,  
35 inclusive, may seize any of the weapons described in  
36 subdivision (a), and any certificated or classified  
37 employee or school peace officer of any private  
38 university, state university, or community college may  
39 seize any of the weapons described in subdivision (b),  
40 from the possession of any person upon the grounds of, or

1 within, the school if he or she knows, or has reasonable  
2 cause to know, the person is prohibited from bringing or  
3 possessing the weapon upon the grounds of, or within, the  
4 school.

5 (h) As used in this section, "dirk" or "dagger" means  
6 a knife or other instrument with or without a handguard  
7 that is capable of ready use as a stabbing weapon that may  
8 inflict great bodily injury or death. *A nonlocking folding*  
9 *knife, a folding knife that is not prohibited by Section*  
10 *653k, or a pocketknife is capable of ready use as a stabbing*  
11 *weapon that may inflict great bodily injury or death only*  
12 *if the blade of the knife is exposed and locked into*  
13 *position.*

14 SEC. 1.5. Section 12020 of the Penal Code is amended  
15 to read:

16 12020. (a) Any person in this state who manufactures  
17 or causes to be manufactured, imports into the state,  
18 keeps for sale, or offers or exposes for sale, or who gives,  
19 lends, or possesses any cane gun or wallet gun, any  
20 undetectable firearm, any firearm which is not  
21 immediately recognizable as a firearm, any camouflaging  
22 firearm container, any ammunition which contains or  
23 consists of any fléchette dart, any bullet containing or  
24 carrying an explosive agent, any ballistic knife, any  
25 multiburst trigger activator, any nunchaku, any  
26 short-barreled shotgun, any short-barreled rifle, any  
27 metal knuckles, any belt buckle knife, any leaded cane,  
28 any zip gun, any shuriken, any unconventional pistol, any  
29 lipstick case knife, any cane sword, any shobi-zue, any air  
30 gauge knife, any writing pen knife, or any instrument or  
31 weapon of the kind commonly known as a blackjack,  
32 slungshot, billy, sandclub, sap, or sandbag, or who carries  
33 concealed upon his or her person any explosive substance,  
34 other than fixed ammunition, or who carries concealed  
35 upon his or her person any dirk or dagger is punishable  
36 by imprisonment in a county jail not exceeding one year  
37 or in the state prison. A bullet containing or carrying an  
38 explosive agent is not a destructive device as that term is  
39 used in Section 12301.

1 (b) Subdivision (a) does not apply to any of the  
2 following:

3 (1) The sale to, purchase by, or possession of  
4 short-barreled shotguns or short-barreled rifles by police  
5 departments, sheriffs' offices, marshals' offices, the  
6 California Highway Patrol, the Department of Justice, or  
7 the military or naval forces of this state or of the United  
8 States for use in the discharge of their official duties or the  
9 possession of short-barreled shotguns and short-barreled  
10 rifles by regular, salaried, full-time members of a police  
11 department, sheriff's office, marshal's office, the  
12 California Highway Patrol, or the Department of Justice  
13 when on duty and the use is authorized by the agency and  
14 is within the course and scope of their duties.

15 (2) The manufacture, possession, transportation or  
16 sale of short-barreled shotguns or short-barreled rifles  
17 when authorized by the Department of Justice pursuant  
18 to Article 6 (commencing with Section 12095) of this  
19 chapter and not in violation of federal law.

20 (3) The possession of a nunchaku on the premises of a  
21 school which holds a regulatory or business license and  
22 teaches the arts of self-defense.

23 (4) The manufacture of a nunchaku for sale to, or the  
24 sale of a nunchaku to, a school which holds a regulatory  
25 or business license and teaches the arts of self-defense.

26 (5) Any antique firearm. For purposes of this section,  
27 "antique firearm" means any firearm not designed or  
28 redesigned for using rimfire or conventional center fire  
29 ignition with fixed ammunition and manufactured in or  
30 before 1898 (including any matchlock, flintlock,  
31 percussion cap, or similar type of ignition system or  
32 replica thereof, whether actually manufactured before or  
33 after the year 1898) and also any firearm using fixed  
34 ammunition manufactured in or before 1898, for which  
35 ammunition is no longer manufactured in the United  
36 States and is not readily available in the ordinary channels  
37 of commercial trade.

38 (6) Tracer ammunition manufactured for use in  
39 shotguns.

1 (7) Any firearm or ammunition which is a curio or relic  
2 as defined in Section 178.11 of Title 27 of the Code of  
3 Federal Regulations and which is in the possession of a  
4 person permitted to possess the items pursuant to  
5 Chapter 44 (commencing with Section 921) of Title 18 of  
6 the United States Code and the regulations issued  
7 pursuant thereto. Any person prohibited by Section  
8 12021, 12021.1, or 12101 of this code or Section 8100 or 8103  
9 of the Welfare and Institutions Code from possessing  
10 firearms or ammunition who obtains title to these items  
11 by bequest or intestate succession may retain title for not  
12 more than one year, but actual possession of these items  
13 at any time is punishable pursuant to Section 12021,  
14 12021.1, or 12101 of this code or Section 8100 or 8103 of the  
15 Welfare and Institutions Code. Within the year the  
16 person shall transfer title to the firearms or ammunition  
17 by sale, gift, or other disposition. Any person who violates  
18 this paragraph is in violation of subdivision (a).

19 (8) Any other weapon as defined in subsection (e) of  
20 Section 5845 of Title 26 of the United States Code and  
21 which is in the possession of a person permitted to possess  
22 the weapons pursuant to the federal Gun Control Act of  
23 1968 (Public Law 90-618), as amended, and the  
24 regulations issued pursuant thereto. Any person  
25 prohibited by Section 12021, 12021.1, or 12101 of this code  
26 or Section 8100 or 8103 of the Welfare and Institutions  
27 Code from possessing these weapons who obtains title to  
28 these weapons by bequest or intestate succession may  
29 retain title for not more than one year, but actual  
30 possession of these weapons at any time is punishable  
31 pursuant to Section 12021, 12021.1, or 12101 of this code or  
32 Section 8100 or 8103 of the Welfare and Institutions Code.  
33 Within the year, the person shall transfer title to the  
34 weapons by sale, gift, or other disposition. Any person  
35 who violates this paragraph is in violation of subdivision  
36 (a). The exemption provided in this subdivision does not  
37 apply to pen guns.

38 (9) Instruments or devices that are possessed by  
39 federal, state, and local historical societies, museums, and  
40 institutional collections which are open to the public,

1 provided that these instruments or devices are properly  
2 housed, secured from unauthorized handling, and, if the  
3 instrument or device is a firearm, unloaded.

4 (10) Instruments or devices, other than short-barreled  
5 shotguns or short-barreled rifles, that are possessed or  
6 utilized during the course of a motion picture, television,  
7 or video production or entertainment event by an  
8 authorized participant therein in the course of making  
9 that production or event or by an authorized employee  
10 or agent of the entity producing that production or event.

11 (11) Instruments or devices, other than short-barreled  
12 shotguns or short-barreled rifles, that are sold by,  
13 manufactured by, exposed or kept for sale by, possessed  
14 by, imported by, or lent by persons who are in the  
15 business of selling instruments or devices listed in  
16 subdivision (a) solely to the entities referred in  
17 paragraphs (9) and (10) when engaging in transactions  
18 with those entities.

19 (12) The sale to, possession of, or purchase of any  
20 weapon, device, or ammunition, other than a  
21 short-barreled rifle or short-barreled shotgun, by any  
22 federal, state, county, city and county, or city agency that  
23 is charged with the enforcement of any law for use in the  
24 discharge of their official duties, or the possession of any  
25 weapon, device, or ammunition, other than a  
26 short-barreled rifle or short-barreled shotgun, by peace  
27 officers thereof when on duty and the use is authorized  
28 by the agency and is within the course and scope of their  
29 duties.

30 (13) Weapons, devices, and ammunition, other than a  
31 short-barreled rifle or short-barreled shotgun, that are  
32 sold by, manufactured by, exposed, or kept for sale by,  
33 possessed by, imported by, or lent by, persons who are in  
34 the business of selling weapons, devices, and ammunition  
35 listed in subdivision (a) solely to the entities referred to  
36 in paragraph (12) when engaging in transactions with  
37 those entities.

38 (14) The manufacture for, sale to, exposing or keeping  
39 for sale to, importation of, or lending of wooden clubs or  
40 batons to special police officers or uniformed security

1 guards authorized to carry any wooden club or baton  
2 pursuant to Section 12002 by entities that are in the  
3 business of selling wooden batons or clubs to special police  
4 officers and uniformed security guards when engaging in  
5 transactions with those persons.

6 (15) Any instrument, ammunition, weapon, or device  
7 listed in subdivision (a), other than a short-barreled rifle  
8 or short-barreled shotgun, that is found and possessed by  
9 a person who is not prohibited from possessing firearms  
10 or ammunition pursuant to Section 12021, 12021.1, or  
11 paragraph (1) of subdivision (b) of Section 12316 of this  
12 code or Section 8100 or 8103 of the Welfare and  
13 Institutions Code and is transporting the listed item to a  
14 law enforcement agency for disposition according to law.

15 (16) The possession of any weapon, device, or  
16 ammunition, by a forensic laboratory or any authorized  
17 agent or employee thereof in the course and scope of his  
18 or her authorized activities.

19 ~~(17) A dirk or dagger that is carried in a backpack, tool~~  
20 ~~belt, tackle box, briefcase, purse, or similar container that~~  
21 ~~is used to carry or transport possessions.~~

22 (c) (1) As used in this section, a "short-barreled  
23 shotgun" means any of the following:

24 (A) A firearm which is designed or redesigned to fire  
25 a fixed shotgun shell and having a barrel or barrels of less  
26 than 18 inches in length.

27 (B) A firearm which has an overall length of less than  
28 26 inches and which is designed or redesigned to fire a  
29 fixed shotgun shell.

30 (C) Any weapon made from a shotgun (whether by  
31 alteration, modification, or otherwise) if that weapon, as  
32 modified, has an overall length of less than 26 inches or a  
33 barrel or barrels of less than 18 inches in length.

34 (D) Any device which may be readily restored to fire  
35 a fixed shotgun shell which, when so restored, is a device  
36 defined in subparagraphs (A) to (C), inclusive.

37 (E) Any part, or combination of parts, designed and  
38 intended to convert a device into a device defined in  
39 subparagraphs (A) to (C), inclusive, or any combination  
40 of parts from which a device defined in subparagraphs



1 (A) to (C), inclusive, can be readily assembled if those  
2 parts are in the possession or under the control of the  
3 same person.

4 (2) As used in this section, a "short-barreled rifle"  
5 means any of the following:

6 (A) A rifle having a barrel or barrels of less than 16  
7 inches in length.

8 (B) A rifle with an overall length of less than 26 inches.

9 (C) Any weapon made from a rifle (whether by  
10 alteration, modification, or otherwise) if that weapon as  
11 modified has an overall length of less than 26 inches or a  
12 barrel or barrels of less than 16 inches in length.

13 (D) Any device which may be readily restored to fire  
14 a fixed cartridge which, when so restored, is a device  
15 defined in subparagraphs (A) to (C), inclusive.

16 (E) Any part, or combination of parts, designed and  
17 intended to convert a device into a device defined in  
18 subparagraphs (A) to (C), inclusive, or any combination  
19 of parts from which a device defined in subparagraphs  
20 (A) to (C), inclusive, may be readily assembled if those  
21 parts are in the possession or under the control of the  
22 same person.

23 (3) As used in this section, a "nunchaku" means an  
24 instrument consisting of two or more sticks, clubs, bars or  
25 rods to be used as handles, connected by a rope, cord,  
26 wire, or chain, in the design of a weapon used in  
27 connection with the practice of a system of self-defense  
28 such as karate.

29 (4) As used in this section, a "wallet gun" means any  
30 firearm mounted or enclosed in a case, resembling a  
31 wallet, designed to be or capable of being carried in a  
32 pocket or purse, if the firearm may be fired while  
33 mounted or enclosed in the case.

34 (5) As used in this section, a "cane gun" means any  
35 firearm mounted or enclosed in a stick, staff, rod, crutch,  
36 or similar device, designed to be, or capable of being used  
37 as, an aid in walking, if the firearm may be fired while  
38 mounted or enclosed therein.

39 (6) As used in this section, a "fléchette dart" means a  
40 dart, capable of being fired from a firearm, which

1 measures approximately one inch in length, with tail fins  
2 which take up five-sixteenths of an inch of the body.

3 (7) As used in this section, "metal knuckles" means  
4 any device or instrument made wholly or partially of  
5 metal which is worn for purposes of offense or defense in  
6 or on the hand and which either protects the wearer's  
7 hand while striking a blow or increases the force of impact  
8 from the blow or injury to the individual receiving the  
9 blow. The metal contained in the device may help  
10 support the hand or fist, provide a shield to protect it, or  
11 consist of projections or studs which would contact the  
12 individual receiving a blow.

13 (8) As used in this section, a "ballistic knife" means a  
14 device that propels a knifelike blade as a projectile by  
15 means of a coil spring, elastic material, or compressed gas.  
16 Ballistic knife does not include any device which propels  
17 an arrow or a bolt by means of any common bow,  
18 compound bow, crossbow, or underwater spear gun.

19 (9) As used in this section, a "camouflaging firearm  
20 container" means a container which meets all of the  
21 following criteria:

22 (A) It is designed and intended to enclose a firearm.

23 (B) It is designed and intended to allow the firing of  
24 the enclosed firearm by external controls while the  
25 firearm is in the container.

26 (C) It is not readily recognizable as containing a  
27 firearm.

28 "Camouflaging firearm container" does not include  
29 any camouflaging covering used while engaged in lawful  
30 hunting or while going to or returning from a lawful  
31 hunting expedition.

32 (10) As used in this section, a "zip gun" means any  
33 weapon or device which meets all of the following  
34 criteria:

35 (A) It was not imported as a firearm by an importer  
36 licensed pursuant to Chapter 44 (commencing with  
37 Section 921) of Title 18 of the United States Code and the  
38 regulations issued pursuant thereto.

39 (B) It was not originally designed to be a firearm by a  
40 manufacturer licensed pursuant to Chapter 44

1 (commencing with Section 921) of Title 18 of the United  
2 States Code and the regulations issued pursuant thereto.

3 (C) No tax was paid on the weapon or device nor was  
4 an exemption from paying tax on that weapon or device  
5 granted under Section 4181 and subchapters F  
6 (commencing with Section 4216) and G (commencing  
7 with Section 4221) of Chapter 32 of Title 26 of the United  
8 States Code, as amended, and the regulations issued  
9 pursuant thereto.

10 (D) It is made or altered to expel a projectile by the  
11 force of an explosion or other form of combustion.

12 (11) As used in this section, a "shuriken" means any  
13 instrument, without handles, consisting of a metal plate  
14 having three or more radiating points with one or more  
15 sharp edges and designed in the shape of a polygon,  
16 trefoil, cross, star, diamond, or other geometric shape for  
17 use as a weapon for throwing.

18 (12) As used in this section, an "unconventional pistol"  
19 means a firearm that does not have a rifled bore and has  
20 a barrel or barrels of less than 18 inches in length or has  
21 an overall length of less than 26 inches.

22 (13) As used in this section, a "belt buckle knife" is a  
23 knife which is made an integral part of a belt buckle and  
24 consists of a blade with a length of at least 2<sup>1</sup>/<sub>2</sub> inches.

25 (14) As used in this section, a "lipstick case knife"  
26 means a knife enclosed within and made an integral part  
27 of a lipstick case.

28 (15) As used in this section, a "cane sword" means a  
29 cane, swagger stick, stick, staff, rod, pole, umbrella, or  
30 similar device, having concealed within it a blade that  
31 may be used as a sword or stiletto.

32 (16) As used in this section, a "shobi-zue" means a staff,  
33 crutch, stick, rod, or pole concealing a knife or blade  
34 within it which may be exposed by a flip of the wrist or  
35 by a mechanical action.

36 (17) As used in this section, a "leaded cane" means a  
37 staff, crutch, stick, rod, pole, or similar device,  
38 unnaturally weighted with lead.

39 (18) As used in this section, an "air gauge knife" means  
40 a device that appears to be an air gauge but has concealed

1 within it a pointed, metallic shaft that is designed to be a  
2 stabbing instrument which is exposed by mechanical  
3 action or gravity which locks into place when extended.

4 (19) As used in this section, a "writing pen knife"  
5 means a device that appears to be a writing pen but has  
6 concealed within it a pointed, metallic shaft that is  
7 designed to be a stabbing instrument which is exposed by  
8 mechanical action or gravity which locks into place when  
9 extended or the pointed, metallic shaft is exposed by the  
10 removal of the cap or cover on the device.

11 (20) As used in this section, a "rifle" means a weapon  
12 designed or redesigned, made or remade, and intended  
13 to be fired from the shoulder and designed or redesigned  
14 and made or remade to use the energy of the explosive in  
15 a fixed cartridge to fire only a single projectile through a  
16 rifled bore for each single pull of the trigger.

17 (21) As used in this section, a "shotgun" means a  
18 weapon designed or redesigned, made or remade, and  
19 intended to be fired from the shoulder and designed or  
20 redesigned and made or remade to use the energy of the  
21 explosive in a fixed shotgun shell to fire through a smooth  
22 bore either a number of projectiles (ball shot) or a single  
23 projectile for each pull of the trigger.

24 (22) As used in this section, an "undetectable firearm"  
25 means any weapon which meets one of the following  
26 requirements:

27 (A) When, after removal of grips, stocks, and  
28 magazines, it is not as detectable as the Security  
29 Exemplar, by walk-through metal detectors calibrated  
30 and operated to detect the Security Exemplar.

31 (B) When any major component of which, when  
32 subjected to inspection by the types of X-ray machines  
33 commonly used at airports, does not generate an image  
34 that accurately depicts the shape of the component.  
35 Barium sulfate or other compounds may be used in the  
36 fabrication of the component.

37 (C) For purposes of this paragraph, the terms  
38 "firearm," "major component," and "Security Exemplar"  
39 have the same meanings as those terms are defined in  
40 Section 922 of Title 18 of the United States Code.

1 All firearm detection equipment newly installed in  
2 nonfederal public buildings in this state shall be of a type  
3 identified by either the United States Attorney General,  
4 the Secretary of Transportation, or the Secretary of the  
5 Treasury, as appropriate, as available state-of-the-art  
6 equipment capable of detecting an undetectable firearm,  
7 as defined, while distinguishing innocuous metal objects  
8 likely to be carried on one's person sufficient for  
9 reasonable passage of the public.

10 (23) As used in this section, a "multiburst trigger  
11 activator" means one of the following devices:

12 (A) A device designed or redesigned to be attached to  
13 a semiautomatic firearm which allows the firearm to  
14 discharge two or more shots in a burst by activating the  
15 device.

16 (B) A manual or power-driven trigger activating  
17 device constructed and designed so that when attached  
18 to a semiautomatic firearm it increases the rate of fire of  
19 that firearm.

20 (24) As used in this section, a "dirk" or "dagger" means  
21 a knife or other instrument with or without a handguard  
22 that is capable of ready use as a stabbing weapon that may  
23 inflict great bodily injury or death. A nonlocking folding  
24 knife, a folding knife that is not prohibited by Section  
25 653k, or a pocketknife is capable of ready use as a stabbing  
26 weapon that may inflict great bodily injury or death only  
27 if the blade of the knife is exposed and locked into  
28 position.

29 (d) Knives carried in sheaths which are worn openly  
30 suspended from the waist of the wearer are not concealed  
31 within the meaning of this section.

32 SEC. 2. Section 12021 of the Penal Code is amended  
33 to read:

34 12021. (a) (1) Any person who has been convicted  
35 of a felony under the laws of the United States, of the State  
36 of California, or any other state, government, or country,  
37 or of an offense enumerated in subdivision (a), (b), or (d)  
38 of Section 12001.6, or who is addicted to the use of any  
39 narcotic drug, who owns or has in his or her possession or

AMENDED IN SENATE JUNE 23, 1997  
AMENDED IN SENATE JUNE 17, 1997  
AMENDED IN SENATE MAY 29, 1997  
AMENDED IN ASSEMBLY MARCH 20, 1997  
AMENDED IN ASSEMBLY MARCH 17, 1997

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 78**

**Introduced by Assembly Member Granlund**

December 18, 1996

---

An act to amend Sections ~~626.10~~, 12020, 12021, 12026.2, 12076, 12092, 12094, 12201, 12316, and 12322 of the Penal Code, and to amend Section 8103 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 78, as amended, Granlund. Firearms: transporting exemption.

(1) Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. Existing law also provides exemptions for the possession of handgun ammunition.

This bill would add to these exemptions both of the following:

(a) The circumstance where any of these weapons, firearms other than a short-barreled rifle or short-barreled

shotgun, or ammunition is found and possessed by a person who is not in a specified prohibited class and is transporting the weapon, firearm, or device to a law enforcement agency for disposition according to law.

(b) The possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(2) Under existing law, one of the weapons subject to the prohibition described in (1) above is a dirk or dagger that is carried concealed upon the person. For purposes of this prohibition, a dirk or dagger is defined as 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.

This bill would specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(3) Under existing law, any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill would instead permit any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.

(4) Existing law provides that no person prohibited by state law from owning or processing a firearm shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

This bill would specify conditions that justify a violation of this prohibition.

(5) Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration to buy, receive, dispose of, sell, or possess any pistol, revolver, or

other firearm with changed, altered, or obliterated identification marks.

This bill would exempt from this provision persons in specified classes, including certain on-duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

(6) Under existing law, any person who, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, and is taken into custody in an evaluation facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation, is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of 5 years after release from the facility. Existing law also applies this prohibition if the person detained pursuant to this provision is certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism.

This bill would repeal this prohibition as it applies to a person who is detained for treatment and evaluation for a period not to exceed 72 hours. The bill also would make conforming changes.

*(7) This bill would incorporate additional changes in Section 12316 of the Penal Code proposed by AB 1221, to be operative if AB 1221 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.*

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 626.10 of the Penal Code is~~  
2 ~~amended to read:~~  
3 ~~626.10. (a) Any person, except a duly appointed~~  
4 ~~peace officer as defined in Chapter 4.5 (commencing~~  
5 ~~with Section 830) of Title 3 of Part 2, a full-time paid peace~~  
6 ~~officer of another state or the federal government who is~~  
7 ~~carrying out official duties while in this state, a person~~  
8 ~~summoned by any officer to assist in making arrests or~~



1 ~~preserving the peace while the person is actually engaged~~  
2 ~~in assisting any officer, or a member of the military forces~~  
3 ~~of this state or the United States who is engaged in the~~  
4 ~~performance of his or her duties, who brings or possesses~~  
5 ~~any dirk, dagger, ice pick, knife having a blade longer~~  
6 ~~than 2<sup>1</sup>/<sub>2</sub> inches, folding knife with a blade that locks into~~  
7 ~~place, a razor with an unguarded blade, a taser, or a stun~~  
8 ~~gun, as defined in subdivision (a) of Section 244.5, any~~  
9 ~~instrument that expels a metallic projectile such as a BB~~  
10 ~~or a pellet, through the force of air pressure, CO<sub>2</sub>~~  
11 ~~pressure, or spring action, or any spot marker gun, upon~~  
12 ~~the grounds of, or within, any public or private school~~  
13 ~~providing instruction in kindergarten or any of grades 1~~  
14 ~~to 12, inclusive, is guilty of a public offense, punishable by~~  
15 ~~imprisonment in a county jail not exceeding one year, or~~  
16 ~~by imprisonment in the state prison.~~

17 (b) ~~Any person, except a duly appointed peace officer~~  
18 ~~as defined in Chapter 4.5 (commencing with Section 830)~~  
19 ~~of Title 3 of Part 2, a full-time paid peace officer of another~~  
20 ~~state or the federal government who is carrying out~~  
21 ~~official duties while in this state, a person summoned by~~  
22 ~~any officer to assist in making arrests or preserving the~~  
23 ~~peace while the person is actually engaged in assisting any~~  
24 ~~officer, or a member of the military forces of this state or~~  
25 ~~the United States who is engaged in the performance of~~  
26 ~~his or her duties, who brings or possesses any dirk, dagger,~~  
27 ~~ice pick, or knife having a fixed blade longer than 2<sup>1</sup>/<sub>2</sub>~~  
28 ~~inches upon the grounds of, or within, any private~~  
29 ~~university, the University of California, the California~~  
30 ~~State University, or the California Community Colleges~~  
31 ~~is guilty of a public offense, punishable by imprisonment~~  
32 ~~in a county jail not exceeding one year, or by~~  
33 ~~imprisonment in the state prison.~~

34 (c) ~~Subdivisions (a) and (b) do not apply to any~~  
35 ~~person who brings or possesses a knife having a blade~~  
36 ~~longer than 2<sup>1</sup>/<sub>2</sub> inches or a razor with an unguarded~~  
37 ~~blade upon the grounds of, or within, a public or private~~  
38 ~~school providing instruction in kindergarten or any of~~  
39 ~~grades 1 to 12, inclusive, or any private university, state~~  
40 ~~university, or community college at the direction of a~~

1 ~~faculty member of the private university, state university,~~  
2 ~~or community college, or a certificated or classified~~  
3 ~~employee of the school for use in a private university,~~  
4 ~~state university, community college, or school-sponsored~~  
5 ~~activity or class.~~

6 ~~(d) Subdivisions (a) and (b) do not apply to any~~  
7 ~~person who brings or possesses an ice pick, a knife having~~  
8 ~~a blade longer than 2½ inches, or a razor with an~~  
9 ~~unguarded blade upon the grounds of, or within, a public~~  
10 ~~or private school providing instruction in kindergarten or~~  
11 ~~any of grades 1 to 12, inclusive, or any private university,~~  
12 ~~state university, or community college for a lawful~~  
13 ~~purpose within the scope of the person's employment.~~

14 ~~(e) Subdivision (b) does not apply to any person who~~  
15 ~~brings or possesses an ice pick or a knife having a fixed~~  
16 ~~blade longer than 2½ inches upon the grounds of, or~~  
17 ~~within, any private university, state university, or~~  
18 ~~community college for lawful use in or around a residence~~  
19 ~~or residential facility located upon those grounds or for~~  
20 ~~lawful use in food preparation or consumption.~~

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

29 ~~(g) Any certificated or classified employee or school~~  
30 ~~peace officer of a public or private school providing~~  
31 ~~instruction in kindergarten or any of grades 1 to 12,~~  
32 ~~inclusive, may seize any of the weapons described in~~  
33 ~~subdivision (a), and any certificated or classified~~  
34 ~~employee or school peace officer of any private~~  
35 ~~university, state university, or community college may~~  
36 ~~seize any of the weapons described in subdivision (b),~~  
37 ~~from the possession of any person upon the grounds of, or~~  
38 ~~within, the school if he or she knows, or has reasonable~~  
39 ~~cause to know, the person is prohibited from bringing or~~

1 ~~possessing the weapon upon the grounds of, or within, the~~  
2 ~~school.~~

3 ~~(h) As used in this section, "dirk" or "dagger" means~~  
4 ~~a knife or other instrument with or without a handguard~~  
5 ~~that is capable of ready use as a stabbing weapon that may~~  
6 ~~inflict great bodily injury or death. A nonlocking folding~~  
7 ~~knife, a folding knife that is not prohibited by Section~~  
8 ~~653k, or a pocketknife is capable of ready use as a stabbing~~  
9 ~~weapon that may inflict great bodily injury or death only~~  
10 ~~if the blade of the knife is exposed and locked into~~  
11 ~~position.~~

12 ~~SEC. 1.5.~~

13 *SECTION 1.* Section 12020 of the Penal Code is  
14 amended to read:

15 12020. (a) Any person in this state who manufactures  
16 or causes to be manufactured, imports into the state,  
17 keeps for sale, or offers or exposes for sale, or who gives,  
18 lends, or possesses any cane gun or wallet gun, any  
19 undetectable firearm, any firearm which is not  
20 immediately recognizable as a firearm, any camouflaging  
21 firearm container, any ammunition which contains or  
22 consists of any fléchette dart, any bullet containing or  
23 carrying an explosive agent, any ballistic knife, any  
24 multiburst trigger activator, any nunchaku, any  
25 short-barreled shotgun, any short-barreled rifle, any  
26 metal knuckles, any belt buckle knife, any leaded cane,  
27 any zip gun, any shuriken, any unconventional pistol, any  
28 lipstick case knife, any cane sword, any shobi-zue, any air  
29 gauge knife, any writing pen knife, or any instrument or  
30 weapon of the kind commonly known as a blackjack,  
31 slungshot, billy, sandclub, sap, or sandbag, or who carries  
32 concealed upon his or her person any explosive substance,  
33 other than fixed ammunition, or who carries concealed  
34 upon his or her person any dirk or dagger is punishable  
35 by imprisonment in a county jail not exceeding one year  
36 or in the state prison. A bullet containing or carrying an  
37 explosive agent is not a destructive device as that term is  
38 used in Section 12301.

39 (b) Subdivision (a) does not apply to any of the  
40 following:

1 (1) The sale to, purchase by, or possession of  
2 short-barreled shotguns or short-barreled rifles by police  
3 departments, sheriffs' offices, marshals' offices, the  
4 California Highway Patrol, the Department of Justice, or  
5 the military or naval forces of this state or of the United  
6 States for use in the discharge of their official duties or the  
7 possession of short-barreled shotguns and short-barreled  
8 rifles by regular, salaried, full-time members of a police  
9 department, sheriff's office, marshal's office, the  
10 California Highway Patrol, or the Department of Justice  
11 when on duty and the use is authorized by the agency and  
12 is within the course and scope of their duties.

13 (2) The manufacture, possession, transportation or  
14 sale of short-barreled shotguns or short-barreled rifles  
15 when authorized by the Department of Justice pursuant  
16 to Article 6 (commencing with Section 12095) of this  
17 chapter and not in violation of federal law.

18 (3) The possession of a nunchaku on the premises of a  
19 school which holds a regulatory or business license and  
20 teaches the arts of self-defense.

21 (4) The manufacture of a nunchaku for sale to, or the  
22 sale of a nunchaku to, a school which holds a regulatory  
23 or business license and teaches the arts of self-defense.

24 (5) Any antique firearm. For purposes of this section,  
25 "antique firearm" means any firearm not designed or  
26 redesigned for using rimfire or conventional center fire  
27 ignition with fixed ammunition and manufactured in or  
28 before 1898 (including any matchlock, flintlock,  
29 percussion cap, or similar type of ignition system or  
30 replica thereof, whether actually manufactured before or  
31 after the year 1898) and also any firearm using fixed  
32 ammunition manufactured in or before 1898, for which  
33 ammunition is no longer manufactured in the United  
34 States and is not readily available in the ordinary channels  
35 of commercial trade.

36 (6) Tracer ammunition manufactured for use in  
37 shotguns.

38 (7) Any firearm or ammunition which is a curio or relic  
39 as defined in Section 178.11 of Title 27 of the Code of  
40 Federal Regulations and which is in the possession of a

1 person permitted to possess the items pursuant to  
2 Chapter 44 (commencing with Section 921) of Title 18 of  
3 the United States Code and the regulations issued  
4 pursuant thereto. Any person prohibited by Section  
5 12021, 12021.1, or 12101 of this code or Section 8100 or 8103  
6 of the Welfare and Institutions Code from possessing  
7 firearms or ammunition who obtains title to these items  
8 by bequest or intestate succession may retain title for not  
9 more than one year, but actual possession of these items  
10 at any time is punishable pursuant to Section 12021,  
11 12021.1, or 12101 of this code or Section 8100 or 8103 of the  
12 Welfare and Institutions Code. Within the year the  
13 person shall transfer title to the firearms or ammunition  
14 by sale, gift, or other disposition. Any person who violates  
15 this paragraph is in violation of subdivision (a).

16 (8) Any other weapon as defined in subsection (e) of  
17 Section 5845 of Title 26 of the United States Code and  
18 which is in the possession of a person permitted to possess  
19 the weapons pursuant to the federal Gun Control Act of  
20 1968 (Public Law 90-618), as amended, and the  
21 regulations issued pursuant thereto. Any person  
22 prohibited by Section 12021, 12021.1, or 12101 of this code  
23 or Section 8100 or 8103 of the Welfare and Institutions  
24 Code from possessing these weapons who obtains title to  
25 these weapons by bequest or intestate succession may  
26 retain title for not more than one year, but actual  
27 possession of these weapons at any time is punishable  
28 pursuant to Section 12021, 12021.1, or 12101 of this code or  
29 Section 8100 or 8103 of the Welfare and Institutions Code.  
30 Within the year, the person shall transfer title to the  
31 weapons by sale, gift, or other disposition. Any person  
32 who violates this paragraph is in violation of subdivision  
33 (a). The exemption provided in this subdivision does not  
34 apply to pen guns.

35 (9) Instruments or devices that are possessed by  
36 federal, state, and local historical societies, museums, and  
37 institutional collections which are open to the public,  
38 provided that these instruments or devices are properly  
39 housed, secured from unauthorized handling, and, if the  
40 instrument or device is a firearm, unloaded.

1 (10) Instruments or devices, other than short-barreled  
2 shotguns or short-barreled rifles, that are possessed or  
3 utilized during the course of a motion picture, television,  
4 or video production or entertainment event by an  
5 authorized participant therein in the course of making  
6 that production or event or by an authorized employee  
7 or agent of the entity producing that production or event.

8 (11) Instruments or devices, other than short-barreled  
9 shotguns or short-barreled rifles, that are sold by,  
10 manufactured by, exposed or kept for sale by, possessed  
11 by, imported by, or lent by persons who are in the  
12 business of selling instruments or devices listed in  
13 subdivision (a) solely to the entities referred in  
14 paragraphs (9) and (10) when engaging in transactions  
15 with those entities.

16 (12) The sale to, possession of, or purchase of any  
17 weapon, device, or ammunition, other than a  
18 short-barreled rifle or short-barreled shotgun, by any  
19 federal, state, county, city and county, or city agency that  
20 is charged with the enforcement of any law for use in the  
21 discharge of their official duties, or the possession of any  
22 weapon, device, or ammunition, other than a  
23 short-barreled rifle or short-barreled shotgun, by peace  
24 officers thereof when on duty and the use is authorized  
25 by the agency and is within the course and scope of their  
26 duties.

27 (13) Weapons, devices, and ammunition, other than a  
28 short-barreled rifle or short-barreled shotgun, that are  
29 sold by, manufactured by, exposed, or kept for sale by,  
30 possessed by, imported by, or lent by, persons who are in  
31 the business of selling weapons, devices, and ammunition  
32 listed in subdivision (a) solely to the entities referred to  
33 in paragraph (12) when engaging in transactions with  
34 those entities.

35 (14) The manufacture for, sale to, exposing or keeping  
36 for sale to, importation of, or lending of wooden clubs or  
37 batons to special police officers or uniformed security  
38 guards authorized to carry any wooden club or baton  
39 pursuant to Section 12002 by entities that are in the  
40 business of selling wooden batons or clubs to special police

1 officers and uniformed security guards when engaging in  
2 transactions with those persons.

3 (15) Any instrument, ammunition, weapon, or device  
4 listed in subdivision (a), other than a short-barreled rifle  
5 or short-barreled shotgun, that is found and possessed by  
6 a person who is not prohibited from possessing firearms  
7 or ammunition pursuant to Section 12021, 12021.1, or  
8 paragraph (1) of subdivision (b) of Section 12316 of this  
9 code or Section 8100 or 8103 of the Welfare and  
10 Institutions Code and is transporting the listed item to a  
11 law enforcement agency for disposition according to law.

12 (16) The possession of any weapon, device, or  
13 ammunition, by a forensic laboratory or any authorized  
14 agent or employee thereof in the course and scope of his  
15 or her authorized activities.

16 (c) (1) As used in this section, a "short-barreled  
17 shotgun" means any of the following:

18 (A) A firearm which is designed or redesigned to fire  
19 a fixed shotgun shell and having a barrel or barrels of less  
20 than 18 inches in length.

21 (B) A firearm which has an overall length of less than  
22 26 inches and which is designed or redesigned to fire a  
23 fixed shotgun shell.

24 (C) Any weapon made from a shotgun (whether by  
25 alteration, modification, or otherwise) if that weapon, as  
26 modified, has an overall length of less than 26 inches or a  
27 barrel or barrels of less than 18 inches in length.

28 (D) Any device which may be readily restored to fire  
29 a fixed shotgun shell which, when so restored, is a device  
30 defined in subparagraphs (A) to (C), inclusive.

31 (E) Any part, or combination of parts, designed and  
32 intended to convert a device into a device defined in  
33 subparagraphs (A) to (C), inclusive, or any combination  
34 of parts from which a device defined in subparagraphs  
35 (A) to (C), inclusive, can be readily assembled if those  
36 parts are in the possession or under the control of the  
37 same person.

38 (2) As used in this section, a "short-barreled rifle"  
39 means any of the following:

- 1 (A) A rifle having a barrel or barrels of less than 16  
2 inches in length.
- 3 (B) A rifle with an overall length of less than 26 inches.
- 4 (C) Any weapon made from a rifle (whether by  
5 alteration, modification, or otherwise) if that weapon as  
6 modified has an overall length of less than 26 inches or a  
7 barrel or barrels of less than 16 inches in length.
- 8 (D) Any device which may be readily restored to fire  
9 a fixed cartridge which, when so restored, is a device  
10 defined in subparagraphs (A) to (C), inclusive.
- 11 (E) Any part, or combination of parts, designed and  
12 intended to convert a device into a device defined in  
13 subparagraphs (A) to (C), inclusive, or any combination  
14 of parts from which a device defined in subparagraphs  
15 (A) to (C), inclusive, may be readily assembled if those  
16 parts are in the possession or under the control of the  
17 same person.
- 18 (3) As used in this section, a "nunchaku" means an  
19 instrument consisting of two or more sticks, clubs, bars or  
20 rods to be used as handles, connected by a rope, cord,  
21 wire, or chain, in the design of a weapon used in  
22 connection with the practice of a system of self-defense  
23 such as karate.
- 24 (4) As used in this section, a "wallet gun" means any  
25 firearm mounted or enclosed in a case, resembling a  
26 wallet, designed to be or capable of being carried in a  
27 pocket or purse, if the firearm may be fired while  
28 mounted or enclosed in the case.
- 29 (5) As used in this section, a "cane gun" means any  
30 firearm mounted or enclosed in a stick, staff, rod, crutch,  
31 or similar device, designed to be, or capable of being used  
32 as, an aid in walking, if the firearm may be fired while  
33 mounted or enclosed therein.
- 34 (6) As used in this section, a "fléchette dart" means a  
35 dart, capable of being fired from a firearm, which  
36 measures approximately one inch in length, with tail fins  
37 which take up five-sixteenths of an inch of the body.
- 38 (7) As used in this section, "metal knuckles" means  
39 any device or instrument made wholly or partially of  
40 metal which is worn for purposes of offense or defense in



1 or on the hand and which either protects the wearer's  
2 hand while striking a blow or increases the force of impact  
3 from the blow or injury to the individual receiving the  
4 blow. The metal contained in the device may help  
5 support the hand or fist, provide a shield to protect it, or  
6 consist of projections or studs which would contact the  
7 individual receiving a blow.

8 (8) As used in this section, a "ballistic knife" means a  
9 device that propels a knifelike blade as a projectile by  
10 means of a coil spring, elastic material, or compressed gas.  
11 Ballistic knife does not include any device which propels  
12 an arrow or a bolt by means of any common bow,  
13 compound bow, crossbow, or underwater spear gun.

14 (9) As used in this section, a "camouflaging firearm  
15 container" means a container which meets all of the  
16 following criteria:

17 (A) It is designed and intended to enclose a firearm.

18 (B) It is designed and intended to allow the firing of  
19 the enclosed firearm by external controls while the  
20 firearm is in the container.

21 (C) It is not readily recognizable as containing a  
22 firearm.

23 "Camouflaging firearm container" does not include  
24 any camouflaging covering used while engaged in lawful  
25 hunting or while going to or returning from a lawful  
26 hunting expedition.

27 (10) As used in this section, a "zip gun" means any  
28 weapon or device which meets all of the following  
29 criteria:

30 (A) It was not imported as a firearm by an importer  
31 licensed pursuant to Chapter 44 (commencing with  
32 Section 921) of Title 18 of the United States Code and the  
33 regulations issued pursuant thereto.

34 (B) It was not originally designed to be a firearm by a  
35 manufacturer licensed pursuant to Chapter 44  
36 (commencing with Section 921) of Title 18 of the United  
37 States Code and the regulations issued pursuant thereto.

38 (C) No tax was paid on the weapon or device nor was  
39 an exemption from paying tax on that weapon or device  
40 granted under Section 4181 and subchapters F

1 (commencing with Section 4216) and G (commencing  
2 with Section 4221) of Chapter 32 of Title 26 of the United  
3 States Code, as amended, and the regulations issued  
4 pursuant thereto.

5 (D) It is made or altered to expel a projectile by the  
6 force of an explosion or other form of combustion.

7 (11) As used in this section, a "shuriken" means any  
8 instrument, without handles, consisting of a metal plate  
9 having three or more radiating points with one or more  
10 sharp edges and designed in the shape of a polygon,  
11 trefoil, cross, star, diamond, or other geometric shape for  
12 use as a weapon for throwing.

13 (12) As used in this section, an "unconventional pistol"  
14 means a firearm that does not have a rifled bore and has  
15 a barrel or barrels of less than 18 inches in length or has  
16 an overall length of less than 26 inches.

17 (13) As used in this section, a "belt buckle knife" is a  
18 knife which is made an integral part of a belt buckle and  
19 consists of a blade with a length of at least 2<sup>1</sup>/<sub>2</sub> inches.

20 (14) As used in this section, a "lipstick case knife"  
21 means a knife enclosed within and made an integral part  
22 of a lipstick case.

23 (15) As used in this section, a "cane sword" means a  
24 cane, swagger stick, stick, staff, rod, pole, umbrella, or  
25 similar device, having concealed within it a blade that  
26 may be used as a sword or stiletto.

27 (16) As used in this section, a "shobi-zue" means a staff,  
28 crutch, stick, rod, or pole concealing a knife or blade  
29 within it which may be exposed by a flip of the wrist or  
30 by a mechanical action.

31 (17) As used in this section, a "leaded cane" means a  
32 staff, crutch, stick, rod, pole, or similar device,  
33 unnaturally weighted with lead.

34 (18) As used in this section, an "air gauge knife" means  
35 a device that appears to be an air gauge but has concealed  
36 within it a pointed, metallic shaft that is designed to be a  
37 stabbing instrument which is exposed by mechanical  
38 action or gravity which locks into place when extended.

39 (19) As used in this section, a "writing pen knife"  
40 means a device that appears to be a writing pen but has

1 concealed within it a pointed, metallic shaft that is  
2 designed to be a stabbing instrument which is exposed by  
3 mechanical action or gravity which locks into place when  
4 extended or the pointed, metallic shaft is exposed by the  
5 removal of the cap or cover on the device.

6 (20) As used in this section, a "rifle" means a weapon  
7 designed or redesigned, made or remade, and intended  
8 to be fired from the shoulder and designed or redesigned  
9 and made or remade to use the energy of the explosive in  
10 a fixed cartridge to fire only a single projectile through a  
11 rifled bore for each single pull of the trigger.

12 (21) As used in this section, a "shotgun" means a  
13 weapon designed or redesigned, made or remade, and  
14 intended to be fired from the shoulder and designed or  
15 redesigned and made or remade to use the energy of the  
16 explosive in a fixed shotgun shell to fire through a smooth  
17 bore either a number of projectiles (ball shot) or a single  
18 projectile for each pull of the trigger.

19 (22) As used in this section, an "undetectable firearm"  
20 means any weapon which meets one of the following  
21 requirements:

22 (A) When, after removal of grips, stocks, and  
23 magazines, it is not as detectable as the Security  
24 Exemplar, by walk-through metal detectors calibrated  
25 and operated to detect the Security Exemplar.

26 (B) When any major component of which, when  
27 subjected to inspection by the types of X-ray machines  
28 commonly used at airports, does not generate an image  
29 that accurately depicts the shape of the component.  
30 Barium sulfate or other compounds may be used in the  
31 fabrication of the component.

32 (C) For purposes of this paragraph, the terms  
33 "firearm," "major component," and "Security Exemplar"  
34 have the same meanings as those terms are defined in  
35 Section 922 of Title 18 of the United States Code.

36 All firearm detection equipment newly installed in  
37 nonfederal public buildings in this state shall be of a type  
38 identified by either the United States Attorney General,  
39 the Secretary of Transportation, or the Secretary of the  
40 Treasury, as appropriate, as available state-of-the-art

1 equipment capable of detecting an undetectable firearm,  
2 as defined, while distinguishing innocuous metal objects  
3 likely to be carried on one's person sufficient for  
4 reasonable passage of the public.

5 (23) As used in this section, a "multiburst trigger  
6 activator" means one of the following devices:

7 (A) A device designed or redesigned to be attached to  
8 a semiautomatic firearm which allows the firearm to  
9 discharge two or more shots in a burst by activating the  
10 device.

11 (B) A manual or power-driven trigger activating  
12 device constructed and designed so that when attached  
13 to a semiautomatic firearm it increases the rate of fire of  
14 that firearm.

15 (24) As used in this section, a "dirk" or "dagger" means  
16 a knife or other instrument with or without a handguard  
17 that is capable of ready use as a stabbing weapon that may  
18 inflict great bodily injury or death. A nonlocking folding  
19 knife, a folding knife that is not prohibited by Section  
20 653k, or a pocketknife is capable of ready use as a stabbing  
21 weapon that may inflict great bodily injury or death only  
22 if the blade of the knife is exposed and locked into  
23 position.

24 (d) Knives carried in sheaths which are worn openly  
25 suspended from the waist of the wearer are not concealed  
26 within the meaning of this section.

27 SEC. 2. Section 12021 of the Penal Code is amended  
28 to read:

29 12021. (a) (1) Any person who has been convicted  
30 of a felony under the laws of the United States, of the State  
31 of California, or any other state, government, or country,  
32 or of an offense enumerated in subdivision (a), (b), or (d)  
33 of Section 12001.6, or who is addicted to the use of any  
34 narcotic drug, who owns or has in his or her possession or  
35 under his or her custody or control any firearm is guilty  
36 of a felony.

37 (2) Any person who has two or more convictions for  
38 violating paragraph (2) of subdivision (a) of Section 417  
39 and who owns or has in his or her possession or under his  
40 or her custody or control any firearm is guilty of a felony.

AMENDED IN SENATE JUNE 30, 1997  
AMENDED IN SENATE JUNE 23, 1997  
AMENDED IN SENATE JUNE 17, 1997  
AMENDED IN SENATE MAY 29, 1997  
AMENDED IN ASSEMBLY MARCH 20, 1997  
AMENDED IN ASSEMBLY MARCH 17, 1997

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 78**

**Introduced by Assembly Member Granlund**

December 18, 1996

---

An act to amend Sections 12020, 12021, 12026.2, ~~12076~~, 12092, 12094, 12201, 12316, and 12322 of the Penal Code, and to amend ~~Section 8103 of the Welfare and Institutions Code~~, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 78, as amended, Granlund. Firearms: transporting exemption.

(1) Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. Existing law also provides exemptions for the possession of handgun ammunition.

This bill would add to these exemptions both of the following:

(a) The circumstance where any of these weapons, firearms other than a short-barreled rifle or short-barreled shotgun, or ammunition is found and possessed by a person who is not in a specified prohibited class and is transporting the weapon, firearm, or device to a law enforcement agency for disposition according to law.

(b) The possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(2) Under existing law, one of the weapons subject to the prohibition described in (1) above is a dirk or dagger that is carried concealed upon the person. For purposes of this prohibition, a dirk or dagger is defined as 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.

This bill would specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(3) Under existing law, any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill would instead permit any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.

(4) Existing law provides that no person prohibited by state law from owning or possessing a firearm shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

This bill would specify conditions that justify a violation of this prohibition.

(5) Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill would exempt from this provision persons in specified classes, including certain on-duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

~~(6) Under existing law, any person who, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, and is taken into custody in an evaluation facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation, is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of 5 years after release from the facility. Existing law also applies this prohibition if the person detained pursuant to this provision is certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism.~~

~~This bill would repeal this prohibition as it applies to a person who is detained for treatment and evaluation for a period not to exceed 72 hours. The bill also would make conforming changes. This bill would incorporate additional changes in Section 12021 of the Penal Code proposed by AB 688, to be operative if AB 688 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.~~

(7) This bill would incorporate additional changes in Section 12316 of the Penal Code proposed by AB 1221, to be operative if AB 1221 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.

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 12020 of the Penal Code is  
2 amended to read:

3 12020. (a) Any person in this state who manufactures  
4 or causes to be manufactured, imports into the state,  
5 keeps for sale, or offers or exposes for sale, or who gives,  
6 lends, or possesses any cane gun or wallet gun, any  
7 undetectable firearm, any firearm which is not  
8 immediately recognizable as a firearm, any camouflaging  
9 firearm container, any ammunition which contains or  
10 consists of any fléchette dart, any bullet containing or  
11 carrying an explosive agent, any ballistic knife, any  
12 multiburst trigger activator, any nunchaku, any  
13 short-barreled shotgun, any short-barreled rifle, any  
14 metal knuckles, any belt buckle knife, any leaded cane,  
15 any zip gun, any shuriken, any unconventional pistol, any  
16 lipstick case knife, any cane sword, any shobi-zue, any air  
17 gauge knife, any writing pen knife, or any instrument or  
18 weapon of the kind commonly known as a blackjack,  
19 slungshot, billy, sandclub, sap, or sandbag, or who carries  
20 concealed upon his or her person any explosive substance,  
21 other than fixed ammunition, or who carries concealed  
22 upon his or her person any dirk or dagger is punishable  
23 by imprisonment in a county jail not exceeding one year  
24 or in the state prison. A bullet containing or carrying an  
25 explosive agent is not a destructive device as that term is  
26 used in Section 12301.

27 (b) Subdivision (a) does not apply to any of the  
28 following:

29 (1) The sale to, purchase by, or possession of  
30 short-barreled shotguns or short-barreled rifles by police  
31 departments, sheriffs' offices, marshals' offices, the  
32 California Highway Patrol, the Department of Justice, or  
33 the military or naval forces of this state or of the United  
34 States for use in the discharge of their official duties or the  
35 possession of short-barreled shotguns and short-barreled  
36 rifles by regular, salaried, full-time members of a police  
37 department, sheriff's office, marshal's office, the  
38 California Highway Patrol, or the Department of Justice



1 when on duty and the use is authorized by the agency and  
2 is within the course and scope of their duties.

3 (2) The manufacture, possession, transportation or  
4 sale of short-barreled shotguns or short-barreled rifles  
5 when authorized by the Department of Justice pursuant  
6 to Article 6 (commencing with Section 12095) of this  
7 chapter and not in violation of federal law.

8 (3) The possession of a nunchaku on the premises of a  
9 school which holds a regulatory or business license and  
10 teaches the arts of self-defense.

11 (4) The manufacture of a nunchaku for sale to, or the  
12 sale of a nunchaku to, a school which holds a regulatory  
13 or business license and teaches the arts of self-defense.

14 (5) Any antique firearm. For purposes of this section,  
15 "antique firearm" means any firearm not designed or  
16 redesigned for using rimfire or conventional center fire  
17 ignition with fixed ammunition and manufactured in or  
18 before 1898 (including any matchlock, flintlock,  
19 percussion cap, or similar type of ignition system or  
20 replica thereof, whether actually manufactured before or  
21 after the year 1898) and also any firearm using fixed  
22 ammunition manufactured in or before 1898, for which  
23 ammunition is no longer manufactured in the United  
24 States and is not readily available in the ordinary channels  
25 of commercial trade.

26 (6) Tracer ammunition manufactured for use in  
27 shotguns.

28 (7) Any firearm or ammunition which is a curio or relic  
29 as defined in Section 178.11 of Title 27 of the Code of  
30 Federal Regulations and which is in the possession of a  
31 person permitted to possess the items pursuant to  
32 Chapter 44 (commencing with Section 921) of Title 18 of  
33 the United States Code and the regulations issued  
34 pursuant thereto. Any person prohibited by Section  
35 12021, 12021.1, or 12101 of this code or Section 8100 or 8103  
36 of the Welfare and Institutions Code from possessing  
37 firearms or ammunition who obtains title to these items  
38 by bequest or intestate succession may retain title for not  
39 more than one year, but actual possession of these items  
40 at any time is punishable pursuant to Section 12021,

1 12021.1, or 12101 of this code or Section 8100 or 8103 of the  
2 Welfare and Institutions Code. Within the year the  
3 person shall transfer title to the firearms or ammunition  
4 by sale, gift, or other disposition. Any person who violates  
5 this paragraph is in violation of subdivision (a).

6 (8) Any other weapon as defined in subsection (e) of  
7 Section 5845 of Title 26 of the United States Code and  
8 which is in the possession of a person permitted to possess  
9 the weapons pursuant to the federal Gun Control Act of  
10 1968 (Public Law 90-618), as amended, and the  
11 regulations issued pursuant thereto. Any person  
12 prohibited by Section 12021, 12021.1, or 12101 of this code  
13 or Section 8100 or 8103 of the Welfare and Institutions  
14 Code from possessing these weapons who obtains title to  
15 these weapons by bequest or intestate succession may  
16 retain title for not more than one year, but actual  
17 possession of these weapons at any time is punishable  
18 pursuant to Section 12021, 12021.1, or 12101 of this code or  
19 Section 8100 or 8103 of the Welfare and Institutions Code.  
20 Within the year, the person shall transfer title to the  
21 weapons by sale, gift, or other disposition. Any person  
22 who violates this paragraph is in violation of subdivision  
23 (a). The exemption provided in this subdivision does not  
24 apply to pen guns.

25 (9) Instruments or devices that are possessed by  
26 federal, state, and local historical societies, museums, and  
27 institutional collections which are open to the public,  
28 provided that these instruments or devices are properly  
29 housed, secured from unauthorized handling, and, if the  
30 instrument or device is a firearm, unloaded.

31 (10) Instruments or devices, other than short-barreled  
32 shotguns or short-barreled rifles, that are possessed or  
33 utilized during the course of a motion picture, television,  
34 or video production or entertainment event by an  
35 authorized participant therein in the course of making  
36 that production or event or by an authorized employee  
37 or agent of the entity producing that production or event.

38 (11) Instruments or devices, other than short-barreled  
39 shotguns or short-barreled rifles, that are sold by,  
40 manufactured by, exposed or kept for sale by, possessed

1 by, imported by, or lent by persons who are in the  
2 business of selling instruments or devices listed in  
3 subdivision (a) solely to the entities referred in  
4 paragraphs (9) and (10) when engaging in transactions  
5 with those entities.

6 (12) The sale to, possession of, or purchase of any  
7 weapon, device, or ammunition, other than a  
8 short-barreled rifle or short-barreled shotgun, by any  
9 federal, state, county, city and county, or city agency that  
10 is charged with the enforcement of any law for use in the  
11 discharge of their official duties, or the possession of any  
12 weapon, device, or ammunition, other than a  
13 short-barreled rifle or short-barreled shotgun, by peace  
14 officers thereof when on duty and the use is authorized  
15 by the agency and is within the course and scope of their  
16 duties.

17 (13) Weapons, devices, and ammunition, other than a  
18 short-barreled rifle or short-barreled shotgun, that are  
19 sold by, manufactured by, exposed, or kept for sale by,  
20 possessed by, imported by, or lent by, persons who are in  
21 the business of selling weapons, devices, and ammunition  
22 listed in subdivision (a) solely to the entities referred to  
23 in paragraph (12) when engaging in transactions with  
24 those entities.

25 (14) The manufacture for, sale to, exposing or keeping  
26 for sale to, importation of, or lending of wooden clubs or  
27 batons to special police officers or uniformed security  
28 guards authorized to carry any wooden club or baton  
29 pursuant to Section 12002 by entities that are in the  
30 business of selling wooden batons or clubs to special police  
31 officers and uniformed security guards when engaging in  
32 transactions with those persons.

33 (15) Any instrument, ammunition, weapon, or device  
34 listed in subdivision (a), other than a short-barreled rifle  
35 or short-barreled shotgun, that is found and possessed by  
36 a person who is not prohibited from possessing firearms  
37 or ammunition pursuant to Section 12021, 12021.1, or  
38 paragraph (1) of subdivision (b) of Section 12316 of this  
39 code or Section 8100 or 8103 of the Welfare and

1 Institutions Code and is transporting the listed item to a  
2 law enforcement agency for disposition according to law.

3 (16) The possession of any weapon, device, or  
4 ammunition, by a forensic laboratory or any authorized  
5 agent or employee thereof in the course and scope of his  
6 or her authorized activities.

7 (c) (1) As used in this section, a "short-barreled  
8 shotgun" means any of the following:

9 (A) A firearm which is designed or redesigned to fire  
10 a fixed shotgun shell and having a barrel or barrels of less  
11 than 18 inches in length.

12 (B) A firearm which has an overall length of less than  
13 26 inches and which is designed or redesigned to fire a  
14 fixed shotgun shell.

15 (C) Any weapon made from a shotgun (whether by  
16 alteration, modification, or otherwise) if that weapon, as  
17 modified, has an overall length of less than 26 inches or a  
18 barrel or barrels of less than 18 inches in length.

19 (D) Any device which may be readily restored to fire  
20 a fixed shotgun shell which, when so restored, is a device  
21 defined in subparagraphs (A) to (C), inclusive.

22 (E) Any part, or combination of parts, designed and  
23 intended to convert a device into a device defined in  
24 subparagraphs (A) to (C), inclusive, or any combination  
25 of parts from which a device defined in subparagraphs  
26 (A) to (C), inclusive, can be readily assembled if those  
27 parts are in the possession or under the control of the  
28 same person.

29 (2) As used in this section, a "short-barreled rifle"  
30 means any of the following:

31 (A) A rifle having a barrel or barrels of less than 16  
32 inches in length.

33 (B) A rifle with an overall length of less than 26 inches.

34 (C) Any weapon made from a rifle (whether by  
35 alteration, modification, or otherwise) if that weapon as  
36 modified has an overall length of less than 26 inches or a  
37 barrel or barrels of less than 16 inches in length.

38 (D) Any device which may be readily restored to fire  
39 a fixed cartridge which, when so restored, is a device  
40 defined in subparagraphs (A) to (C), inclusive.

1 (E) Any part, or combination of parts, designed and  
2 intended to convert a device into a device defined in  
3 subparagraphs (A) to (C), inclusive, or any combination  
4 of parts from which a device defined in subparagraphs  
5 (A) to (C), inclusive, may be readily assembled if those  
6 parts are in the possession or under the control of the  
7 same person.

8 (3) As used in this section, a "nunchaku" means an  
9 instrument consisting of two or more sticks, clubs, bars or  
10 rods to be used as handles, connected by a rope, cord,  
11 wire, or chain, in the design of a weapon used in  
12 connection with the practice of a system of self-defense  
13 such as karate.

14 (4) As used in this section, a "wallet gun" means any  
15 firearm mounted or enclosed in a case, resembling a  
16 wallet, designed to be or capable of being carried in a  
17 pocket or purse, if the firearm may be fired while  
18 mounted or enclosed in the case.

19 (5) As used in this section, a "cane gun" means any  
20 firearm mounted or enclosed in a stick, staff, rod, crutch,  
21 or similar device, designed to be, or capable of being used  
22 as, an aid in walking, if the firearm may be fired while  
23 mounted or enclosed therein.

24 (6) As used in this section, a "fléchette dart" means a  
25 dart, capable of being fired from a firearm, which  
26 measures approximately one inch in length, with tail fins  
27 which take up five-sixteenths of an inch of the body.

28 (7) As used in this section, "metal knuckles" means  
29 any device or instrument made wholly or partially of  
30 metal which is worn for purposes of offense or defense in  
31 or on the hand and which either protects the wearer's  
32 hand while striking a blow or increases the force of impact  
33 from the blow or injury to the individual receiving the  
34 blow. The metal contained in the device may help  
35 support the hand or fist, provide a shield to protect it, or  
36 consist of projections or studs which would contact the  
37 individual receiving a blow.

38 (8) As used in this section, a "ballistic knife" means a  
39 device that propels a knifelike blade as a projectile by  
40 means of a coil spring, elastic material, or compressed gas.

1 Ballistic knife does not include any device which propels  
2 an arrow or a bolt by means of any common bow,  
3 compound bow, crossbow, or underwater spear gun.

4 (9) As used in this section, a "camouflaging firearm  
5 container" means a container which meets all of the  
6 following criteria:

7 (A) It is designed and intended to enclose a firearm.

8 (B) It is designed and intended to allow the firing of  
9 the enclosed firearm by external controls while the  
10 firearm is in the container.

11 (C) It is not readily recognizable as containing a  
12 firearm.

13 "Camouflaging firearm container" does not include  
14 any camouflaging covering used while engaged in lawful  
15 hunting or while going to or returning from a lawful  
16 hunting expedition.

17 (10) As used in this section, a "zip gun" means any  
18 weapon or device which meets all of the following  
19 criteria:

20 (A) It was not imported as a firearm by an importer  
21 licensed pursuant to Chapter 44 (commencing with  
22 Section 921) of Title 18 of the United States Code and the  
23 regulations issued pursuant thereto.

24 (B) It was not originally designed to be a firearm by a  
25 manufacturer licensed pursuant to Chapter 44  
26 (commencing with Section 921) of Title 18 of the United  
27 States Code and the regulations issued pursuant thereto.

28 (C) No tax was paid on the weapon or device nor was  
29 an exemption from paying tax on that weapon or device  
30 granted under Section 4181 and subchapters F  
31 (commencing with Section 4216) and G (commencing  
32 with Section 4221) of Chapter 32 of Title 26 of the United  
33 States Code, as amended, and the regulations issued  
34 pursuant thereto.

35 (D) It is made or altered to expel a projectile by the  
36 force of an explosion or other form of combustion.

37 (11) As used in this section, a "shuriken" means any  
38 instrument, without handles, consisting of a metal plate  
39 having three or more radiating points with one or more  
40 sharp edges and designed in the shape of a polygon,

1 trefoil, cross, star, diamond, or other geometric shape for  
2 use as a weapon for throwing.

3 (12) As used in this section, an "unconventional pistol"  
4 means a firearm that does not have a rifled bore and has  
5 a barrel or barrels of less than 18 inches in length or has  
6 an overall length of less than 26 inches.

7 (13) As used in this section, a "belt buckle knife" is a  
8 knife which is made an integral part of a belt buckle and  
9 consists of a blade with a length of at least 2<sup>1</sup>/<sub>2</sub> inches.

10 (14) As used in this section, a "lipstick case knife"  
11 means a knife enclosed within and made an integral part  
12 of a lipstick case.

13 (15) As used in this section, a "cane sword" means a  
14 cane, swagger stick, stick, staff, rod, pole, umbrella, or  
15 similar device, having concealed within it a blade that  
16 may be used as a sword or stiletto.

17 (16) As used in this section, a "shobi-zue" means a staff,  
18 crutch, stick, rod, or pole concealing a knife or blade  
19 within it which may be exposed by a flip of the wrist or  
20 by a mechanical action.

21 (17) As used in this section, a "leaded cane" means a  
22 staff, crutch, stick, rod, pole, or similar device,  
23 unnaturally weighted with lead.

24 (18) As used in this section, an "air gauge knife" means  
25 a device that appears to be an air gauge but has concealed  
26 within it a pointed, metallic shaft that is designed to be a  
27 stabbing instrument which is exposed by mechanical  
28 action or gravity which locks into place when extended.

29 (19) As used in this section, a "writing pen knife"  
30 means a device that appears to be a writing pen but has  
31 concealed within it a pointed, metallic shaft that is  
32 designed to be a stabbing instrument which is exposed by  
33 mechanical action or gravity which locks into place when  
34 extended or the pointed, metallic shaft is exposed by the  
35 removal of the cap or cover on the device.

36 (20) As used in this section, a "rifle" means a weapon  
37 designed or redesigned, made or remade, and intended  
38 to be fired from the shoulder and designed or redesigned  
39 and made or remade to use the energy of the explosive in

1 a fixed cartridge to fire only a single projectile through a  
2 rifled bore for each single pull of the trigger.

3 (21) As used in this section, a "shotgun" means a  
4 weapon designed or redesigned, made or remade, and  
5 intended to be fired from the shoulder and designed or  
6 redesigned and made or remade to use the energy of the  
7 explosive in a fixed shotgun shell to fire through a smooth  
8 bore either a number of projectiles (ball shot) or a single  
9 projectile for each pull of the trigger.

10 (22) As used in this section, an "undetectable firearm"  
11 means any weapon which meets one of the following  
12 requirements:

13 (A) When, after removal of grips, stocks, and  
14 magazines, it is not as detectable as the Security  
15 Exemplar, by walk-through metal detectors calibrated  
16 and operated to detect the Security Exemplar.

17 (B) When any major component of which, when  
18 subjected to inspection by the types of X-ray machines  
19 commonly used at airports, does not generate an image  
20 that accurately depicts the shape of the component.  
21 Barium sulfate or other compounds may be used in the  
22 fabrication of the component.

23 (C) For purposes of this paragraph, the terms  
24 "firearm," "major component," and "Security Exemplar"  
25 have the same meanings as those terms are defined in  
26 Section 922 of Title 18 of the United States Code.

27 All firearm detection equipment newly installed in  
28 nonfederal public buildings in this state shall be of a type  
29 identified by either the United States Attorney General,  
30 the Secretary of Transportation, or the Secretary of the  
31 Treasury, as appropriate, as available state-of-the-art  
32 equipment capable of detecting an undetectable firearm,  
33 as defined, while distinguishing innocuous metal objects  
34 likely to be carried on one's person sufficient for  
35 reasonable passage of the public.

36 (23) As used in this section, a "multiburst trigger  
37 activator" means one of the following devices:

38 (A) A device designed or redesigned to be attached to  
39 a semiautomatic firearm which allows the firearm to



1 discharge two or more shots in a burst by activating the  
2 device.

3 (B) A manual or power-driven trigger activating  
4 device constructed and designed so that when attached  
5 to a semiautomatic firearm it increases the rate of fire of  
6 that firearm.

7 (24) As used in this section, a "dirk" or "dagger" means  
8 a knife or other instrument with or without a handguard  
9 that is capable of ready use as a stabbing weapon that may  
10 inflict great bodily injury or death. A nonlocking folding  
11 knife, a folding knife that is not prohibited by Section  
12 653k, or a pocketknife is capable of ready use as a stabbing  
13 weapon that may inflict great bodily injury or death only  
14 if the blade of the knife is exposed and locked into  
15 position.

16 (d) Knives carried in sheaths which are worn openly  
17 suspended from the waist of the wearer are not concealed  
18 within the meaning of this section.

19 SEC. 2. Section 12021 of the Penal Code is amended  
20 to read:

21 12021. (a) (1) Any person who has been convicted  
22 of a felony under the laws of the United States, of the State  
23 of California, or any other state, government, or country,  
24 or of an offense enumerated in subdivision (a), (b), or (d)  
25 of Section 12001.6, or who is addicted to the use of any  
26 narcotic drug, who owns or has in his or her possession or  
27 under his or her custody or control any firearm is guilty  
28 of a felony.

29 (2) Any person who has two or more convictions for  
30 violating paragraph (2) of subdivision (a) of Section 417  
31 and who owns or has in his or her possession or under his  
32 or her custody or control any firearm is guilty of a felony.

33 (b) Notwithstanding subdivision (a), any person who  
34 has been convicted of a felony or of an offense  
35 enumerated in Section 12001.6, when that conviction  
36 results from certification by the juvenile court for  
37 prosecution as an adult in an adult court under Section  
38 707 of the Welfare and Institutions Code, who owns or has  
39 in his or her possession or under his or her custody or  
40 control any firearm is guilty of a felony.

AMENDED IN SENATE JULY 7, 1997  
AMENDED IN SENATE JUNE 30, 1997  
AMENDED IN SENATE JUNE 23, 1997  
AMENDED IN SENATE JUNE 17, 1997  
AMENDED IN SENATE MAY 29, 1997  
AMENDED IN ASSEMBLY MARCH 20, 1997  
AMENDED IN ASSEMBLY MARCH 17, 1997

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 78**

**Introduced by Assembly Member Granlund**

December 18, 1996

---

An act to amend Sections 12020, 12021, 12026.2, 12092, 12094, 12201, 12316, and 12322 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 78, as amended, Granlund. Firearms: transporting exemption.

(1) Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. Existing law also provides exemptions for the possession of handgun ammunition.

This bill would add to these exemptions ~~both~~ *all* of the following:

(a) ~~The circumstance where any of these weapons, firearms other than a short barreled rifle or short barreled shotgun, or ammunition instrument, ammunition, weapon, or device listed in these prohibitions that is not a firearm~~ is found and possessed for a specified period of time by a person who is not in a specified prohibited class and is transporting the ~~weapon, firearm,~~ or device to a law enforcement agency for disposition according to law.

(b) *Any firearm, other than a short-barrelled rifle or short-barrelled shotgun, that is found and possessed by a person under the circumstance described in (a) above who additionally has given prior notice to the law enforcement agency and is transporting the firearm in a locked container.*

(c) The possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(2) Under existing law, one of the weapons subject to the prohibition described in (1) above is a dirk or dagger that is carried concealed upon the person. For purposes of this prohibition, a dirk or dagger is defined as 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.

This bill would specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(3) Under existing law, any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill would instead permit any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.

(4) Existing law provides that no person prohibited by state law from owning or ~~possessing~~ *possessing* a firearm shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

This bill would specify conditions that justify a violation of this prohibition.

(5) Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill would exempt from this provision persons in specified classes, including certain on-duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

(6) This bill would incorporate additional changes in Section 12021 of the Penal Code proposed by AB 688, to be operative if AB 688 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.

(7) This bill would incorporate additional changes in Section 12316 of the Penal Code proposed by AB 1221, to be operative if AB 1221 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.

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 12020 of the Penal Code is  
2 amended to read:  
3 12020. (a) Any person in this state who manufactures  
4 or causes to be manufactured, imports into the state,  
5 keeps for sale, or offers or exposes for sale, or who gives,  
6 lends, or possesses any cane gun or wallet gun, any  
7 undetectable firearm, any firearm which is not  
8 immediately recognizable as a firearm, any camouflaging  
9 firearm container, any ammunition which contains or  
10 consists of any fléchette dart, any bullet containing or

1 carrying an explosive agent, any ballistic knife, any  
2 multiburst trigger activator, any nunchaku, any  
3 short-barreled shotgun, any short-barreled rifle, any  
4 metal knuckles, any belt buckle knife, any leaded cane,  
5 any zip gun, any shuriken, any unconventional pistol, any  
6 lipstick case knife, any cane sword, any shobi-zue, any air  
7 gauge knife, any writing pen knife, or any instrument or  
8 weapon of the kind commonly known as a blackjack,  
9 slungshot, billy, sandclub, sap, or sandbag, or who carries  
10 concealed upon his or her person any explosive substance,  
11 other than fixed ammunition, or who carries concealed  
12 upon his or her person any dirk or dagger is punishable  
13 by imprisonment in a county jail not exceeding one year  
14 or in the state prison. A bullet containing or carrying an  
15 explosive agent is not a destructive device as that term is  
16 used in Section 12301.

17 (b) Subdivision (a) does not apply to any of the  
18 following:

19 (1) The sale to, purchase by, or possession of  
20 short-barreled shotguns or short-barreled rifles by police  
21 departments, sheriffs' offices, marshals' offices, the  
22 California Highway Patrol, the Department of Justice, or  
23 the military or naval forces of this state or of the United  
24 States for use in the discharge of their official duties or the  
25 possession of short-barreled shotguns and short-barreled  
26 rifles by regular, salaried, full-time members of a police  
27 department, sheriff's office, marshal's office, the  
28 California Highway Patrol, or the Department of Justice  
29 when on duty and the use is authorized by the agency and  
30 is within the course and scope of their duties.

31 (2) The manufacture, possession, transportation or  
32 sale of short-barreled shotguns or short-barreled rifles  
33 when authorized by the Department of Justice pursuant  
34 to Article 6 (commencing with Section 12095) of this  
35 chapter and not in violation of federal law.

36 (3) The possession of a nunchaku on the premises of a  
37 school which holds a regulatory or business license and  
38 teaches the arts of self-defense.

1 (4) The manufacture of a nunchaku for sale to, or the  
2 sale of a nunchaku to, a school which holds a regulatory  
3 or business license and teaches the arts of self-defense.

4 (5) Any antique firearm. For purposes of this section,  
5 "antique firearm" means any firearm not designed or  
6 redesigned for using rimfire or conventional center fire  
7 ignition with fixed ammunition and manufactured in or  
8 before 1898 (including any matchlock, flintlock,  
9 percussion cap, or similar type of ignition system or  
10 replica thereof, whether actually manufactured before or  
11 after the year 1898) and also any firearm using fixed  
12 ammunition manufactured in or before 1898, for which  
13 ammunition is no longer manufactured in the United  
14 States and is not readily available in the ordinary channels  
15 of commercial trade.

16 (6) Tracer ammunition manufactured for use in  
17 shotguns.

18 (7) Any firearm or ammunition which is a curio or relic  
19 as defined in Section 178.11 of Title 27 of the Code of  
20 Federal Regulations and which is in the possession of a  
21 person permitted to possess the items pursuant to  
22 Chapter 44 (commencing with Section 921) of Title 18 of  
23 the United States Code and the regulations issued  
24 pursuant thereto. Any person prohibited by Section  
25 12021, 12021.1, or 12101 of this code or Section 8100 or 8103  
26 of the Welfare and Institutions Code from possessing  
27 firearms or ammunition who obtains title to these items  
28 by bequest or intestate succession may retain title for not  
29 more than one year, but actual possession of these items  
30 at any time is punishable pursuant to Section 12021,  
31 12021.1, or 12101 of this code or Section 8100 or 8103 of the  
32 Welfare and Institutions Code. Within the year the  
33 person shall transfer title to the firearms or ammunition  
34 by sale, gift, or other disposition. Any person who violates  
35 this paragraph is in violation of subdivision (a).

36 (8) Any other weapon as defined in subsection (e) of  
37 Section 5845 of Title 26 of the United States Code and  
38 which is in the possession of a person permitted to possess  
39 the weapons pursuant to the federal Gun Control Act of  
40 1968 (Public Law 90-618), as amended, and the

1 regulations issued pursuant thereto. Any person  
2 prohibited by Section 12021, 12021.1, or 12101 of this code  
3 or Section 8100 or 8103 of the Welfare and Institutions  
4 Code from possessing these weapons who obtains title to  
5 these weapons by bequest or intestate succession may  
6 retain title for not more than one year, but actual  
7 possession of these weapons at any time is punishable  
8 pursuant to Section 12021, 12021.1, or 12101 of this code or  
9 Section 8100 or 8103 of the Welfare and Institutions Code.  
10 Within the year, the person shall transfer title to the  
11 weapons by sale, gift, or other disposition. Any person  
12 who violates this paragraph is in violation of subdivision  
13 (a). The exemption provided in this subdivision does not  
14 apply to pen guns.

15 (9) Instruments or devices that are possessed by  
16 federal, state, and local historical societies, museums, and  
17 institutional collections which are open to the public,  
18 provided that these instruments or devices are properly  
19 housed, secured from unauthorized handling, and, if the  
20 instrument or device is a firearm, unloaded.

21 (10) Instruments or devices, other than short-barreled  
22 shotguns or short-barreled rifles, that are possessed or  
23 utilized during the course of a motion picture, television,  
24 or video production or entertainment event by an  
25 authorized participant therein in the course of making  
26 that production or event or by an authorized employee  
27 or agent of the entity producing that production or event.

28 (11) Instruments or devices, other than short-barreled  
29 shotguns or short-barreled rifles, that are sold by,  
30 manufactured by, exposed or kept for sale by, possessed  
31 by, imported by, or lent by persons who are in the  
32 business of selling instruments or devices listed in  
33 subdivision (a) solely to the entities referred in  
34 paragraphs (9) and (10) when engaging in transactions  
35 with those entities.

36 (12) The sale to, possession of, or purchase of any  
37 weapon, device, or ammunition, other than a  
38 short-barreled rifle or short-barreled shotgun, by any  
39 federal, state, county, city and county, or city agency that  
40 is charged with the enforcement of any law for use in the

1 discharge of their official duties, or the possession of any  
2 weapon, device, or ammunition, other than a  
3 short-barreled rifle or short-barreled shotgun, by peace  
4 officers thereof when on duty and the use is authorized  
5 by the agency and is within the course and scope of their  
6 duties.

7 (13) Weapons, devices, and ammunition, other than a  
8 short-barreled rifle or short-barreled shotgun, that are  
9 sold by, manufactured by, exposed, or kept for sale by,  
10 possessed by, imported by, or lent by, persons who are in  
11 the business of selling weapons, devices, and ammunition  
12 listed in subdivision (a) solely to the entities referred to  
13 in paragraph (12) when engaging in transactions with  
14 those entities.

15 (14) The manufacture for, sale to, exposing or keeping  
16 for sale to, importation of, or lending of wooden clubs or  
17 batons to special police officers or uniformed security  
18 guards authorized to carry any wooden club or baton  
19 pursuant to Section 12002 by entities that are in the  
20 business of selling wooden batons or clubs to special police  
21 officers and uniformed security guards when engaging in  
22 transactions with those persons.

23 ~~(15) Any instrument, ammunition, weapon, or device~~  
24 ~~listed in subdivision (a), other than a short barreled rifle~~  
25 ~~or short barreled shotgun, that is found and possessed by~~  
26 ~~a person who is not prohibited from possessing firearms~~  
27 ~~or ammunition pursuant to Section 12021, 12021.1, or~~  
28 ~~paragraph (1) of subdivision (b) of Section 12316 of this~~  
29 ~~code or Section 8100 or 8103 of the Welfare and~~  
30 ~~Institutions Code and is transporting the listed item to a~~  
31 ~~law enforcement agency for disposition according to law.~~

32 (16)  
33 (15) Any instrument, ammunition, weapon, or device  
34 listed in subdivision (a) that is not a firearm that is found  
35 and possessed by a person who meets all of the following:

36 (A) The person is not prohibited from possessing  
37 firearms or ammunition pursuant to Section 12021 or  
38 12021.1 or paragraph (1) of subdivision (b) of Section  
39 12316 of this code or Section 8100 or 8103 of the Welfare  
40 and Institutions Code.



1 (B) The person possessed the instrument,  
2 ammunition, weapon, or device no longer than was  
3 necessary to deliver or transport the same to a law  
4 enforcement agency for that agency's disposition  
5 according to law.

6 (C) If the person is transporting the listed item, he or  
7 she is transporting the listed item to a law enforcement  
8 agency for disposition according to law.

9 (16) Any firearm, other than a short-barreled rifle or  
10 short-barreled shotgun, that is found and possessed by a  
11 person who meets all of the following:

12 (A) The person is not prohibited from possessing  
13 firearms or ammunition pursuant to Section 12021 or  
14 12021.1 or paragraph (1) of subdivision (b) of Section  
15 12316 of this code or Section 8100 or 8103 of the Welfare  
16 and Institutions Code.

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

21 (C) If the person is transporting the firearm, he or she  
22 is transporting the firearm to a law enforcement agency  
23 for disposition according to law.

24 (D) Prior to transporting the firearm to a law  
25 enforcement agency, he or she has given prior notice to  
26 that law enforcement agency that he or she is  
27 transporting the firearm to that law enforcement agency  
28 for disposition according to law.

29 (E) The firearm is transported in a locked container as  
30 defined in subdivision (d) of Section 12026.2.

31 (17) The possession of any weapon, device, or  
32 ammunition, by a forensic laboratory or any authorized  
33 agent or employee thereof in the course and scope of his  
34 or her authorized activities.

35 (c) (1) As used in this section, a "short-barreled  
36 shotgun" means any of the following:

37 (A) A firearm which is designed or redesigned to fire  
38 a fixed shotgun shell and having a barrel or barrels of less  
39 than 18 inches in length.

- 1 (B) A firearm which has an overall length of less than  
2 26 inches and which is designed or redesigned to fire a  
3 fixed shotgun shell.
- 4 (C) Any weapon made from a shotgun (whether by  
5 alteration, modification, or otherwise) if that weapon, as  
6 modified, has an overall length of less than 26 inches or a  
7 barrel or barrels of less than 18 inches in length.
- 8 (D) Any device which may be readily restored to fire  
9 a fixed shotgun shell which, when so restored, is a device  
10 defined in subparagraphs (A) to (C), inclusive.
- 11 (E) Any part, or combination of parts, designed and  
12 intended to convert a device into a device defined in  
13 subparagraphs (A) to (C), inclusive, or any combination  
14 of parts from which a device defined in subparagraphs  
15 (A) to (C), inclusive, can be readily assembled if those  
16 parts are in the possession or under the control of the  
17 same person.
- 18 (2) As used in this section, a "short-barreled rifle"  
19 means any of the following:
- 20 (A) A rifle having a barrel or barrels of less than 16  
21 inches in length.
- 22 (B) A rifle with an overall length of less than 26 inches.
- 23 (C) Any weapon made from a rifle (whether by  
24 alteration, modification, or otherwise) if that weapon as  
25 modified has an overall length of less than 26 inches or a  
26 barrel or barrels of less than 16 inches in length.
- 27 (D) Any device which may be readily restored to fire  
28 a fixed cartridge which, when so restored, is a device  
29 defined in subparagraphs (A) to (C), inclusive.
- 30 (E) Any part, or combination of parts, designed and  
31 intended to convert a device into a device defined in  
32 subparagraphs (A) to (C), inclusive, or any combination  
33 of parts from which a device defined in subparagraphs  
34 (A) to (C), inclusive, may be readily assembled if those  
35 parts are in the possession or under the control of the  
36 same person.
- 37 (3) As used in this section, a "nunchaku" means an  
38 instrument consisting of two or more sticks, clubs, bars or  
39 rods to be used as handles, connected by a rope, cord,  
40 wire, or chain, in the design of a weapon used in

1 connection with the practice of a system of self-defense  
2 such as karate.

3 (4) As used in this section, a "wallet gun" means any  
4 firearm mounted or enclosed in a case, resembling a  
5 wallet, designed to be or capable of being carried in a  
6 pocket or purse, if the firearm may be fired while  
7 mounted or enclosed in the case.

8 (5) As used in this section, a "cane gun" means any  
9 firearm mounted or enclosed in a stick, staff, rod, crutch,  
10 or similar device, designed to be, or capable of being used  
11 as, an aid in walking, if the firearm may be fired while  
12 mounted or enclosed therein.

13 (6) As used in this section, a "fléchette dart" means a  
14 dart, capable of being fired from a firearm, which  
15 measures approximately one inch in length, with tail fins  
16 which take up five-sixteenths of an inch of the body.

17 (7) As used in this section, "metal knuckles" means  
18 any device or instrument made wholly or partially of  
19 metal which is worn for purposes of offense or defense in  
20 or on the hand and which either protects the wearer's  
21 hand while striking a blow or increases the force of impact  
22 from the blow or injury to the individual receiving the  
23 blow. The metal contained in the device may help  
24 support the hand or fist, provide a shield to protect it, or  
25 consist of projections or studs which would contact the  
26 individual receiving a blow.

27 (8) As used in this section, a "ballistic knife" means a  
28 device that propels a knifelike blade as a projectile by  
29 means of a coil spring, elastic material, or compressed gas.  
30 Ballistic knife does not include any device which propels  
31 an arrow or a bolt by means of any common bow,  
32 compound bow, crossbow, or underwater spear gun.

33 (9) As used in this section, a "camouflaging firearm  
34 container" means a container which meets all of the  
35 following criteria:

36 (A) It is designed and intended to enclose a firearm.

37 (B) It is designed and intended to allow the firing of  
38 the enclosed firearm by external controls while the  
39 firearm is in the container.

1 (C) It is not readily recognizable as containing a  
2 firearm.

3 "Camouflaging firearm container" does not include  
4 any camouflaging covering used while engaged in lawful  
5 hunting or while going to or returning from a lawful  
6 hunting expedition.

7 (10) As used in this section, a "zip gun" means any  
8 weapon or device which meets all of the following  
9 criteria:

10 (A) It was not imported as a firearm by an importer  
11 licensed pursuant to Chapter 44 (commencing with  
12 Section 921) of Title 18 of the United States Code and the  
13 regulations issued pursuant thereto.

14 (B) It was not originally designed to be a firearm by a  
15 manufacturer licensed pursuant to Chapter 44  
16 (commencing with Section 921) of Title 18 of the United  
17 States Code and the regulations issued pursuant thereto.

18 (C) No tax was paid on the weapon or device nor was  
19 an exemption from paying tax on that weapon or device  
20 granted under Section 4181 and subchapters F  
21 (commencing with Section 4216) and G (commencing  
22 with Section 4221) of Chapter 32 of Title 26 of the United  
23 States Code, as amended, and the regulations issued  
24 pursuant thereto.

25 (D) It is made or altered to expel a projectile by the  
26 force of an explosion or other form of combustion.

27 (11) As used in this section, a "shuriken" means any  
28 instrument, without handles, consisting of a metal plate  
29 having three or more radiating points with one or more  
30 sharp edges and designed in the shape of a polygon,  
31 trefoil, cross, star, diamond, or other geometric shape for  
32 use as a weapon for throwing.

33 (12) As used in this section, an "unconventional pistol"  
34 means a firearm that does not have a rifled bore and has  
35 a barrel or barrels of less than 18 inches in length or has  
36 an overall length of less than 26 inches.

37 (13) As used in this section, a "belt buckle knife" is a  
38 knife which is made an integral part of a belt buckle and  
39 consists of a blade with a length of at least 2<sup>1</sup>/<sub>2</sub> inches.

1 (14) As used in this section, a "lipstick case knife"  
2 means a knife enclosed within and made an integral part  
3 of a lipstick case.

4 (15) As used in this section, a "cane sword" means a  
5 cane, swagger stick, stick, staff, rod, pole, umbrella, or  
6 similar device, having concealed within it a blade that  
7 may be used as a sword or stiletto.

8 (16) As used in this section, a "shobi-zue" means a staff,  
9 crutch, stick, rod, or pole concealing a knife or blade  
10 within it which may be exposed by a flip of the wrist or  
11 by a mechanical action.

12 (17) As used in this section, a "leaded cane" means a  
13 staff, crutch, stick, rod, pole, or similar device,  
14 unnaturally weighted with lead.

15 (18) As used in this section, an "air gauge knife" means  
16 a device that appears to be an air gauge but has concealed  
17 within it a pointed, metallic shaft that is designed to be a  
18 stabbing instrument which is exposed by mechanical  
19 action or gravity which locks into place when extended.

20 (19) As used in this section, a "writing pen knife"  
21 means a device that appears to be a writing pen but has  
22 concealed within it a pointed, metallic shaft that is  
23 designed to be a stabbing instrument which is exposed by  
24 mechanical action or gravity which locks into place when  
25 extended or the pointed, metallic shaft is exposed by the  
26 removal of the cap or cover on the device.

27 (20) As used in this section, a "rifle" means a weapon  
28 designed or redesigned, made or remade, and intended  
29 to be fired from the shoulder and designed or redesigned  
30 and made or remade to use the energy of the explosive in  
31 a fixed cartridge to fire only a single projectile through a  
32 rifled bore for each single pull of the trigger.

33 (21) As used in this section, a "shotgun" means a  
34 weapon designed or redesigned, made or remade, and  
35 intended to be fired from the shoulder and designed or  
36 redesigned and made or remade to use the energy of the  
37 explosive in a fixed shotgun shell to fire through a smooth  
38 bore either a number of projectiles (ball shot) or a single  
39 projectile for each pull of the trigger.

1 (22) As used in this section, an "undetectable firearm"  
2 means any weapon which meets one of the following  
3 requirements:

4 (A) When, after removal of grips, stocks, and  
5 magazines, it is not as detectable as the Security  
6 Exemplar, by walk-through metal detectors calibrated  
7 and operated to detect the Security Exemplar.

8 (B) When any major component of which, when  
9 subjected to inspection by the types of X-ray machines  
10 commonly used at airports, does not generate an image  
11 that accurately depicts the shape of the component.  
12 Barium sulfate or other compounds may be used in the  
13 fabrication of the component.

14 (C) For purposes of this paragraph, the terms  
15 "firearm," "major component," and "Security Exemplar"  
16 have the same meanings as those terms are defined in  
17 Section 922 of Title 18 of the United States Code.

18 All firearm detection equipment newly installed in  
19 nonfederal public buildings in this state shall be of a type  
20 identified by either the United States Attorney General,  
21 the Secretary of Transportation, or the Secretary of the  
22 Treasury, as appropriate, as available state-of-the-art  
23 equipment capable of detecting an undetectable firearm,  
24 as defined, while distinguishing innocuous metal objects  
25 likely to be carried on one's person sufficient for  
26 reasonable passage of the public.

27 (23) As used in this section, a "multiburst trigger  
28 activator" means one of the following devices:

29 (A) A device designed or redesigned to be attached to  
30 a semiautomatic firearm which allows the firearm to  
31 discharge two or more shots in a burst by activating the  
32 device.

33 (B) A manual or power-driven trigger activating  
34 device constructed and designed so that when attached  
35 to a semiautomatic firearm it increases the rate of fire of  
36 that firearm.

37 (24) As used in this section, a "dirk" or "dagger" means  
38 a knife or other instrument with or without a handguard  
39 that is capable of ready use as a stabbing weapon that may  
40 inflict great bodily injury or death. A nonlocking folding

1 knife, a folding knife that is not prohibited by Section  
2 653k, or a pocketknife is capable of ready use as a stabbing  
3 weapon that may inflict great bodily injury or death only  
4 if the blade of the knife is exposed and locked into  
5 position.

6 (d) Knives carried in sheaths which are worn openly  
7 suspended from the waist of the wearer are not concealed  
8 within the meaning of this section.

9 SEC. 2. Section 12021 of the Penal Code is amended  
10 to read:

11 12021. (a) (1) Any person who has been convicted  
12 of a felony under the laws of the United States, of the State  
13 of California, or any other state, government, or country,  
14 or of an offense enumerated in subdivision (a), (b), or (d)  
15 of Section 12001.6, or who is addicted to the use of any  
16 narcotic drug, who owns or has in his or her possession or  
17 under his or her custody or control any firearm is guilty  
18 of a felony.

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

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

31 (c) (1) Except as provided in subdivision (a) or  
32 paragraph (2) of this subdivision, any person who has  
33 been convicted of a misdemeanor violation of Section 71,  
34 76, 136.5, or 140, subdivision (d) of Section 148, Section  
35 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,  
36 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9,  
37 646.9, 12023, or 12024, subdivision (b) or (d) of Section  
38 12034, Section 12040, subdivision (b) of Section 12072,  
39 subdivision (a) of former Section 12100, Section 12220,  
40 12320, or 12590, or Section 8100, 8101, or 8103 of the

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

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

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

38 (B) Finds that the petitioner is not within a prohibited  
39 class as specified in subdivision (a), (b), (d), (e), or (g)  
40 or Section 12021.1, and the court is not presented with any



1 credible evidence that the petitioner is a person  
2 described in Section 8100 or 8103 of the Welfare and  
3 Institutions Code.

4 (C) Finds that the petitioner does not have a previous  
5 conviction under this subdivision no matter when the  
6 prior conviction occurred.

7 In making its decision, the court shall consider the  
8 petitioner's continued employment, the interest of  
9 justice, any relevant evidence, and the totality of the  
10 circumstances. The court shall require, as a condition of  
11 granting relief from the prohibition under this section,  
12 that the petitioner agree to participate in counseling as  
13 deemed appropriate by the court. Relief from the  
14 prohibition shall not relieve any other person or entity  
15 from any liability that might otherwise be imposed. It is  
16 the intent of the Legislature that courts exercise broad  
17 discretion in fashioning appropriate relief under this  
18 paragraph in cases in which relief is warranted. However,  
19 nothing in this paragraph shall be construed to require  
20 courts to grant relief to any particular petitioner. It is the  
21 intent of the Legislature to permit persons who were  
22 convicted of an offense specified in Section 273.5, 273.6,  
23 or 646.9 to seek relief from the prohibition imposed by this  
24 subdivision.

25 (3) Any person who is subject to the prohibition  
26 imposed by this subdivision because of a conviction of an  
27 offense prior to that offense being added to paragraph  
28 (1), may petition the court only once for relief from this  
29 prohibition. The petition shall be filed with the court in  
30 which the petitioner was sentenced. If possible, the  
31 matter shall be heard before the same judge that  
32 sentenced the petitioner. Upon filing the petition, the  
33 clerk of the court shall set the hearing date and notify the  
34 petitioner and the prosecuting attorney of the date of the  
35 hearing. Upon making each of the following findings, the  
36 court may reduce or eliminate the prohibition, impose  
37 conditions on reduction or elimination of the prohibition,  
38 or otherwise grant relief from the prohibition as the court  
39 deems appropriate:

- 1 (A) Finds by a preponderance of the evidence that the  
2 petitioner is likely to use a firearm in a safe and lawful  
3 manner.
- 4 (B) Finds that the petitioner is not within a prohibited  
5 class as specified in subdivision (a), (b), (d), (e), or (g)  
6 or Section 12021.1, and the court is not presented with any  
7 credible evidence that the petitioner is a person  
8 described in Section 8100 or 8103 of the Welfare and  
9 Institutions Code.
- 10 (C) Finds that the petitioner does not have a previous  
11 conviction under this subdivision, no matter when the  
12 prior conviction occurred.
- 13 In making its decision, the court may consider the  
14 interest of justice, any relevant evidence, and the totality  
15 of the circumstances. It is the intent of the Legislature  
16 that courts exercise broad discretion in fashioning  
17 appropriate relief under this paragraph in cases in which  
18 relief is warranted. However, nothing in this paragraph  
19 shall be construed to require courts to grant relief to any  
20 particular petitioner.
- 21 (4) Law enforcement officials who enforce the  
22 prohibition specified in this subdivision against a person  
23 who has been granted relief pursuant to paragraph (2) or  
24 (3), shall be immune from any liability for false arrest  
25 arising from the enforcement of this subdivision unless  
26 the person has in his or her possession a certified copy of  
27 the court order that granted the person relief from the  
28 prohibition. This immunity from liability shall not relieve  
29 any person or entity from any other liability that might  
30 otherwise be imposed.
- 31 (d) Any person who, as an express condition of  
32 probation, is prohibited or restricted from owning,  
33 possessing, controlling, receiving, or purchasing a firearm  
34 and who owns, or has in his or her possession or under his  
35 or her custody or control, any firearm but who is not  
36 subject to subdivision (a) or (c) is guilty of a public  
37 offense, which shall be punishable by imprisonment in a  
38 county jail not exceeding one year or in the state prison,  
39 by a fine not exceeding one thousand dollars (\$1,000), or  
40 by both that imprisonment and fine. The court, on forms

1 provided by the Department of Justice, shall notify the  
2 department of persons subject to this subdivision. The  
3 notice shall include a copy of the order of probation and  
4 a copy of any minute order or abstract reflecting the  
5 order and conditions of probation.

6 (e) Any person who (1) is alleged to have committed  
7 an offense listed in subdivision (b) of Section 707 of the  
8 Welfare and Institutions Code, an offense described in  
9 subdivision (b) of Section 1203.073, or any offense  
10 enumerated in paragraph (1) of subdivision (c), (2) is  
11 found to be a fit and proper subject to be dealt with under  
12 the juvenile court law, and (3) is subsequently adjudged  
13 a ward of the juvenile court within the meaning of Section  
14 602 of the Welfare and Institutions Code because the  
15 person committed an offense listed in subdivision (b) of  
16 Section 707 of the Welfare and Institutions Code, an  
17 offense described in subdivision (b) of Section 1203.073,  
18 or any offense enumerated in paragraph (1) of  
19 subdivision (c) shall not own, or have in his or her  
20 possession or under his or her custody or control, any  
21 firearm until the age of 30 years. A violation of this  
22 subdivision shall be punishable by imprisonment in a  
23 county jail not exceeding one year or in the state prison,  
24 by a fine not exceeding one thousand dollars (\$1,000), or  
25 by both that imprisonment and fine. The juvenile court,  
26 on forms prescribed by the Department of Justice, shall  
27 notify the department of persons subject to this  
28 subdivision. Notwithstanding any other law, the forms  
29 required to be submitted to the department pursuant to  
30 this subdivision may be used to determine eligibility to  
31 acquire a firearm.

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

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

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

1 (g) Every person who purchases or receives, or  
2 attempts to purchase or receive, a firearm knowing that  
3 he or she is subject to a protective order as defined in  
4 Section 6218 of the Family Code, or a temporary  
5 restraining order or injunction issued pursuant to Section  
6 527.6 or 527.8 of the Code of Civil Procedure, is guilty of  
7 a public offense, which shall be punishable by  
8 imprisonment in a county jail not exceeding one year or  
9 in the state prison, by a fine not exceeding one thousand  
10 dollars (\$1,000), or by both that imprisonment and fine.  
11 This subdivision does not apply unless the copy of the  
12 restraining order personally served on the person against  
13 whom the restraining order is issued contains a notice in  
14 bold print stating (1) that the person is prohibited from  
15 purchasing or receiving or attempting to purchase or  
16 receive a firearm and (2) specifying the penalties for  
17 violating this subdivision, or a court has provided actual  
18 verbal notice of the firearm prohibition and penalty as  
19 provided in Section 6304 of the Family Code. However,  
20 this subdivision does not apply if the firearm is received  
21 as part of the disposition of community property pursuant  
22 to Division 7 (commencing with Section 2500) of the  
23 Family Code.

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

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

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

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

37 (D) *If the firearm is being transported to a law*  
38 *enforcement agency, the person transporting the firearm*  
39 *has given prior notice to the law enforcement agency that*

1 *he or she is transporting the firearm to the law*  
2 *enforcement agency for disposition according to law.*

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

7 (3) The defendant has the burden of proving by a  
8 preponderance of the evidence that he or she comes  
9 within the provisions of the exemption created by this  
10 subdivision.

11 SEC. 2.5. Section 12021 of the Penal Code is amended  
12 to read:

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

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

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

33 (c) (1) Except as provided in subdivision (a) or  
34 paragraph (2) of this subdivision, any person who has  
35 been convicted of a misdemeanor violation of Section 71,  
36 76, 136.5, or 140, subdivision (d) of Section 148, Section  
37 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,  
38 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9,  
39 646.9, 12023, or 12024, subdivision (b) or (d) of Section  
40 12034, Section 12040, subdivision (b) of Section 12072,

1 subdivision (a) of former Section 12100, Section 12220,  
2 12320, or 12590, or Section 8100, 8101, or 8103 of the  
3 Welfare and Institutions Code, any firearm-related  
4 offense pursuant to Sections 871.5 and 1001.5 of the  
5 Welfare and Institutions Code, or of the conduct  
6 punished in paragraph (3) of subdivision (g) of Section  
7 12072, and who, within 10 years of the conviction, owns,  
8 or has in his or her possession or under his or her custody  
9 or control, any firearm is guilty of a public offense, which  
10 shall be punishable by imprisonment in a county jail not  
11 exceeding one year or in the state prison, by a fine not  
12 exceeding one thousand dollars (\$1,000), or by both that  
13 imprisonment and fine. The court, on forms prescribed  
14 by the Department of Justice, shall notify the department  
15 of persons subject to this subdivision. However, the  
16 prohibition in this paragraph may be reduced,  
17 eliminated, or conditioned as provided in paragraph (2)  
18 or (3).

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

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

1 (B) Finds that the petitioner is not within a prohibited  
 2 class as specified in subdivision (a), (b), (d), (e), or (g)  
 3 or Section 12021.1, and the court is not presented with any  
 4 credible evidence that the petitioner is a person  
 5 described in Section 8100 or 8103 of the Welfare and  
 6 Institutions Code.

7 (C) Finds that the petitioner does not have a previous  
 8 conviction under this subdivision no matter when the  
 9 prior conviction occurred.

10 In making its decision, the court shall consider the  
 11 petitioner's continued employment, the interest of  
 12 justice, any relevant evidence, and the totality of the  
 13 circumstances. The court shall require, as a condition of  
 14 granting relief from the prohibition under this section,  
 15 that the petitioner agree to participate in counseling as  
 16 deemed appropriate by the court. Relief from the  
 17 prohibition shall not relieve any other person or entity  
 18 from any liability that might otherwise be imposed. It is  
 19 the intent of the Legislature that courts exercise broad  
 20 discretion in fashioning appropriate relief under this  
 21 paragraph in cases in which relief is warranted. However,  
 22 nothing in this paragraph shall be construed to require  
 23 courts to grant relief to any particular petitioner. It is the  
 24 intent of the Legislature to permit persons who were  
 25 convicted of an offense specified in Section 273.5, 273.6,  
 26 or 646.9 to seek relief from the prohibition imposed by this  
 27 subdivision.

28 (3) Any person who is subject to the prohibition  
 29 imposed by this subdivision because of a conviction of an  
 30 offense prior to that offense being added to paragraph  
 31 (1), may petition the court only once for relief from this  
 32 prohibition. The petition shall be filed with the court in  
 33 which the petitioner was sentenced. If possible, the  
 34 matter shall be heard before the same judge that  
 35 sentenced the petitioner. Upon filing the petition, the  
 36 clerk of the court shall set the hearing date and notify the  
 37 petitioner and the prosecuting attorney of the date of the  
 38 hearing. Upon making each of the following findings, the  
 39 court may reduce or eliminate the prohibition, impose  
 40 conditions on reduction or elimination of the prohibition,

1 or otherwise grant relief from the prohibition as the court  
2 deems appropriate:

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

6 (B) Finds that the petitioner is not within a prohibited  
7 class as specified in subdivision (a), (b), (d), (e), or (g)  
8 or Section 12021.1, and the court is not presented with any  
9 credible evidence that the petitioner is a person  
10 described in Section 8100 or 8103 of the Welfare and  
11 Institutions Code.

12 (C) Finds that the petitioner does not have a previous  
13 conviction under this subdivision, no matter when the  
14 prior conviction occurred.

15 In making its decision, the court may consider the  
16 interest of justice, any relevant evidence, and the totality  
17 of the circumstances. It is the intent of the Legislature  
18 that courts exercise broad discretion in fashioning  
19 appropriate relief under this paragraph in cases in which  
20 relief is warranted. However, nothing in this paragraph  
21 shall be construed to require courts to grant relief to any  
22 particular petitioner.

23 (4) Law enforcement officials who enforce the  
24 prohibition specified in this subdivision against a person  
25 who has been granted relief pursuant to paragraph (2) or  
26 (3), shall be immune from any liability for false arrest  
27 arising from the enforcement of this subdivision unless  
28 the person has in his or her possession a certified copy of  
29 the court order that granted the person relief from the  
30 prohibition. This immunity from liability shall not relieve  
31 any person or entity from any other liability that might  
32 otherwise be imposed.

33 (d) Any person who, as an express condition of  
34 probation, is prohibited or restricted from owning,  
35 possessing, controlling, receiving, or purchasing a firearm  
36 and who owns, or has in his or her possession or under his  
37 or her custody or control, any firearm but who is not  
38 subject to subdivision (a) or (c) is guilty of a public  
39 offense, which shall be punishable by imprisonment in a  
40 county jail not exceeding one year or in the state prison,



1 by a fine not exceeding one thousand dollars (\$1,000), or  
2 by both that imprisonment and fine. The court, on forms  
3 provided by the Department of Justice, shall notify the  
4 department of persons subject to this subdivision. The  
5 notice shall include a copy of the order of probation and  
6 a copy of any minute order or abstract reflecting the  
7 order and conditions of probation.

8 (e) Any person who (1) is alleged to have committed  
9 an offense listed in subdivision (b) of Section 707 of the  
10 Welfare and Institutions Code, an offense described in  
11 subdivision (b) of Section 1203.073, or any offense  
12 enumerated in paragraph (1) of subdivision (c), and (2)  
13 is subsequently adjudged a ward of the juvenile court  
14 within the meaning of Section 602 of the Welfare and  
15 Institutions Code because the person committed an  
16 offense listed in subdivision (b) of Section 707 of the  
17 Welfare and Institutions Code, an offense described in  
18 subdivision (b) of Section 1203.073, or any offense  
19 enumerated in paragraph (1) of subdivision (c) shall not  
20 own, or have in his or her possession or under his or her  
21 custody or control, any firearm until the age of 30 years.  
22 A violation of this subdivision shall be punishable by  
23 imprisonment in a county jail not exceeding one year or  
24 in the state prison, by a fine not exceeding one thousand  
25 dollars (\$1,000), or by both that imprisonment and fine.  
26 The juvenile court, on forms prescribed by the  
27 Department of Justice, shall notify the department of  
28 persons subject to this subdivision. Notwithstanding any  
29 other law, the forms required to be submitted to the  
30 department pursuant to this subdivision may be used to  
31 determine eligibility to acquire a firearm.

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

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

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

1 (g) Every person who purchases or receives, or  
2 attempts to purchase or receive, a firearm knowing that  
3 he or she is subject to a protective order as defined in  
4 Section 6218 of the Family Code, or a temporary  
5 restraining order or injunction issued pursuant to Section  
6 527.6 or 527.8 of the Code of Civil Procedure, is guilty of  
7 a public offense, which shall be punishable by  
8 imprisonment in a county jail not exceeding one year or  
9 in the state prison, by a fine not exceeding one thousand  
10 dollars (\$1,000), or by both that imprisonment and fine.  
11 This subdivision does not apply unless the copy of the  
12 restraining order personally served on the person against  
13 whom the restraining order is issued contains a notice in  
14 bold print stating (1) that the person is prohibited from  
15 purchasing or receiving or attempting to purchase or  
16 receive a firearm and (2) specifying the penalties for  
17 violating this subdivision, or a court has provided actual  
18 verbal notice of the firearm prohibition and penalty as  
19 provided in Section 6304 of the Family Code. However,  
20 this subdivision does not apply if the firearm is received  
21 as part of the disposition of community property pursuant  
22 to Division 7 (commencing with Section 2500) of the  
23 Family Code.

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

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

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

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

37 (D) *If the firearm is being transported to a law*  
38 *enforcement agency, the person transporting the firearm*  
39 *has given prior notice to the law enforcement agency that*

1 *he or she is transporting the firearm to the law*  
2 *enforcement agency for disposition according to law.*

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

7 (3) The defendant has the burden of proving by a  
8 preponderance of the evidence that he or she comes  
9 within the provisions of the exemption created by this  
10 subdivision.

11 SEC. 3. Section 12026.2 of the Penal Code is amended  
12 to read:

13 12026.2. (a) Section 12025 does not apply to, or affect,  
14 any of the following:

15 (1) The possession of a firearm by an authorized  
16 participant in a motion picture, television, or video  
17 production or entertainment event when the participant  
18 lawfully uses the firearm as part of that production or  
19 event or while going directly to, or coming directly from,  
20 that production or event.

21 (2) The possession of a firearm in a locked container by  
22 a member of any club or organization, organized for the  
23 purpose of lawfully collecting and lawfully displaying  
24 pistols, revolvers, or other firearms, while the member is  
25 at meetings of the clubs or organizations or while going  
26 directly to, and coming directly from, those meetings.

27 (3) The transportation of a firearm by a participant  
28 when going directly to, or coming directly from, a  
29 recognized safety or hunter safety class, or a recognized  
30 sporting event involving that firearm.

31 (4) The transportation of a firearm by a person listed  
32 in Section 12026 directly between any of the places  
33 mentioned in Section 12026.

34 (5) The transportation of a firearm by a person when  
35 going directly to, or coming directly from, a fixed place  
36 of business or private residential property for the purpose  
37 of the lawful repair or the lawful transfer, sale, or loan of  
38 that firearm.

39 (6) The transportation of a firearm by a person listed  
40 in Section 12026 when going directly from the place

1 where that person lawfully received that firearm to that  
2 person's place of residence or place of business or to  
3 private property owned or lawfully possessed by that  
4 person.

5 (7) The transportation of a firearm by a person when  
6 going directly to, or coming directly from, a gun show,  
7 swap meet, or similar event to which the public is invited,  
8 for the purpose of displaying that firearm in a lawful  
9 manner.

10 (8) The transportation of a firearm by an authorized  
11 employee or agent of a supplier of firearms when going  
12 directly to, or coming directly from, a motion picture,  
13 television, or video production or entertainment event  
14 for the purpose of providing that firearm to an authorized  
15 participant to lawfully use as a part of that production or  
16 event.

17 (9) The transportation of a firearm by a person when  
18 going directly to, or coming directly from, a target range,  
19 which holds a regulatory or business license, for the  
20 purposes of practicing shooting at targets with that  
21 firearm at that target range.

22 (10) The transportation of a firearm by a person when  
23 going directly to, or coming directly from, a place  
24 designated by a person authorized to issue licenses  
25 pursuant to Section 12050 when done at the request of the  
26 issuing agency so that the issuing agency can determine  
27 whether or not a license should be issued to that person  
28 to carry that firearm.

29 (11) The transportation of a firearm by a person when  
30 going directly to, or coming directly from, a law  
31 enforcement agency for the purpose of a lawful transfer,  
32 sale, or loan of that firearm pursuant to Section 12084.

33 (12) The transportation of a firearm by a person when  
34 going directly to, or coming directly from, a lawful  
35 camping activity for the purpose of having that firearm  
36 available for lawful personal protection while at the  
37 lawful campsite. This paragraph shall not be construed to  
38 override the statutory authority granted to the  
39 Department of Parks and Recreation or any other state  
40 or local governmental agencies to promulgate rules and

1 regulations governing the administration of parks and  
2 campgrounds.

3 (13) The transportation of a firearm by a person in  
4 order to comply with subdivision (c) or (i) of Section  
5 12078 as it pertains to that firearm.

6 (14) The transportation of a firearm by a person in  
7 order to utilize subdivision (l) of Section 12078 as it  
8 pertains to that firearm.

9 (15) The transportation of a firearm by a person when  
10 going directly to, or coming directly from, a gun show or  
11 event, as defined in Section 178.100 of Title 27 of the Code  
12 of Federal Regulations, for the purpose of lawfully  
13 transferring, selling, or loaning that firearm in  
14 accordance with subdivision (d) of Section 12072.

15 (16) The transportation of a firearm by a person in  
16 order to utilize paragraph (3) of subdivision (a) of  
17 Section 12078 as it pertains to that firearm.

18 (17) The transportation of a firearm by a person who  
19 finds the firearm in order to comply with Article 1  
20 (commencing with Section 2080) of Chapter 4 of Division  
21 3 of the Civil Code as it pertains to that firearm *and if that*  
22 *firearm is being transported to a law enforcement*  
23 *agency, the person gives prior notice to the law*  
24 *enforcement agency that he or she is transporting the*  
25 *firearm to the law enforcement agency.*

26 (18) The transportation of a firearm by a person who  
27 finds the firearm and is transporting it to a law  
28 enforcement agency for disposition according to law, *if he*  
29 *or she gives prior notice to the law enforcement agency*  
30 *that he or she is transporting the firearm to the law*  
31 *enforcement agency for disposition according to law.*

32 (b) In order for a firearm to be exempted under  
33 subdivision (a), while being transported to or from a  
34 place, the firearm shall be unloaded, kept in a locked  
35 container, as defined in subdivision (d), and the course of  
36 travel shall include only those deviations between  
37 authorized locations as are reasonably necessary under  
38 the circumstances.

39 (c) This section does not prohibit or limit the  
40 otherwise lawful carrying or transportation of any pistol,

1 revolver, or other firearm capable of being concealed  
2 upon the person in accordance with this chapter.

3 (d) As used in this section, "locked container" means  
4 a secure container which is fully enclosed and locked by  
5 a padlock, key lock, combination lock, or similar locking  
6 device. The term "locked container" does not include the  
7 utility or glove compartment of a motor vehicle.

8 SEC. 4. Section 12092 of the Penal Code is amended  
9 to read:

10 12092. The Department of Justice upon request may  
11 assign a distinguishing number or mark of identification  
12 to any firearm whenever it is without a manufacturer's  
13 number, or other mark of identification or whenever the  
14 manufacturer's number or other mark of identification or  
15 the distinguishing number or mark assigned by the  
16 department has been destroyed or obliterated.

17 SEC. 5. Section 12094 of the Penal Code is amended  
18 to read:

19 12094. (a) Any person with knowledge of any  
20 change, alteration, removal, or obliteration described  
21 herein, who buys, receives, disposes of, sells, offers for  
22 sale, or has in his *or her* possession any pistol, revolver, or  
23 other firearm which has had the name of the maker,  
24 model, or the manufacturer's number or other mark of  
25 identification including any distinguishing number or  
26 mark assigned by the Department of Justice changed,  
27 altered, removed, or obliterated is guilty of a  
28 misdemeanor.

29 (b) Subdivision (a) does not apply to any of the  
30 following:

31 (1) The acquisition or possession of a firearm  
32 described in subdivision (a) by any member of the  
33 military forces of the this state or of the United States,  
34 while on duty and acting within the scope and course of  
35 his or her employment.

36 (2) The acquisition or possession of a firearm  
37 described in subdivision (a) by any peace officer  
38 described in Chapter 4.5 (commencing with Section 830)  
39 of Title 3 of Part 2, while on duty and acting within the  
40 scope and course of his or her employment.

1 (3) The acquisition or possession of a firearm  
2 described in subdivision (a) by any employee of a forensic  
3 laboratory, while on duty and acting within the scope and  
4 course of his or her employment.

5 ~~(4) The possession and disposition of a firearm~~  
6 ~~described in subdivision (a) by a person who is not~~  
7 ~~prohibited from possessing firearms or ammunition~~  
8 ~~pursuant to Section 12021, 12021.1, or paragraph (1) of~~  
9 ~~subdivision (b) of Section 12316 of this code, or Section~~  
10 ~~8100 or 8103 of the Welfare and Institutions Code if he or~~  
11 ~~she is transporting and transferring the firearm to a law~~  
12 ~~enforcement agency for that agency's disposition~~  
13 ~~according to law.~~

14 (4) *The possession and disposition of a firearm*  
15 *described in subdivision (a) by a person who meets, all of*  
16 *the following:*

17 (A) *He or she is not prohibited from possessing*  
18 *firearms or ammunition pursuant to Section 12021 or*  
19 *12021.1 or paragraph (1) of subdivision (b) of Section*  
20 *12316 of this code, or Section 8100 or 8103 of the Welfare*  
21 *and Institutions Code.*

22 (B) *The person possessed the firearm no longer than*  
23 *was necessary to deliver the same to a law enforcement*  
24 *agency for that agency's disposition according to law.*

25 (C) *If the person is transporting the firearm, he or she*  
26 *is transporting the firearm to a law enforcement agency*  
27 *in order to deliver the firearm to the law enforcement*  
28 *agency for the agency's disposition according to law.*

29 (D) *If the person is transporting the firearm to a law*  
30 *enforcement agency, he or she has given prior notice to*  
31 *the law enforcement agency that he or she is transporting*  
32 *the firearm to that law enforcement agency for that*  
33 *agency's disposition according to law.*

34 (E) *The firearm is transported in a locked container as*  
35 *defined in subdivision (d) of Section 12026.2.*

36 SEC. 6. Section 12201 of the Penal Code is amended  
37 to read:

38 12201. Nothing in this chapter shall affect or apply to  
39 any of the following:

1 (a) The sale to, purchase by, or possession of  
2 machineguns by police departments, sheriffs' offices,  
3 marshals' offices, district attorneys' offices, the California  
4 Highway Patrol, the Department of Justice, the  
5 Department of Corrections for use by the department's  
6 Special Emergency Response Teams and Law  
7 Enforcement Liaison/Investigations Unit, or the military  
8 or naval forces of this state or of the United States for use  
9 in the discharge of their official duties.

10 (b) The possession of machineguns by regular,  
11 salaried, full-time peace officer members of a police  
12 department, sheriff's office, marshal's office, district  
13 attorney's office, the California Highway Patrol, the  
14 Department of Justice, or the Department of Corrections  
15 for use by the department's Special Emergency Response  
16 Teams and Law Enforcement Liaison/Investigations  
17 Unit when on duty and if the use is within the scope of  
18 their duties.

19 SEC. 7. Section 12316 of the Penal Code is amended  
20 to read:

21 12316. (a) Any person, corporation, or dealer who  
22 sells ammunition or reloaded ammunition to a person  
23 knowing that person to be a minor under 18 years of age  
24 shall be punished by imprisonment in a county jail for a  
25 term not to exceed six months, or by a fine not to exceed  
26 one thousand dollars (\$1,000), or by both the  
27 imprisonment and fine.

28 Proof that a person, corporation, or dealer, or his or her  
29 agent or employee, demanded, was shown, and acted in  
30 reliance upon, bona fide evidence of majority and  
31 identity shall be a defense to any criminal prosecution  
32 under this subdivision. As used in this subdivision, "bona  
33 fide evidence of majority and identity" means a  
34 document issued by a federal, state, county, or municipal  
35 government, or subdivision or agency thereof, including,  
36 but not limited to, a motor vehicle operator's license,  
37 California state identification card, identification card  
38 issued to a member of the armed forces, or other form of  
39 identification that bears the name, date of birth,  
40 description, and picture of the person.



1 (b) (1) No person prohibited from owning or  
2 possessing a firearm under Section 12021 or 12021.1 of this  
3 code or Section 8100 or 8103 of the Welfare and  
4 Institutions Code shall own, possess, or have under his or  
5 her custody or control, any ammunition or reloaded  
6 ammunition.

7 (2) For purposes of this subdivision, "ammunition"  
8 shall include, but not be limited to, any bullet, cartridge,  
9 magazine, clip, speed loader, autoloader, or projectile  
10 capable of being fired from a firearm with a deadly  
11 consequence.

12 (3) A violation of this subdivision is punishable by  
13 imprisonment in a county jail not to exceed one year or  
14 in the state prison, by a fine not to exceed one thousand  
15 dollars (\$1,000), or by both the fine and imprisonment.

16 (c) Unless it is with the written permission of the  
17 school district superintendent, his or her designee, or  
18 equivalent school authority, no person shall carry  
19 ammunition or reloaded ammunition onto school  
20 grounds, except sworn law enforcement officers acting  
21 within the scope of their duties or persons exempted  
22 under subparagraph (A) of paragraph (1) of subdivision  
23 (a) of Section 12027. This subdivision shall not apply to a  
24 duly appointed peace officer as defined in Chapter 4.5  
25 (commencing with Section 830) of Title 3 of Part 2, a  
26 full-time paid peace officer of another state or the federal  
27 government who is carrying out official duties while in  
28 California, any person summoned by any of these officers  
29 to assist in making an arrest or preserving the peace while  
30 he or she is actually engaged in assisting the officer, a  
31 member of the military forces of this state or of the United  
32 States who is engaged in the performance of his or her  
33 duties, a person holding a valid license to carry the  
34 firearm pursuant to Article 3 (commencing with Section  
35 12050) of Chapter 1 of Title 2 of Part 4, or an armored  
36 vehicle guard, who is engaged in the performance of his  
37 or her duties, as defined in subdivision (e) of Section 7521  
38 of the Business and Professions Code. A violation of this  
39 subdivision is punishable by imprisonment in a county jail  
40 for a term not to exceed six months, a fine not to exceed

1 one thousand dollars (\$1,000), or both the imprisonment  
2 and fine.

3 (d) (1) A violation of paragraph (1) of subdivision (b)  
4 is justifiable where all of the following conditions are met:

5 (A) The person found the ammunition or reloaded  
6 ammunition or took the ammunition or reloaded  
7 ammunition from a person who was committing a crime  
8 against him or her.

9 (B) The person possessed the ammunition or reloaded  
10 ammunition no longer than was necessary to deliver or  
11 transport the ammunition or reloaded ammunition to a  
12 law enforcement agency for that agency's disposition  
13 according to law.

14 (C) The person is prohibited from possessing any  
15 ammunition or reloaded ammunition solely because that  
16 person is prohibited from owning or possessing a firearm  
17 only by virtue of Section 12021.

18 (2) Upon the trial for violating paragraph (1) of  
19 subdivision (b), the trier of fact shall determine whether  
20 the defendant is subject to the exemption created by this  
21 subdivision.

22 (3) The defendant has the burden of proving by a  
23 preponderance of the evidence that he or she is subject  
24 to the exemption provided by this subdivision.

25 SEC. 8. Section 12316 of the Penal Code is amended  
26 to read:

27 12316. (a) (1) Any person, corporation, or dealer  
28 who does either of the following shall be punished by  
29 imprisonment in a county jail for a term not to exceed six  
30 months, or by a fine not to exceed one thousand dollars  
31 (\$1,000), or by both the imprisonment and fine:

32 (A) Sells any ammunition or reloaded ammunition to  
33 a person knowing that person to be under 18 years of age.

34 (B) Sells any ammunition or reloaded ammunition  
35 designed and intended for use in a pistol, revolver, or  
36 other firearm capable of being concealed upon the  
37 person to a person knowing that person to be under 21  
38 years of age. As used in this subparagraph, "ammunition"  
39 means handgun ammunition as defined in subdivision (a)  
40 of Section 12323. Where ammunition or reloaded

1 ammunition may be used in both a rifle and a handgun,  
2 federal law shall be considered for purposes of enforcing  
3 this subparagraph.

4 (2) Proof that a person, corporation, or dealer, or his  
5 or her agent or employee, demanded, was shown, and  
6 acted in reliance upon, bona fide evidence of majority  
7 and identity shall be a defense to any criminal  
8 prosecution under this subdivision. As used in this  
9 subdivision, "bona fide evidence of majority and identity"  
10 means a document issued by a federal, state, county, or  
11 municipal government, or subdivision or agency thereof,  
12 including, but not limited to, a motor vehicle operator's  
13 license, California state identification card, identification  
14 card issued to a member of the armed forces, or other  
15 form of identification that bears the name, date of birth,  
16 description, and picture of the person.

17 (b) (1) No person prohibited from owning or  
18 possessing a firearm under Section 12021 or 12021.1 of this  
19 code or Section 8100 or 8103 of the Welfare and  
20 Institutions Code shall own, possess, or have under his or  
21 her custody or control, any ammunition or reloaded  
22 ammunition.

23 (2) For purposes of this subdivision, "ammunition"  
24 shall include, but not be limited to, any bullet, cartridge,  
25 magazine, clip, speed loader, autoloader, or projectile  
26 capable of being fired from a firearm with a deadly  
27 consequence.

28 (3) A violation of this subdivision is punishable by  
29 imprisonment in a county jail not to exceed one year or  
30 in the state prison, by a fine not to exceed one thousand  
31 dollars (\$1,000), or by both the fine and imprisonment.

32 (c) Unless it is with the written permission of the  
33 school district superintendent, his or her designee, or  
34 equivalent school authority, no person shall carry  
35 ammunition or reloaded ammunition onto school  
36 grounds, except sworn law enforcement officers acting  
37 within the scope of their duties or persons exempted  
38 under subparagraph (A) of paragraph (1) of subdivision  
39 (a) of Section 12027. This subdivision shall not apply to a  
40 duly appointed peace officer as defined in Chapter 4.5

1 (commencing with Section 830) of Title 3 of Part 2, a  
2 full-time paid peace officer of another state or the federal  
3 government who is carrying out official duties while in  
4 California, any person summoned by any of these officers  
5 to assist in making an arrest or preserving the peace while  
6 he or she is actually engaged in assisting the officer, a  
7 member of the military forces of this state or of the United  
8 States who is engaged in the performance of his or her  
9 duties, a person holding a valid license to carry the  
10 firearm pursuant to Article 3 (commencing with Section  
11 12050) of Chapter 1 of Title 2 of Part 4, or an armored  
12 vehicle guard, who is engaged in the performance of his  
13 or her duties, as defined in subdivision (e) of Section 7521  
14 of the Business and Professions Code. A violation of this  
15 subdivision is punishable by imprisonment in a county jail  
16 for a term not to exceed six months, a fine not to exceed  
17 one thousand dollars (\$1,000), or both the imprisonment  
18 and fine.

19 (d) (1) A violation of paragraph (1) of subdivision (b)  
20 is justifiable where all of the following conditions are met:

21 (A) The person found the ammunition or reloaded  
22 ammunition or took the ammunition or reloaded  
23 ammunition from a person who was committing a crime  
24 against him or her.

25 (B) The person possessed the ammunition or reloaded  
26 ammunition no longer than was necessary to deliver or  
27 transport the ammunition or reloaded ammunition to a  
28 law enforcement agency for that agency's disposition  
29 according to law.

30 (C) The person is prohibited from possessing any  
31 ammunition or reloaded ammunition solely because that  
32 person is prohibited from owning or possessing a firearm  
33 only by virtue of Section 12021.

34 (2) Upon the trial for violating paragraph (1) of  
35 subdivision (b), the trier of fact shall determine whether  
36 the defendant is subject to the exemption created by this  
37 subdivision.

38 (3) The defendant has the burden of proving by a  
39 preponderance of the evidence that he or she is subject  
40 to the exemption provided by this subdivision.

1 SEC. 9. Section 12322 of the Penal Code is amended  
2 to read:

3 12322. Nothing in this chapter shall apply to or affect  
4 either of the following:

5 (a) The sale to, purchase by, possession of, or use of any  
6 ammunition by any member of the Army, Navy, Air  
7 Force, or Marine Corps of the United States, or the  
8 National Guard, while on duty and acting within the  
9 scope and course of his or her employment, or any police  
10 agency or forensic laboratory or any person who is the  
11 holder of a valid permit issued pursuant to Section 12305.

12 (b) The possession of handgun ammunition designed  
13 primarily to penetrate metal or armor by a person who  
14 found the ammunition, if he or she is not prohibited from  
15 possessing firearms or ammunition pursuant to Section  
16 12021, 12021.1, or paragraph (1) of subdivision (b) of  
17 Section 12316 of this code or Section 8100 or 8103 of the  
18 Welfare and Institutions Code and is transporting the  
19 ammunition to a law enforcement agency for disposition  
20 according to law.

21 SEC. 10. Section 2.5 of this bill incorporates  
22 amendments to Section 12021 of the Penal Code proposed  
23 by both this bill and AB 688. It shall only become  
24 operative if (1) both bills are enacted and become  
25 effective on or before January 1, 1998, (2) each bill  
26 amends Section 12021 of the Penal Code, and (3) this bill  
27 is enacted after AB 688, in which case Section 2 of this bill  
28 shall not become operative.

29 SEC. 11. Section 8 of this bill incorporates  
30 amendments to Section 12316 of the Penal Code proposed  
31 by both this bill and AB 1221. It shall only become  
32 operative if (1) both bills are enacted and become  
33 effective on or before January 1, 1998, (2) each bill  
34 amends Section 12316 of the Penal Code, and (3) this bill  
35 is enacted after AB 1221, in which case Section 7 of this bill  
36 shall not become operative.

O

The documents following this page were  
photocopied from the files of the

Assembly Committee on

Public Safety.

Date of Hearing: April 8, 1997  
Chief Counsel: Judith M. Garvey

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Robert M. Hertzberg, Chair

AB 78 (Granlund) - As Amended: March 20, 1997

C.O.P.S.  
Do Not Remove

SUMMARY: Makes a series of changes to California's firearms and weapons laws to address issues raised in several recent Court of Appeals decisions and a letter in the Assembly Journal.

Specifically, this bill:

- 1) Creates a locked container exemption for persons who are not in a prohibited class to transport to law enforcement agency handguns they find for disposition according to law.
- 2) Allows persons not otherwise prohibited from possessing firearms to possess incident to transportation to transport certain firearms and ammunition to law enforcement agencies of those items they find for disposition according to law.
- 3) Allows non-violent, prohibited persons who are not mentally infirm to avoid prosecution on possession of conventional firearms where they deliver conventional firearms to law enforcement agencies which they find.
- 4) Rewrites a relief from disability statute to conform to a ruling of the Court of Appeal and in so doing permits any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.
- 5) Exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.
- 6) Excludes from the definition of "dirk or dagger", a non-locking folding knife, a folding knife that is not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.
- 7) Codifies case law that a dirk or dagger is not concealed upon the person where the dirk or dagger that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.

EXISTING LAW:

- 1) Provides it is illegal to carry a concealed "dirk or dagger" upon one's person. (Penal Code Section 12020(a).)

- 2) Provides it is illegal to carry a concealed handgun on one's person or in a vehicle. (Penal Code Section 12025.) There are numerous exemptions from this prohibition. (Penal Code Sections 12026, 12026.1, 12026.2, and 12027.)
- 3) Prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. (Penal Code Section 12020.)
- 4) Prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition. (Penal Code Sections 12320 to 12323.)
- 5) Prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition. (Penal Code Sections 12021 and 12021.1, and Welfare and Institutions Code Section 8100 and 8103.)
- 6) Provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition. (Penal Code Section 12021.)

COMMENTS:

- 1) Author's Statement. According to the author, "AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the the recovery of lost property.

"Also, Justice Art McKinster who is a Justice of the Court of Appeal in San Bernardino noted in In re Evans 49 Cal.App.4th 1263 that the relief from disabilities provisions in Penal Code section 12021(c)(3) as drafted violated the 'equal protection clauses' of the state and federal constitutions.

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the 10 year prohibition prior to the offense being added to the list of offense for which the 10 year prohibition applied to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

- 2) Relief from Disabilities. In re Evans (1996) 49 Cal.App.4th 1263, the Court of Appeals held that the "relief from disabilities provisions" in Penal Code Section 12021(c)(3) as drafted violated the "Equal Protection Clauses" of the State and Federal Constitutions. Evans involved a defendant who was convicted of possessing a gun after he had been convicted of spousal abuse. His conviction of spousal abuse occurred after January 1, 1991, but prior to the offense of spousal abuse barring gun possession for 10 years. That occurred in 1993.

Evans challenged his gun conviction that had he been convicted of spousal



abuse prior to 1991, he could have claimed relief. In agreeing with his claim, the Court of Appeal noted that the January 1, 1991 date was irrational as to persons where the offense barring possession was added to the list after January 1, 1991.

There are approximately 25 offenses added to the 10-year prohibition after January 1, 1991. To save the statute from invalidity, the Court of Appeal rewrote the statute to allow anyone who was convicted of an offense subject to the 10-year prohibition prior to the offense being added to the list of offenses for which the 10-year prohibition applied to apply once for relief from the disability imposed by the prohibition.

3) Persons Who Turn In Weapons.

- a) Case Law. Under current California law, there are no statutory "safe harbor" exemptions for persons who may or may not be in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies.

This issue has been discussed by the Court of Appeals in People v. Hurtado (1996) 47 Cal.App.4th. 805 and People v. Pepper (1996) 41 Cal.App.4th 1029 in the context of prohibited persons, i.e., persons who cannot legally possess any firearm. One court felt the exemption existed, but held that the defendant could not claim it. The other court disallowed the exemption period.

- b) AB 78. This bill creates distinct safe harbor exemptions for persons who are not, per se, legally prohibited from possessing weapons and for those persons prohibited from possessing weapons. The author believes that these exemptions should be placed on a statutory basis.
- c) Specific Provisions as to Non-Prohibited Persons. As to non-prohibited persons, they may legally transport conventional firearms and certain contraband to law enforcement agencies provided certain conditions are met.

The bill covers the following items:

- i. Handguns. The Civil Code contains specific provisions on the responsibilities of finders of lost property. There is no Penal Code concealed carry exemption for the safe transport of lost handguns to a law enforcement agency.

This bill amends the locked container exemption section to add two specific exemptions to allow the transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and the transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law.

Since this bill adds to a laundry list of exemptions, as is the case with the other exemptions, in order for a firearm to be exempted while being transported to or from a place, the firearm shall be unloaded, kept in a locked container and the course of travel shall include only those deviations between authorized

locations as are reasonably necessary under the circumstances.

Under current law, a "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

- ii. 12020 Items. Penal Code Section 12020 bans the manufacture, distribution, importation and possession of most illegal firearms and certain forms of ammunition. These items include a cane gun or a wallet gun, an undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multi-burst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

AB 78 would allow possession incident to transport of all Section 12020 items other than a short-barreled rifle or short-barreled shotgun found and possessed by a person who is not generally prohibited from possessing firearms or ammunition and is transporting the listed item to a law enforcement agency for disposition according to law.

- iii. Armor-Piercing Ammunition. Armor-piercing ammunition (aka "cop killer bullets") are prohibited by Penal Code Section 12320. Under this bill, a person who found the ammunition may possess it incident to transporting it to a law enforcement agency for disposition according to law if he or she is not in a prohibited class of person generally prohibited from possessing firearms or ammunition.

As is the case of various weapons statutes, the defendant has the burden that he or she falls under the exemption.

- d) Pepper-Hurtado Issue as to Prohibited Persons. As noted above, case law suggests that felons and other prohibited persons who take possession guns out of necessity and turn them into a law enforcement agency may possess the same incident to transportation thereto.

This bill makes justifiable a violation of Penal Code Section 12021 (but not other statutes) a possession charge where all of the following conditions are met:

- i. The person found the firearm or took the firearm from a person who was committing a crime against him or her.
- ii. The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

- iii. If the firearm was transported to a law enforcement agency, it was transported in accordance with the locked container rules.
- iv. Upon the trial for violating the possession section, the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this bill.
- v. The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this bill.

Should there be an amendment to include the same language in Penal Code Section 12316 (prohibited persons possessing ammunition) to include the same provision limited to the same persons set forth in Section 12021? Should not this be done?

4) When are Knives Dirk or Daggers?

- a) AB 1222 (Martinez), Chapter 128, Statutes of 1995. Last year, Assembly Member Martinez wrote a letter in the Assembly Journal clarified the meaning of AB 1222, which revised the definition of a "dirk or dagger". The prior definition was created by AB 1266 (Martinez), Chapter 357, Statutes of 1993. Both bills were designed to create a statutory definition rather than having conflicting case law.

The letter in the Journal indicates that a folding knife is "a dirk or dagger" for purposes of Penal Code Section 12020 only if the blade of such knife is exposed and locked into position.

- b) AB 78. This bill attempts to codify the letter in the Journal without touching switchblade knife regulation or otherwise doing major damage to the law. The author is doing this at the request of Buck Knives.

5) When are Dirks and Daggers Illegally Carried Concealed?

- a) Case Law. Under current Section 12020, dirks or daggers are considered to be illegally carried only if carried concealed upon the person. Case law suggests that this is under the person's clothes.
- b) AB 78. At the request of the Buck Knives, AB 798 also provides that a dirk or dagger is not illegally carried concealed if it is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions. This appears to be consistent with current case law.

6) Forensic Laboratories.

- a) Background. Under a number of code sections, lab personnel have a clear exemption to allow them to possess contraband incident to their official duties. Penal Code Section 12020 does not have such a clear exemption.
- b) AB 78. AB 78 explicitly allows possession of any weapon, device, or ammunition banned by Section 12020 by a forensic laboratory or any

authorized agent or employee thereof in the course and scope of his or her authorized activities.

- 7) Machine-Guns. At the request of Legislative Counsel, the bill makes cosmetic code maintenance changes to the machine-gun exemption statute.

ARGUMENTS IN SUPPORT AND OPPOSITION. The California Attorneys for Criminal Justice support the proposed amendments to Section 22 relating to exemptions for possession and transportation of weapons as the provision will increase public safety by encouraging the removal of firearms from communities. CACJ does not believe, however, that expanding criminal liability for possession of certain knives will deter criminal conduct, but only further clog the courts and penal institutions.

REGISTERED SUPPORT/OPPOSITION:

Support

California Attorneys for Criminal Justice (partial support)  
California Rifle and Pistol Association, Inc.  
Doris Tate Crime Victims Bureau

Opposition

California Attorneys for Criminal Justice (partial opposition)

Analysis prepared by: Judith M. Garvey / apubs / (916) 445-3268

# C.O.P.S. Do Not Remove

AB 78  
Page 1

CONCURRENCE IN SENATE AMENDMENTS  
AB 78 (Granlund)  
As Amended July 7, 1997  
Majority vote

ASSEMBLY: 76-0 (April 17, 1997) SENATE: 26-5 (July 17, 1997)

Original Committee Reference: PUB. S.

SUMMARY: Makes a series of changes to California's firearms and weapons laws to address issues raised in several recent Court of Appeals decisions and a letter in the Assembly Journal.

The Senate amendments:

- 1) Add an exemption to the existing prohibition on the acquisition, possession or transportation of firearms with obliterated ID marks for military members, peace officers, forensic lab employees, and persons otherwise in lawful possession who are taking the firearm to a law enforcement agency for disposal.
- 2) Condition all the exemptions added by the bill as passed by the Assembly for turning in firearms to a law enforcement agency on the following additional factors:
  - a) The person gives prior notice to the law enforcement agency that he or she is bringing the firearm into those premises.
  - b) The firearm is transported in a "locked container," as defined under existing law.
- 3) Allow non-violent, prohibited persons who were not mentally infirm to avoid prosecution on possession of ammunition, where they delivered the ammunition to law enforcement agencies.
- 4) Delete a duplicative provision of this bill as it passed the Assembly relating to when a dirk or dagger was not concealed upon the person.
- 5) Allow the Department of Justice (DOJ) to assign a distinguished mark to any firearm, not just a pistol or revolver, when the regular mark is obliterated.
- 6) Double-join this bill to AB 688 (Bowler), enrolled to Governor, and AB 1221 (Aroner), pending in the Senate.

EXISTING LAW:

- 1) Provides it is illegal to carry a concealed "dirk or dagger" upon one's person.
- 2) Provides it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.
- 3) Prohibits the manufacture, import, distribution or possession of specified weapons and firearms, and prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or

00215

ammunition.

- 4) Provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.
- 5) Allows the DOJ to assign a new serial number on request to any pistol or revolver.

AS PASSED BY THE ASSEMBLY, this bill:

- 1) Created a locked container exemption for persons who were not in a prohibited class to transport to law enforcement agency handguns they found for disposition according to law.
- 2) Allowed persons not otherwise prohibited from possessing firearms to possess incident to transportation to transport certain firearms and ammunition to law enforcement agencies of those items they found for disposition according to law.
- 3) Allowed non-violent, prohibited persons who were not mentally infirm to avoid prosecution on possession of conventional firearms which they found and deliver conventional firearms to law enforcement agencies.
- 4) Re-wrote a relief from disability statute to conform to a ruling of the Court of Appeal.
- 5) Exempted from the prohibition against the manufacture, import, distribution or possession of specified weapons and firearms, the possession of these items by a forensic laboratory or any authorized agent or employee thereof in the course and scope of their authorized activities.
- 6) Excluded from the definition of "dirk or dagger," a non-locking folding knife, a folding knife that was not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that would inflict great bodily injury or death only if the blade of the knife was exposed and locked into position.

FISCAL EFFECT: None

COMMENTS: This bill addresses a constitutional issue resulting from relief from disabilities issues in In re Evans 49 Cal.App.4th 1263 which rewrote the statute to make it valid. This bill conforms to Evans.

This bill creates "safe harbor" exemptions for persons who may or may not be in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies to address the suggestions of the Courts of Appeal in People v. Hurtado (1996) 47 Cal.App.4th. 805 and People v. Pepper (1996) 41 Cal.App.4th 1029.

Analysis prepared by: Judith M. Garvey / apubs / (916) 445-3268

FN 033874

ASSEMBLY THIRD READING  
AB 78 (Granlund)  
As Amended: March 20, 1997  
Majority vote

PUBLIC SAFETY 12-0

Ayes: Hertzberg, Goldsmith, Aroner,  
Baugh, Bowler, House, Kuehl,  
Martinez, Migden, Murray,  
Pacheco, Washington

C.O.P.S.  
Do Not Remove

SUMMARY: Makes a series of changes to California's firearms and weapons laws to address issues raised in several recent Court of Appeals decisions and a letter in the Assembly Journal. Specifically, this bill:

- 1) Creates a locked container exemption for persons who are not in a prohibited class to transport to law enforcement agency handguns they find for disposition according to law.
- 2) Allows persons not otherwise prohibited from possessing firearms to possess incident to transportation to transport certain firearms and ammunition to law enforcement agencies of those items they find for disposition according to law.
- 3) Allows non-violent, prohibited persons who are not mentally infirm to avoid prosecution on possession of conventional firearms where they deliver conventional firearms to law enforcement agencies which they find.
- 4) Rewrites a relief from disability statute to conform to a ruling of the Court of Appeal and in so doing permits any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.
- 5) Exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.
- 6) Excludes from the definition of "dirk or dagger", a non-locking folding knife, a folding knife that is not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.
- 7) Codifies case law that a dirk or dagger is not concealed upon the person where the dirk or dagger that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.

EXISTING LAW:

- 1) Provides it is illegal to carry a concealed "dirk or dagger" upon one's person.

- 2) Provides it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.
- 3) Prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.
- 4) Prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.
- 5) Prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.
- 6) Provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

FISCAL EFFECT: None

COMMENTS:

- 1) According to the author, "AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the the recovery of lost property.

"Also, Justice Art McKinster who is a Justice of the Court of Appeal in San Bernardino noted in In re Evans 49 Cal.App.4th 1263 that the relief from disabilities provisions in Penal Code section 12021(c)(3) as drafted violated the 'equal protection clauses' of the state and federal constitutions.

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the 10 year prohibition prior to the offense being added to the list of offense for which the 10 year prohibition applied to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

- 2) Please see the policy committee analysis for a more comprehensive discussion of this bill.

Analysis prepared by: Judith M. Garvey / apubs / (916) 445-3268



ASSEMBLY COMMITTEE ON PUBLIC SAFETY

BILL NO. 78

AUTHOR: Granlund

SENT: 2-7

DUE: 2-18

Legislative Office Building  
1021 O Street, Suite A198  
Sacramento, CA 95814-5718  
(916) 445-3268  
(916) 327-6830 (FAX)

**BILL ANALYSIS WORKSHEET**

**ALL COMMITTEE WORKSHEETS SHALL BE RETURNED TO THE COMMITTEE NO LATER THAN FIVE LEGISLATIVE DAYS AFTER DELIVERY TO THE AUTHOR'S OFFICE.**

**1) NEED FOR BILL. (AUTHOR'S STATEMENT)**

Please present all the relevant facts (BE SPECIFIC) that demonstrate the need for this bill (AS YOU WISH IT TO APPEAR IN THE AUTHOR'S STATEMENT PORTION OF THE ANALYSIS).

SEE ATTACHED

---

---

---

---

---

---

---

---

**2) SOURCE AND BACKGROUND OF BILL.**

a) Who is the person in your office to contact regarding this bill? (Please provide telephone number.)

Ash/ Irwin Nowick (445-6767/445-5231) and Dr. Bill Cavala

b) What, if any, person, organization, or governmental entity requested introduction of this bill? (PLEASE NAME SOURCE, CONTACT PERSON AND TELEPHONE NUMBER.)

c) Identification by session and bill number similar or companion bills previously introduced, including the disposition of these bills.

Unclear

d) Please attach <sup>2</sup> a copy of any press release issued in connection with this bill. (LABELING IT AS SUCH)

---

e) Please attach <sup>2</sup> copies of any background material in explanation of this bill, or state where such material is available for reference by committee staff. (LABELING IT AS SUCH)

---

f) Please attach <sup>2</sup> copies of letters of support or opposition you have already received. And please immediately forward any letters received after turning in this worksheet.

---

3) AMENDMENTS PRIOR TO HEARING.

a) Do you plan any substantive amendments to this bill prior to hearing?

yes XXXX no         

b) If the answer to (a) is "yes" please EXPLAIN BRIEFLY THE SUBSTANCE of the amendments being prepared (and attach a copy of the draft language which has gone to legislative counsel).

c) SUBSTANTIVE AUTHOR'S AMENDMENT(S) SHALL NOT BE ACCEPTED LATER THAN TUESDAY AT 12:00 P.M. PRIOR TO THE COMMITTEE HEARING AT WHICH THE BILL HAS BEEN SET. (SEVEN COPIES IN LEGISLATIVE COUNSEL FORM.) AMENDMENTS MUST BE HAND DELIVERED TO THE COMMITTEE LOCATED AT 1021 O STREET, ROOM A-198.

4) WITNESSES.

Please list the witnesses you plan to have testify.

---

5) Please state what the potential effect of this bill is if it were to be signed into law.

Deals with various court decisions on transporting of guns and

---

6) ORDER OF AGENDA. relief from the 10 year prohibition.

Subject to the Chair's discretion, bills set for hearing shall be heard in sign-in order. ONLY A MEMBER SHALL BE AUTHORIZED TO SIGN IN A BILL TO BE HEARD.

Please do not return this form through inter-office mail. Hand delivery or fax are preferred. If faxing please follow-up with a call to ensure receipt. If hand delivered, please bring to Public Safety Committee located at 1021 O Street, Room A-198.

AB 78 ATTACHMENT

AB 78 addresses certain "odds and ends weapons" issues that have come to light by virtue of the lost and found property issue and two issues raised by Granlund's constituents of mine.

The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the the recovery of lost property.

Under current California law, there are no "safe harbor" exemptions for persons who are not in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies. This issue has been alluded to by the Court of Appeals in People v. Hurtado, (1996) 47 Cal.App.4th. 805 and People v. Pepper, (1996) 41 Cal.App.4th 1029.

AB 78 addresses this issue as follows:

- 1) As to non prohibited persons by amending various Penal Code section to permit the temporary possession and transportation by non-prohibited persons who find these weapons and transporting the same to a law enforcement agency for disposition according to law.
- 2) As to the Pepper-Hurtado issue, the bill amends PC 12021 to create an exemption where the defendant proves by a preponderance of the evidence all of the following:
  - o The person found the firearm or took the same from a person committing a crime against him or her.
  - o The person possessed the firearm no longer that was necessary to transport the firearm to a law enforcement agency for that agency's disposition according to law.
  - o The firearm was transported in accordance with PC 12026.2.

If this language in the bill needs refinement, the author will be happy to amend the same to address any concern.

- 3) Justice Art McKinster who is a Justice of the Court of Appeal in San Bernardino noted in In re Evans, 49 Cal.App.4th 1263 that the relief from disabilities provisions in Penal Code section 12021(c)(3) as drafted violated the "equal protection clauses" of the state and federal constitutions.

To save the statute from invalidity, Justice McKinster

rewrote the statute to allow anyone who was convicted of an offense subject to the 10 year prohibition prior to the offense being added to the list of offense for which the 10 year prohibition applied to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion.

If we don't fix the problem as McKinster indicated, here is who could get guns:

- o Persons convicted of possessing machineguns.
  - o Persons adjudicated mentally disordered sex offenders or having mental infirmities.
  - o Persons convicted of threatening public officials.
  - o Persons convicted of bringing weapons into YA facilities.
  - o Persons convicted of certain forms of drive-by shootings.
  - o Persons convicted of domestic violence offenses.
  - o Persons convicted of gun trafficking offenses.
  - o Persons convicted of stalking.
  - o Persons convicted of possessing weapons with intent to assault another.
- 4) AB 78 codifies Assembly Member Diane Martinez's letter in the Assembly Journal which clarifies that "a dirk or dagger" for purposes of Penal Code section 12020 includes a folding knife only if the blade of such knife is exposed and locked into position. The language on this issue is being revised to reflect a concern that the switchblade knife regulations are not affected. This codification is included at the request of various hunters in the author's district.

Other legislators have introduced legislation to require the theft or loss of their handguns. If such reporting legislation is to be pursued - and there are a number of technical and legal issues involved with such a proposal, it would be irrational, unfair and fruitless to pursue such legislation unless it is linked to the protections and requirements in ABs' 78 and 79 dealing with lost and stolen serialized property.

- but 30 years of decisio

Okay, look....I don't know a tang from a choll from a quillon, but I do know that knives, like most other things around us, are *composites* of different component parts that are designed to fit and work together to accomplish their purpose. It wouldn't surprise you, would it, to hear that our scheme of criminal law operates the same way?

What if someone were offering to sell you an encased knife when all you could see was the pommel? Wouldn't you want to see the rest of it before making up your

# the DA on Dirks & Daggers

**A professional perspective on a serious subject**

BY DEVALLIS RUTLEDGE, DDA

mind? What seems to have happened with California's most recent dirk and dagger law is that some folks have looked at the isolated language of the statutory definition of "dirk or dagger," and have drawn all kinds of conclusions, without considering other important parts of the penal composition.

For many years, it has been illegal in California for someone to carry a dirk or dagger concealed on his or her person. This prohibition was intended to reduce the risk that an unsuspecting victim would be suddenly stabbed, in a face-to-face confrontation, by someone who had the unfair advantage of a hidden ability to strike without warning. This purpose of the law explains why it is not illegal to carry a dirk or dagger that is not concealed,\* nor to carry a concealed knife that is not capable of stabbing (rounded tip, for example),\* nor to carry a concealed knife that is not ready for use as a stabbing instrument (folded pocketknife,\* for example). If a potential victim can see that another is openly carrying a dirk or dagger, or has the chance to retreat while an implement is being prepared for stabbing, the threat of sudden, surprise attack is presumably lessened. Make sense?

Trouble was, for many years there was

no statutory definition of "dirk or dagger" to guide police, prosecutors and judges, much less the general public, in deciding what was and wasn't illegal. Appellate decisions were all over the landscape: some cases said a handguard was necessary, while others disagreed; some courts considered the curvature of the blade, some looked at the length, and some discussed the number of sharpened edges.

To resolve the confusion, the Legislature enacted Penal Code subsection 12020 (c) (24), specifying that a "dirk or dagger" was something primarily designed, constructed or altered to be a dangerous or

deadly stabbing weapon. Juries promptly began acquitting defendants who were caught carrying concealed butcher knives, ice picks and "survival knives" in their boots, because these items were primarily designed for something other than stabbing. Youth gangs, rapists and carjackers rejoiced.

Back at the drawing board, the Legislature adopted a redefinition aimed at effectuating the underlying policy of the law: "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." Before the ink had dried, some knees began to jerk.

Knife manufacturers, dealers, enthusiasts and users began to conjure all sorts of scary scenarios: police would be arresting everyone with a Bic pen in a coat pocket, prosecutors would go after Uncle Luther's pocket fisherman, and jails would fill up with TV technicians caught with a Phillips screwdriver under their shirts.

But the people who imagined these implications from the strict construction of the literal language of a single statute were only seeing the pommel of the knife. It would be impossible for a legislator to write any law, on any subject, that would be

exactly broad enough to accomplish its purpose, and precisely narrow enough that it would never literally apply to an unintended situation. That's why there are other laws, sometimes called "maxims of jurisprudence," that establish general guidelines for applying and interpreting specific statutes. All penal provisions, including section 12020, must be read and applied in light of these general principles, and not in isolation. Police, prosecutors and judges are trained to use judgment and to exercise their discretion with the entire composition in mind.

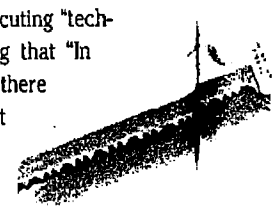
For example, Penal Code section 4 says this: "The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice." This means, said the California Supreme Court, that "statutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers—one that is practical rather than technical, and that will lead to a wise policy rather than to mischief."

And Penal Code section 20 further restricts the state from prosecuting "technical violations" by providing that "In every crime or public offense, there must exist a union, or joint operation, of act and intent, or criminal negligence." The courts have said that "this rule is particularly pertinent where a proposed construction would impose absolute criminal liability and make a felony of an act that involves no culpability whatever."

So much for the Bic pen and the innocent sportsman. Aside from the fact that some sort of overtly suspicious or criminal behavior would have to bring an individual to the attention of police in order to present the occasion for discovery of a concealed dirk or dagger (unlikely for the truly innocent), officials are simply not inclined or permitted to arrest or prosecute for conduct that technically falls within the literal language of a statute, but falls outside the *purpose* intended to be served.

The dirk or dagger statute on the books in California is adequate to permit enforce-

but look at the anecdotal evidence



ment where warranted by circumstances. At the same time, it is not so sinister, when applied in the necessary context, as to justify any concern by law-abiding citizens that any pointed object they legitimately carry may land them in the hoosegow. And just in case human error miscarries justice in any given case, layers of reviewing courts sit ready to provide correction.\*

The three penal code sections I've mentioned here are by no means the only controlling statutes. Dozens—sometimes hundreds—of laws and court decisions may apply to a single investigation and prosecution. But you get the point (no pun): it's a mistake to lift an isolated statute out of the entire criminal law composition and start drawing conclusions that run contrary to the common sense of a self-governing people. The sky is not falling.

Now...what exactly is a ricasso?

Spyderco's Mariner features a 3 1/2-inch fully serrated SHEEPSFOOT styled blade and a stainless steel handle. Their RESCUE model carries the same SHEEPSFOOT blade (shown here) but features Zytel handles. These knives are NOT designed for stabbing, but for cutting seat belts and similar materials in emergencies.



**(Editor's Note:** This article is presented in response to an article we published in the August 1996 edition of *KNIVES ILLUSTRATED*, entitled: *Dirks & Daggers Redefined, Again*. The author is a Deputy District Attorney for the County of Orange, California, and was instrumental in rewriting California law regarding the concealed carry of dangerous instruments. His manuscript is presented unedited.

\* It was reported in both September and November 1996 issues of *Blade* magazine that a Los Angeles man was arrested for carrying a Spyderco Mariner folding knife clipped to his belt. He was involved in no crime. An arresting officer declared the Mariner could be used for stabbing, even though it has a snubbed nose blade. He was found guilty of carrying concealed a dirk or dagger, even though the knife was not hidden. A similar case in another court may result in a different verdict, but the "layers of reviewing courts" cost lots of money. ) •KNIVES•

*R. Cutchin Knives*  
**Handcrafted Knives**  
 Photo by Christensen  
**Brochure \$2.00**

**Roy D. Cutchin**  
 Knifemaker

960 Hwy 169 South  
 Seale, AL 36875 (334) 855-3080

**A Complete Line of Knifemaking Supplies**  
**From A Full-Time Shop**

Heat Treating  
 Custom Sheaths  
 Leather

Extensive selection of micarta  
 pakkawood, steel, exotic woods  
 brass, books, stag horn  
 bone, handle fasteners  
 rod, tubing, ox horn  
 hippo teeth, amber  
 beads, belt sanders, belts  
 buffing wheels and rouge  
 epoxy

Send \$3.00 for Catalog  
 P.O. Box 79402  
 Houston, Texas 77279  
 (713) 461-8632

**OL BONE KNIVES, INC.**

**DAVE BURNS, KNIFEMAKER**  
 P.O. BOX 1040  
 BEACH, FL 33425-1040  
 (561) 734-4509

**Norris Custom Knives**

Bowies, Working Knives, Fighters, Collectibles  
 Custom Orders Welcome  
 Tool Steels, Stainless, Damascus

Don Norris  
 471 E. Paseo Solano  
 Tucson, Arizona 85715  
 (520) 299-6531

## DIRK OR DAGGER: DEFINED

*by Lawrence G. Brown*

In 1995, the California District Attorneys Association sponsored Assembly Bill 1222 (Martinez) which amended the definition of a "dirk" or "dagger" for purposes of Penal Code section 12020 as of January 1, 1996. Section 12020(c)(4) provides that a 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 harm."

This legislation was prompted by an overly-restrictive definition of dirk or dagger placed into statute in 1994. Since then, there has been some debate over the precise meaning of the revised definition. This prompted the author of AB 1222, Assembly Member Diane Martinez, to place a letter in the Assembly Daily Journal on August 31, 1996, to clarify the intent behind the measure. Her letter read as follows:

Dear Mr. Wilson: This letter is meant to express my intent in authoring AB 1222 in 1995, as well as the intent of the sponsors of my legislation, the California District Attorneys Association.

Among other provisions, the statute prohibits any person from carrying, concealed upon his or her person, any dirk or dagger. Subdivision (c) (24) defines the term dirk or dagger. For several decades, the term "dirk or dagger" was not defined in statute.

Prior to 1993, the Penal Code did not specifically define dirk or dagger (case law did define a "stabbing" instrument). In 1993, the Legislature enacted AB 1266 (Martinez), which was effective on January 1, 1994, that defined dirk or dagger as "a knife or other instrument with or without a hand guard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death." This "primarily designed" definition proved problematic for prosecutions and, as a result, the Legislature amended the statute again.

In 1995, the Legislature enacted AB 1222 (Martinez), which became effective on January 1, 1996. The law now defines dirk or dagger as "a knife or other instrument with or without a hand guard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death."

In sponsoring AB 1222, the California District Attorneys Association sought to eliminate the "primarily designed" language which had given rise to prosecutorial problems and to substitute language aimed at preventing surprise knife attacks by prohibiting the carrying of concealed knives that are particularly suited for stabbing and that are readily accessible to the user.

According to a police training video prepared by the Orange County District Attorney who drafted the "capable of ready use" language contained in the current statute, folding knives are not "dirk or daggers," unless they are carried in an open and locked position. This is due to the fact that, when folded, they are not "capable of ready use" without a number of intervening machinations that give the intended victim time to anticipate and/or prevent an attack.

Thus, the definition of "dirk or dagger" amended by my AB 1222 last year was not intended to prohibit folding knives. I believe this is consistent with the intent of the Legislature.

Warmest regards,

DIANE MARTINEZ, Assembly Member  
Forty-ninth District

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0001  
(916) 445-7552  
(916) 445-7650 FAX

DISTRICT OFFICE  
34932 YUCAIPA BLVD.  
YUCAIPA, CA 92399  
(909) 790-4196  
(909) 790-0478 FAX

# Assembly California Legislature

**BRETT GRANLUND**  
ASSEMBLYMEMBER, SIXTY-FIFTH DISTRICT

COMMITTEES

HEALTH, Vice Chair  
APPROPRIATIONS  
GOVERNMENTAL  
ORGANIZATION



To: Leg Counsel  
From: Irwin 445-6767/445-5231  
Re: AB 78 -Revision to RN 97707521

Please revise RN as follows:

### Amendment 5 Revised

At page 11, delete lines 14 to 17, inclusive, and insert:

inflicts great bodily injury or death. a nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocket knife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

### Amendment 6

At page 16, between lines 35 and 36, insert:

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

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

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

(C) The firearm was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

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

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

Due sure: 3/1/97

00226



AMENDMENTS TO ASSEMBLY BILL NO. 78

Amendment 1

On page 6, between lines 7 and 8, insert:

(16) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(17) A knife that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.

Amendment 2

On page 7, line 20, strike out "such" and insert:

the

Amendment 3

On page 7, line 21, strike out "such" and insert:

the

Amendment 4

On page 7, line 25, strike out "such" and insert:

the

Amendment 5

On page 11, strike out lines 14 to 17, inclusive, and insert:

insert:

[REDACTED]



MEMORANDUM

Date: 19-Jun-1997 12:53pm PDT
From: Irwin Nowick
NOWICK\_IR
Dept: SC40
Tel No:

TO: Judith Garvey

( GARVEY\_JU AT A1 AT ACOMM )

Subject: letter to the Journal-draft

Hon. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol
Sacramento, CA

Re: AB 78

Dear Dotson:

Certain questions have been raised as to the provisions of AB 78.

AB 78 addresses a number of technical firearms issues raised primarily because of recent court decisions in a manner that the courts have indicated need to be done in order to maintain these statutes on the books. In other cases, the bill codifies previous letters in the Assembly Journal or are Legislative Counsel requested cleanup amendments.

The main portions of AB 78 relate two court decisions.

First, in In re Evans, (1996) 49 Cal.App.4th 1263, the Court of Appeals held that the relief from disabilities provisions in Penal Code section 12021(c)(3) as drafted violated the equal protection clauses of the State and Federal Constitutions because of an arbitrary cutoff date for seeking relief from the disability. The Court of Appeals held was irrational as to persons, where the offense barring possession was added to the list after that date.

This w

There are approximately twenty-five offenses added to the ten-year prohibition after January 1, 1991. To save the statute from invalidity, the Court of Appeal rewrote the statute to allow anyone who was convicted of an offense subject to the ten-year prohibition prior to the offense being added to the list of offenses for which the ten-year prohibition applied, to apply once for relief from the disability imposed by the prohibition.

Interpreted
unnecessary

AB 78 conforms the language in Penal Code section 12021(c)(3) to the Evans court's decision. Failure to rewrite Section 12021(c)(3) to reflect Evans could result in the prohibition being invalid and all sorts of persons who no one to gain access to guns being legally able to do so.

Secondly, AB 78 addresses the decision of the Sacramento Superior Court in Davacamos v. Department of Justice, Case No. 96 CS 01471. In Davacamos, the Honorable Cecily Bond, Judge of the Superior Court held that current Welfare and Institutions Code section 8103(f) is unconstitutional as Section 8103(f) it deprives persons subject to its prohibition of the right to possess a firearm without any further court hearing or determination (due process right to counsel, hearing, etc.).

Judge Bond has stayed the effective date of the decision until January 1, 1998, in order to allow the Department of Justice to make the necessary changes in its process and to notify the parties who would otherwise be required to submit information to the department.

The Department of Justice is not going to appeal the decision and now wants to deal with the statutory changes needed to delete the prohibition set forth in Section 8103(f) from possessing firearms.

*believes there is little or no likelihood of success in appealing Judge Bond's decision*

The Department of Justice and the Department of Mental Health estimate that ~~approximately almost all~~ of the persons barred from possessing firearms can be prohibited from possessing the same if Section 8103(g)'s certification procedures are followed.

~~In 1991, the Legislature at the urging of then Assemblyman and now Senator John Burton enacted in Assembly Bill 242 (Connelly), Ch. 955/1991 the 8103(g) prohibition based on the so-called "5250 certification procedure" which was in addition to the 8103(f) provision.~~

*interfering with (involvement)*

Section 8103(g) was enacted in 1991 precisely because there was an concern that the Section 8103(f) prohibition was invalid.

AB 78 repeals the invalid 8103(f) provisions as Judge Bond in her order held that that Section 8103(g) procedure was so intertwined with Section 8103(f) that it should be separated out and repealed for the 8103(g) prohibition to be valid.

Judge Bond ~~held~~ <sup>held</sup> that Section 8103(g) - which is renumbered as Section 8103(f) pursuant to AB 78 - is itself a valid prohibition. As such, AB 78 preserves the valid Section 8103(g) prohibition which will now constitutionally stand.

The expectation is that with AB 78's changes, those

mentally infirm persons who should not gain access to firearms and other weapons will still be denied access pursuant to new Section 8103(f). AB 78 also states specifically that these mental health changes are being made to comply with Dayacamos.

AB 78 is the product of much effort and negotiation. In that regard, I wish to express my appreciation for the assistance and input of Assemblyman Bob Hertzberg as Chair of the Public Safety Committee, Judith Garvey, Chief Counsel of the Assembly Public Safety Committee, Senator John Burton, Simon Haines, Chief Counsel of the Senate Public Safety Committee, Larry Brown of the California District Attorneys Association, and Steve Boreman of the Attorney General's office.

*EXECUTIVE DIRECTOR*

*Deputy Attorney General*

AB 78 is supported by the Attorney General, the California Attorneys for Criminal Justice, various firearms organizations, and the State Sheriff's Association.

*California*

I trust that this clarifies matters as to the need for AB 78.

Sincerely,

Brett Granlund

I N T E R O F F I C E   M E M O R A N D U M

Date: 10-Jun-1997 12:50pm PDT  
From: Irwin Nowick  
NOWICK\_IR@A1@SENATE  
Dept: SC40  
Tel No:

TO: Judith Garvey

( GARVEY\_JU@A1@ACOMM )

Subject: ab 78 (Granlund)

Judith:

AB 78 got out of Senate Public Safety Committee DPA. The bill was amended approximately three weeks ago so that that Simon would get input on the Dayacomos situation.

Here are what the Senate Amendments to the bill do:

- 1) Inserts into the bill your suggested amendments on amending PC 12316 on Pepper-Hurtado as set forth in comment 3(d) of your analysis. That was an oversight in COPS and was done in the Senate.
- 2) Made a conforming change to 626.10 on the definition of dirks and daggers to reflect Section 12020 changes. This was a Simon requested amendment and makes a deletion on redundant language.
- 3) Includes the following provisions from SB 63 which we made a two year bill to cut down on chaptering issues:
  - a) Allows the Department of Justice to assign a distinguishing mark to any firearm, not just a pistol or revolver, when the regular mark is obliterated.
  - b) Adds exemptions to the existing general prohibition on the acquisition, possession or transportation of firearms with obliterated ID marks for:
    - i) Members of the military on duty in scope of employment;
    - ii) Peace officers on duty in scope of employment;
    - iii) Employees of a forensic laboratory on duty in scope of employment;
    - iv) Persons otherwise in lawful possession who are taking the firearm to a law enforcement agency for disposal.

- 4) Addresses the Dayacomos issue by repealing 8103(f) as added in AB 497. In Dayacomos, Judge Bond struck down 8103(f) but upheld 8103(g). This is DOJ's fix. DOJ spoke to CSSAC and the consensus was that to comply with Bond's ruling which DOJ will not appeal you need a special court hearing and procedure that is comparable to 5250.

The reason 8103(g) was added in AB 242 in 1991 was Gene, Burton, and Lloyd were told that everyone who was a nut case could constitutionally be denied a gun for 5 years under 5250 certification provisions and 8103(f) was invalid.

All the people Lloyd wanted to get at are 5250 able and it satisfies Due Process. The view is that the effect of this is that there are going to be a ton more of 5250/8103(g) hearings. I spoke to Lloyd at the Courthouse about this and he's OK on the fix. He says that the only reason he got into this is because of McClintock. In the bill it is stated that this is being done to comply with Dayacomos.

**If you have any questions about Dayacomos, call Boreman at 324-5413.**



# California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

## Officers

### President

**Ronald D. Jarrell**  
Sheriff  
Lassen County

April 11, 1997

### 1st Vice President

**Charles Byrd**  
Sheriff  
Siskiyou County

The Honorable Brett Granlund  
Assembly Member, 65th District  
State Capitol Building  
Sacramento, CA 95814

### 2nd Vice President

**Glenn Seymour**  
Sheriff  
Madera County

### Secretary

**Charles C. Plummer**  
Sheriff  
Alameda County

Dear Assembly Member Granlund:

### Treasurer

**Steve Magarian**  
Sheriff  
Fresno County

Please be advised that the California State Sheriffs' Association (CSSA) is no longer opposed to AB 78 as amended March 28, 1997.

### Sergeant-at-Arms

**Les Weidman**  
Sheriff  
Stanislaus County


Should you have any questions or wish to discuss CSSA's position on this legislation, please don't hesitate to contact me.

### Directors

**Warren Rupf**  
Sheriff  
Contra Costa County

Sincerely,

**Don McDonald**  
Sheriff  
El Dorado County

  
Alva S. Cooper  
Legislative Advocate

**Sherman Block**  
Past President  
Sheriff  
Los Angeles County

**Tom Sawyer**  
Sheriff  
Merced County

ASC/cmc

**Brad Gates**  
Past President  
Sheriff  
Orange County

cc: Assembly Committee on Public Safety  
Attention: Judith Garvey

**Bill Kalender**  
Sheriff  
San Diego County

**Jim Thomas**  
Sheriff  
Santa Barbara County

**Jim Pope**  
Immediate Past President  
Sheriff  
Shasta County

**Gary Tindel**  
Sheriff  
Yuba County

\*\*\*

Executive Director  
Sue Muncy

Hon. Public Safety Committee 4-10-97

I respectfully oppose the following bills -  
HB 73, HB 131, HB 136, HB 247, HB 488, HB 646,  
HB 958, HB 941, HB 1105, HB 1124, HB 1201, SB 243,  
HB 532, SB 515, SB 1143.

I respectfully support the following bills -  
HB 78, HB 79, HB 687, HB 739, HB 916, HB 1369, HB 3  
SB 379, SB 517, SB 591, SB 835, SB 430.

Obviously, I'm pro-firearm ownership.  
The ownership + freedom of the use of  
same, are our rights. Please vote for  
freedom, not govt control. Thank you -  
E. Bruce Vochim





## CAUSE

California Union of  
Safety Employees  
2029 H Street  
Sacramento, CA 95814  
1-800-522-2873  
916-447-5262  
916-447-2530 fax  
2900 Bristol Street  
Suite H-201  
Costa Mesa, CA 92626  
1-800-551-1414  
714-708-7576  
714-708-7582 fax

### Affiliates

Association of Conservation  
Employees  
Association of Criminalists-DOJ  
Association of Deputy  
Commissioners  
Association of Motor Carrier  
Operations Specialists  
Association of Motor Vehicle  
Investigators of California  
Association of Special  
Agents-DOJ  
California Association of  
Criminal Investigators  
California Association of  
Food & Drug Investigators  
California Association of  
Fraud Investigators  
California Association of  
Regulatory Investigators  
and Inspectors  
California Association of  
State Investigators  
California Organization of  
Food and Agriculture Inspectors  
California Organization of  
Licensing Registration Examiners  
California State Police  
Association  
CHP Radio Dispatchers  
Association  
Fire Marshals & Emergency  
Services Association  
Fish & Game Warden  
Protective Association  
Hospital Police Association  
of California  
State Employed Fire Fighters  
Association

April 4, 1997

Honorable Bob Hertzberg, Chair.  
Assembly Public Safety Committee  
State Capitol, Room 4162  
Sacramento, CA 95814

### AB 78 - SUPPORT

Dear Assemblymember Hertzberg:

The California Union of Safety Employees (CAUSE), representing more than 6,400 state employed peace officers, regulatory investigators and safety personnel, support AB 78.

This bill recognizes a glaring loophole in the law with regard to forensic laboratories and the possession and transport of certain types of evidence, and attempts to correct that problem. CAUSE and the Association of Criminalists-Department of Justice (affiliated with CAUSE), strongly endorse this corrective measure.

Should you have any questions, please call either myself at the CAUSE office or CAUSE Lobbyist Peter Jensen at (916) 441-0258.

Sincerely,

John A. Miller  
Director of Governmental Affairs

JAM:tdd

cc: Assembly Public Safety Committee

# California Attorneys for Criminal Justice



Assembly Member Brett Granlund  
State Capitol - Room 4164  
Sacramento, California 95814

April 2, 1997 Re: AB 78

Dear Assembly Member Granlund:

CACJ regrets to inform you of that we are only able to support part of AB 78 , and oppose the rest of the bill,

The proposed amendments to Section 2 relating to exemptions for possession and transportation of weapons will increase public safety by encouraging the removal of firearms from our communities.

We do not believe, however, that expanding criminal liability for possession of certain knives will deter criminal conduct, but only further clog the courts and penal institutions.

If you or your staff wish to discuss this further, please contact me at my office.

Very truly yours,

Mary Broderick  
Executive Director  
and  
Katherine Sher  
Legislative Advocate

cc: Members and consultants,  
Assembly Committee on Public Safety

EXECUTIVE DIRECTOR  
Mary Broderick  
PRESIDENT  
Jerry J. Kenkel  
P.O. Box 3970  
Chico, CA 95927  
(916) 345-1396  
PRESIDENT-ELECT  
Marcia A. Morrissey  
VICE PRESIDENT  
Cynthia A. Thomas  
SECRETARY  
Jon Minsloff  
TREASURER  
Michael F. Yamamoto  
BOARD OF GOVERNORS  
Michael L. Adelson, Los Angeles  
Seymour Applebaum, Pasadena  
Raymond Aragon, San Diego  
Carleen R. Arledge, San Jose  
Daniel L. Barton, Palo Alto  
Richard Berman, Fresno  
Clyde M. Blackmon, Sacramento  
Kelly S. Buck, Los Angeles  
Martha J. Carlton, Modesto  
Shawn Sneider Chapman, Los Angeles  
Nanci Clarence, San Francisco  
Steve Cochran, Los Angeles  
Lynne S. Coffin, San Francisco  
Cathy Dreyfuss, Venice  
Rex Gay, Susanville  
Lisa Greer, Los Angeles  
Susan Ten Kwan, San Francisco  
John C. Lawson, Los Angeles  
Jan Lecklikner, San Francisco  
Willie M. Love, Oakland  
Madellne McDowell, Sacramento  
Richard Millard, Los Angeles  
Patience Milrod, Fresno  
Elizabeth Missakian, San Diego  
Gregory C. Paraskou, San Jose  
Nancy Pemberton, Emeryville  
Vicki I. Podberesky, Santa Monica  
H.A. Sala, Bakersfield  
D. "Mickey" Sampson, Auburn  
Phillip A. Schnayerson, Hayward  
Carmela Simoncini, San Diego  
Karen Snell, San Francisco  
Trina L. Thompson Stanley, Oakland  
Maria E. Stratton, Los Angeles  
Spencer Strellis, Oakland  
Scott A. Sugarman, San Francisco  
Kay L. Sunday, San Diego  
Tony Tamburello, San Francisco  
L. Stephen Turer, San Francisco  
Frank Ubhaus, San Jose  
Verna Welald, Los Angeles  
Melissa N. Widdifield, Los Angeles  
Charles Windon, III, Los Angeles  
Christopher H. Wing, Sacramento  
Thomas S. Worthington, Salinas  
PAST PRESIDENTS  
Ephraim Margolin, San Francisco, 1974  
Paul J. Fitzgerald, Beverly Hills, 1975  
George W. Porter, Ontario, 1976  
Louis S. Katz, San Francisco, 1977  
Barry Tarlow, Los Angeles, 1978  
Charles R. Garry (deceased), 1979  
Charles M. Sevilla, San Diego, 1980  
Dennis Roberts, Oakland, 1981  
John J. Cleary, San Diego, 1982  
Gerald F. Uelmen, Santa Clara, 1983  
Michael G. Millman, San Francisco, 1984  
Robert Berke, Santa Monica, 1985  
Alex Landon, San Diego, 1986  
Richard G. Hirsch, Santa Monica, 1987  
Thomas J. Nolan, Palo Alto, 1988  
Leslie H. Abramson, Los Angeles, 1989  
Elisabeth Semel, San Diego, 1990  
Michael Rothschild, Sacramento, 1991  
Phillip H. Pennypacker, San Jose, 1992  
James Larson, San Francisco, 1993  
James S. Thomson, Berkeley, 1994  
Anne E. Fragasso, San Diego, 1995  
Cristina C. Arguedas, Emeryville, 1996  
LEGISLATIVE ADVOCATE  
Katherine Sher  
660 "J" Street, Suite 200  
Sacramento, CA 95814  
Phone: (916) 448-8868  
Fax: (916) 448-8965  
4929 Wilshire Blvd., Suite 688  
Los Angeles, CA 90010  
Phone: (213) 933-9414 00236  
Fax: (213) 933-9417

PS

# facsimile

TRANSMITTAL

**to:** Assemblyperson Robert Hertzberg  
**fax #:** 1-916-323-8459  
**re:** AB 78 (Granlund) SUPPORT  
**date:** April 1, 1997  
**pages:** 1 page(s) total, including this cover sheet

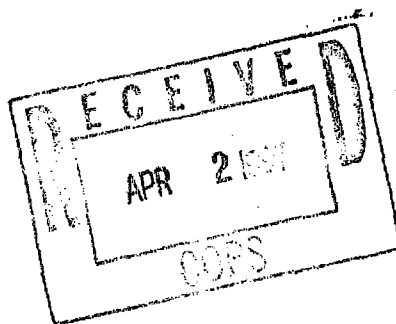
Assemblyperson Hertzberg,

AB 78 is necessary to make the current law fair for individuals who had a conviction for an offense before it was added to the ten year prohibition list.

Urge you support AB78.

Thank you,

Bob Hancock



From the desk of...

**Robert Raymond Hancock**

7001 Shady Lane  
Placerville, California 95667-8616

tel: 916-295-9385  
fax: 916-295-9385 FAX & bobhnc@inforum.net

*Add*  
80237

CARPENTER SNODGRASS  
& ASSOCIATES

Assembly Public Safety  
1021-0 1919

MEMORANDUM

March 28, 1997

TO: Assembly Public Safety Committee Members

FROM: Chris Micheli on behalf of  
BUCK KNIVES

RE: AB 78 (Granlund) -- SUPPORT  
Set for hearing: April 8, 1997

On behalf of our client, Buck Knives, I write in support of AB 78 (Granlund). Among other provisions, this bill would codify legislative intent regarding the definition of "dirk or dagger" found in California Penal Code Section 12020(c)(24).

In our opinion, Section 12020(c)(24) is an overly broad statute which could lead to discriminatory enforcement. There are already sufficient penalties for the wrongful use or brandishment of a knife. Mere possession of a knife which has many legitimate uses is unnecessary. As a result, we seek this clarifying language in the statute that specifically excludes certain knives from the dirk/dagger statute.

All folding knives should be excluded from the definition of "dirk or dagger," unless they are open and in a locked position, thereby meeting the definition of "capable of ready use." We should not prevent law-abiding citizens from possessing knives which can be used for a variety of peaceful, utilitarian purposes, such as hunting, fishing, camping, hiking, picnicking, and numerous trades or occupations customarily requiring the use of a knife. The lack of certainty and the contrary interpretations demonstrate that appropriate amendments to the statute are necessary.

AB 78 would have the effect of codifying the following letter from Assembly Member Diane Martinez which was published in the *Assembly Daily Journal* on August 31, 1996:

This letter is meant to express my intent in authoring AB 1222 in 1995, as well as the intent of the sponsors of my legislation, the California District Attorneys Association.

Among other provisions, the statute prohibits any person from carrying, concealed upon his or her person, any dirk or dagger. Subdivision (c)(24) defines the term dirk or dagger. For several decades, the term "dirk or dagger" was not defined in statute.

Prior to 1993, the Penal Code did not specifically define dirk or dagger (case law did define a "stabbing" instrument). In 1993, the Legislature enacted AB 1266 (Martinez), which was effective on January 1, 1994, that defined dirk or dagger as "a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death." This "primarily designed" definition proved problematic for prosecutions and, as a result, the Legislature amended the statute again.

In 1995, the Legislature enacted AB 1222 (Martinez), which became effective on January 1, 1996. The law now defines dirk or dagger as "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."

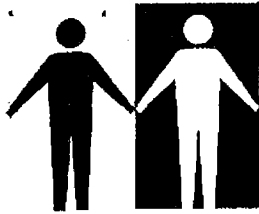
In sponsoring AB 1222, the California District Attorneys Association sought to eliminate the "primarily designed" language which had given rise to prosecutorial problems and to substitute language aimed at preventing surprise knife attacks by prohibiting the carrying of concealed knives that are particularly suited for stabbing and that are readily accessible to the user.

According to a police training video prepared by the Orange County District Attorney who drafted the "capable of ready use" language contained in the current statute, folding knives are not "dirks or daggers," unless they are carried in an open and locked position. This is due to the fact that, when folded, they are not "capable of ready use" without a number of intervening machinations which give the intended victim time to anticipate and/or prevent an attack.

Thus, the definition of "dirk or dagger" amended by my AB 1222 last year was not intended to prohibit folding knives. I believe this is consistent with the intent of the Legislature.

Buck Knives, based in El Cajon, California was founded in 1902 and is a fourth generation, family-owned and operated company. Buck Knives is one of the largest domestic manufacturers of sports cutlery. It does not manufacture knives designed to be used as weapons.

Thank you for your consideration.



*Doris Tate*

**Crime  
Victims  
Bureau**

Jan Miller  
Chairman

March 24, 1997

Susan Fisher  
Vice Chairman

Kelly Rudiger  
Executive Director

**Board and Advisory Members**

Jennifer Anderson

Steve Baker

Cynthia Duarte

Maggie Elvey

Dan Felizzatto

Jeff Fraser

Jan Lane

Judy Luecke

Alexandria Matteucci

Evan Miller

Paula Myers

Anne Poverello

Jackie Ravel Knezevich

Mike Reynolds

Valerie Richards

Anne Marie Schubert

Patti Tate

Christine Ward

Ray Wieser

Marianne Wrede

(partial listing)

The Honorable Brett Granlund  
State Capitol, Room 4164  
Sacramento, CA 95814

**Re: AB 78 - Support**

Dear Assemblyman Granlund:

On behalf of the Doris Tate Crime Victims Bureau, we would like convey our support for AB 78 regarding exemptions for transportation of firearms. Please feel free to reference our support for the measure in any forum you deem appropriate.

Sincerely,

Jeff Thompson  
Legislative Advocate  
Doris Tate Crime Victims Bureau

cc: Assembly Public Safety Committee  
Minority Consultant

---

CARPENTER SNODGRASS  
& ASSOCIATES

---

MEMORANDUM

March 17, 1997

TO: Simon Haines, Senate Criminal Procedure Committee  
Judith Garvey, Assembly Public Safety Committee  
Charlie Fennessey, Governor's Office

FROM: Chris Micheli  
on behalf of Buck Knives and the Sports Cutlery Coalition

RE: *Proposed Legislation on P.C. Section 12020 -- "Dirk or Dagger" Definition*

---

As you know, many knife manufacturers (including our client), customers and distributors have been quite concerned with the 1995 legislative amendments made to California Penal Code Section 12020(c)(24). Based upon our discussions with CDAA, I have attempted in this memo to summarize the development of the "dirk or dagger" statute, explain our concerns with the current statute, and suggest amendments to the law for your consideration which we would like to enact this Session. Proposed changes to the statute are currently contained in AB 78 (Granlund).

Background on Dirk/Dagger Statute

California Penal Code Section 12020 concerns the unlawful manufacture, carrying or possession of certain weapons. The Legislature's purpose in enacting Section 12020 was to condemn weapons common to the criminal's arsenal and to outlaw instruments that are ordinarily used for unlawful purposes. People v. Wasley (1966) 245 Cal.App.2d 383; Bills v. Superior Court (1978) 86 Cal.App.3d 855; People v. Garrett (1987) 195 Cal.App.3d 795.

Among other provisions, the statute prohibits any person from "carrying concealed upon his or her person any dirk or dagger." Violation of the statute is punishable as a felony. Subdivision (c)(24) defines the term dirk or dagger. However, for several decades, the term "dirk or dagger" was not defined in statute.

In 1967, the Supreme Court of California, for the first time, considered the term "dirk or dagger." In People v. Forrest, the Court reasoned the Legislature understood the term "dirk or dagger" did not include all knives. The Court developed the "primarily designed for use as a stabbing weapon" test. Dirks and daggers were originally used in dueling and required blades locked into place to be effective because they were weapons designed primarily for stabbing. The Court in Forrest found that a pocket knife could not be a dirk or dagger.

Memo re: P.C. Sec. 12020

March 17, 1997

Page 2

Other courts followed the Forrest case language in interpreting this section of the Penal Code. The test of a dirk or dagger was whether the instrument was designed primarily for stabbing. Hence, an instrument is not a dirk or dagger where it was designed only for use as a cutting tool and not primarily for stabbing. Bills v. Superior Court (1978) 86 Cal.App.3d 855.

Prior to 1993, the Penal Code did not specifically define dirk or dagger (case law did define a "stabbing" instrument). In 1993, the Legislature enacted AB 1266 (Martinez) (Stats. 1993, Ch. 357), which became effective on January 1, 1994. That bill defined dirk or dagger as "a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death." This "primarily designed" definition proved problematic for prosecutors and, as a result, the Legislature amended the statute again.

In 1995, the Legislature enacted AB 1222 (Martinez) (Stats. 1995, Ch. 128), which became effective on January 1, 1996. The law now defines dirk or dagger as "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."

Once again, we believe that the intent of the Legislature is to limit the types of instruments that fall under Penal Code Section 12020. "In view of the possible greater punishment for concealed possession of a dirk or dagger, it would not seem reasonable to conclude that the Legislature used those terms broadly. It should also be pointed out that the other instruments mentioned in Section 12020 are either items having no substantial innocent purpose (like a blackjack), an instrument ordinarily having an innocent purpose but constructed or altered for violent purposes (such as a sawed-off shotgun), or a highly dangerous item (an explosive substance). Thus, the Legislature did not include all knives within the terms dirk or dagger." People v. Bain (1971) 5 Cal.3d 839.

In sponsoring AB 1222, the California District Attorneys Association sought to eliminate the "primarily designed" language which had given rise to prosecutorial problems and to substitute language aimed at preventing surprise knife attacks by prohibiting the carrying of concealed knives that are suited for stabbing and that are readily accessible to the user. Unfortunately, we do not think this intent is reflected in the current statutory language.

According to the Assembly Public Safety Committee's analysis on AB 1222, "[t]he requirement in the bill that the dirk or dagger be capable of ready use as a stabbing weapon would seem to preclude a folding pocket knife from being included within this definition, consistent with settled case law."



Memo re: P.C. Sec. 12020  
March 17, 1997  
Page 3

In addition, according to the police training video prepared by the Orange County District Attorney who drafted the "capable of ready use" language contained in the current statute, folding knives are not "dirks or daggers," unless they are carried in an open and locked position. This is due to the fact that, when folded, they are not "capable of ready use" without a number of intervening machinations which give the intended victim time to anticipate and/or prevent an attack.

Similarly, a letter written by Larry Brown to Assemblyman Poochigian on May 18, 1995 asserted that folded pocket knives concealed on the person are not included within the revised definition of "dirk or dagger" under AB 1222. He stated in his letter that "a knife which is folded would not be capable of ready use as a stabbing weapon, since it would require the affirmative act of unfolding the blade." While this appears to be an appropriate and plausible interpretation of the "capable of ready use" language, once again, we are concerned that the statute could be interpreted differently and actually has been interpreted differently.

CDAA has indicated that the definition of "dirk or dagger" amended by AB 1222 was not intended to prohibit folding knives. While we believe this is consistent with the intent of the Legislature, the language in the statute is not clear on this point. That is the key reason that we would like to amend the statute so that this point and others are clear, rather than be subject to interpretation (perhaps the wrong interpretation) by a judge or jury in the future, let alone law enforcement.

#### Concerns Are Justified

There is some lack of concern expressed by those with whom we have spoken about the need for clarifying amendments to Section 12020. However, there is plenty of evidence that justifies our concerns with the lack of guidance in the statute. For example, a February 6, 1996 "Watch Briefing" issued by the Crescenta Valley Police Department states that "[t]his new definition would include any locking blade knife or fixed blade knife concealed on the person in a position where it can be readily retrieved for use as a weapon."

It goes on to specify that one particular knife is a perfect example of what the statute is intended to cover: "One excellent example, seen frequently of late, is the 'SPYDERCO' locking blade knife. Your friendly Watch Commander would probably approve a 12020 P.C. booking of anyone carrying this knife concealed on the person." Not only are these statements clearly contrary to the intent expressed by the sponsors of AB 1222, but also they are of great concern to knife manufacturers, especially because the locking blade knife is one of the most popular products today.

Memo re: P.C. Sec. 12020

March 17, 1997

Page 4

In addition, we would suggest a review of the transcript from the March 28, 1996 court trial in *People v. Troy Michael Smith* (No. 6NE00086). The Deputy D.A. prosecuting the case argued that the new definition under AB 1222 requires that "two things are looked at: the situation that we find the knife in and then the design of the weapon itself." The Court stated that the knife in this case was "capable of ready use as a stabbing weapon" because "[i]t can be opened very quickly and with one hand." The judge also stated that "some indication that the user or possessor of the weapon intends to use it as a dirk or dagger" is also indicative of a violation of § 12020. Neither the prosecutor nor the judge in this case argued the intent expressed by the sponsors of AB 1222 in adopting the revised definition of dirk or dagger. Moreover, the statements were quite disconcerting for those who read the transcript as they were contrary to existing case law, as well as the literal reading of the statute.

Finally, a quick survey by two knife companies last July found that they were aware of several instances in which their customers were charged under Section 12020 for carrying a folding, locking knife. While some of these charges were dismissed, other defendants were fined or pled guilty to a lesser charge. We are receiving more anecdotal evidence on a regular basis from persons statewide who have been arrested or charged for violating Sec. 12020 because they are carrying a one-handed knife.

Obviously, there is confusion among law enforcement, prosecutors and the judiciary concerning the definition of "dirk or dagger." Moreover, as you can see, these interpretations do not follow the assurances given by CDAA that the statute was not intended to cover pocket knives or folding knives. This evidence demonstrates that our concerns are fully justified and that amendments are needed to this statute.

In our opinion, Section 12020(c)(24) is an overly broad statute which could lead to discriminatory enforcement. There are already sufficient penalties for the wrongful use or brandishment of a knife. Mere possession of a knife which has many legitimate uses is unnecessary. As a result, we would like to have clarifying language in the statute that specifically excludes certain knives from the dirk/dagger statute.

All folding knives should be excluded from the definition of "dirk or dagger." Folding knives that lock should also be excluded from the definition as the locking mechanism was designed as a safety feature and not for stabbing efficiency. In addition, locking knives are no more "capable of ready use" than a non-locking knife. We should not prevent law-abiding citizens from possessing knives which can be used for a variety of peaceful, utilitarian purposes, such as hunting, fishing, camping, hiking, picnicking, and numerous trades or occupations customarily requiring the use of a knife. The lack of certainty and the contrary interpretations as set forth above clearly demonstrate that appropriate amendments to the statute are necessary,

Memo re: P.C. Sec. 12020  
March 17, 1997  
Page 5

### Suggested Language

In light of the foregoing, representatives of Buck Knives and I discussed this matter with representatives of CDAA. Pursuant to those discussions, we proposed to CDAA the following amendments to California Penal Code Sections 12020 (c)(24) and (d):

(c)(24) As used in this section, a "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. *A non-locking folding knife or a pocket knife is not "capable of ready use" within the meaning of this section. A folding knife with a locking blade is not "capable of ready use" within the meaning of this section unless it is carried in an open and locked position.*

This provision is consistent with Orange County Deputy D.A. Rutledge's interpretation of the legislative intent behind this statute (as expressed on his police training video). This provision is also consistent with the language that the knife must be "capable of ready use."

(c)(25) *"Concealed upon his or her person" shall not include any folding knife or pocket knife that is carried by a belt clip or in a backpack, tool belt, tool box, tackle box, briefcase, suitcase, purse, or other similar container used to carry or transport possessions.*

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed *upon his or her person* within the meaning of this section.

A fixed blade knife worn in a sheath which is covered by outerwear, such as during cold or inclement weather, should fall under this section as well. Once again, these provisions are consistent with Deputy D.A. Rutledge's interpretation of the legislative intent behind this statute (as expressed on his police training video). Moreover, as he specifies in an August 23, 1994 letter to Assemblywoman Martinez, "[n]or does the section prohibit carrying knives openly, in belt sheaths (thereby accommodating the hunter and fisher)."

I should point out that CDAA expressed opposition to our proposed amendments set forth above. Nonetheless, CDAA has agreed that it would be appropriate to discuss these concerns and any proposed amendments to Section 12020. In the meantime, CDAA committed to do the following three things:

1. A letter to the *Assembly Daily Journal* was placed on August 31, 1996 by Assembly Member Diane Martinez indicating legislative intent in enacting AB 1222. The letter is attached for your reference.

Memo re: P.C. Sec. 12020

March 17, 1997

Page 6

2. Devallis Rutledge wrote an article for *Knives Illustrated* magazine, a copy of which is attached for your information.

3. CDAA ran an article in its monthly magazine and reprinted the Martinez letter. A copy of the article is attached.

Thank you for your prompt attention to this matter. I look forward to discussing this important issue at your earliest convenience.

cc: Irwin Nowick  
Steve Boreman, Dept. of Justice  
Ash Givargis, Assemblyman Granlund  
C.J. Buck & Lisa Sanderson, Buck Knives



*Removed  
per f/c*

# California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

February 10, 1997

Officers  
President  
**Ronald D. Jarrell**  
Sheriff  
Lassen County

1st Vice President  
**Charles Byrd**  
Sheriff  
Siiskiyou County

2nd Vice President  
**Glenn Seymour**  
Sheriff  
Madera County

Secretary  
**Charles C. Plummer**  
Sheriff  
Alameda County

Treasurer  
**Steve Magarian**  
Sheriff  
Fresno County

Sergeant-at-Arms  
**Les Weidman**  
Sheriff  
Stanislaus County

Directors  
**Warren Rupp**  
Sheriff  
Contra Costa County

**Don McDonald**  
Sheriff  
El Dorado County

**Sherman Block**  
Past President  
Sheriff  
Los Angeles County

**Tom Sawyer**  
Sheriff  
Merced County

**Brad Gates**  
Past President  
Sheriff  
Orange County

**Bill Kolender**  
Sheriff  
San Diego County

**Jim Thomas**  
Sheriff  
Santa Barbara County

**Jim Pope**  
Immediate Past President  
Sheriff  
Shasta County

**Gary Tindel**  
Sheriff  
Yuba County

\*\*\*

Executive Director  
**Sue Muney**

The Honorable Brett Granlund  
Assembly Member, 65th District  
State Capitol Building  
Sacramento, CA 95814

Dear Assembly Member Granlund:

Please be advised that the California State Sheriffs' Association (CSSA) is opposed to AB 78 as presently drafted.

On page 11, line 14 of the bill, the new language exempts a folding knife from being considered a "dirk" or dagger only when the blade is exposed and locked in position. We believe that this definition could be interpreted to include "switchblade" knives, "fan" knives, etc. We suggest that the words, "otherwise legal" be inserted after the work "knife" on line 14.

Also, on page 19, line 4 after the word, "person" we would like the words "legally eligible to possess a firearm" added, and on line 8, after the word, "person" add the words, "legally eligible to possess a firearm."

Thank you for your consideration regarding CSSA's position on AB 143. Should you have any questions or wish to discuss the bill, please don't hesitate to contact me.

Sincerely,

Alva S. Cooper  
Legislative Advocate

ASC/cmc



## California Rifle and Pistol Association, Inc.

1127 11th Street • Suite 610 • Sacramento, California 95814  
 (916) 447-C<sub>2</sub>R<sub>7</sub>P<sub>7</sub>A<sub>2</sub> • FAX (916) 446-3531

**Bill J. Chapman**  
President  
**Martin J. Miller, Jr.**  
Vice President  
**Robert A. Frushon**  
Secretary  
**George V. Barr**  
Treasurer  
**James H. Erdman, Jr.**  
Executive Director  
**Gerald H. Upholt**  
Manager - Governmental Affairs

January 31, 1997

The Honorable Brett Granlund  
 California State Assembly  
 P.O. Box 942849  
 Sacramento, CA 94249

Dear Assemblymember Granlund:

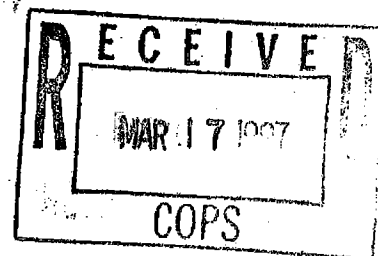
RE: AB 78 Firearms: Transporting exemption  
 Position: Support as introduced December 18, 1996

This is to notify you of the support of the California Rifle and Pistol Association for legislation introduced by you, AB 78, that would provide for the lawful transportation of firearms "found" by a person to a law enforcement agency; that allows anyone convicted of an offense subject to the 10-year prohibition on the possession of a firearm prior to that offense being added to the 10-year prohibition list to apply to the courts for relief; and which seeks to clarify the provisions relating to the prohibition against the possession of a dirk or dagger concealed upon the person.

Sincerely,

Gerald H. Upholt  
 Manager of Governmental Affairs

cc: Assembly Public Safety Committee



## REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member Martinez was granted unanimous consent that the following statement of legislative intent be printed in the Journal.

Legislative Intent—Assembly Bill No. 1222

August 30, 1996

*E. DOTSON WILSON*

*Chief Clerk of the Assembly  
State Capitol, Room 3196  
Sacramento, California*

Dear Mr. Wilson: This letter is meant to express my intent in authoring AB 1222 in 1995, as well as the intent of the sponsors of my legislation, the California District Attorneys Association.

Among other provisions, the statute prohibits any person from carrying, concealed upon his or her person, any dirk or dagger. Subdivision (c) (24) defines the term dirk or dagger. For several decades, the term "dirk or dagger" was not defined in statute.

Prior to 1993, the Penal Code did not specifically define dirk or dagger (case law did define a "stabbing" instrument). In 1993, the Legislature enacted AB 1266 (Martinez), which was effective on January 1, 1994, that defined dirk or dagger as "a knife or other instrument with or without a hand guard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death." This "primarily designed" definition proved problematic for prosecutions and, as a result, the Legislature amended the statute again.

In 1995, the Legislature enacted AB 1222 (Martinez), which became effective on January 1, 1996. The law now defines dirk or dagger as "a knife or other instrument with or without a hand guard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death."

In sponsoring AB 1222, the California District Attorneys Association sought to eliminate the "primarily designed" language which had given rise to prosecutorial problems and to substitute language aimed at preventing surprise knife attacks by prohibiting the carrying of concealed knives that are particularly suited for stabbing and that are readily accessible to the user.

According to a police training video prepared by the Orange County District Attorney who drafted the "capable of ready use" language contained in the current statute, folding knives are not "dirk or daggers," unless they are carried in an open and locked position. This is due to the fact that, when folded, they are not "capable of ready use" without a number of intervening machinations that give the intended victim time to anticipate and/or prevent an attack.

Thus, the definition of "dirk or dagger" amended by my AB 1222 last year was not intended to prohibit folding knives. I believe this is consistent with the intent of the Legislature.

Warmest regards,

DIANE MARTINEZ, Assembly Member  
Forty-ninth District

The documents following this page were  
photocopied from the files of the  
Senate Committee on  
Public Safety.



**SENATE COMMITTEE ON PUBLIC SAFETY**

Senator John Vasconcellos, Chair  
1997-98 Regular Session

A  
B  
7  
8

AB 78 (Granlund)  
As amended May 29, 1997  
Hearing date: June 10, 1997  
Penal Code and Uncodified Law  
SH:jm

THE DANGEROUS WEAPONS' CONTROL LAW -  
A VARIETY OF PROPOSED CHANGES

**HISTORY**

Source: Author

Prior Legislation: See text/Comments for relevant references

Support: California Union of Safety Employees; Buck Knives; California Attorneys  
for Criminal Justice

Opposition: None known

Assembly Floor Vote: Ayes 76 - Noes 0.

KEY ISSUES

SHOULD A VARIETY OF CHANGES BE MADE TO THE DANGEROUS WEAPONS' CONTROL LAW, INCLUDING THE FOLLOWING:

(1) UNDER EXISTING LAW, ANY PERSON WHO IS SUBJECT TO THE PROHIBITION ON POSSESSING A FIREARM BECAUSE OF SPECIFIED MISDEMEANOR CONVICTIONS PRIOR TO JANUARY 1, 1991, MAY PETITION THE COURT ONLY ONCE FOR RELIEF FROM THE PROHIBITION.

(CONTINUED)

(More)

SHOULD THE LAW BE CHANGED TO DELETE THE SPECIFIC REFERENCE TO "JANUARY 1, 1991" AND INSTEAD APPLY "PRIOR TO THE OFFENSE BEING ADDED TO" THE SPECIFIED OFFENSES THAT ARE SUBJECT TO THE PROHIBITION?

(2) EXISTING LAW PROVIDES THAT ANY PERSON WHO, AS A RESULT OF MENTAL DISORDER, IS A DANGER TO OTHERS, OR TO HIMSELF OR HERSELF, OR GRAVELY DISABLED, AND IS TAKEN INTO CUSTODY IN AN EVALUATION FACILITY FOR 72-HOUR TREATMENT AND EVALUATION, IS PROHIBITED FROM OWNING, POSSESSING, CONTROLLING, RECEIVING, OR PURCHASING ANY FIREARM FOR A PERIOD OF FIVE YEARS AFTER RELEASE FROM THE FACILITY.

SHOULD THAT PROHIBITION APPLICABLE TO A PERSON WHO IS DETAINED FOR TREATMENT AND EVALUATION FOR A PERIOD NOT TO EXCEED 72 HOURS (AND NOT OTHERWISE CERTIFIED FOR TREATMENT) BE DELETED?

SHOULD UNCODIFIED LANGUAGE BE ENACTED TO STATE LEGISLATIVE INTENT THAT THIS CHANGE IS BEING MADE IN ORDER TO COMPLY WITH THE DECISION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SACRAMENTO IN DAYACAMOS V. DEPARTMENT OF JUSTICE, CASE NO. 96 CS 01471?

SHOULD NUMEROUS OTHER AMENDMENTS BE MADE TO THE DANGEROUS WEAPONS' CONTROL LAW, AS SPECIFIED?

#### PURPOSE

(1) Existing law provides that it is illegal to carry a concealed "dirk or dagger" upon one's person. (Penal Code Section 12020(a))

This bill excludes from the definition of "dirk or dagger" a non-locking folding knife, a folding knife that is not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(2) Existing law provides that it is illegal to carry a concealed handgun on one's person or in a vehicle. (Penal Code Section 12025) There are numerous exemptions from this prohibition. (Penal Code Sections 12026, 12026.1, 12026.2, and 12027)

(More)

This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

(3) Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. (Penal Code Section 12020)

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(4) Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition. (Penal Code Sections 12320 to 12323)

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

(5) Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition. (Penal Code Sections 12021 and 12021.1, and Welfare and Institutions Code Sections 8100 and 8103)

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

(6) Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition. (Penal Code Section 12021)

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

(More)

(7) Existing law allows the Department of Justice to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark. (Penal Code Section 12092)

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

(8) Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks. (Penal Code Section 12094)

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

(9) Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition. (Penal Code Section 12316)

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

(10) Existing law provides that every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not. (Welfare and Institutions Code Section 8103)

This bill deletes that restriction for persons held only under WIC 5150 (and not otherwise certified for additional intensive treatment.

This bill contains uncodified language that:

"It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471."

(More)

This bill makes related changes to the Dangerous Weapons' Control Law.

The purpose of this bill is to make all of the changes specified to the existing law.

## COMMENTS

### 1. Need for This Bill.

According to the author:

"AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

"Also, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the 'equal protection clauses' of the state and federal constitutions.

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the ten year prohibition prior to the offense being added to the list of offenses for which the ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made "to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471." That decision was made February 7, 1997, and the order was stayed until January 1, 1998, in order to allow the Department of Justice to comply.

(More)

## 2. Relief from the Prohibition on Possessing a Firearm after Specified Misdemeanor Offenses

In In re Evans (1996) 49 Cal.App.4th 1263, the Court of Appeals (Fourth Appellate District) held that the "relief from disabilities provisions" in Penal Code Section 12021(c)(3) as drafted violated the "Equal Protection Clauses" of the State and Federal Constitutions. Evans involved a defendant who was convicted of possessing a gun after he had been convicted of spousal abuse. His conviction of spousal abuse occurred after January 1, 1991, but prior to the offense of spousal abuse barring gun possession for ten years. That occurred in 1993.

Evans challenged his gun conviction that, had he been convicted of spousal abuse prior to 1991, he could have claimed relief. In agreeing with his claim, the Court of Appeal noted that the January 1, 1991 date was irrational as to persons, where the offense barring possession was added to the list after January 1, 1991.

There are approximately twenty-five offenses added to the ten-year prohibition after January 1, 1991. To save the statute from invalidity, the Court of Appeal rewrote the statute to allow anyone who was convicted of an offense subject to the ten-year prohibition prior to the offense being added to the list of offenses for which the ten-year prohibition applied, to apply once for relief from the disability imposed by the prohibition.

This bill conforms the language in Penal Code Section 12021(c)(3) to the court's decision.

## 3. The Deletion of WIC Section 5150 72-Hour Holds from the Prohibitions on Firearms Possession.

Under current law, every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not.

Sacramento Superior Court Judge Bond has now held that it is unconstitutional to deprive a "5150" of the right to possess a firearm without any further court hearing or determination (due process right to counsel, hearing, etc.). Dayacamos v. Department of Justice, Case No. 96 CS 01471, February 7, 1997. Judge Bond stayed the effective date of the decision until January 1, 1998, in order to allow the Department of Justice to make the necessary changes in its process and to notify the parties who would otherwise be required to submit information to the department.

(More)

The Department of Justice is not going to appeal the decision and now wants to deal with the statutory changes needed to delete the prohibition on "5150's" from possessing firearms. DOJ and the Department of Mental Health estimate that approximately 40% of existing 413,000 "5150's" in the system will have been held beyond 72-hours with a requisite court hearing, so those individuals are still subject to firearms possession prohibitions. That means 60% of those persons will be deleted and no longer subject to such restrictions (presumably the same ratio will exist for future persons first held pursuant to WIC "5150").

AB 78 now has amendments which delete the WIC "5150" prohibition. The alternative would be to require a full blown court proceeding for all "5150's," however, the whole point of the 72-hour hold is to decide whether to go forward to seek further commitment. How would a hearing take place for those persons not certified for intensive treatment, for purposes only of the imposition of firearms possession?

AB 78 also now contains the following uncodified language to make clear that the change is being made to comply with the court decision:

SEC. 11. It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471.

#### 4. Additional Information Provided by Staff Working on This Bill

The staff person working on this bill provides the following information pertaining to some of the numerous other changes made by this bill:

(1) Under current California law, there are no statutory "safe harbor" exemptions for persons who may or may not be in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies.

This issue has been discussed by the Court of Appeals in People v. Hurtado (1996) 47 Cal.App.4th. 805, and People v. Pepper (1996) 41 Cal.App.4th 1029, in the context of prohibited persons, i.e., persons who cannot legally possess any firearm. One court felt the exemption existed, but held that the defendant could not claim it. The other court disallowed the exemption period.

This bill creates distinct safe harbor exemptions for persons who are not, *per se*, legally prohibited from possessing weapons and for those persons prohibited from

(More)

possessing weapons. The author believes that these exemptions should be placed on a statutory basis.

As to non-prohibited persons, they may legally transport conventional firearms and certain contraband to law enforcement agencies provided certain conditions are met.

The Civil Code contains specific provisions on the responsibilities of finders of lost property. There is no Penal Code concealed carry exemption for the safe transport of lost handguns to a law enforcement agency. This bill amends the locked container exemption section to add two specific exemptions to allow the transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and the transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law.

Since this bill adds to a laundry list of exemptions, as is the case with the other exemptions, in order for a firearm to be exempted while being transported to or from a place, the firearm shall be unloaded, kept in a locked container and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

Penal Code Section 12020 bans the manufacture, distribution, importation and possession of most illegal firearms and certain forms of ammunition. AB 78 would allow possession incident to transport of all Section 12020 items other than a short-barreled rifle or short-barreled shotgun found and possessed by a person who is not generally prohibited from possessing firearms or ammunition and is transporting the listed item to a law enforcement agency for disposition according to law.

Under this bill, a person who found armor piercing ammunition may possess it incident to transporting it to a law enforcement agency for disposition according to law if he or she is not in a prohibited class of person generally prohibited from possessing firearms or ammunition.

As is the case in various weapons statutes, the defendant has the burden that he or she falls under the exemption.

(2) As noted above, case law suggests that felons and other prohibited persons who take possession guns out of necessity and turn them into a law enforcement agency may possess the same incident to transportation thereto.

This bill makes justifiable a violation of Penal Code Section 12021 (but not other statutes)--a possession charge--if the specified conditions are met.



(3) When is a knife a dirk or a dagger? See AB 1222 (Martinez), Chapter 128, Statutes of 1995 . Last year, Assemblymember Martinez wrote a letter in the Assembly Journal clarifying the meaning of AB 1222, which revised the definition of "dirk or dagger." The prior definition was created by AB 1266 (Martinez), Chapter 357, Statutes of 1993. Both bills were designed to create a statutory definition rather than having conflicting case law.

The letter in the Journal indicates that a folding knife is "a dirk or dagger," for purposes of Penal Code Section 12020, only if the blade of such knife is exposed and locked into position.

This bill attempts to codify the letter in the Journal without touching switchblade knife regulation or otherwise doing major damage to the law. The author is doing this at the request of Buck Knives.

(4) Under a number of code sections, lab personnel have a clear exemption to allow them to possess contraband incident to their official duties. Penal Code Section 12020 does not have such a clear exemption. AB 78 explicitly allows possession of any weapon, device, or ammunition banned by Section 12020 by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(5) At the request of Legislative Counsel, the bill makes cosmetic code maintenance changes to the machine-gun exemption statute.

#### 5. Suggested Amendment

In order to prevent possible confusion, committee staff recommends deleting the language on page 7, lines 36-38, of this bill pertaining to "dirks and daggers." Staff and interested parties appear to have agreed to that amendment.

SHOULD THIS AMENDMENT BE MADE?

\*\*\*\*\*

~~add something~~  
 DPA - + add  
 Senator  
 A  
 B  
 Polanco  
 9  
 1  
 + McPherson

**SENATE COMMITTEE ON PUBLIC SAFETY**  
 Senator John Vasconcellos, Chair  
 1997-98 Regular Session

Probably to  
 may

AB 991 (Shelley)  
 As amended June 3, 1997  
 Hearing date: June 24, 1997  
 Penal Code and Food and Agricultural Code  
 SH:js

**REGISTERING HANDGUNS BROUGHT INTO THIS STATE WITH THE DEPARTMENT OF JUSTICE**

**HISTORY**

Source: Author

Prior Legislation: AB 501 (1993-94) - provisions amended out in the Senate

Support: Handgun Control; California Medical Association; Los Angeles County District Attorney; Trauma Foundation; Legal Community Against Violence

Opposition: None known (no letters received by Committee)

NRA / CAPA

Assembly Floor Vote: Ayes 41 - Noes 33

NOTE: THIS ANALYSIS REFLECTS AUTHOR'S AMENDMENTS TO BE OFFERED IN COMMITTEE (SEE COMMENT 5)

**KEY ISSUES**

SHOULD A PERSON MOVING INTO CALIFORNIA WITH A HANDGUN ACQUIRED OUTSIDE OF CALIFORNIA BE REQUIRED TO REGISTER THE HANDGUN WITH THE DEPARTMENT OF JUSTICE, AS SPECIFIED, WITH VIOLATIONS PUNISHABLE AS A MISDEMEANOR?

(CONTINUED)

(More)

SHOULD CALIFORNIA RESIDENTS WHO ARE FEDERALLY LICENSED CURIO AND RELIC FIREARMS COLLECTORS WHO LAWFULLY ACQUIRE A CURIO OR RELIC HANDGUN OUTSIDE THIS STATE BE REQUIRED TO REPORT THE ACQUISITION OF THAT FIREARM TO DOJ, AS SPECIFIED, WITH VIOLATIONS PUNISHABLE AS A MISDEMEANOR?

SHOULD THE DEPARTMENT OF JUSTICE BE REQUIRED TO CONDUCT A PUBLIC EDUCATION AND NOTIFICATION PROGRAM REGARDING THE REQUIREMENT FOR NEW RESIDENTS TO REGISTER HANDGUNS IN ORDER TO ENSURE A HIGH DEGREE OF PUBLICITY ABOUT THAT REQUIREMENT?

SHOULD THE DEPARTMENT OF FOOD AND AGRICULTURE BE REQUIRED TO POST NOTICES ABOUT LAWS PERTAINING TO BRINGING FIREARMS INTO THIS STATE AT BORDER INSPECTION STATIONS?

SHOULD RELATED CHANGES BE MADE?

#### PURPOSE

Existing law generally requires that the sale, loan or transfer of a firearm in California must be conducted through a state-licensed firearms dealer or through a local sheriff's department in counties of less than 200,000 population. A 10-day waiting period, background check, and handgun safety certificate for handgun transfers are required prior to delivery of the firearm. (Penal Code Sections 1203[e][13], 11106, and 12072[c] and [d] and 12084)

This bill does the following:

- adds a new definition to law for a "personal handgun importer" as a person who is not otherwise "licensed" regarding sale of firearms; who owns a handgun; who acquired that handgun outside of California; and who moves into and becomes a resident of this state after January 1, 1998.
- requires a "personal handgun importer" to, within 30 days of bringing a handgun into this state, to either forward information about the person and handgun to the Department of Justice; sell or transfer the firearm pursuant to law to another party (through a dealer) or to a dealer; or sell or transfer the handgun to a sheriff or police department; all as specified. (Violations would be punishable as a misdemeanor; a one year statute of limitations applies pursuant to Penal Code Section 802.)

(More)

00261

- provides that if a "personal handgun importer" attempts to transfer a handgun to another person through a licensed dealer but the transfer cannot be completed, then that attempt shall comply with the registration requirements added by this bill.
- requires the Department of Justice, working with the DMV, to notify persons of the requirements pertaining to a "personal handgun importer".
- requires California residents who are federally licensed curio and relic firearms collectors who lawfully acquire a curio or relic handgun outside this state to report the acquisition of that firearm to the DOJ within five days of transporting the firearm into this state. (Violations would be punishable as a misdemeanor; a one year statute of limitations applies pursuant to Penal Code Section 802.)
- states legislative intent that the new requirements pertaining to "personal handgun importers" and curio and relics collectors shall not constitute a "continuing offense" and the statute of limitations for commencing a prosecution for a violation commences on the date that the applicable grace period expires.

This bill makes related changes.

The purpose of this bill is to require persons moving into this state with a handgun to register those handguns within 30 days, as specified, and to make related changes.

## COMMENTS

### 1. Need for This Bill

According to the author's staff:

"Since January 1, 1991, all changes of title on a handgun have to be registered with the Department of Justice (DOJ). Therefore, when our constituents acquire handguns in-state, the handguns have to be registered in their names. This occurs as part of the waiting period process. On the other hand, when persons move to California with handguns, they are not subject to a registration process. This bill makes these new California residents subject to the registration requirements. In addition, this bill also addresses a 1996 federal law change which resulted in a loss of the ability of the State to invoke registration procedures on licensed collectors who acquire curios and relics outside California. AB 991 also requires a collector whose licensed premises are within this state, who acquires a handgun curio or relic outside of this state, and then transports that firearm into this state, within five days of transporting the gun to register the acquisition to DOJ."

(More)

## 2. Background on This Bill

Currently, all sales, purchases, transfers and loans of firearms – including handguns – are to be conducted through a state licensed firearms dealer, subject to handgun registration and other controls.

State law currently does not require people moving into California with handguns to register the guns with DOJ. Penal Code Section 12078 (l) allows anyone to register handguns with DOJ and many persons have elected to do so. There have been numerous efforts to regulate this process, to provide parity between people who acquire guns in California, and people who move to California with their guns.

In the 1993-1994 Legislative Session, AB 501 (Alpert) passed the Assembly and the Senate Policy Committee. That bill was later gutted for other purposes. The Assembly Public Safety Committee analysis at that time contained a detailed discussion of this issue, which dates back to the mid-1960's.

AB 501 attempted to equalize the treatment between gun owners who purchase firearms in California and gun owners who import weapons they previously owned in another state. Under AB 501, the return of the gun was subject to wait/registration/DROS process. AB 501 had notice and other provisions as well.

Background information provided Committee staff indicates that some other states currently regulate the importation of handguns by new residents. New Jersey requires that handguns must be shipped to a state licensed dealer in order to enter the state, with subsequent redelivery to eligible owners. Oregon, which has a waiting period and background check for handgun transfers, similarly requires importation through a dealer. Hawaii requires that when a person imports a firearms into the state, he or she must register it within 72 hours. Michigan requires people importing firearms to obtain a permit, and to register the weapon through a "pistol inspection."

The Federal Gun Control Act of 1968 prohibits the mailing of handguns weapons to non-law enforcement personnel, and the transference (or receipt) of a firearm from another state without prior shipment to a licensed dealer. However, those who possess firearms may move them to another state.

Finally, SB 1374 (Chapter 924, Statutes of 1996) required the Attorney General, subject to the availability of funds, to study and report back to the Legislature about the effects of federal and state law on changes in residency and the movement of firearms as well as the impact of both on persons who are residents of more than one state in a year. That report was due by June 1, 1997.

(More)

00263

### 3. The Notice Issue for New Residents

This bill requires the Department of Justice, working with the DMV, to publicize the new requirements for "personal handgun importers" imposed by this bill. The Department of Food and Agriculture would also be required to post notices at border stations. This bill further provides for Dealer Record of Sale (DRoS) fees to be used for those public awareness efforts.

Staff working on this bill provides the following general information pertaining to any questions about adequate notice being provided any person who is a "personal handgun importer":

Galvan v. Superior Court, (1969) 70 Cal.2d 851, involved a San Francisco ordinance that required persons who resided in San Francisco or moved into that city and county to register their handguns. The grace period for new residents was 7 days.

Two of Galvan's claims are directly related to this bill. First, the Supreme Court rejected the notion that there had to be a notice component as part of due process.

Secondly, the Supreme Court rejected the contention by Galvan that the ordinance violated the Fifth Amendment and the California Constitution.

The defendant argued that persons such as felons, narcotics addicts, and the like did not have to comply with the ordinance because they were prohibited by Penal Code section 12021 from possessing handguns. Registering their guns would expose them to a Section 12021 prosecution.

In rejecting the self-incrimination claim, the California Supreme Court made two points. First, Mr. Galvan did not have a Section 12021 defense as he did not assert he was in a prohibited class. Therefore, his claim of privilege – which is personal to the holder – did not lie.

Secondly, the Galvan court noted that in two other cases the United States Supreme Court made clear that generalized reporting schemes aimed at conventional firearms or other lawful items involving the public at large required a specific claim of privilege before the Fifth Amendment claim could be raised.

### 4. Collector Issue in This Bill

According to the Assembly Committee on Public Safety analysis of this bill, last year's AB 113 (W. Murray) – Chapter 668, Statutes of 1996 – provided an exemption from the waiting period for the delivery, sale or transfer by a licensed firearms dealer of a curio or

(More)

relic handgun to a licensed collector with a current DOJ Certificate of Eligibility (COE). A COE is a fingerprint-based background check issued annually. The transaction must still be registered with the DOJ on Dealer Registry Of Sale forms as is the case with other weapons. Fees may be charged.

In October of 1996, the Federal Government enacted a law which allows the actual delivery of curio and relic firearms to a federal firearms licensee outside the state where his/her licensed premises are located. Prior to the 1996 change, the delivery had to occur at the person's licensed premises. The federal law resulted in the ability to engage in behavior outside of California which resulted in a loss of state jurisdiction.

AB 991 mandates that if a licensed collector whose licensed premises are within California acquires a handgun curio or relic outside of this state, the collector must, within five days after transporting the gun into California, register the acquisition with DOJ.

#### 5. Author's Amendments To Be Offered in Committee

The author's amendments do the following to the June 3, 1997, version of this bill:

(a) delete Section 4 of the bill, the proposed change to Penal Code Section 12021 pertaining to those person prohibited from possessing firearms for a specified time period.

(b) revise the requirement that the DOJ conduct a public education and notification program about new residents registering handguns, beginning on page 22, line 17, to read:

(D)(i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

*(ii) As part of this public education and notification program, described in this subparagraph, the department shall do all of the following:*

*(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and is provided with blank copies of the report described in clause (i) of subparagraph (A), at the time that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.*

*(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.*

*(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.*

Maybe  
modify

(More)

00265

***(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers licensed pursuant to Section 12071 or at law enforcement agencies and it is advisable to do so for the sake of accuracy and completeness of the reports at either the premises of dealers licensed pursuant to Section 12071 or at the premises of law enforcement agencies.***

***(iii) Any costs*** incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(c) delete all the references added in Penal Code Section 12076 to the "sum not to exceed" limits for the Department of Agriculture and the Department of Justice and delete all references in Section 12076 to "by the act which added" concerning the Welfare and Institutions Code Sections 8103, 8104, and 8105 requirements.

(d) restore the existing misdemeanor penalty for furnishing incorrect information or a fictitious name to a licensed firearms dealer.

\*\*\*\*\*



SENATE FLOOR AMENDMENTS COMMITTEE ANALYSIS

---

Bill No: AB 78  
Author: Granlund  
RN: 9717383  
Set: 1  
Submitted by: Peace

---

SUBJECT OF BILL: The Dangerous Weapons' Control Law

Subject of Amendments: Same

Amendments are: Technical / Substantive / Re-write Bill / New Bill

Were these amendments discussed in committee? No

If yes, were they defeated? N/A

Likely opposition to amendments? No

If yes, from whom? N/A

Purpose of Amendments: To insert a requirement that law enforcement be notified prior to a person taking a firearm or other device to the law enforcement agency for disposition.

ANALYSIS: This bill inserts into several sections of existing law provisions to allow persons to lawfully transport firearms or other destructive devices to a law enforcement agency for disposition according to law.

These amendments further require that in each of those situations, law enforcement is to be given "prior notice" before a person takes a firearm or destructive device to a law enforcement agency. These amendments are therefore consistent with the bill as introduced and previously amended.

By: Senate Committee on Public Safety; Simon Haines  
Date: July 7, 1997

\*\*\*\* END \*\*\*\*

*J. Pauland*  
*Trace*

AMENDMENTS TO ASSEMBLY BILL NO. 78  
AS AMENDED IN SENATE JUNE 30, 1997

*Item 72*

Amendment 1

On page 7, strike out lines 33 to 39, inclusive, on page 8, strike out lines 1 and 2, in line 3, strike out "(16)" and insert:

(15) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(16) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

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

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(17)

Amendment 2

*above*

*[Handwritten bracket]*

L06



On page 19, between lines 7 and 8, insert:

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

Amendment 3

On page 25, between lines 5 and 6, insert:

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

Amendment 4

On page 27, line 25, after "firearm" insert:

and if that firearm is being transported to a law enforcement agency, the person gives prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency

Amendment 5

On page 27, line 28, after "law" insert:

, if he or she gives prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law

Amendment 6

On page 35, line 23, after "his" insert:

or her

Amendment 7

On page 36, strike out lines 7 to 15, inclusive, and insert:

(4) The possession and disposition of a firearm described in subdivision (a) by a person who meets, all of the following:

(A) He or she is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code, or Section 8100 or

8103 of the Welfare and Institutions Code.

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

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency in order to deliver the firearm to the law enforcement agency for the agency's disposition according to law.

(D) If the person is transporting the firearm to a law enforcement agency, he or she has given prior notice to the law enforcement agency that he or she is transporting the firearm to that law enforcement agency for that agency's disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

- 0 -

SENATE FLOOR AMENDMENTS COMMITTEE ANALYSIS

---

Bill No: AB 78  
Author: Granlund  
RN: 9716917  
Set: 1  
Submitted by: Peace

---

SUBJECT OF BILL: The Dangerous Weapons' Control Law

Subject of Amendments: Same

Amendments are: Technical / Substantive / Re-write Bill / New Bill

Were these amendments discussed in committee? No

If yes, were they defeated? No

Likely opposition to amendments? No

If yes, from whom? N/A

Purpose of Amendments: To (1) delete proposed changes in the bill pertaining to persons subject to a 72-hour hold/observation and to (2) add double-jointing language to prevent chaptering concerns with AB 688 (Bowler).

ANALYSIS: (1) The first amendment to this bill deletes Sections 4, 10, and 11 of the bill altogether. Those provisions relate to changes proposed because of a Sacramento Superior Court case enjoining the Attorney General from enforcing existing firearms restrictions on persons subject to a 72-hour hold pursuant to Welfare and Institutions Code Section 5150 (where no subsequent "hearing" is held). Interested parties, including the Attorney General's staff, have continued to discuss this proposed change and all agree that retaining the current provisions, notwithstanding that court's action, is appropriate. In addition, it has now been ascertained that the 2d District Court of Appeal in Orange County is considering the same issue but has not yet issued a decision. Therefore, it is appropriate to delete those proposed statutory changes from this bill altogether and to leave a discussion of any need to revise those sections, and how, to another time. The Attorney General will remain subject to the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471.

(2) The second amendment adds double-jointing language to protect the provisions of AB 688 (Bower). AB 688 is currently on the Senate floor and amends the provisions of Penal Code Section 12021 pertaining to restrictions on the possession of firearms by persons adjudged to have committed specified crimes as juveniles. AB 78 amends Penal Code Section 12021 in general and provides "justifiable" violations if specified conditions are met. These double-jointing amendments protect the amendment made by AB 688 to that section if both bills are signed into law and AB 78 is signed after AB 688.

By: Senate Committee on Public Safety; Simon Haines  
Date: June 30, 1997

\*\*\*\* END \*\*\*\*

SENATE FLOOR AMENDMENTS COMMITTEE ANALYSIS

---

Bill No: AB 78  
Author: Granlund  
RN: 9716411  
Set: 1  
Submitted by: Peace

---

SUBJECT OF BILL: The Dangerous Weapons' Control Law

Subject of Amendments: Same

Amendments are: Technical / Substantive / Re-write Bill / New Bill

Were these amendments discussed in committee? Yes

If yes, were they defeated? No

Likely opposition to amendments? None

If yes, from whom? N/A

Purpose of Amendments: To remove Section 1 of the bill and to add double-jointing language to protect AB 1221 (Aroner) in the event this bill is signed into law after AB 1221.

ANALYSIS: The first amendment deletes Penal Code Section 626.10 from the bill. That language was added at staff's suggestion in the policy committee in order to conform the definition of "dirk" and "dagger" to the definition this bill revises in Penal Code Section 12020; there was no actual discussion of that amendment in committee. That amendment has now resulted in concern about its impact. Therefore, it is appropriate to delete Penal Code Section 626.10 from the bill altogether and leave a discussion of any need to revise that section to another time.

The second amendment simply adds double-jointing language to protect the provisions of AB 1211 (Aroner); AB 1211 is currently in the Senate Appropriations Committee.

By: Senate Committee on Public Safety; Simon Haines  
Date: June 23, 1997

\*\*\*\* END \*\*\*\*

07678

06/19/97 4:14 PM  
RN9716411 PAGE 1  
Substantive

*Brett G...*

AMENDMENTS TO ASSEMBLY BILL NO. 78  
AS AMENDED IN SENATE JUNE 17, 1997

*Place*

Amendment 1

In line 1 of the title, strike out "626.10,"

*Item # 29*

Amendment 2

On page 3, strike out lines 1 to 5, inclusive, strike out pages 4 and 5, on page 6, strike out lines 1 to 13, inclusive, in line 14, strike out "SEC. 1.5." and insert:

SECTION 1.

Amendment 3

On page 35, between lines 16 and 17, insert:

SEC. 8.5. Section 12316 of the Penal Code is amended to read:

12316. (a) (1) Any person, corporation, or dealer who sells ammunition or reloaded ammunition to a person knowing that person to be a minor under 18 years of age does either of the following shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both the imprisonment and fine:

(A) Sells any ammunition or reloaded ammunition to a person knowing that person to be under 18 years of age.

(B) Sells any ammunition or reloaded ammunition designed and intended for use in a pistol, revolver, or other firearm capable of being concealed upon the person to a person knowing that person to be under 21 years of age. As used in this subparagraph, "ammunition" means handgun ammunition as defined in subdivision (a) of Section 12323. Where ammunition or reloaded ammunition may be used in both a rifle and a handgun, federal law shall be considered for purposes of enforcing this subparagraph.

(2) Proof that a person, corporation, or dealer, or his or her agent or employee, demanded, was shown, and acted in reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this subdivision. As used in this subdivision, "bona fide evidence of majority and identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, California state identification card, identification card issued to a member of the

012





armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(b) (1) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

(2) For purposes of this subdivision, "ammunition" shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

(3) A violation of this subdivision is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.

(c) Unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under subparagraph (A) of paragraph (1) of subdivision (a) of Section 12027. This subdivision shall not apply to 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 California, any person summoned by any of these officers to assist in making an arrest or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, 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, or an armored vehicle guard, who is engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code. A violation of this subdivision is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars (\$1,000), or both the imprisonment and fine.

(d) (1) A violation of paragraph (1) of subdivision (b) is justifiable where all of the following conditions are met:

(A) The person found the ammunition or reloaded ammunition or took the ammunition or reloaded ammunition from a person who was committing a crime against him or her.

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

(C) The person is prohibited from possessing any ammunition or reloaded ammunition solely because that person is

07678

06/19/97 4:14 PM  
RN9716411 PAGE 3  
Substantive

prohibited from owning or possessing a firearm only by virtue of Section 12021.

(2) Upon the trial for violating paragraph (1) of subdivision (b), the trier of fact shall determine whether the defendant is subject to the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she is subject to the exemption provided by this subdivision.

Amendment 4

On page 41, below line 33, insert:

SEC. 12. Section 8.5 of this bill incorporates amendments to Section 12316 of the Penal Code proposed by both this bill and AB 1221. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 12316 of the Penal Code, and (3) this bill is enacted after AB 1221, in which case Section 8 of this bill shall not become operative.

- 0 -

Author: Jrnlund

Bill No. AB 78

**SENATE COMMITTEE ON PUBLIC SAFETY**

**BACKGROUND INFORMATION**  
Room 7209, State Capitol, 322-1305

Please complete this form and return it to the Senate Committee on Public Safety, Room 2209. Your bill will not be set until this form is returned. **CALL AS SOON AS POSSIBLE TO SET YOUR BILL.**

1. What is the name and phone number of the person on your staff responsible for this measure?

Ash Givargus 445-7552

2. Which agency, organization or individual requested the introduction of this bill?

Name: Author

Phone Number:

Contact Person:

3. Which agencies, organizations, or individuals (outside of the sponsor) have expressed support? Attach copies of letters.

See attached

4. Which agencies, organizations or individuals have expressed opposition? Attach copies of letters.

CAJC - in part

5. If a similar bill has been introduced in this or any previous session, what was the number and year of its introduction?

see attached

6. What problem or deficiency under current law does the bill seek to remedy? Please be specific as possible, and include any legal or empirical information upon which the bill is based. NOTE: Some or all of this statement may be quoted verbatim in the Committee's analysis.

See attached

7. Are you planning any amendments to be offered before the Committee hearing? YES  NO  If so, describe the amendments. PLEASE NOTE THAT THE HEARING OF A BILL MAY BE DELAYED IF ONE SIGNED AND SIX UNSIGNED COPIES OF AMENDMENTS IN LEGISLATIVE COUNSEL FORM ARE NOT PROVIDED TO THE COMMITTEE SECRETARY IN A TIMELY MANNER.

See attached

8. If you have any further background information or material relating to this measure (letters of support or opposition, reports, court cases, Legislative Counsel opinions, citations, etc.), please attach copies or state where such information is available.

Amendments. Three substantive amendments will be included in the bill, two of which are definite:

Amendment 1

This first amendment would include in the bill the identification mark provisions of SB 63 (Peace). Those amendments would:

- a) Allow the Department of Justice to assign a distinguishing mark to any firearm, not just a pistol or revolver, when the regular mark is obliterated.
- b) Adds specific exemptions to the existing general prohibition on the acquisition, possession or transportation of firearms with obliterated ID marks, such as for peace officers possessing such weapons in the normal course of business. Specifically, this adds exemptions to the existing general prohibition on the acquisition, possession or transportation of firearms with obliterated ID marks (a) members of the military on duty in scope of employment; (b) same for peace officers; same for employees of a forensic laboratory; persons otherwise in lawful possession who are taking the firearm to a law enforcement agency for disposal.

Amendment 2

The Assembly Public Safety Committee analysis recommended that an amendment to include the same language in Penal Code Section 12316 (prohibited persons possessing ammunition) to include the same provision limited to the same persons set forth in Section 12021 on the turn in issue. Amendments will be submitted to do that.

Amendment 3

Earlier this year, Judge Bond in Sacramento held the provisions of WIC 8103(f) (so-called 5150 gun ban) were invalid. It is unclear whether Judge Bond struck down the statute because there was no judicial adjudication of 5150 status or that the 5150 ban per se was invalid. The Department of Justice committed to Judge Bond to "fix" the problem legislatively. The author and his advisor have agreed to implement Judge Bond's agreement with DOJ. They are, however, awaiting DOJ's language.

## AB 78 - Weapons Bill

**Author:**

Assemblyman Brett Granlund (R-Yucaipa)

**Co-Authors:**

**Sponsor:**

**Problem the bill addresses:**

AB 78 addresses certain "odds and ends weapons" issues that have come to light by virtue of the lost and found property issue and two issues raised by Granlund's constituents. The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property. Under current California law, there are no "safe harbor" exemptions for persons who are not in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies. This issue has been alluded to by the Court of Appeals in People v. Hurtado, (1996) 47 Cal.App.4th. 805 and People v. Pepper, (1996) 41 Cal.App.4th 1029.

**Proposed solution:**

AB 78 would:

- 1) As to non prohibited persons by amending various Penal Code sections to permit the temporary possession and transportation by non-prohibited persons who find these weapons and transporting the same to a law enforcement agency for disposition according to law.
- 2) The bill amends PC 12021 to create an exemption where the defendant proves by a preponderance of the evidence all of the following
  - a. The person found the firearm or took the same from a person committing a crime against him or her.
  - b. The person possessed the firearm no longer that was necessary to transport the firearm to a law enforcement agency for that agency's disposition according to law.

**For more information, please contact Ash Givargis in  
Assemblyman Brett Granlund's office at (916) 445-7552.**

c. The firearm was transported in accordance with PC 12026.2.

If this language in the bill needs refinement, the author will be happy to amend the same to address any concern.

3) Justice Art McKinister who is a Justice of the Court of Appeal in San Bernardino noted in *IN re Evans*, 49 Cal.App.4th 1263 that the relief from disabilities provisions in Penal Code section 12021 (c) (3) as drafted violated the "equal protection clauses" of the state and federal constitutions.

To save the statute from invalidity, Justice McKinister rewrote the statute to allow anyone who was convicted of an offense subject to the 10 year prohibition prior to the offense being added to the list of offenses for which the 10 year prohibition applied to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinister's opinion.

If we don't fix the problem as McKinister indicated, here is who could get guns:

- Persons convicted of possessing machine guns.
- Persons adjudicated mentally disordered sex offenders.
- Persons convicted of threatening public officials.
- Persons convicted of bringing weapons into YA facilities.
- Persons convicted of certain forms of drive-by shootings.
- Persons convicted of domestic violence offenses.
- Persons convicted of gun trafficking offenses.
- Persons convicted of stalking.
- Persons convicted of possessing weapons with intent to assault another.

4) AB 78 codifies Assembly Member Diane Martinez's letter in the Assembly Journal which clarifies that "a dirk or dagger" for purposes of Penal Code section 12020 includes a folding knife only if the blade of such knife is exposed and locked into position. The language on this issue is being revised to reflect a concern that the switchblade knife regulations are not affected. This codification is included at the request of various hunters in the author's district.

Other legislators have introduced legislation to require the reporting of theft or loss of their handguns. If such reporting legislation is to be pursued -- and there are a number of technical and legal issues involved with such a proposal, it would be irrational, unfair and fruitless to pursue such legislation unless it is linked to the protections and requirements in ABs' 78 and 79 dealing with lost and stolen serialized property.

#### **Arguments in support:**

**For more information, please contact Ash Givargis in  
Assemblyman Brett Granlund's office at (916) 445-7552.**

*- but 30 years of decis. is*

Okay, look...I don't know a tang from a choil from a quillon, but I do know that knives, like most other things around us, are *composites* of different component parts that are designed to fit and work together to accomplish their purpose. It wouldn't surprise you, would it, to hear that our scheme of criminal law operates the same way?

What if someone were offering to sell you an encased knife when all you could see was the pommel? Wouldn't you want to see the rest of it before making up your

no statutory definition of "dirk or dagger" to guide police, prosecutors and judges, much less the general public. In deciding what was and wasn't illegal. Appellate decisions were all over the landscape: some cases said a handguard was necessary, while others disagreed; some courts considered the curvature of the blade, some looked at the length, and some discussed the number of sharpened edges.

To resolve the confusion, the Legislature enacted Penal Code subsection 12020 (c) (24), specifying that a "dirk or dagger" was something primarily designed, constructed or altered to be a dangerous or

exactly broad enough to accomplish its purpose, and precisely narrow enough that it would never literally apply to an unintended situation. That's why there are other laws, sometimes called "maxims of jurisprudence," that establish general guidelines for applying and interpreting specific statutes. All penal provisions, including section 12020, must be read and applied in light of these general principles, and not in isolation. Police, prosecutors and judges are trained to use judgment and to exercise their discretion with the entire composition in mind.

For example, Penal Code section 4 says this: "The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice." This means, said the California Supreme Court, that "statutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers—one that is practical rather than technical, and that will lead to a wise policy rather than to mischief."

*- but lack at the anecdotal evidence*

And Penal Code section 20 further restricts the state from prosecuting "technical violations" by providing that "In every crime or public offense, there must exist a union, or joint operation, of act and intent, or criminal negligence." The courts have said that "this rule is particularly pertinent where a proposed construction would impose absolute criminal liability and make a felony of an act that involves no culpability whatever."

So much for the Bic pen and the innocent sportsman. Aside from the fact that some sort of overtly suspicious or criminal behavior would have to bring an individual to the attention of police in order to present the occasion for discovery of a concealed dirk or dagger (unlikely for the truly innocent), officials are simply not inclined or permitted to arrest or prosecute for conduct that technically falls within the literal language of a statute, but falls outside the *purpose* intended to be served.

The dirk or dagger statute on the books in California is adequate to permit enforce-



# the DA on Dirks & Daggers

**A professional perspective on a serious subject**

BY DEVALLIS RUTLEDGE, DDA

mind? What seems to have happened with California's most recent dirk and dagger law is that some folks have looked at the isolated language of the statutory definition of "dirk or dagger," and have drawn all kinds of conclusions, without considering other important parts of the penal composition.

For many years, it has been illegal in California for someone to carry a dirk or dagger concealed on his or her person. This prohibition was intended to reduce the risk that an unsuspecting victim would be suddenly stabbed, in a face-to-face confrontation, by someone who had the unfair advantage of a hidden ability to strike without warning. This purpose of the law explains why it is not illegal to carry a dirk or dagger that is not concealed,\* nor to carry a concealed knife that is not capable of stabbing (rounded tip, for example),\* nor to carry a concealed knife that is not ready for use as a stabbing instrument (folded pocketknife,\* for example). If a potential victim can see that another is openly carrying a dirk or dagger, or has the chance to retreat while an implement is being prepared for stabbing, the threat of sudden, surprise attack is presumably lessened. Make sense?

Trouble was, for many years there was

deadly stabbing weapon. Juries promptly began acquitting defendants who were caught carrying concealed butcher knives, ice picks and "survival knives" in their boots, because these items were primarily designed for something other than stabbing. Youth gangs, rapists and carjackers rejoiced.

Back at the drawing board, the Legislature adopted a redefinition aimed at effectuating the underlying policy of the law: "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." Before the ink had dried, some knees began to jerk.

Knife manufacturers, dealers, enthusiasts and users began to conjure all sorts of scary scenarios: police would be arresting everyone with a Bic pen in a coat pocket, prosecutors would go after Uncle Luther's pocket fisherman, and jails would fill up with TV technicians caught with a Phillips screwdriver under their shirts.

But the people who imagined these implications from the strict construction of the literal language of a single statute were only seeing the pommel of the knife. It would be impossible for a legislator to write any law, on any subject, that would be

ment where warranted by . . . circumstances. At the same time, it is not so sinister, when applied in the necessary context, as to justify any concern by law-abiding citizens that any pointed object they legitimately carry may land them in the hoosegow. And just in case human error miscarries justice in any given case, layers of reviewing courts sit ready to provide correction.\*

The three penal code sections I've mentioned here are by no means the only controlling statutes. Dozens—sometimes hundreds—of laws and court decisions may apply to a single investigation and prosecution. But you get the point (no pun): it's a mistake to lift an isolated statute out of the entire criminal law composition and start drawing conclusions that run contrary to the common sense of a self-governing people. The sky is not falling.

Now...what exactly is a ricasso?

Spyderco's Mariner features a 3 1/2-inch fully serrated SHEEPSFOOT styled blade and a stainless steel handle. Their RESCUE model carries the same SHEEPSFOOT blade (shown here) but features Zytel handles. These knives are NOT designed for stabbing, but for cutting seat belts and similar materials in emergencies.



**(Editor's Note:** This article is presented in response to an article we published in the August 1996 edition of *KNIVES ILLUSTRATED*, entitled: *Dirks & Daggers Redefined, Again*. The author is a Deputy District Attorney for the County of Orange, California, and was instrumental in rewriting California law regarding the concealed carry of dangerous instruments. His manuscript is presented unedited.

\* It was reported in both September and November 1996 issues of *Blade* magazine that a Los Angeles man was arrested for carrying a Spyderco Mariner folding knife clipped to his belt. He was involved in no crime. An arresting officer declared the Mariner could be used for stabbing, even though it has a snubbed nose blade. He was found guilty of carrying concealed a dirk or dagger, even though the knife was not hidden. A similar case in another court may result in a different verdict, but the "layers of reviewing courts" cost lots of money. | • **KNIVES** •

*R. Cutchin Knives*  
**Handcrafted Knives**  
 Photo by Christensen  
**Brochure \$2.00**

**Roy D. Cutchin**  
 Knifemaker

960 Hwy 169 South  
 Seale, AL 36875 (334) 855-3080

**A Complete Line of Knifemaking Supplies**  
**From A Full-Time Shop**

Heat Treating  
 Custom Sheaths  
 Leather

Extensive selection of micarta  
 pakkawood, steel, exotic woods  
 brass, books, stag horn  
 bone, handle fasteners  
 rod, tubing, ox horn  
 hippo teeth, amber  
 beads, belt sanders, belts  
 buffing wheels and rouge  
 epoxy

Send \$3.00 for Catalog  
 P.O. Box 79402  
 Houston, Texas 77279  
 (713) 461-8632

**OL BONE KNIVES, INC.**

**DAVE BURNS, KNIFEMAKER**  
 P.O. BOX 1040  
 BEACH, FL 33425-1040  
 (561) 734-4509

**Norris Custom Knives**  
 Blades, Working Knives, Fighters, Collectibles  
 Custom Orders Welcome  
 Steels, Stainless, Damascus

Don Norris  
 4715 N. Paseo Schoyta  
 Tucson, Arizona 85711  
 (520) 299-6551



## DIRK OR DAGGER: DEFINED

by Lawrence G. Brown

In 1995, the California District Attorneys Association sponsored Assembly Bill 1222 (Martinez) which amended the definition of a "dirk" or "dagger" for purposes of Penal Code section 12020 as of January 1, 1996. Section 12020(c)(4) provides that a 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 harm."

This legislation was prompted by an overly-restrictive definition of dirk or dagger placed into statute in 1994. Since then, there has been some debate over the precise meaning of the revised definition. This prompted the author of AB 1222, Assembly Member Diane Martinez, to place a letter in the Assembly Daily Journal on August 31, 1996, to clarify the intent behind the measure. Her letter read as follows:

Dear Mr. Wilson: This letter is meant to express my intent in authoring AB 1222 in 1995, as well as the intent of the sponsors of my legislation, the California District Attorneys Association.

Among other provisions, the statute prohibits any person from carrying, concealed upon his or her person, any dirk or dagger. Subdivision (c) (24) defines the term dirk or dagger. For several decades, the term "dirk or dagger" was not defined in statute.

Prior to 1993, the Penal Code did not specifically define dirk or dagger (case law did define a "stabbing" instrument). In 1993, the Legislature enacted AB 1266 (Martinez), which was effective on January 1, 1994, that defined dirk or dagger as "a knife or other instrument with or without a hand guard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death." This "primarily designed" definition proved problematic for prosecutions and, as a result, the Legislature amended the statute again.

In 1995, the Legislature enacted AB 1222 (Martinez), which became effective on January 1, 1996. The law now defines dirk or dagger as "a knife or other instrument with or without a hand guard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death."

In sponsoring AB 1222, the California District Attorneys Association sought to eliminate the "primarily designed" language which had given rise to prosecutorial problems and to substitute language aimed at preventing surprise knife attacks by prohibiting the carrying of concealed knives that are particularly suited for stabbing and that are readily accessible to the user.

According to a police training video prepared by the Orange County District Attorney who drafted the "capable of ready use" language contained in the current statute, folding knives are not "dirk or daggers," unless they are carried in an open and locked position. This is due to the fact that, when folded, they are not "capable of ready use" without a number of intervening machinations that give the intended victim time to anticipate and/or prevent an attack.

Thus, the definition of "dirk or dagger" amended by my AB 1222 last year was not intended to prohibit folding knives. I believe this is consistent with the intent of the Legislature.

Warmest regards,

DIANE MARTINEZ, Assembly Member  
Forty-ninth District

MEMORANDUM

Date: 21-Jun-1997 06:03pm PDT  
From: Irwin Nowick  
NOWICK\_IR  
Dept: SC40  
Tel No:

TO: Simon Haines

( HAINES\_SI )

Subject: 991 info

Simon:

- 1) In terms of "fix-it" ticket analogies, the sole registration situation wherein a fix-it ticket is used is where the person commits CVC 4454 - not having the registration in the vehicle. I checked with DMV and a fix it ticket does not apply to other registration violations.
- 2) The fix-it ticket is a bad analogy anyway because of the Assault Weapons infraction procedure that drives Burton up the wall. Indeed, the nuisance portion of AB 23 by rewriting PC 12276.5 and the infraction repeal in 23 is to put a stop to Lungren's action of allowing illegal possessors of assault weapons to late register their firearms after the grace period provided for in Chapter 953 of the Statutes of 1991 expired which is in direct contravention of the intent and provisions of the Roberti-Roos Assault Weapons Control Act.
- 3) In terms of residency, CVC 6700(a) provides that a non resident has to register his or her car within 20 days of establishing residency here.
- 4) In terms of residency, CVC 12505(c) provides that a non resident has to get a California Driver's license car within 10 days of establishing residency here.

**You might mention in the Analysis and to Quentin the dichotomy between the 6700(a) and 12505(b)**

- 5) You should read Galvan v. Superior Court, (1969) 70 Cal.3d 851 which involved a San Francisco ordinance that required persons who resided in San Francisco or moved into that city and county to register their handguns. The grace period for new residents was 7 days.

Two of Galvan's claims are directly related to this bill. First, the Supreme Court rejected the notion that there had to be a notice component as part of due process.

Secondly, the Supreme Court rejected the contention by Galvan that the ordinance violated the Fifth Amendment and the California Constitution.

The defendant argued that persons such as felons, narcotics addicts, and the like did not have to comply with the ordinance because they were prohibited by Penal Code section 12021 from possessing handguns. Registering their guns would expose them to a Section 12021 prosecution.

In rejecting the self-incrimination claim, the Supreme Court made two points. First, Galvan did not have a Section 12021 defense as he did not assert he was in a prohibited class. Therefore, his claim of privilege - which is personal to the holder - did not lie.

Secondly, Galvan noted that in Haynes and Marchetti the United States Supreme Court made clear that generalized reporting schemes aimed at conventional firearms or other lawful items involving the public at large required a specific claim of privilege before the Fifth Amendment claim could be raised. **Please note I have the cumulative language in the bill.**

Irwin

file - AB 78  
2

Simon:

On AB 78, if someone kvetches about amending 78 to take 626.10 out of the bill on the floor because it affects knives on school grounds, will that cause any tsouris or a re-referral to Senate Public Safety. I am already getting rumbles of concern about that. I am just checking.

As to AB 991, here are somethings you should be aware of:

- 1) I told Mark and Kevin to delete the 12021 stuff and the 12076 wobbler from the bill. They knew that would cause a problem in the Senate so it was a throwaway so I believe that happens. The 12076 language to go back to current code is tricky.
- 2) Its my recommendation to Kevin and you that we delete the 1 cent and 4 cent fee cap for the public education program and let Lungren manage his own budget within the existing overall fee cap. I say that for two reasons. First, I don't want to have veto bait unnecessarily in there. Secondly, with Judge Bond's ruling, that frees up 50 cents for other purposes within the overall \$14.00. I want enough money to do the education program. Given 600,000 DROS's a year, 50 cents will generate \$300,000 to do an adequate public education job.
- 3) In terms of gun registration laws, you should read Galvan v. Superior Court, (1969) 70 Cal.2d 851 and the AB 1201 COPS analysis. The gist of both Galvan and the 1201 analysis is that general gun registration laws do not raise Fifth Amendment issues and notice issues.
- 4) I have recommended to have more leverage and to cut down on chaptering issues, 991 and not 689 do the 12076 change in 689 that Lungren needs.
- 5) You should be aware that section 11 of AB 3552 (Ch. 1326/1992) states that Lungren should have one super duper 12078 form. This bill should probably amend that Section of 3552 to state that it is the intent of the Legislature to have one form for 12078 and 12072(f)(2) and (f)(3).

ate: 6/15/97 9:30:10 PM  
rom: Irwin Nowick  
subject: ab 78 and other matters  
o: Simon Haines

( HAINES\_SI )

RICHARD RAINEY  
VICE CHAIR

JOHN BURTON  
QUENTIN KOPP  
BRUCE MC PHERSON  
RICHARD POLANCO  
ADAM SCHIFF  
DIANE WATSON  
MEMBERS

# California Senate

## COMMITTEE ON PUBLIC SAFETY

SENATOR JOHN VASCONCELLOS

CHAIR

SIMON HAINES  
CHIEF COUNSEL

LES KLEINBERG  
ALISON ANDERSON  
MARY KENNEDY  
COUNSELS

KARA UEDA  
ASSOCIATE

JANET SAKATA  
JOHN MELLO  
COMMITTEE ASSISTANTS

ROOM 2209  
STATE CAPITOL  
SACRAMENTO, CA 95814  
(916) 322-1305  
FAX (916) 445-4688

June 10, 1997


Mr. Bion Gregory  
Legislative Counsel  
State Capitol, Room 3021

Dear Mr. Gregory:

Please have your deputies draft amendments for **AB 78 (Granlund)** using the attached mock up of proposed amendments. Please return them to Room 2209 as soon as possible. Please contact Simon Haines at 322-1305 if you have any questions.

Thank you.

Sincerely,



John Mello  
Office Assistant

Attachment

SH:jm

June 10, 1997

Please prepare amendments to AB 78 (Granlund), as amended May 29, 1997, to do the following:

(1) Delete lines 36 - 38 on page 7:

~~(17) A dirk or dagger that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.~~

(2) Add Penal Code Section 626.10 to this bill with an amendment to conform the definition of "dirk" and "dagger" in 626.10(h) to be the same as now in Penal Code Section 12020(c)(24):

(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. *A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.*

\*\*\*\*\*

Any questions, please call Simon Haines, 322-1305.

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
Public: (916) 445-9555

Facsimile: (916) 322-2630  
(916) 324-5413

June 10, 1997

The Honorable Brett Granlund  
California State Assembly  
State Capitol, Room 4164  
Sacramento, California 95814

JUN 11 1997

RE: Support for Your Measure. AB 78 -- As Amended May 29, 1997

Dear Assembly Member Granlund:

The Attorney General's Office is pleased to support your measure, AB 78, as amended May 29, 1997.

If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

DANIEL E. LUNGREN  
Attorney General

A handwritten signature in dark ink, appearing to read "S.M. Boreman", written over a horizontal line.

STEPHEN M. BOREMAN  
Deputy Attorney General  
Legislative Affairs

SMB:rvo

cc: The Honorable John Vasconcellos, Chairman  
Senate Committee on Public Safety  
The Honorable Richard K. Rainey, Vice-Chairman  
Senate Committee on Public Safety  
Senate Committee on Public Safety  
Mr. Charles Fennessey, Governor's Office  
Mr. David Shaw, OCJP  
Ms. Amy Frees, CPOA

00290



May 30, 1997 - 1015 hours

Something to look at...AB 78 (Granlund) as amended May 29, 1997. AB 78 and AB 79 (same author; no need to look at AB 79 but they are a package staffed by Mr. Nowick) are up in Senate Public Safety on June 10, 1997.

AB 78 is a clump of stuff re firearms and as amended yesterday, Section 10 of the bill amends Welfare and Institutions Code Section 8103. This new amendment is sponsored by the Attorney General. Issue is that under current law, every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently, whether first subject to WIC 5150 or not, adjudicated as mentally disordered and committed to a mental health facility.

Sacramento Superior Court Judge Bond has now held that it is unconstitutional to deprive a "5150" of the right to possess a firearm without any further court hearing or determination (right to counsel, hearing, etc.). Case is Dayacamos v. Department of Justice, Case No. 96 CS 01471, February 7, 1997. (I have copy of the case.)

DOJ is not going to appeal the decision and now wants to deal with the statutory changes needed to delete the prohibition on "5150's" from possessing firearms. DOJ and Dept. of Mental Health estimate that approximately 40% of existing 413,000 "5150's" in system will have been held beyond 72-hours with a requisite court hearing so those folks are still subject to firearm possession prohibitions. That means 60% of those folks will be deleted and no longer subject to such restrictions (not clear if all are still within five year limit; presumably same ratio will exist for future persons first held per "5150").

AB 78 now has amends to take out simple "5150" prohibition. Alternative would be to require a full blown court proceeding for all "5150's". Very expensive and big impact on the courts. However, what if...even one of those "5150" folks buys a gun in the future and then does something (under AB 78, they will be able to buy and possess a gun; even prior to 2/7/97 they could get a gun other than by purchase and do something bad; but could be arrested for only possessing gun without doing anything else wrong).

Therefore, AB 78 has the following uncodified language:

SEC. 11. It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471.

\*\*\*\*\*ENI

Post-it™ Fax Note		7671	Date	5/30/97	# of pages	1
To	BARRIE		From	Sun		
Co./Dept.			Co.			
Phone #			Phone #	916-222-1305		
Fax #			Fax #	00291		

May 30, 1997 - 1015 hours

Something to look at...AB 78 (Granlund) as amended May 29, 1997. AB 78 and AB 79 (same author; no need to look at AB 79 but they are a package staffed by Mr. Nowick) are up in Senate Public Safety on June 10, 1997.

AB 78 is a clump of stuff re firearms and as amended yesterday, Section 10 of the bill amends Welfare and Institutions Code Section 8103. This new amendment is sponsored by the Attorney General. Issue is that under current law, every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently, whether first subject to WIC 5150 or not, adjudicated as mentally disordered and committed to a mental health facility.

Sacramento Superior Court Judge Bond has now held that it is unconstitutional to deprive a "5150" of the right to possess a firearm without any further court hearing or determination (right to counsel, hearing, etc.). Case is Dayacamos v. Department of Justice, Case No. 96 CS 01471, February 7, 1997. (I have copy of the case.)

DOJ is not going to appeal the decision and now wants to deal with the statutory changes needed to delete the prohibition on "5150's" from possessing firearms. DOJ and Dept. of Mental Health estimate that approximately 40% of existing 413,000 "5150's" in system will have been held beyond 72-hours with a requisite court hearing so those folks are still subject to firearm possession prohibitions. That means 60% of those folks will be deleted and no longer subject to such restrictions (not clear if all are still within five year limit; presumably same ratio will exist for future persons first held per "5150").

AB 78 now has amends to take out simple "5150" prohibition. Alternative would be to require a full blown court proceeding for all "5150's". Very expensive and big impact on the courts. However, what if...even one of those "5150" folks buys a gun in the future and then does something (under AB 78, they will be able to buy and possess a gun; even prior to 2/7/97 they could get a gun other than by purchase and do something bad; but could be arrested for only possessing gun without doing anything else wrong).

Therefore, AB 78 has the following uncodified language:

SEC. 11. It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471.

\*\*\*\*\*END\*\*\*\*\*

May 29, 1997 - 1230 hours

Dirks and Daggers in Penal Code Section 12020 (from AB 78 a/a 3/20/97)

(a) Any person in this state...who carries concealed upon his or her person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

\*\*\*\*\*

(b) Subdivision (a) does not apply to any of the following:

(17) ~~A knife dirk or dagger that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.~~

\*\*\*\*\*

(c) (24) As used in this section, a "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. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

*Case law and others*

NOTE: The exemption in (c) (17) only applies for prohibited dirks and daggers, meaning that any such device carried concealed on the person will not be prohibited if in a purse or backpack or such items which may be carried close to the person. That exemption does not apply regarding closed knives since those are not dirks or daggers pursuant to the definition. Thus a closed knife in such a "container" may be subject - or not, based upon anecdotes - to the prohibition in (a) regarding dirks and daggers?

*other section in law??*

*+ Ed Code*

# FAX

To: Simon Haynes, Senate Public Safety  
 Fax #: 445-4688  
 Subject: AB 78 and P.C. 5150  
 Date: 5/9/97  
 Pages: 26 including this cover sheet

COMMENTS: Per our discussion.  
Requid  
Hee

From the desk of . . .  
**STEPHEN M. BOREMAN**  
 Deputy Attorney General  
 Legislative Affairs  
 Office of the Attorney General  
 1300 I Street, Suite 1790  
 Sacramento, CA 95814

(916) 324-5413  
 Fax: (916) 322-2630

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
(916) 445-9555

FACSIMILE: (916) 322-2630  
(916) 324-5413

May 1, 1997

The Hon. Assemblyman Brett Granlund  
State Capitol  
Sacramento, CA 95814

RE: AB 78 (Granlund), firearms.

Dear Assemblyman Granlund:

Thank you for your offer to amend AB 78 (Granlund), your bill relating to firearms, in order to address firearm possession prohibition issues raised in *Dayacamos v. Department of Justice*, Sacramento County Superior Court Case No. 96 CS 01471, relative to persons detained by peace officers under Penal Code § 5150.

Attached is an analysis of the issue and our legislative proposal, including the specific language which we request that you adopt for amendment of AB 78. In our analysis you will also find answers to the inquiries you posed in your letter of April 28, 1997, including the fiscal impact on the DROS program.

It is the Attorney General's policy to request that all authors of sponsored bills agree to allow our office to review any proposed amendments to this measure in advance, and that adoption of any amendment be subject to our prior approval. Adoption of unauthorized amendments may result in withdrawal of sponsorship. Should this policy present any difficulties for you, please advise our office immediately.

Again, thank you for your assistance. Please advise when you wish to meet pursuant to your letter of April 28, 1997.

Sincerely,

DANIEL E. LUNGREN  
Attorney General

A handwritten signature in cursive script, appearing to read "Stephen M. Boreman".

STEPHEN M. BOREMAN  
Deputy Attorney General

The Hon. Assemblyman Brett Granlund  
May 1, 1997  
Page 2

cc: Charlie Fennessey, Governor's Office  
Assembly Public Safety Committee  
Assembly Appropriations Committee  
Assembly Minority Appropriations Staff



**CAUSE**

California Union of  
Safety Employees  
2029 H Street  
Sacramento, CA 95814  
1-800-522-2873  
916-447-5262  
916-447-2530 fax  
2900 Bristol Street  
Suite H-201  
Costa Mesa, CA 92626  
1-800-551-1414  
714-708-7576  
714-708-7582 fax

**Affiliates**

- Association of Conservation Employees
- Association of Criminalists-DOJ
- Association of Deputy Commissioners
- Association of Motor Carrier Operations Specialists
- Association of Motor Vehicle Investigators of California
- Association of Special Agents-DOJ
- California Association of Criminal Investigators
- California Association of Food & Drug Investigators
- California Association of Fraud Investigators
- California Association of Regulatory Investigators and Inspectors
- California Association of State Investigators
- California Organization of Food and Agriculture Inspectors
- California Organization of Licensing Registration Examiners
- California State Police Association
- CHP-Radio Dispatchers Association
- Fire Marshals & Emergency Services Association
- Fish & Game Wardens Protective Association
- Hospital Police Association of California
- State Employed Fire Fighters Association

May 1, 1997

SH

Honorable John Vasconcellos, Chair.  
Senate Public Safety Committee  
State Capitol, Room 5100  
Sacramento, CA 95814

**AB 78 - SUPPORT**

Dear Senator Vasconcellos:

The California Union of Safety Employees (CAUSE), representing more than 6,400 state employed peace officers, regulatory investigators and safety personnel, support AB 78.

This bill recognizes a glaring loophole in the law with regard to forensic laboratories and the possession and transport of certain types of evidence, and attempts to correct that problem. CAUSE and the Association of Criminalists-Department of Justice (affiliated with CAUSE), strongly endorse this corrective measure.

Should you have any questions, please call either myself at the CAUSE office or CAUSE Lobbyist Peter Jensen at (916) 441-0258.

Sincerely,

John A. Miller  
Director of Governmental Affairs

JAM:tdd

cc: Senate Public Safety Committee

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0001  
(916) 446-7552  
(916) 445-7860 FAX

DISTRICT OFFICE  
34932 YUCAIPA BLVD.  
YUCAIPA, CA 92399  
(909) 790-4196  
(909) 790-0479 FAX

Assembly  
California Legislature

BRETT GRANLUND  
ASSEMBLYMEMBER, SIXTY-FIFTH DISTRICT

COMMITTEES

HEALTH, Vice Chair  
APPROPRIATIONS  
GOVERNMENTAL  
ORGANIZATION



April 28, 1997

Mr. Steve Boreman  
Department of Justice  
1300 I Street  
Sacramento, CA 95814

RE: AB 78

Dear Steve:

As Irwin Nowick indicated, I am willing to attend AB 78 to keep the Department of Justice's commitment to Judge Bond to address the constitutional issue relating to WIC 8103(f) (so-called "5150") gun ban.

However, neither Irwin nor I are clear as to the basis for Judge Bond's decision. Specifically, it is unclear whether Judge Bond struck down the statute because there was no judicial adjudication of 5150 status for the ban to kick in or that the 5150 ban per se was invalid. In addition, it is unclear whether Judge Bond's ruling extends to WIC 8100 or WIC 8103(f).

Given the sensitive nature of this issue, I would appreciate it if you would do three things:

First, I would appreciate it if you would provide a copy of Judge Bond's decision to this office.

Second, after we review Judge Bond's decision, I would like to meet with you, Paul Bishop, and Irwin to discuss how we should proceed in this matter.

Third, assuming that a decision is made to repeal Section 8103(f), how much of the DROS fee is allocated to reimburse facilities for costs associated with their Section 8103(f) reports? This is very important as to how to proceed as I have been advised that much of the recent increases in the DROS fee are attributable to reimbursements to local facilities for making Section 8103 reports.

Sincerely,

BRETT GRANLUND



State of California

Department of Justice  
4949 Broadway, J231  
Sacramento, CA 95820

## M e m o r a n d u m

To : [REDACTED]  
[REDACTED]  
[REDACTED]

Date: April 23, 1997

Telephone: CALNET (8) 498-3500  
(916) 227-3500  
FACSIMILE: (916) 227-3700From : Mike Broderick, Manager  
Firearms Program  
Criminal Justice Information Services DivisionSubject : Dayacamos vs. Department of Justice: Legislative Proposal

As you are aware, the recent *Dayacamos vs. Department of Justice* court decision has held that the reporting of W&I 5150 (72-hour hold) information and the associated 5-year prohibition from owning or possessing firearms is unconstitutional. In light of the Attorney General's decision not to appeal or pursue any legislative remedy to the court ruling, we are moving ahead to fully comply with this decision.

One of the important tasks is a revision to W&I 8103 to remove all reporting requirements currently mandated of mental health facilities with respect to W&I 5150 commitments. In addition, all associated references in W&I 8103 prohibiting W&I 5150s from owning or possessing a firearm will also need to be removed.

Attached find the necessary legislative proposal package that will accomplish this task. All appropriate W&I 8103 language modifications are enclosed in this draft proposal.

Please review and approve the attached legislative proposal. Please forward to Director Dedier for his sign-off and return to me so that I can move forward and work with DAG Steve Boreman of the Legislative Unit to quickly introduce the attached proposal.

tf

Attachment

Division Priority # \_\_\_\_\_  
Assigned by Division Chief)

**DEPARTMENT OF JUSTICE**  
**LEGISLATIVE PROPOSAL FORMAT**

**I. DIVISION AND BUREAU/SECTION SUBMITTING THE PROPOSAL**

*Division: Criminal Justice Information Services Division*  
*Bureau: Bureau of Criminal Information and Analysis*  
*Section: Firearms Program*

**II. TITLE**

*Court imposed revisions to Welfare & Institutions (W&I) Code section 8103 (mental health database)*

**III. SUMMARY**

*In light of a recent court decision (Dayacamos vs. Department of Justice) which has ruled that aspects of W&I Code section 8103 are unconstitutional inasmuch as individuals detained under the provisions of W&I 5150 (72-hour hold) are not afforded any type of a judicial review prior to their inclusion within the Firearms Program's mental health database. Inclusion prohibits them from owning or possessing a firearm for five years. Essentially, the court has held that the statute does not provide for adequate notice and an opportunity for a hearing within a meaningful time (prior to inclusion in our mental health database). DAG Eileen Gray is the Department's attorney who has been handling this case.*

*This legislative proposal makes required changes to W&I Code section 8103 which has historically mandated that mental health facilities report W&I 5150 detainees to the Department of Justice for inclusion in our mental health database. In addition, W&I 8103 also contains the specific language prohibiting such individuals from owning or possessing a firearm for five years. The attached proposed legislative revisions will remove all of these references.*

**IV. BACKGROUND****A. Existing Law**

*The proposed legislation will remove all references to the current mandatory reporting of W&I section 5150 detainees to the Department of Justice and all language pertaining to the prohibition of such individuals from owning or possessing a firearm. These changes are mandatory based upon the court ruling associated with the recent Dayacamos vs. Department of Justice court case.*

**B. Problem**

DAG ~~Ernesto (S. 1003)~~ recently contacted the Firearms Program relative to a court case she was handling (Dayacamos vs. Department of Justice) which ruled that aspects of W&I Code section 8103 were unconstitutional inasmuch as individuals detained under W&I 5150 (72-hour hold) are not afforded any type of judicial review prior to their inclusion within the Firearm Program's mental health database which prohibits them from owning or possessing a firearm for five years. Essentially, the court has held that the statute does not provide for adequate notice and an opportunity for a hearing within a meaningful time (prior to inclusion in our mental health database).

In light of this decision coupled with confirmation from the Attorney General that he does not wish to appeal or pursue any type of legislative remedy to the recent court decision, the Firearms Program must immediately take action to implement the court's order by purging its mental health database of all W&I 5150 entries and submitting the necessary corrective legislation removing current statutory language requiring mental health facilities to report W&I 5150s to the Department of Justice and prohibiting such individuals from owning or possessing a firearm for five years.

Based upon contact with the Department of Mental Health, it is estimated that approximately 40% of our existing mental health database represents individuals that have been held beyond the 72-hour hold limitations contained within W&I 5150. Because such individuals have also gone through the necessary judicial review before their 14-day hold was imposed, these individuals would continue to remain in our mental health database. However, 60% of our existing 413,000 entries will need to be purged from our database in order to comply with the court's order. In addition, changes must be made to the existing mental health database reporting form prepared and distributed by the Department of Justice, associated instructions/procedures, previously released Information Bulletins, and related training materials in order to ensure that future W&I 5150 detainees are not reported to the department and erroneously imputed into our mental health database.

**V. PROPOSAL****A. Suggested Legislation**

As previously indicated, the attached suggested legislative changes provide for revisions to W&I sections 8103 (f), (g), and (h). Other than legislative changes specifically designed to comply with the court order, no other changes to this code section are included.

**C. Public Policy**

*The proposed legislative changes are not of a "public policy" nature but instead represent the department's full compliance with the court's ruling.*

**VI. FISCAL IMPACT**

*As indicated by the attached funding summary, it is estimated that the cost to refine our mental health database in response to the requirements of the court order will cost approximately \$196,000. At the present time, CJISD management is working with the Administrative Services Division to identify possible funding options to undertake this one time activity.*

**VII. TECHNOLOGY**

*Not Applicable; a minimal expenditure of \$6,000 by HDC to separate the existing database for distribution and verification by each submitting mental health facility.*

**VIII. SUPPORT/OPPOSITION**

*This proposal is in response to a court order imposed as a result of a court case involving Dayacamos vs. the Department of Justice. DAG Eileen Gray is the Department's attorney handling this case. Ms. Gray can be reached at 324-5442.*

**IX. EXPERTS/WITNESSES**

*Mike Broderick, Manager, Firearms Program*

*Paul Bishop, Deputy Attorney General*

*Eileen Gray, Deputy Attorney General*

Prepared by



MIKE BRODERICK, Manager  
Firearms Program

Telephone:

227-3500

**DEPARTMENT OF JUSTICE****EXECUTIVE SUMMARY**

A recent court case (*Dayacamos vs. Department of Justice*) has ruled that sections of Welfare and Institutions (W&I) Code 8103 are unconstitutional inasmuch as it does not provide for adequate notice and an opportunity for a formal hearing prior to the inclusion of W&I 5150 detainees (72-hour holds) in our mental health database thereby prohibiting them from owning and possessing a firearm for five years. This court decision has major programmatic implications and inherent costs for both the Department of Justice and mental health facilities who have historically reported W&I 5150 information.

In light of this judicial direction, arrangements need to be made with our Legislative Affairs Unit to submit revised statutory language which would amend the necessary sections of the Welfare and Institutions Code section 8103 that currently restrict the ownership and purchase of a firearm due to an individual's assessment and admittance to a mental health facility under W&I 5150 as well as the mandatory reporting of such W&I 5150 information to the Department of Justice for inclusion in our mental health database. The necessary statutory revisions to accomplish this are reflected in this legislative proposal.

CARPENTER SNODGRASS  
& ASSOCIATES

2209

MEMORANDUM

SH

April 17, 1997

TO: Members of the Senate Public Safety Committee

FROM: Chris Micheli on behalf of  
BUCK KNIVES

RE: AB 78 (Granlund) – SUPPORT  
Set for: May 13, 1997

On behalf of our client, Buck Knives, I write in support of AB 78 (Granlund). Among other provisions, this bill would codify legislative intent regarding the definition of "dirk or dagger" found in California Penal Code Section 12020(c)(24).

In our opinion, Section 12020(c)(24) is an overly broad statute which could lead to discriminatory enforcement. There are already sufficient penalties for the wrongful use or brandishment of a knife. Mere possession of a knife which has many legitimate uses is unnecessary. As a result, we seek this clarifying language in the statute that specifically excludes certain knives from the dirk/dagger statute.

All folding knives should be excluded from the definition of "dirk or dagger," unless they are open and in a locked position, thereby meeting the definition of "capable of ready use." We should not prevent law-abiding citizens from possessing knives which can be used for a variety of peaceful, utilitarian purposes, such as hunting, fishing, camping, hiking, picnicking, and numerous trades or occupations customarily requiring the use of a knife. The lack of certainty and the contrary interpretations demonstrate that appropriate amendments to the statute are necessary.

AB 78 would have the effect of codifying the following letter from Assembly Member Diane Martinez which was published in the *Assembly Daily Journal* on August 31, 1996:

This letter is meant to express my intent in authoring AB 1222 in 1995, as well as the intent of the sponsors of my legislation, the California District Attorneys Association.

Among other provisions, the statute prohibits any person from carrying, concealed upon his or her person, any dirk or dagger. Subdivision (c)(24) defines the term dirk or dagger. For several decades, the term "dirk or dagger" was not defined in statute.

Prior to 1993, the Penal Code did not specifically define dirk or dagger (case law did define a "stabbing" instrument). In 1993, the Legislature enacted AB 1266 (Martinez), which was effective on January 1, 1994, that defined dirk or dagger as "a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death." This "primarily designed" definition proved problematic for prosecutions and, as a result, the Legislature amended the statute again.

In 1995, the Legislature enacted AB 1222 (Martinez), which became effective on January 1, 1996. The law now defines dirk or dagger as "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."

In sponsoring AB 1222, the California District Attorneys Association sought to eliminate the "primarily designed" language which had given rise to prosecutorial problems and to substitute language aimed at preventing surprise knife attacks by prohibiting the carrying of concealed knives that are particularly suited for stabbing and that are readily accessible to the user.

According to a police training video prepared by the Orange County District Attorney who drafted the "capable of ready use" language contained in the current statute, folding knives are not "dirks or daggers," unless they are carried in an open and locked position. This is due to the fact that, when folded, they are not "capable of ready use" without a number of intervening machinations which give the intended victim time to anticipate and/or prevent an attack.

Thus, the definition of "dirk or dagger" amended by my AB 1222 last year was not intended to prohibit folding knives. I believe this is consistent with the intent of the Legislature.

Buck Knives, based in El Cajon, California was founded in 1902 and is a fourth generation, family-owned and operated company. Buck Knives is one of the largest domestic manufacturers of sports cutlery. It does not manufacture knives designed to be used as weapons.

Thank you for your consideration.



# California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

## Officers

*President*  
**Ronald D. Jarrell**  
*Sheriff*  
*Lassen County*

*1st Vice President*  
**Charles Byrd**  
*Sheriff*  
*Siskiyou County*

*2nd Vice President*  
**Glenn Seymour**  
*Sheriff*  
*Madera County*

*Secretary*  
**Charles C. Plummer**  
*Sheriff*  
*Alameda County*

*Treasurer*  
**Steve Magarian**  
*Sheriff*  
*Fresno County*

*Sergeant-at-Arms*  
**Les Weidman**  
*Sheriff*  
*Stanislaus County*

*Directors*  
**Warren Ruff**  
*Sheriff*  
*Contra Costa County*

**Don McDonald**  
*Sheriff*  
*El Dorado County*

**Sherman Block**  
*Past President*  
*Sheriff*  
*Los Angeles County*

**Tom Sawyer**  
*Sheriff*  
*Merced County*

**Brad Gates**  
*Past President*  
*Sheriff*  
*Orange County*

**Bill Kolender**  
*Sheriff*  
*San Diego County*

**Jim Thomas**  
*Sheriff*  
*Santa Barbara County*

**Jim Pope**  
*Immediate Past President*  
*Sheriff*  
*Shasta County*

**Gary Tindel**  
*Sheriff*  
*Yuba County*

\*\*\*

*Executive Director*  
**Joe Muncy**

April 11, 1997


The Honorable Brett Granlund  
Assembly Member, 65th District  
State Capitol Building  
Sacramento, CA 95814

Dear Assembly Member Granlund:

Please be advised that the California State Sheriffs' Association (CSSA) is no longer opposed to AB 78 as amended March 28, 1997.

Should you have any questions or wish to discuss CSSA's position on this legislation, please don't hesitate to contact me.

Sincerely,

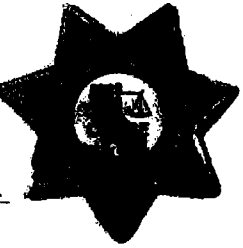
  
Alva S. Cooper  
Legislative Advocate

ASC/cmc

cc: Assembly Committee on Public Safety  
Attention: Judith Garvey



Support AB 78



**CAUSE**  
California Union of  
Safety Employees  
2029 H Street  
Sacramento, CA 95814  
1-800-522-2873  
916-447-5262  
916-447-2530 fax  
2900 Bristol Street  
Suite H-201  
Costa Mesa, CA 92626  
1-800-551-1414  
714-708-7576  
714-708-7582 fax

April 1, 1997

Honorable Brett Granlund  
California State Assembly  
State Capitol, Room 4164  
Sacramento, CA 95814

**AB 78 - SUPPORT**

Dear Assemblyman Granlund:

The California Union of Safety Employees (CAUSE), representing more than 6,400 state employed peace officers, regulatory investigators and safety personnel, support AB 78.

This bill recognizes a glaring loophole in the law with regard to forensic laboratories and the possession and transport of certain types of evidence, and attempts to correct that problem. CAUSE and the Association of Criminalists-Department of Justice (affiliated with CAUSE), strongly endorse this corrective measure.

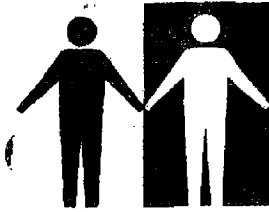
Should you have any questions, please call either myself at the CAUSE office or CAUSE Lobbyist Peter Jensen at (916) 441-0258.

Sincerely,

John A. Miller  
Director of Governmental Affairs

JAM:tdd

- Affiliates**
- Association of Conservation Employees
  - Association of Criminalists-DOJ
  - Association of Deputy Commissioners
  - Association of Motor Carrier Vehicle Specialists
  - Association of Motor Vehicle Investigators of California
  - Association of Special Agents-DOJ
  - Association of State Police Investigators



*Doris Tate*

**Crime  
Victims  
Bureau**

Jan Miter  
Chairman

March 24, 1997

Susan Fisher  
Vice Chairman

Kelly Rudiger  
Executive Director

**Board and Advisory Members**

Jennifer Anderson

Steve Baker

Cynthia Duarte

Maggie Elvey

Dan Felizzatto

Jeff Fraser

1 Lane

Judy Luecke

Alexandria Matteucci

Evan Miller

Paula Myers

Anne Poverello

Jackie Ravel Knezevich

Mike Reynolds

Valerie Richards

Anne Marie Schubert

Patti Tate

Christine Ward

Ray Wieser

Marianne Wrede

(partial listing)

The Honorable Brett Granlund  
State Capitol, Room 4164  
Sacramento, CA 95814

**Re: AB 78 - Support**

Dear Assemblyman Granlund:

On behalf of the Doris Tate Crime Victims Bureau, we would like convey our support for AB 78 regarding exemptions for transportation of firearms. Please feel free to reference our support for the measure in any forum you deem appropriate.

Sincerely,

Jeff Thompson  
Legislative Advocate  
Doris Tate Crime Victims Bureau

cc: Assembly Public Safety Committee  
Minority Consultant

Date: Sun, 23 Mar 1997 23:55:17, -0500  
From: DAVE PALMER <TFTC61E@prodigy.com>  
To: brett.granlund@assembly.ca.gov  
Subject: AB 78, AB 79 and CCW reform

Brett:

I would like to thank you for your support/authoring of bills AB 78 and AB 79. I would also like to thank you for the work you are doing on the CCW reform bill with Assemblyman Rico Oller. Keep up the good work!

Sincerely,

Dave Palmer

Yucaipa



## California Rifle and Pistol Association, Inc.

1127 11th Street • Suite 610 • Sacramento, California 95814  
(916) 447-C<sub>2</sub>R<sub>7</sub>P<sub>7</sub>A<sub>2</sub> • FAX (916) 446-3531

Bill J. Chapman  
President  
Martin J. Miller, Jr.  
Vice President  
Robert A. Frushon  
Secretary  
George V. Barr  
Treasurer  
James H. Erdman, Jr.  
Executive Director  
Gerald H. Upholt  
Manager - Governmental Affairs

January 31, 1997

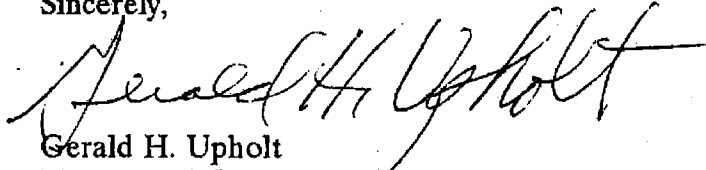
The Honorable Brett Granlund  
California State Assembly  
P.O. Box 942849  
Sacramento, CA 94249

Dear Assemblymember Granlund:

RE: AB 78 Firearms: Transporting exemption  
Position: Support as introduced December 18, 1996

This is to notify you of the support of the California Rifle and Pistol Association for legislation introduced by you, AB 78, that would provide for the lawful transportation of firearms "found" by a person to a law enforcement agency; that allows anyone convicted of an offense subject to the 10-year prohibition on the possession of a firearm prior to that offense being added to the 10-year prohibition list to apply to the courts for relief; and which seeks to clarify the provisions relating to the prohibition against the possession of a dirk or dagger concealed upon the person.

Sincerely,



Gerald H. Upholt  
Manager of Governmental Affairs

cc: Assembly Public Safety Committee

CARPENTER SNODGRASS  
& ASSOCIATES

MEMORANDUM

March 17, 1997

TO: Simon Haines, Senate Criminal Procedure Committee  
Judith Garvey, Assembly Public Safety Committee  
Charlie Fennessey, Governor's Office

FROM: Chris Micheli  
on behalf of Buck Knives and the Sports Cutlery Coalition

RE: *Proposed Legislation on P.C. Section 12020 -- "Dirk or Dagger" Definition*

As you know, many knife manufacturers (including our client), customers and distributors have been quite concerned with the 1995 legislative amendments made to California Penal Code Section 12020(c)(24). Based upon our discussions with CDAA, I have attempted in this memo to summarize the development of the "dirk or dagger" statute, explain our concerns with the current statute, and suggest amendments to the law for your consideration which we would like to enact this Session. Proposed changes to the statute are currently contained in AB 78 (Granlund).

Background on Dirk/Dagger Statute

California Penal Code Section 12020 concerns the unlawful manufacture, carrying or possession of certain weapons. The Legislature's purpose in enacting Section 12020 was to condemn weapons common to the criminal's arsenal and to outlaw instruments that are ordinarily used for unlawful purposes. People v. Wasley (1966) 245 Cal.App.2d 383; Bills v. Superior Court (1978) 86 Cal.App.3d 855; People v. Garrett (1987) 195 Cal.App.3d 795.

Among other provisions, the statute prohibits any person from "carrying concealed upon his or her person any dirk or dagger." Violation of the statute is punishable as a felony. Subdivision (c)(24) defines the term dirk or dagger. However, for several decades, the term "dirk or dagger" was not defined in statute.

In 1967, the Supreme Court of California, for the first time, considered the term "dirk or dagger." In People v. Forrest, the Court reasoned the Legislature understood the term "dirk or dagger" did not include all knives. The Court developed the "primarily designed for use as a stabbing weapon" test. Dirks and daggers were originally used in dueling and required blades locked into place to be effective because they were weapons designed primarily for stabbing. The Court in Forrest found that a pocket knife could not be a dirk or dagger.

Memo re: P.C. Sec. 12020  
March 17, 1997  
Page 2

Other courts followed the Forrest case language in interpreting this section of the Penal Code. The test of a dirk or dagger was whether the instrument was designed primarily for stabbing. Hence, an instrument is not a dirk or dagger where it was designed only for use as a cutting tool and not primarily for stabbing. Bills v. Superior Court (1978) 86 Cal.App.3d 855.

Prior to 1993, the Penal Code did not specifically define dirk or dagger (case law did define a "stabbing" instrument). In 1993, the Legislature enacted AB 1266 (Martinez) (Stats. 1993, Ch. 357), which became effective on January 1, 1994. That bill defined dirk or dagger as "a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death." This "primarily designed" definition proved problematic for prosecutors and, as a result, the Legislature amended the statute again.

In 1995, the Legislature enacted AB 1222 (Martinez) (Stats. 1995, Ch. 128), which became effective on January 1, 1996. The law now defines dirk or dagger as "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."

Once again, we believe that the intent of the Legislature is to limit the types of instruments that fall under Penal Code Section 12020. "In view of the possible greater punishment for concealed possession of a dirk or dagger, it would not seem reasonable to conclude that the Legislature used those terms broadly. It should also be pointed out that the other instruments mentioned in Section 12020 are either items having no substantial innocent purpose (like a blackjack), an instrument ordinarily having an innocent purpose but constructed or altered for violent purposes (such as a sawed-off shotgun), or a highly dangerous item (an explosive substance). Thus, the Legislature did not include all knives within the terms dirk or dagger." People v. Bain (1971) 5 Cal.3d 839.

In sponsoring AB 1222, the California District Attorneys Association sought to eliminate the "primarily designed" language which had given rise to prosecutorial problems and to substitute language aimed at preventing surprise knife attacks by prohibiting the carrying of concealed knives that are suited for stabbing and that are readily accessible to the user. Unfortunately, we do not think this intent is reflected in the current statutory language.

According to the Assembly Public Safety Committee's analysis on AB 1222, "[t]he requirement in the bill that the dirk or dagger be capable of ready use as a stabbing weapon would seem to preclude a folding pocket knife from being included within this definition, consistent with settled case law."

Memo re: P.C. Sec. 12020

March 17, 1997

Page 3

In addition, according to the police training video prepared by the Orange County District Attorney who drafted the "capable of ready use" language contained in the current statute, folding knives are not "dirks or daggers," unless they are carried in an open and locked position. This is due to the fact that, when folded, they are not "capable of ready use" without a number of intervening machinations which give the intended victim time to anticipate and/or prevent an attack.

Similarly, a letter written by Larry Brown to Assemblyman Poochigian on May 18, 1995 asserted that folded pocket knives concealed on the person are not included within the revised definition of "dirk or dagger" under AB 1222. He stated in his letter that "a knife which is folded would not be capable of ready use as a stabbing weapon, since it would require the affirmative act of unfolding the blade." While this appears to be an appropriate and plausible interpretation of the "capable of ready use" language, once again, we are concerned that the statute could be interpreted differently and actually has been interpreted differently.

CDA has indicated that the definition of "dirk or dagger" amended by AB 1222 was not intended to prohibit folding knives. While we believe this is consistent with the intent of the Legislature, the language in the statute is not clear on this point. That is the key reason that we would like to amend the statute so that this point and others are clear, rather than be subject to interpretation (perhaps the wrong interpretation) by a judge or jury in the future, let alone law enforcement.

#### Concerns Are Justified

There is some lack of concern expressed by those with whom we have spoken about the need for clarifying amendments to Section 12020. However, there is plenty of evidence that justifies our concerns with the lack of guidance in the statute. For example, a February 6, 1996 "Watch Briefing" issued by the Crescenta Valley Police Department states that "[t]his new definition would include any locking blade knife or fixed blade knife concealed on the person in a position where it can be readily retrieved for use as a weapon."

It goes on to specify that one particular knife is a perfect example of what the statute is intended to cover: "One excellent example, seen frequently of late, is the 'SPYDERCO' locking blade knife. Your friendly Watch Commander would probably approve a 12020 P.C. booking of anyone carrying this knife concealed on the person." Not only are these statements clearly contrary to the intent expressed by the sponsors of AB 1222, but also they are of great concern to knife manufacturers, especially because the locking blade knife is one of the most popular products today.

Memo re: P.C. Sec. 12020  
March 17, 1997  
Page 4

In addition, we would suggest a review of the transcript from the March 28, 1996 court trial in *People v. Troy Michael Smith* (No. 6NE00086). The Deputy D.A. prosecuting the case argued that the new definition under AB 1222 requires that "two things are looked at: the situation that we find the knife in and then the design of the weapon itself." The Court stated that the knife in this case was "capable of ready use as a stabbing weapon" because "[i]t can be opened very quickly and with one hand." The judge also stated that "some indication that the user or possessor of the weapon intends to use it as a dirk or dagger" is also indicative of a violation of § 12020. Neither the prosecutor nor the judge in this case argued the intent expressed by the sponsors of AB 1222 in adopting the revised definition of dirk or dagger. Moreover, the statements were quite disconcerting for those who read the transcript as they were contrary to existing case law, as well as the literal reading of the statute.

Finally, a quick survey by two knife companies last July found that they were aware of several instances in which their customers were charged under Section 12020 for carrying a folding, locking knife. While some of these charges were dismissed, other defendants were fined or pled guilty to a lesser charge. We are receiving more anecdotal evidence on a regular basis from persons statewide who have been arrested or charged for violating Sec. 12020 because they are carrying a one-handed knife.

Obviously, there is confusion among law enforcement, prosecutors and the judiciary concerning the definition of "dirk or dagger." Moreover, as you can see, these interpretations do not follow the assurances given by CDAA that the statute was not intended to cover pocket knives or folding knives. This evidence demonstrates that our concerns are fully justified and that amendments are needed to this statute.

In our opinion, Section 12020(c)(24) is an overly broad statute which could lead to discriminatory enforcement. There are already sufficient penalties for the wrongful use or brandishment of a knife. Mere possession of a knife which has many legitimate uses is unnecessary. As a result, we would like to have clarifying language in the statute that specifically excludes certain knives from the dirk/dagger statute.

All folding knives should be excluded from the definition of "dirk or dagger." Folding knives that lock should also be excluded from the definition as the locking mechanism was designed as a safety feature and not for stabbing efficiency. In addition, locking knives are no more "capable of ready use" than a non-locking knife. We should not prevent law-abiding citizens from possessing knives which can be used for a variety of peaceful, utilitarian purposes, such as hunting, fishing, camping, hiking, picnicking, and numerous trades or occupations customarily requiring the use of a knife. The lack of certainty and the contrary interpretations as set forth above clearly demonstrate that appropriate amendments to the statute are necessary,



Memo re: P.C. Sec. 12020

March 17, 1997

Page 5

Suggested Language

In light of the foregoing, representatives of Buck Knives and I discussed this matter with representatives of CDAA. Pursuant to those discussions, we proposed to CDAA the following amendments to California Penal Code Sections 12020 (c)(24) and (d):

(c)(24) As used in this section, a "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. *A non-locking folding knife or a pocket knife is not "capable of ready use" within the meaning of this section. A folding knife with a locking blade is not "capable of ready use" within the meaning of this section unless it is carried in an open and locked position.*

This provision is consistent with Orange County Deputy D.A. Rutledge's interpretation of the legislative intent behind this statute (as expressed on his police training video). This provision is also consistent with the language that the knife must be "capable of ready use."

(c)(25) *"Concealed upon his or her person" shall not include any folding knife or pocket knife that is carried by a belt clip or in a backpack, tool belt, tool box, tackle box, briefcase, suitcase, purse, or other similar container used to carry or transport possessions.*

(d) Knives carried in sheaths which are worn ~~openly~~ suspended from the waist of the wearer are not concealed *upon his or her person* within the meaning of this section.

A fixed blade knife worn in a sheath which is covered by outerwear, such as during cold or inclement weather, should fall under this section as well. Once again, these provisions are consistent with Deputy D.A. Rutledge's interpretation of the legislative intent behind this statute (as expressed on his police training video). Moreover, as he specifies in an August 23, 1994 letter to Assemblywoman Martinez, "[n]or does the section prohibit carrying knives openly, in belt sheaths (thereby accommodating the hunter and fisher)."

I should point out that CDAA expressed opposition to our proposed amendments set forth above. Nonetheless, CDAA has agreed that it would be appropriate to discuss these concerns and any proposed amendments to Section 12020. In the meantime, CDAA committed to do the following three things:

1. A letter to the *Assembly Daily Journal* was placed on August 31, 1996 by Assembly Member Diane Martinez indicating legislative intent in enacting AB 1222. The letter is attached for your reference.

Memo re: P.C. Sec. 12020

March 17, 1997

Page 6

2. Devallis Rutledge wrote an article for *Knives Illustrated* magazine, a copy of which is attached for your information.

3. CDAA ran an article in its monthly magazine and reprinted the Martinez letter. A copy of the article is attached.

Thank you for your prompt attention to this matter. I look forward to discussing this important issue at your earliest convenience.

cc: Irwin Nowick  
Steve Boreman, Dept. of Justice  
Ash Givargis, Assemblyman Granlund  
C.J. Buck & Lisa Sanderson, Buck Knives

**DANIEL E. LUNGREN**  
**Attorney General**

*State of California*  
**DEPARTMENT OF JUSTICE**



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
Public: (916) 445-9555

Facsimile: (916) 324-8835  
(916) 324-5442

March 5, 1997

Dana K. Drenkowski, Esq.  
740 West Texas Street, Suite 301  
Fairfield, CA 94533

Don B. Kates, Esq.  
920 Arline Way  
Novato, CA 94947

RE: Dayacamos v. Department of Justice  
Sacramento County Superior Court Case No. 96 CS 01471

Gentlemen:

Enclosed please find a copy of the transcript from the February 7, 1997, hearing before Judge Cecily Bond. As noted in the transcript, Judge Bond directed that her statements be transcribed by the reporter and attached to the clerk's minutes as the Court's Statement of Decision.

I will await receipt of your proposed order, and I trust that it will conform to the judge's Statement. As set forth in my previous letter objecting to Mr. Drenkowski's proposed order, the judge was clearly aware that this was not a class action, she did not indicate any intent to apply the ruling retroactively, and she left the issue of attorney fees to be handled by an appropriate motion.

Sincerely,

**DANIEL E. LUNGREN**  
Attorney General

A handwritten signature in dark ink, appearing to read "Daniel E. Lungren", written over a horizontal line.

Deputy Attorney General

EG:ljt

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 LINDA A. CABATIC, Supervising  
Deputy Attorney General  
3 EILEEN GRAY, (State Bar No. 95770)  
Deputy Attorney General  
4 1300 I Street, Suite 125  
Post Office Box 944255  
5 Sacramento, California 94244-2550  
Telephone: (916) 324-5442  
6

7 Attorneys for Defendant  
CALIFORNIA DEPARTMENT OF JUSTICE  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SACRAMENTO  
11

12 P. J. DAYACAMOS,  
13 Plaintiff,  
14 v.  
15 DEPARTMENT OF JUSTICE, STATE OF  
CALIFORNIA,  
16 Defendants.  
17

) Case No. 96 CS 01471

) [PROPOSED] JUDGMENT  
) GRANTING WRIT OF MANDATE,  
) PERMANENT INJUNCTION, AND  
) DECLARATORY RELIEF

18  
19 This cause came on regularly for hearing on February 7, 1997, before The Honorable  
20 Cecily Bond, Department 45, Sacramento County Superior Court. Dana Drenkowski and Don B.  
21 Kates appeared for petitioner Dayacamos. Deputy Attorney General Eileen Gray appeared on behalf  
22 of respondent Department of Justice.

23 After consideration of the pleadings, points and authorities, and argument of counsel,  
24 the Court orally rendered its Statement of Decision granting the petition for writ of mandate and  
25 preliminary injunction and its declaration regarding the constitutional validity of Welfare and  
26 Institutions Code section 8103(f) and the related provision for judicial review, subsection (f)(4). A  
27 true and correct transcription of the Court's Statement is attached hereto marked Exhibit A.

28 ///

1 IT IS HEREBY ORDERED that a Peremptory Writ of Mandate, in the form attached  
2 hereto marked Exhibit B, shall issue against respondent Department of Justice.

3 IT IS FURTHER ORDERED that the Department of Justice is hereby restrained from  
4 notifying firearms dealers that they must deny the sale and/or transfer of a firearm pursuant to Penal  
5 Code sections 12072(c)(4) and 12076(d) on the basis of Welfare and Institutions Code section  
6 8103(f) based upon information in the Department's files indicating that the proposed owner of the  
7 firearm has been the subject of a 72-hour involuntary hold pursuant to Welfare and Institutions Code  
8 section 5150.

9 IT IS FURTHER ORDERED that the Court hereby declares, as more fully set forth in  
10 its oral Statement of Decision, that Welfare and Institutions Code Section 8103(f)(4), on its face and  
11 as applied, violates the Fourteenth Amendment to the United States Constitution and article I, section  
12 7 of the California Constitution. Section 8103(f)(4) of the Welfare and Institutions Code constitutes  
13 a denial of due process because the first opportunity for judicial review of the firearms prohibitions  
14 compels the owner to initiate the action.

15 IT IS FURTHER ORDERED that this judgment is hereby stayed until January 1,  
16 1998, to allow the Department of Justice sufficient time to refine its database and time in which to  
17 seek statutory changes consistent with this Court's findings regarding due process.

18 The Court takes no action on petitioner's claim of entitlement to attorneys' fees.  
19 Petitioner may pursue such claim by motion.

20 Dated: \_\_\_\_\_, 1997

21 \_\_\_\_\_  
22 JUDGE OF THE SUPERIOR COURT  
23  
24  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR AND MUNICIPAL COURTS  
STATE OF CALIFORNIA, COUNTY OF SACRAMENTO  
HON. CECILY BOND, JUDGE, DEPARTMENT 45

--oOo--

P.J. DAYCAMOS,

Petitioner,

vs.

DEPARTMENT OF JUSTICE,

Respondent.

No. 96CS01471

**COPY**

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
PETITION FOR WRIT OF MANDAMUS  
COURT'S STATEMENT OF DECISION

--oOo--

FRIDAY, FEBRUARY 7, 1997

--oOo--

APPEARANCES:

For the Petitioner:

DANA K. DRENKOWSKI, Attorney at Law  
DON B. KATES, Attorney at Law  
Sacramento, CA

For the Respondent:

Office of the Attorney General  
State of California, Department of Justice  
BY: HILEEN GRAY, Deputy Attorney General  
1300 I Street  
Sacramento, CA 95814

--oOo--

Reported by: Cheryl R. Redlich, CSR No. 4362

--oOo--

1 and the State have the primary obligations.

2 THE COURT: Submitted?

3 MS. GRAY: Submitted, your Honor.

4 MR. KATES: Yes.

5 THE COURT: I have looked at this carefully. And I  
6 first want to make clear -- and this will be the Court's  
7 decision with respect to this matter, and I will ask that  
8 the court reporter to prepare this part of the record only,  
9 and I will ask the clerk to attach that to her minutes and  
10 incorporate it in the minutes. That will constitute the  
11 Court's statement of decision.

12 I have looked at this carefully. I first want to  
13 make clear that the only challenge that is being made to  
14 Welfare and Institutions Code section 8103 is to  
15 subdivision (f). That is the only provision of 8103 which  
16 has been called into question in this case.

17 All the other provisions, as I indicated earlier, do  
18 clearly flow as consequences from an adjudication either of  
19 mental incompetence or criminal liability or  
20 conservatorship, or where there has been a certification of  
21 a person so that the 5150 hold would continue.

22 None of those sections are called into question, and  
23 the Court has no problems or questions with the  
24 applicability and constitutionality of each of those  
25 sections, so it is only subdivision (f) we're dealing  
26 with.

27 Subdivision (f) is startlingly different than the  
28 others because it does permit serious consequences to flow



1 merely from the institution of a 5150 hold.

2 I believe that the consequences that flow from that  
3 and that that section, both on its face and as it is  
4 applied in this particular case with respect to  
5 Ms. Daycamos, are unconstitutional and violative of both  
6 the federal and state constitution.

7 It does not provide for any sort of meaningful  
8 hearing nor notice and a meaningful hearing prior to the  
9 deprivation of the ability to either possess, own, control,  
10 receive, purchase a firearm.

11 And I think that's what's required by procedural due  
12 process. I think that's clear from the Bryte case, and  
13 especially true from the Menefee case. That's  
14 Menefee & Sons versus Department of Food & Agriculture,  
15 199 Cal.App.3d 774, March 1988 case; and Bryte is  
16 207 Cal.App.3d 687, 1989 case that dealt actually with the  
17 seizure statute 81.2. But I think there is an analogous  
18 situation there.

19 To merely hold a person whose status is changed  
20 because somebody has put a hold on them under 5150, and  
21 they, therefore, have suddenly the burden to show they are  
22 able to have a gun without having any opportunity for any  
23 kind of meaningful hearing, I think is clearly violative of  
24 the basic tenants of due process.

25 I think that the analogous language in Menefee is  
26 very clear here where a judicial proceeding is the owner's  
27 first and only opportunity to have a hearing on the merits.  
28 In that case, they were talking about a seizure.

1 But I think the right to own, possess or control  
2 weapons or guns or property is also a fundamental right of  
3 citizenship and fundamental right that the constitution  
4 protects; then it is essential the Department be required  
5 to bear the burden of proof on all issues.

6 And so this statute does not provide -- it provides  
7 exactly the opposite, puts the burden of proof on the  
8 person who has had a hold without any determination as to  
9 whether that hold was justified or not. And I think that  
10 just violates due process.

11 I am going to grant the writ.

12 There was a request for fees under both 1021.5 and  
13 42 U.S. Code 1988. I will grant costs to petitioner  
14 pursuant to a cost bill. But nobody has either briefed or  
15 dealt with the issue of attorneys' fees, and so I will  
16 allow you to bring a motion for fees under those sections  
17 so that both sides will have an opportunity to address  
18 those issues.

19 So I will make no ruling as to fees at this time,  
20 address that in that way.

21 MR. KATES: Your Honor, I am not sure the  
22 Attorney General at this position -- at this point is in a  
23 position to decide this, but it seems to me that if the  
24 Attorney General is going to appeal the case, it would be  
25 premature to bring a motion for fees and just waste of your  
26 time and everybody's time to do this.

27 Perhaps we can have some kind of agreement that  
28 we'll not bring such a motion -- I am not familiar with the

1 local rules about when we have to bring such a motion. In  
2 L.A. it has to be brought within 60 days.

3 THE COURT: I don't know that we have a time period  
4 in any local rules, but I think you do have to now bring a  
5 request for fees by motion rather than by a cost bill.

6 MR. DRENKOWSKI: Absolutely, your Honor.

7 THE COURT: As used to be the case, you would ask  
8 for fees and cost bill; but as I understand it now, that  
9 rule has changed. You have to bring an actual motion for  
10 fees.

11 I would have no objection to allowing you to file  
12 your motion and have that hearing on that delayed or not  
13 heard, if there is going to be an appeal.

14 However you want to handle it, that's fine. I am  
15 just trying to preserve your right, both of you, to have an  
16 opportunity to be heard on that issue before it is decided.

17 MR. KATES: Thank you very much, your Honor. I  
18 think what we'll do is consult with opposing counsel and  
19 decide what would be the most expeditious way and most  
20 economical way to save the Court's resources and  
21 everybody's resources.

22 MS. GRAY: Until we know where we're going on this,  
23 there is no need to deal with that today.

24 Had your Honor finished with the tentative ruling  
25 then or the statement of decision?

26 THE COURT: Yes, I believe so.

27 MS. GRAY: My only question then, you've indicated  
28 that you would be issuing a -- granting a Writ of Mandate.

1           What precisely is the Court ordering the Department  
2 of Justice to do?

3           THE COURT: That Writ of Mandate -- I was going to  
4 ask petitioner to draft that in accordance with the ruling  
5 that the Court has made and to submit it to counsel before  
6 you submit it to the Court. But I envision that what it  
7 would mean is that subdivision (f) could no longer be  
8 enforced because it has been held to be unconstitutional.

9           I suspect that some of this infirmity could be  
10 modified and changed and rectified by the Legislature,  
11 obviously. That may be something you want to explore. I  
12 think clearly its infirmity could be rectified. I am not  
13 going to rule on that.

14          MS. GRAY: Your Honor, I wanted to clarify that this  
15 was not a class action.

16          THE COURT: No. But it is a taxpayers' suit as well  
17 as Ms. Daycamos individually sued; that's why I held on its  
18 face as it applied to her, which means it is invalid, which  
19 means it can no longer be enforced because it is  
20 unconstitutional.

21          MS. GRAY: I understand. It is just a question of,  
22 I believe then the permanent injunction under the taxpayer  
23 action would be an appropriate judgment.

24          THE COURT: That may well be the form in which it  
25 takes.

26          MR. KATES: This is also a citizens mandamus, which  
27 means it can be done in either or both forums. And I think  
28 what we will do is a mandatory -- a writ of mandamus,

1 mandatory injunction, and conceivably a prohibitory  
 2 injunction, as well.

3 THE COURT: All right. I leave that forum to you.  
 4 I would like you to submit it to counsel first. If there  
 5 are any problems, we'll deal with it. Thank you very  
 6 much.

7 (Proceedings concluded.)

8 --oOo--

9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF OFFICIAL SHORTHAND REPORTER

State of California )  
County of Sacramento ) ss.

I, Cheryl R. Redlich, hereby certify that I am an Official Certified Shorthand Reporter and that at the time and place shown I recorded verbatim in stenographic writing the proceedings had in the following described action completely and correctly to the best of my ability:

Court: MUNICIPAL AND SUPERIOR COURT  
Judge: HONORABLE CECILY BOND  
Department: 45  
Case Name: P.J.DAYCAMOS, Petitioner  
-vs-  
DEPARTMENT OF JUSTICE, Respondent  
Case Number: 96CS01471  
Date: Friday, FEBRUARY 7, 1997

I further certify that my said stenographic notes have been transcribed into typewriting and that the preceding 30 pages constitute an accurate and complete transcript of all of my said stenographic writing for the date(s) and matter specified.

Dated:

COPY

Cheryl R. Redlich, CSR No. 4362

--oOo--

**REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL**

Assembly Member Martinez was granted unanimous consent that the following statement of legislative intent be printed in the Journal.

Legislative Intent—Assembly Bill No. 1222

August 30, 1996

**E. DOTSON WILSON**

*Chief Clerk of the Assembly  
State Capitol, Room 3196  
Sacramento, California*

Dear Mr. Wilson: This letter is meant to express my intent in authoring AB 1222 in 1995, as well as the intent of the sponsors of my legislation, the California District Attorneys Association.

Among other provisions, the statute prohibits any person from carrying, concealed upon his or her person, any dirk or dagger. Subdivision (c) (24) defines the term dirk or dagger. For several decades, the term "dirk or dagger" was not defined in statute.

Prior to 1993, the Penal Code did not specifically define dirk or dagger (case law did define a "stabbing" instrument). In 1993, the Legislature enacted AB 1266 (Martinez), which was effective on January 1, 1994, that defined dirk or dagger as "a knife or other instrument with or without a hand guard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death." This "primarily designed" definition proved problematic for prosecutions and, as a result, the Legislature amended the statute again.

In 1995, the Legislature enacted AB 1222 (Martinez), which became effective on January 1, 1996. The law now defines dirk or dagger as "a knife or other instrument with or without a hand guard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death."

In sponsoring AB 1222, the California District Attorneys Association sought to eliminate the "primarily designed" language which had given rise to prosecutorial problems and to substitute language aimed at preventing surprise knife attacks by prohibiting the carrying of concealed knives that are particularly suited for stabbing and that are readily accessible to the user.

According to a police training video prepared by the Orange County District Attorney who drafted the "capable of ready use" language contained in the current statute, folding knives are not "dirk or daggers," unless they are carried in an open and locked position. This is due to the fact that, when folded, they are not "capable of ready use" without a number of intervening machinations that give the intended victim time to anticipate and/or prevent an attack.

Thus, the definition of "dirk or dagger" amended by my AB 1222 last year was not intended to prohibit folding knives. I believe this is consistent with the intent of the Legislature.

Warmest regards,

DIANE MARTINEZ, Assembly Member  
Forty-ninth District

The documents following this page were  
photocopied from the

Senate Rules Committee's

file on this legislation.



**SENATE RULES COMMITTEE**

AB 78

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

---

**THIRD READING**

---

Bill No: AB 78  
Author: Granlund (R)  
Amended: 7/7/97 in Senate  
Vote: 21

---

SENATE PUBLIC SAFETY COMMITTEE: 8-0, 6/10/97

AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson, Polanco, Schiff,  
Watson

ASSEMBLY FLOOR: 76-0, 4/17/97

---

**SUBJECT:** Dangerous Weapons' Control Law: clarifying changes

**SOURCE:** Author

---

**DIGEST:** This bill makes a variety of changes to the Dangerous Weapons' Control Law.

Senate Floor Amendments of 7/7/97 provide for prior notice to be given to a law enforcement agency prior to the delivery of a weapon to that agency.

Senate Floor Amendments of 6/30/97 delete proposed changes pertaining to persons subject to a 72-hour hold/observation and add double-joining language.

Senate Floor Amendments of 6/23/97 delete provisions relative to "dirks or daggers" and add double-joining language.

CONTINUED

00331

**ANALYSIS:** Existing law provides that it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.

This bill provides that in all situations where an individual is transporting a firearm to a law enforcement agency, prior notice be given to that agency prior to delivery of the weapon.

This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who, after prior notice is given to the agency, is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person, after prior notice is given to the agency, is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified

procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption and must give prior notice to the agency prior to the delivery of the firearm.

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

This bill makes related changes to the Dangerous Weapons' Control Law.

This bill is double-joined with AB 1211 (Aroner) and AB 688 (Bowler).

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 7/8/97)

Attorney General  
California Union of Safety Employees  
Buck Knives  
California Attorneys for Criminal Justice  
California State Sheriffs Association

**ARGUMENTS IN SUPPORT:** According to the author, "AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The main issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property."

RJG:sl 7/8/97 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

SENATE RULES COMMITTEE

AB 78

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

*TAT*

THIRD READING

Bill No: AB 78  
Author: Granlund (R)  
Amended: ~~6/30/97 in Senate~~ *7/7*  
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 8-0, 6/10/97

AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson, Polanco, Schiff, Watson

ASSEMBLY FLOOR: 76-0, 4/17/97

SUBJECT: Dangerous Weapons' Control Law: clarifying changes

SOURCE: Author

DIGEST: This bill makes a variety of changes to the Dangerous Weapons' Control Law.

Senate Floor Amendments of 6/23/97 delete provisions relative to "dirks or daggers" and add double-joining language.

Senate Floor Amendments of 6/30/97 delete proposed changes pertaining to persons subject to a 72-hour hold/observation and add double-joining language.

*SFA 7/7 provide for prior notice to be given to a law enforcement agency prior to the delivery of a weapon to*

ANALYSIS: Existing law provides that it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.

*This bill provides that in all situations where an individual is transporting a firearm* **AB 78**  
*to a law enforcement agency, ~~that~~ prior* **Page 2**  
*notice be given to that agency, prior to delivery of the*  
This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

*after prior notice is given to the agency,*  
This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

*after prior notice is given to the agency,*  
This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption. *And must give prior notice to the agency prior to the delivery of the firearm*

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

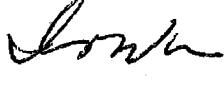
Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

This bill makes related changes to the Dangerous Weapons' Control Law.

This bill is double-joined with AB 1211 (Aroner) and AB 688 (Bowler).

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified <sup>7/8</sup>~~7/1/97~~) 

Attorney General  
California Union of Safety Employees

Buck Knives  
California Attorneys for Criminal Justice  
California State Sheriffs Association

**ARGUMENTS IN SUPPORT:** According to the author:

"AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

"Also, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the 'equal protection clauses' of the state and federal constitutions.

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the ten year prohibition prior to the offense being added to the list of offenses for which the ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made "to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice,



Case No. 96 CS 01471." That decision was made February 7, 1997, and the order was stayed until January 1, 1998, in order to allow the Department of Justice to comply.

RJG:sl 7/1/97 Senate Floor Analyses  
SUPPORT/OPPOSITION: SEE ABOVE  
\*\*\*\* END \*\*\*\*

SENATE RULES COMMITTEE  
Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

AB 78

TAT

---

THIRD READING

---

Bill No: AB 78  
Author: Granlund (R)  
Amended: ~~6/23/97~~ in Senate  
Vote: 21 6/30

---

SENATE PUBLIC SAFETY COMMITTEE: 8-0, 6/10/97  
AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson, Polanco, Schiff,  
Watson

ASSEMBLY FLOOR: 76-0, 4/17/97

---

SUBJECT: Dangerous Weapons' Control Law: clarifying changes

SOURCE: Author

---

DIGEST: This bill makes a variety of changes to the Dangerous Weapons' Control Law.

Senate Floor Amendments of 6/23/97 delete provisions relative to "dirks or daggers" and add double-joining language.

SFA 7 6/30 - DLW  
ANALYSIS: Existing law provides that it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.

This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

CONTINUED

00340

SFA 7) 6/30 delete proposed change pertaining to  
persons subject to a 72-hour hold/observation  
Add ~~add~~ double-jointing language

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not.

This bill deletes that restriction for persons held only under WIC 5150 (and not otherwise certified for additional intensive-treatment).

This bill contains uncodified language that:

"It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471."

This bill makes related changes to the Dangerous Weapons' Control Law.

This bill is double-joined with AB 1211 (Aroner) and AB 688 (Borlier)

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified <sup>7/1</sup> 6/23/97)

- Attorney General
- California Union of Safety Employees
- Buck Knives
- California Attorneys for Criminal Justice
- California State Sheriffs Association

**ARGUMENTS IN SUPPORT:** According to the author:

"AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

"Also, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the 'equal protection clauses' of the state and federal constitutions.

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the ten year

prohibition prior to the offense being added to the list of offenses for which the ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made "to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471." That decision was made February 7, 1997, and the order was stayed until January 1, 1998, in order to allow the Department of Justice to comply.

RJG:sl 6/23/97 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

**SENATE RULES COMMITTEE**

AB 78

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

*TAT*

**THIRD READING**

Bill No: AB 78

Author: Granlund (R)

Amended: ~~6/17/97~~ in Senate *6/23*

Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 8-0, 6/10/97

AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson, Polanco, Schiff, Watson

ASSEMBLY FLOOR: 76-0, 4/17/97

SUBJECT: Dangerous Weapons' Control Law: clarifying changes

SOURCE: Author

DIGEST: This bill makes a variety of changes to the Dangerous Weapons' Control Law.

*SFA 6/23 Deleted provisions relative to "dirks or daggers" and double barrel handguns.*

ANALYSIS: Existing law provides that it is illegal to carry a concealed "dirk or dagger" upon one's person.

This bill excludes from the definition of "dirk or dagger" a non-locking folding knife, a folding knife that is not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position. The above are conforming changes to existing law.

Existing law provides that it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.

CONTINUED



This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control

because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not.

This bill deletes that restriction for persons held only under WIC 5150 (and not otherwise certified for additional intensive treatment).

This bill contains uncodified language that:

"It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471."

This bill makes related changes to the Dangerous Weapons' Control Law.

*This bill is double joint with AB 1211 (Arrows)*  
**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified <sup>6/23</sup> ~~6/17/97~~) *C.W.*

Attorney General  
 California Union of Safety Employees  
 Buck Knives  
 California Attorneys for Criminal Justice  
 California State Sheriffs Association

**ARGUMENTS IN SUPPORT:** According to the author:

"AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

"Also, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the 'equal protection clauses' of the state and federal constitutions.

CONTINUED

00349

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the ten year prohibition prior to the offense being added to the list of offenses for which the ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made "to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in *Dayacamos v. Department of Justice*, Case No. 96 CS 01471." That decision was made February 7, 1997, and the order was stayed until January 1, 1998, in order to allow the Department of Justice to comply.

RJG:sl 6/17/97 Senate Floor Analyses  
SUPPORT/OPPOSITION: SEE ABOVE  
\*\*\*\* END \*\*\*\*

**SENATE RULES COMMITTEE**

AB 78

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

---

**THIRD READING**

---

Bill No: AB 78  
Author: Granlund (R)  
Amended: 6/17/97 in Senate  
Vote: 21

---

SENATE PUBLIC SAFETY COMMITTEE: 8-0, 6/10/97

AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson, Polanco, Schiff,  
Watson

ASSEMBLY FLOOR: 76-0, 4/17/97

---

SUBJECT: Dangerous Weapons' Control Law: clarifying changes

SOURCE: Author

---

DIGEST: This bill makes a variety of changes to the Dangerous Weapons' Control Law.

ANALYSIS: Existing law provides that it is illegal to carry a concealed "dirk or dagger" upon one's person.

This bill excludes from the definition of "dirk or dagger" a non-locking folding knife, a folding knife that is not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position. The above are conforming changes to existing law.

Existing law provides that it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.

CONTINUED

00351

This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control

because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not.

This bill deletes that restriction for persons held only under WIC 5150 (and not otherwise certified for additional intensive treatment).

This bill contains uncodified language that:

"It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471."

This bill makes related changes to the Dangerous Weapons' Control Law.

The purpose of this bill is to make all of the changes specified to the existing law.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 6/17/97)

California Union of Safety Employees  
Buck Knives  
California Attorneys for Criminal Justice

**ARGUMENTS IN SUPPORT:** According to the author:

"AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

"Also, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the 'equal protection clauses' of the state and federal constitutions.



"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the ten year prohibition prior to the offense being added to the list of offenses for which the ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made "to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in *Dayacamos v. Department of Justice*, Case No. 96 CS 01471." That decision was made February 7, 1997, and the order was stayed until January 1, 1998, in order to allow the Department of Justice to comply.

RJG:sl 6/17/97 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

2. Relief from the Prohibition on Possessing a Firearm after Specified Misdemeanor Offenses

In In re Evans (1996) 49 Cal.App.4th 1263, the Court of Appeals (Fourth Appellate District) held that the "relief from disabilities provisions" in Penal Code Section 12021(c)(3) as drafted violated the "Equal Protection Clauses" of the State and Federal Constitutions. Evans involved a defendant who was convicted of possessing a gun after he had been convicted of spousal abuse. His conviction of spousal abuse occurred after January 1, 1991, but prior to the offense of spousal abuse barring gun possession for ten years. That occurred in 1993.

Evans challenged his gun conviction that, had he been convicted of spousal abuse prior to 1991, he could have claimed relief. In agreeing with his claim, the Court of Appeal noted that the January 1, 1991 date was irrational as to persons, where the offense barring possession was added to the list after January 1, 1991.

There are approximately twenty-five offenses added to the ten-year prohibition after January 1, 1991. To save the statute from invalidity, the Court of Appeal rewrote the statute to allow anyone who was convicted of an offense subject to the ten-year prohibition prior to the offense being added to the list of offenses for which the ten-year prohibition applied, to apply once for relief from the disability imposed by the prohibition.

This bill conforms the language in Penal Code Section 12021(c)(3) to the court's decision.

3. The Deletion of WIC Section 5150 72-Hour Holds from the Prohibitions on Firearms Possession.

Under current law, every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not.

Sacramento Superior Court Judge Bond has now held that it is unconstitutional to deprive a "5150" of the right to possess a firearm without any further court hearing or determination (due process right to counsel, hearing, etc.). Dayacamos v. Department of Justice, Case No. 96 CS 01471, February 7, 1997. Judge Bond stayed the effective date of the decision until January 1, 1998, in order to allow the Department of Justice to make the necessary changes in its process and to notify the parties who would otherwise be required to submit information to the department.

(More)

**SENATE COMMITTEE ON PUBLIC SAFETY**

Senator John Vasconcellos, Chair  
1997-98 Regular Session

A  
B  
7  
8

AB 78 (Granlund)  
As amended May 29, 1997  
Hearing date: June 10, 1997  
Penal Code and Uncodified Law  
SH:jm

THE DANGEROUS WEAPONS' CONTROL LAW -  
A VARIETY OF PROPOSED CHANGES

**HISTORY**

Source: Author

Prior Legislation: See text/Comments for relevant references

#1 → Support: California Union of Safety Employees; Buck Knives; California Attorneys  
for Criminal Justice

Opposition: None known

Assembly Floor Vote: Ayes 76 - Noes 0

KEY ISSUES

*This bill makes*  
~~SHOULD~~ A VARIETY OF CHANGES ~~BE MADE TO~~ THE DANGEROUS  
WEAPONS' CONTROL LAW, INCLUDING THE FOLLOWING:

(1) UNDER EXISTING LAW, ANY PERSON WHO IS SUBJECT TO THE  
PROHIBITION ON POSSESSING A FIREARM BECAUSE OF SPECIFIED  
MISDEMEANOR CONVICTIONS PRIOR TO JANUARY 1, 1991, MAY PETITION  
THE COURT ONLY ONCE FOR RELIEF FROM THE PROHIBITION.

(CONTINUED)

(More)

00357

SHOULD THE LAW BE CHANGED TO DELETE THE SPECIFIC REFERENCE TO "JANUARY 1, 1991" AND INSTEAD APPLY "PRIOR TO THE OFFENSE BEING ADDED TO" THE SPECIFIED OFFENSES THAT ARE SUBJECT TO THE PROHIBITION?

(2) EXISTING LAW PROVIDES THAT ANY PERSON WHO, AS A RESULT OF MENTAL DISORDER, IS A DANGER TO OTHERS, OR TO HIMSELF OR HERSELF, OR GRAVELY DISABLED, AND IS TAKEN INTO CUSTODY IN AN EVALUATION FACILITY FOR 72-HOUR TREATMENT AND EVALUATION, IS PROHIBITED FROM OWNING, POSSESSING, CONTROLLING, RECEIVING, OR PURCHASING ANY FIREARM FOR A PERIOD OF FIVE YEARS AFTER RELEASE FROM THE FACILITY.

SHOULD THAT PROHIBITION APPLICABLE TO A PERSON WHO IS DETAINED FOR TREATMENT AND EVALUATION FOR A PERIOD NOT TO EXCEED 72 HOURS (AND NOT OTHERWISE CERTIFIED FOR TREATMENT) BE DELETED?

SHOULD UNCODIFIED LANGUAGE BE ENACTED TO STATE LEGISLATIVE INTENT THAT THIS CHANGE IS BEING MADE IN ORDER TO COMPLY WITH THE DECISION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SACRAMENTO IN DAYACAMOS V. DEPARTMENT OF JUSTICE, CASE NO. 96 CS 01471?

SHOULD NUMEROUS OTHER AMENDMENTS BE MADE TO THE DANGEROUS WEAPONS CONTROL LAW, AS SPECIFIED?

Shwin  
Mazah  
445-52  
Place  
445-67

PURPOSE

829-593

(1) Existing law provides that it is illegal to carry a concealed "dirk or dagger" upon one's person. (Penal Code Section 12020(a))

SA

~~This bill excludes from the definition of "dirk or dagger" a non-locking folding knife, a folding knife that is not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.~~

*There are numerous changes to existing law*

(2) Existing law provides that it is illegal to carry a concealed handgun on one's person or in a vehicle. (Penal Code Section 12025) There are numerous exemptions from this prohibition. (Penal Code Sections 12026, 12026.1, 12026.2, and 12027)

PL

(More)

This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

(3) Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. (Penal Code Section 12020)

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(4) Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition. (Penal Code Sections 12320 to 12323)

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

(5) Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition. (Penal Code Sections 12021 and 12021.1, and Welfare and Institutions Code Sections 8100 and 8103)

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

(6) Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition. (Penal Code Section 12021)

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

(More)

00359

(7) Existing law allows the Department of Justice to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark. (Penal Code Section 12092)

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

(8) Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks. (Penal Code Section 12094)

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

(9) Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition. (Penal Code Section 12316)

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

63  
(10) Existing law provides that every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not. (Welfare and Institutions Code Section 8103)

This bill deletes that restriction for persons held only under WIC 5150 (and not otherwise certified for additional intensive treatment.

This bill contains uncodified language that:

"It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471."

(More)

64  
 This bill makes related changes to the Dangerous Weapons' Control Law.

The purpose of this bill is to make all of the changes specified to the existing law.

### COMMENTS

#### 1. Need for This Bill.

According to the author:

"AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

"Also, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the 'equal protection clauses' of the state and federal constitutions.

61  
 "To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the ten year prohibition prior to the offense being added to the list of offenses for which the ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made "to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471." That decision was made February 7, 1997, and the order was stayed until January 1, 1998, in order to allow the Department of Justice to comply.

(More)

00361

The Department of Justice is not going to appeal the decision and now wants to deal with the statutory changes needed to delete the prohibition on "5150's" from possessing firearms. DOJ and the Department of Mental Health estimate that approximately 40% of existing 413,000 "5150's" in the system will have been held beyond 72-hours with a requisite court hearing, so those individuals are still subject to firearms possession prohibitions. That means 60% of those persons will be deleted and no longer subject to such restrictions (presumably the same ratio will exist for future persons first held pursuant to WIC "5150").

AB 78 now has amendments which delete the WIC "5150" prohibition. The alternative would be to require a full blown court proceeding for all "5150's," however, the whole point of the 72-hour hold is to decide whether to go forward to seek further commitment. How would a hearing take place for those persons not certified for intensive treatment, for purposes only of the imposition of firearms possession?

AB 78 also now contains the following uncodified language to make clear that the change is being made to comply with the court decision:

SEC. 11. It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471.

4. Additional Information Provided by Staff Working on This Bill

The staff person working on this bill provides the following information pertaining to some of the numerous other changes made by this bill:

(1) Under current California law, there are no statutory "safe harbor" exemptions for persons who may or may not be in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies.

This issue has been discussed by the Court of Appeals in People v. Hurtado (1996) 47 Cal.App.4th. 805, and People v. Pepper (1996) 41 Cal.App.4th 1029, in the context of prohibited persons, i.e., persons who cannot legally possess any firearm. One court felt the exemption existed, but held that the defendant could not claim it. The other court disallowed the exemption period.

This bill creates distinct safe harbor exemptions for persons who are not, *per se*, legally prohibited from possessing weapons and for those persons prohibited from

(More)



possessing weapons. The author believes that these exemptions should be placed on a statutory basis.

As to non-prohibited persons, they may legally transport conventional firearms and certain contraband to law enforcement agencies provided certain conditions are met.

The Civil Code contains specific provisions on the responsibilities of finders of lost property. There is no Penal Code concealed carry exemption for the safe transport of lost handguns to a law enforcement agency. This bill amends the locked container exemption section to add two specific exemptions to allow the transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and the transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law.

Since this bill adds to a laundry list of exemptions, as is the case with the other exemptions, in order for a firearm to be exempted while being transported to or from a place, the firearm shall be unloaded, kept in a locked container and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

Penal Code Section 12020 bans the manufacture, distribution, importation and possession of most illegal firearms and certain forms of ammunition. AB 78 would allow possession incident to transport of all Section 12020 items other than a short-barreled rifle or short-barreled shotgun found and possessed by a person who is not generally prohibited from possessing firearms or ammunition and is transporting the listed item to a law enforcement agency for disposition according to law.

Under this bill, a person who found armor piercing ammunition may possess it incident to transporting it to a law enforcement agency for disposition according to law if he or she is not in a prohibited class of person generally prohibited from possessing firearms or ammunition.

As is the case in various weapons statutes, the defendant has the burden that he or she falls under the exemption.

(2) As noted above, case law suggests that felons and other prohibited persons who take possession guns out of necessity and turn them into a law enforcement agency may possess the same incident to transportation thereto.

This bill makes justifiable a violation of Penal Code Section 12021 (but not other statutes)--a possession charge--if the specified conditions are met.

(3) When is a knife a dirk or a dagger? See AB 1222 (Martinez), Chapter 128, Statutes of 1995 . Last year, Assemblymember Martinez wrote a letter in the Assembly Journal clarifying the meaning of AB 1222, which revised the definition of "dirk or dagger." The prior definition was created by AB 1266 (Martinez), Chapter 357, Statutes of 1993. Both bills were designed to create a statutory definition rather than having conflicting case law.

The letter in the Journal indicates that a folding knife is "a dirk or dagger," for purposes of Penal Code Section 12020, only if the blade of such knife is exposed and locked into position.

This bill attempts to codify the letter in the Journal without touching switchblade knife regulation or otherwise doing major damage to the law. The author is doing this at the request of Buck Knives.

(4) Under a number of code sections, lab personnel have a clear exemption to allow them to possess contraband incident to their official duties. Penal Code Section 12020 does not have such a clear exemption. AB 78 explicitly allows possession of any weapon, device, or ammunition banned by Section 12020 by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(5) At the request of Legislative Counsel, the bill makes cosmetic code maintenance changes to the machine-gun exemption statute.

5. Suggested Amendment

In order to prevent possible confusion, committee staff recommends deleting the language on page 7, lines 36-38, of this bill pertaining to "dirks and daggers." Staff and interested parties appear to have agreed to that amendment.

SHOULD THIS AMENDMENT BE MADE?

\*\*\*\*\*

The documents following this page were  
photocopied from the

Governor's Chaptered Bill File

on this legislation.

Jack Horto  
Chief Deputy  
  
James L. Ashford  
Harvey J. Foster  
John T. Stuebaker  
Daniel A. Weitzman

David D. Alves  
Diane F. Doyer-Vine  
C. David Dickerson  
Robert Cullen Duffy  
Robert D. Gronke  
Michael J. Kersten  
James A. Marsala  
Robert G. Miller  
Tracy O. Powell II  
Marguerite Roth  
Michael H. Upton  
Christopher Zirkle  
Principal Deputies

State Capitol, Suite 3021  
Sacramento, CA 95814-4996  
(916) 445-3057  
Telecopier: (916) 322-0769

# Legislative Counsel of California

BION M. GREGORY

Sacramento, California  
July 25, 1997

Gorski Ross Adams  
Paul Antilla  
Hema Rao Anwar  
Charles C. Asbill  
Joe J. Ayala  
Lara K. Bierman  
Marie L. Bordonno  
Ann M. Burastero  
Eileen J. Burton  
Cindy M. Cardullo  
Edward Ned Cohen  
Ernie Cutrer  
Ben E. Dale  
Byron D. Damian, Jr.  
Jeffrey A. DeLand  
Clinton J. deWitt  
Frances S. Dorbin  
Maureen S. Dunn  
Sharon F. Fisher  
Clay Fuller  
Patricia R. Gates  
Debra Zich Gibbons  
Shira K. Gilbert  
Sonya Annie Grant  
Alvin D. Gross  
Elizabeth M. Gress  
Maria Hidakos Hanke  
Jana T. Harrington  
Baldev S. Heir  
Thomas R. Heuer  
Lori Ann Joseph  
  
David B. Judson  
Michael R. Kelly  
Michael Robert Kerr  
Eve B. Krotzinger  
Aubrey LaBrie  
L. Erik Lange  
Felicia A. Lee  
Diana G. Lim  
Jennifer Loomis  
Kirk S. Louie  
Mariana Mann  
Anthony P. Marquez  
Francisco A. Martin  
JudyAnne McGinley  
Peter Melnicos  
Sheila R. Mohan  
Abel Munoz  
Sharon Reilly  
Tara Rulo  
Michael B. Salerno  
William K. Stark  
Jessica L. Steele  
Christopher H. Stevens  
Ellen Sward  
Mark Franklin Terry  
Jeff Thom  
Richard Thomson  
Richard B. Weisberg  
Thomas D. Whelan  
Karen L. Ziskind  
Jack G. Zorman

Deputies

Honorable Pete Wilson  
Governor of California  
Sacramento, CA

## REPORT ON ENROLLED BILL

**A.B. 78** GRANLUND. Firearms: transporting exemption.

**SUMMARY:** See Legislative Counsel's Digest on the bill as adopted.

**FORM:** Approved.

**CONSTITUTIONALITY:** Approved.

**TITLE:** Approved.

**CONFLICTS:** This bill and Assembly Bill No. 688, which is also before the Governor, would both amend Section 12021 of the Penal Code.

This bill contains provisions that make all of the changes in Section 12021 proposed by A.B. 688 and this bill if both bills are chaptered and this bill is chaptered last (Secs. 2.5 and 10, this bill).

A.B. 688 also contains provisions that purport to make all of the changes in Section 12021 proposed by both bills if both bills are chaptered and A.B. 688 is chaptered last (Secs. 2 and 3, A.B. 688). However, those provisions incorporate most but not all of the changes in Section 12021 proposed by this bill. Those provisions do not incorporate subparagraph (D) into paragraph (1) of subdivision (h) which is added to Section 12021 by the proposed amendment to that section contained in this bill. Subparagraph (D) would justify

*[Handwritten signature]*  
00386

a person violating certain provisions that prohibit specified persons from owning, possessing, or having in his or her custody or control, any firearm if the firearm is being transported to a law enforcement agency and the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition (Secs. 2 and 2.5, this bill).

Thus, if both bills are chaptered and this bill is chaptered last, the changes in Section 12021 of the Penal Code proposed by each bill will be given effect. However, if A.B. 688 is chaptered last, the changes proposed by each bill will be given effect, except for the change discussed above proposed by this bill (Sec. 9605, Gov. C.).

Bion M. Gregory  
Legislative Counsel

*Sheila R. Mohan*

By  
Sheila R. Mohan  
Deputy Legislative Counsel

SRM:dil

Two copies to Honorable Brett Granlund  
and Honorable Larry Bowler,  
pursuant to Joint Rule 34.



# OFFICE OF CRIMINAL JUSTICE PLANNING

Enrolled Bill Report  
OCJP 855 (12/96)

**BILL NUMBER:** AB 78  
**AUTHOR:** Granlund  
**AS AMENDED:** July 7, 1997  
**SUBJECT:** Firearms: transporting exemptions

## BILL SUMMARY

This bill will provide for an exemption from the prohibition against possessing certain illegal weapons and devices for persons who are not in a prohibited class, who possess the weapon only as long as necessary to turn it in, and are transporting the weapon or device to a law enforcement agency for disposition according to law. This bill will also provide for a similar exemption involving the possession of a firearm with the additional requirement that the person gives prior notice to law enforcement. This bill also provides an exemption from the above prohibition for forensic laboratories or any authorized agent or employee thereof in the course and scope of his or her authorized duties. This bill will also specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is a dirk or dagger and thereby prohibited only if the blade of the knife is exposed and locked into position. This bill will also provide for an exemption for those who are prohibited from owning or possessing a firearm or ammunition if certain specified conditions are met. This bill would also exempt from the provisions prohibiting the knowing possession of a firearm with altered identification marks, certain on-duty peace officers and persons transporting a firearm to a law enforcement agency for disposition. This bill will also allow anyone who was convicted of an offense subjecting that person to the ten-year prohibition on firearm ownership, prior to the offense being added to the list of offenses for which the prohibition applies to petition the court once for relief from the prohibition.

## SUMMARY OF RECOMMENDATION

The Office of Criminal Justice Planning (OCJP) recommends that the Governor SIGN this measure. The key portions of this bill which deal with exemptions from the prohibitions on the possession of certain weapons and devices have been recently amended to address concerns raised about their potential abuse by defendants who might claim that they were on their way to the police station when caught with an illegal firearm. The bill now provides for prior notification of law enforcement when one is transporting a weapon which may not legally be possessed to law enforcement for disposition. This limits the potential for abuse by those that are stopped with an illegal firearm. The bill strikes an appropriate balance between the need to encourage the law abiding public to turn in dangerous weapons to local law enforcement with the desire to prevent abuse of an overly broad exemption by the criminal element.

### Position

<b>SIGN</b>	
<b>Legislative Analyst</b> Clifford E. Zall	<b>Date</b> July 22, 1997
<b>Deputy Director</b> Donald J. Currier	<b>Executive Director</b> <i>[Signature]</i>

The exemption for forensic laboratory employees in the course and scope of their duties makes sense in light of their need to examine weapons of this type in connection with criminal activity. The dirk and dagger provisions clarify what types of knives are illegal to possess so as not to criminalize the possession of certain hunting knives with legitimate purposes unless they are concealed in such a manner as would make it obvious their intent to be used as a stabbing weapon. This is a sensible clarification. The rest of this measure involves changes to conform with recent court opinions and is unobjectionable.

## **BACKGROUND**

Two cases are cited by the author of this measure as providing the need to create the statutory "safe harbor" exemptions as set forth in this bill. These two cases deal with felons who alleged that their possession of a firearm in violation of Section 12021 was only transitory and therefore they were exempt from prosecution for a violation of this offense.

In People v. Pepper 41 Cal. App. 4<sup>th</sup> 1029 (1996), the defendant claimed that he possessed the firearm only to remove it from an area where his friend's one year old son could have gotten access to it. The court ruled that the exemption for temporary possession to dispose of the firearm provided for in case law did not apply to felons in possession of firearms since as a matter of public policy the Legislature has banned the possession of firearms by felons. The court reasoned that the taking and possessing of a firearm by one whom the Legislature has determined is most likely to misuse use it cannot be justified on the grounds that the temporary possession was to prevent harm to another or to take the weapon from one who possessed it in violation of the law. This is true even if the intent of the felon was to turn the weapon in to law enforcement.

In People v. Hurtado 47 Cal. App. 4<sup>th</sup> 805 (1996), the defendant claimed that he found the weapon and was planning to turn it in to law enforcement. Here the court disagreed with Pepper and ruled that the defendant was eligible to claim the exemption for temporary possession to dispose but the facts did not justify it. The court reasoned that prior case law had established a defense of momentary possession if the intent was to prevent possession by a party who was illegally in possession and the person possessed the weapon no longer than was necessary to dispose of it to law enforcement.

## **SPECIFIC FINDINGS**

Existing law provides exemptions from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons, ammunition, and firearms.

This bill will provide for an exemption from the prohibition against possessing certain illegal weapons and devices for persons who are not in a prohibited class, who possess the weapon only as long as necessary to turn it in, and are transporting the weapon or device to a law enforcement agency for disposition according to law.

This bill provides for a similar exemption involving the possession of a firearm with the additional requirement that the person gives prior notice to law enforcement before transporting it to law enforcement.

This bill provides an exemption from the above prohibition for forensic laboratories or any authorized agent or employee thereof in the course and scope of his or her authorized duties.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and others from possessing any firearm or ammunition.

This bill will also provide for an exemption for those who are prohibited from owning or possessing a firearm or ammunition if the person found the firearm or ammunition or took it from someone who was committing a crime against them, possessed it no longer than necessary to turn it in, and transported it according to law. In the event a firearm is involved the person must take the additional step of notifying law enforcement prior to transporting the firearm to turn it in.

Existing law prohibits the possession of a dirk or dagger that is carried concealed upon the person. A dirk or dagger is defined as a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict death or great bodily injury.

This bill will also specify that a nonlocking folding knife, a folding knife that is not a switchblade knife having a blade 2 or more inches in length, or a pocketknife is a dirk or dagger and thereby prohibited only if the blade of the knife is exposed and locked into position.

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

This bill will also allow anyone who was convicted of an offense subjecting that person to the ten-year prohibition on firearm ownership, prior to the offense being added to the list of offenses for which the prohibition applies to petition the court once for relief from the prohibition.

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered or obliterated identification marks.

This bill will exempt from this prohibition persons in specified classes, including certain on-duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

### CHAPTERING ISSUES

This bill contains language incorporating the provisions of AB 688 (Bowler) and AB 1221 (Aroner). This language is designed to avoid chaptering out problems. AB 688 would delete, for the purposes of a ban on firearm possession until age 30 for juvenile offenders who commit specified offenses, the requirement that the person have been explicitly found to be a fit and proper subject to be dealt with under the juvenile court law. AB 688 is on the Assembly concurrence file. AB 1221 would expand existing law's prohibition on selling ammunition or reloaded ammunition to a minor under 18 years to prohibit the sale of ammunition and reloaded ammunition designed and intended for use in a pistol, revolver, or other firearm capable of being concealed upon the person to a person under the age of 21 years. AB 1221 is on the Senate third reading file. AB 688 and AB 1221 contain similar language to avoid the possibility of chaptering out this bill's language. Since all of these measures contain protective language the signing order is irrelevant.



## ANALYSIS

According to the author, "AB 78 addresses certain miscellaneous weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine."

The Office of Criminal Justice Planning (OCJP) recommends that the Governor SIGN this measure. The key portions of this bill which deal with exemptions from the prohibitions on the possession of certain weapons and devices have been recently amended to address concerns raised about their potential abuse by defendants who might, on advice of their defense attorney, claim that they were on their way to the police station when caught with an illegal firearm. The bill now provides for prior notification of law enforcement when one is transporting a weapon which may not legally be possessed to law enforcement for disposition. This limits the potential for abuse by those that are stopped with an illegal firearm. The bill strikes an appropriate balance between the need to encourage the law abiding public to turn in dangerous weapons to local law enforcement with the desire to prevent abuse of an overly broad exemption by the criminal element.

The exemption for forensic laboratory employees in the course and scope of their duties makes sense in light of their need to examine weapons of this type in connection with criminal activity.

The dirk and dagger provisions clarify what types of knives are illegal to possess so as not to criminalize the possession of certain hunting knives with legitimate purposes unless they are concealed in such a manner as would make it obvious their intent to be used as a stabbing weapon. This is a sensible clarification.

The rest of this measure involves changes to conform with recent court opinions and is unobjectionable.

## FISCAL FINDINGS

This is a non-fiscal measure.

## SUPPORT

California Union of Safety Employees  
Buck Knives  
California Attorneys for Criminal Justice

## OPPOSITION

None known

**STATUS**

- 04/08/97 - Passed Assembly Committee on Public Safety (12-0)
- 04/17/97 - Passed Assembly floor (76-0)
- 06/16/97 - Passed Senate Committee on Public Safety (8-0)
- 07/17/97 - Passed Senate floor (25-5)
- 07/21/97 - Assembly concurrence (76-1)
- 07/21/97 - Enrolled

**RECOMMENDATION**

SIGN

**GOVERNOR'S OFFICE OF PLANNING AND RESEARCH**

*Enrolled Bill Report*

*Bill Number*

*Author*

*As Amended*

AB 78

GRANLUND

JULY 7, 1997

*Subject*

**FIREARMS: TRANSPORTING EXEMPTION**

- No Analysis Required --- not within scope of our responsibility.
- Author advises this is a "spot" bill that will be significantly amended. Further analysis will be completed when language becomes available.
- Author advises will not be pursuing this measure further. We will continue to monitor and will analyze if bill does, in fact, move.
- Technical amendment --- no change needed in previously submitted analysis.  
Approved position and version analysis:
- Minor amendment --- previously submitted analysis still valid.  
Previously approved position:

**Comments:**

This bill would amend various sections of the Penal Code relating to transporting and carrying firearms and other weapons. Because AB 78 does not fall within the purview of this office, we **DEFER TO THE OFFICE OF CRIMINAL JUSTICE PLANNING.**

Benjamin Pugh, Analyst  
Nancy Patton., Deputy Director, Legislation  
AW

*By*

*Lee Grissom*

*Title*

*Date*

**LEE GRISSOM  
DIRECTOR**

**July 22, 1997**

Governor's Office

*Position Noted* \_\_\_\_\_ *Position Approved* \_\_\_\_\_ *Position Disapproved* \_\_\_\_\_

*By:* \_\_\_\_\_ *Date:* \_\_\_\_\_

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0001  
(916) 445-7552  
(916) 445-7650 FAX

DISTRICT OFFICE  
34932 YUCAIPA BLVD.  
YUCAIPA, CA 92399  
(909) 790-4196  
(909) 790-0479 FAX

# Assembly California Legislature

**BRETT GRANLUND**  
ASSEMBLY MEMBER, SIXTY-FIFTH DISTRICT

COMMITTEES

HEALTH, Vice Chair  
APPROPRIATIONS  
GOVERNMENTAL  
ORGANIZATION



July 22, 1997

Honorable Pete Wilson  
Governor's Office  
State Capitol

Re: AB 78 - Sign after AB 688 (Bowler)

Dear Governor Wilson:

You have before you AB 78, an omnibus firearms bill that addresses six issues. In particular the bill addresses several recent court decisions regarding weapons. I have enclosed a summary of AB 78's provisions.

AB 78 is a carefully negotiated measure that reflects the input of Charles Fennessey of your staff. AB 78 has broad bi-partisan support and passed with overwhelming votes.

AB 78 is supported by the Attorney General, California Union of Safety Employees, Buck Knives, California Attorneys for Criminal Justice (albeit reluctantly), California State Sheriffs Association, California Rifle & Pistol Association, Doris Tate Crime Victims Bureau, and several district attorneys.

Please sign AB 78 after AB 688 (Bowler) in order to assure that the provisions of both bills go into effect properly.

Your prompt approval of AB 78 is appreciated.

Respectfully,

A handwritten signature in black ink that reads "Brett Granlund".

Brett Granlund

## AB 78 BACKGROUND SHEET

### I. Dirks and Daggers

AB 78 codifies a letter in the Assembly Journal from last year by Assemblywoman Diane Martinez as to the intent of her AB 1222 Ch. 128/1995.

Last year, Assembly Member Martinez wrote a letter in the Assembly Journal clarified the meaning of AB 1222, which revised the definition of a "dirk or dagger". The prior definition was created by AB 1266 (Martinez), Chapter 357, Statutes of 1993. Both bills were designed to create a statutory definition rather than having conflicting case law.

The letter in the Journal indicates that a folding knife is "a dirk or dagger" for purposes of Penal Code Section 12020 only if the blade of such knife is exposed and locked into position.

AB 78 codifies Mrs. Martinez letter in the Journal without touching switchblade knife regulation or otherwise doing damage to the law. The clarification in this bill protects hunting knives. The bill does not affect the definition of what is a dirk or dagger for purposes of carrying knives on school grounds.

### II. Relief from Disabilities and In re Evans

AB 78 addresses problems with Penal Code section 12021's "relief from misdemeanor disabilities" provision occasioned by In re Evans (1996) 49 Cal.App.4th 1263. In Evan's, the Court of Appeals held that the "relief from disabilities provisions" in Penal Code Section 12021(c)(3) as drafted violated the "Equal Protection Clauses" of the State and Federal Constitutions.

Evans involved a defendant who was convicted of possessing a gun after he had been convicted of spousal abuse. His conviction of spousal abuse occurred after January 1, 1991, but prior to the offense of spousal abuse barring gun possession for 10 years. That occurred in 1993.

Mr. Evans challenged his gun conviction that had he been convicted of spousal abuse prior to 1991, he could have claimed relief. In agreeing with his claim, the Court of Appeal noted that the January 1, 1991 date was irrational as to persons where the offense barring possession was added to the list after January 1, 1991.

There are approximately 25 offenses added to the 10-year prohibition after January 1, 1991. To save the statute from invalidity, the Court of Appeal rewrote the statute to allow anyone who was convicted of an offense subject to the 10-year

prohibition prior to the offense being added to the list of offenses for which the 10-year prohibition applied to apply once for relief from the disability imposed by the 10 year prohibition.

Evans rewrote the statute temporarily to make it constitutional. Since Evans, the Legislature essentially re-enacted the offending provisions in AB 688 (Bowler). AB 688 has chaptering language to pick up this bill. However, it still contains the offending language held invalid in Evans.

AB 78 rewrites the "relief from disabilities" provision to comply with Evans. Failure to enact AB 78 will result in persons convicted of the 25 offenses added to the 10-year prohibition after January 1, 1991 being able acquire guns. Such persons include various categories of mentally infirm persons, adjudicated sex offenders, persons convicted of domestic violence offenses, stalkers, and other similar persons.

### III. Weapons turn in and Pepper-Hurtado

AB 78 addresses the issue of person who turn in weapons. Under current California law, there are no statutory "safe harbor" exemptions for persons who may or may not be in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies.

The "turn in" issue was discussed by the Court of Appeals in People v. Hurtado (1996) 47 Cal.App.4th. 805 and People v. Pepper (1996) 41 Cal.App.4th 1029 in the context of prohibited persons, i.e., persons who cannot legally possess any firearm. One court felt the exemption existed, but held that the defendant could not claim it. The other court disallowed the exemption period.

AB 78 creates distinct safe harbor exemptions for persons who are not, per se, legally prohibited from possessing weapons and for those persons prohibited from possessing weapons. I believe that these exemptions should be placed on a statutory basis. Case law holds that exemption are on the defendant to prove. This bill does not change that. The bill takes the more restrictive view of this defense.

As to non-prohibited persons, they may legally transport conventional firearms and certain contraband to law enforcement agencies provided certain conditions are met. Specifically, the bill covers the following items:

- a) Handguns: The Civil Code contains specific provisions on the responsibilities of finders of lost property. There is no Penal Code concealed carry exemption for the safe transport of lost handguns to a law enforcement agency.

AB 78 amends the locked container exemption section to the concealed carry section (Penal Code Section 12026.2) to add two specific exemptions to allow the transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and the transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law.

Since this bill adds to a laundry list of exemptions, as is the case with the other exemptions, in order for a firearm to be exempted while being transported to or from a place, the firearm shall be unloaded, kept in a locked container and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

Under current law, a "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle. In addition, the bill also requires prior notice to a law enforcement agency that the person is bringing a gun therein.

- b) Section 12020 Items: Penal Code Section 12020 bans the manufacture, distribution, importation and possession of most illegal firearms, a number of knives, certain accessories, and certain forms of ammunition.

AB 78 would allow possession incident to transport of all Section 12020 items other than a short-barreled rifle or short-barreled shotgun found and possessed by a person who is not prohibited from possessing firearms or ammunition and is transporting the listed item to a law enforcement agency for disposition according to law.

Additionally, in the case of guns there must be prior notice to the agency and the gun must be transported in a locked container, as that term is defined under current law.

Your staff agreed that prior notice was not required for non-gun devices as most of these items were not likely to lead to the type of confrontation as the sudden appearance of guns and might in fact discourage persons who are not "prohibited persons" from utilizing these provisions if they became too restrictive.

- c) Armor-Piercing Ammunition. Armor-piercing ammunition (aka "cop killer bullets") are prohibited by Penal Code Section 12320. Under this bill, a person who found the ammunition may possess it incident to transporting it to a law enforcement agency for disposition according to law if he or she is not in a prohibited class of person prohibited from possessing firearms or ammunition.
- d) Obliterated serial numbers on firearms. This bill allows a person not prohibited from possessing firearms or ammunition to possess firearms with obliterated serial incident to turning the same into a law enforcement agency for their disposition. As is the case with other firearms related exemptions the gun must be transported transported in a locked container and there is prior notice to the agency receiving the weapon.
- e) Prohibited Persons: As noted above, case law suggests that felons and other prohibited persons who take possession guns out of necessity and turn them into a law enforcement agency may possess the same incident to transportation thereto. This bill recognizes that but takes a much more restricted view on this issue. Its one thing to allow a person with a non violent record to take a legal gun to an agency which he or she truly finds.

However, it is another thing to allow an illegal possessor to possess even for one moment an item that no one save law enforcement can possess.

This bill makes justifiable a violation of Penal Code Section 12021 (but not other statutes) a possession charge where all of the following conditions are met:

- The person found the firearm or took the firearm from a person who was committing a crime against him or her.

- The person possessed the firearm no longer



than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

- If the firearm was transported to a law enforcement agency, it was transported in accordance with the locked container rules and there was prior notice to the agency.

As to the burden of proof, upon the trial for violating the possession section, the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this bill. The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this bill.

There is similar language to include the same language in Penal Code Section 12316 (prohibited persons possessing ammunition) to include the same provision limited to the same persons set forth in Section 12021

In sum, the weapons turn in provisions of the bill take the more restrictive view of case law. The bill does not affect machineguns, silencers, assault weapons (which are covered under existing law), or sawed off style firearms. Persons with no criminal record or mental infirmity have a narrow turn in window which they bear the burden is showing is legitimate.

Persons with non-violent convictions have a much tougher burden than the average citizen or what case law would suggest. They can only claim "turn in" relief as to guns that the average citizen may possess after meeting very stringent conditions with a high burden of proof which would indicate it is a true "turn in". They may not in any event claim any relief as to illegal weapons or ammunition. And, the bill does not provide any relief to violent felons or the mentally infirm.

#### IV. Lab Personnel

Under a number of code sections, lab personnel have a clear exemption to allow them to possess contraband incident to their official duties. Neither the obliterated serial number section nor Penal Code Section 12020 have such a clear exemption. AB 78 explicitly allows possession of any weapon, device, or ammunition banned by Section 12020 by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

V. Law enforcement and military exemptions for possession of firearms with obliterated serial numbers

There are no express exemptions for law enforcement and military personnel to possess guns with obliterated serial numbers in the course and scope of their duties. AB 78 adds such exemptions.

VI. Assignment of Serial numbers for all firearms

AB 78 allows the Department of Justice to assign a distinguishing number or mark to any firearm. The Department can only do that for handguns now. This change was requested by the Department, the firearms groups and insurers so that that persons can obtain theft insurance, insurers can better monitor insurance claims, and enhances the ability to apprehend thieves who steal guns and allows persons to recover their property.

VII. Miscellaneous

Finally, at the request of Legislative Counsel, the bill makes cosmetic code maintenance changes to the machine-gun exemption statute.

**SENATE RULES COMMITTEE**

AB 78

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

---

**THIRD READING**

---

Bill No: AB 78  
Author: Granlund (R)  
Amended: 7/7/97 in Senate  
Vote: 21

---

SENATE PUBLIC SAFETY COMMITTEE: 8-0, 6/10/97  
AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson, Polanco, Schiff,  
Watson

ASSEMBLY FLOOR: 76-0, 4/17/97

---

SUBJECT: Dangerous Weapons' Control Law: clarifying changes

SOURCE: Author

---

DIGEST: This bill makes a variety of changes to the Dangerous Weapons' Control Law.

Senate Floor Amendments of 7/7/97 provide for prior notice to be given to a law enforcement agency prior to the delivery of a weapon to that agency.

Senate Floor Amendments of 6/30/97 delete proposed changes pertaining to persons subject to a 72-hour hold/observation and add double-joining language.

Senate Floor Amendments of 6/23/97 delete provisions relative to "dirks or daggers" and add double-joining language.

CONTINUED

00381

**ANALYSIS:** Existing law provides that it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.

This bill provides that in all situations where an individual is transporting a firearm to a law enforcement agency, prior notice be given to that agency prior to delivery of the weapon.

This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who, after prior notice is given to the agency, is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person, after prior notice is given to the agency, is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified

procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption and must give prior notice to the agency prior to the delivery of the firearm.

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

This bill makes related changes to the Dangerous Weapons' Control Law.

This bill is double-joined with AB 1211 (Aroner) and AB 688 (Bowler).

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/8/97)

Attorney General  
California Union of Safety Employees  
Buck Knives  
California Attorneys for Criminal Justice  
California State Sheriffs Association

ARGUMENTS IN SUPPORT: According to the author, "AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The main issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property."

RJG:sl 7/8/97 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

The documents following this page were  
photocopied from the files of

Assembly Member Brett Granlund,

author of this legislation.

Senate

## STATEMENT

### Mr. Chairman and Members:

➤ First off, I would like to offer ~~the amendment~~ to accept the amendments Simon suggested in Comment 5 on page 9 of the analysis.

➤ Simon also advised my staff late yesterday that a conforming change on that issue has to be made in Penal Code section 626.10 and possibly one other place. I accept that as an author's amendment as well.

➤ AB 78 makes a number of changes to California's firearms and weapons laws to address issues raised in several recent Court of Appeals decisions and attempts to bring firearm laws into accordance with recent case law.

➤ Specifically, AB 78 is aimed at creating as a statutory basis, as opposed to case law basis, a clear means whereby persons who find weapons or innocently come into possession of weapons can turn them over to law enforcement without



repercussions.

➤ In addition, at the request of the Attorney General's office - and this is their language - the bill meets Judge Bond's decision in the Dayacomos case. As ~~correctly~~ noted in the analysis, on page 6 and 7, the prohibition is unconstitutional and the AG will not appeal that.

~~➤ In that circumstance, in order to rewrite the prohibition to be valid there would have to be <sup>A</sup> ~~some full blown~~ hearing which no one knows how to implement of some type which no one can set the parameters of.~~

~~➤ Irwin, in fact, went over to talk to Judge Connelly about this and he had no suggestions either. The prohibition was inserted in Judge Connelly's AB 497 to placate Mr. McClintock. As such, it was not central to 497.~~

➤ The consensus on the Dayacomos issue is that the people <sup>We Are</sup> ~~everyone is~~ concerned with will - or can be - dealt with in the certified for intensive treatment process which Judge Bond upheld. That was enacted in 1991 as part of AB 242

(Connelly-Burton-Peace). ~~As such, Mr. Burton once again showed his foresight.~~

➤ The language in the bill was drafted in consultation with both the Defense Bar and the California District Attorney's Association. The language assures that it is the burden on the person seeking the relief to claim it

➤ We want to put this on as a statutory basis so people know what the rules are rather than having conflicting case law.

➤ In addition, the bill codifies a letter in the Assembly Journal by Mrs. Martinez on what is considered a dirk or dagger under her prior legislation.

➤ For those of my Democratic Colleagues who say they want weapons off the streets, this bill does it.

➤ AB 78 is supported by the State Sheriffs Association, the Attorney General, the California Rifle and Pistol Association, the Sport Cutlery Association, the California Attorneys for

Criminal Justice, and numerous district attorneys.

~~➤ There are a number of chaptering concerns and I have appointed Irwin to avoid chaptering problems.~~

➤ I ask for your AYE VOTE.

# Floor STATEMENT

## **Madam Speaker and Members:**

➤ AB 78 makes a number of changes to California's firearms and weapons laws to address issues raised in several recent Court of Appeals decisions and attempts to bring firearm laws into accordance with recent case law.

➤ Specifically, AB 78 is aimed at creating as a statutory basis, as opposed to case law basis, a clear means whereby persons who find weapons or innocently come into possession of weapons can turn them over to law enforcement without repercussions.

➤ The language in the bill was drafted in consultation with both the Defense Bar and the California District Attorney's Association. The language assures that it is the burden on the person seeking the relief to claim his/her property.

➤ We want to put this on as a statutory basis so people know what the rules are rather than having conflicting case law.

➤ In addition, the bill codifies a letter in the Assembly Journal by Mrs. Martinez on what is considered a dirk or dagger under her prior legislation.

➤ For those of my Democratic Colleagues who say they want weapons off the streets, this bill does it.

➤ AB 78 is supported by the State Sheriffs Association, the California Rifle and Pistol Association, the Sport Cutlery Association, the California Attorneys for Criminal Justice, and numerous district attorneys.

➤ I ask for your AYE VOTE.

## STATEMENT

**Mr. Chair and Members:**

**\* AB 78 makes a number of changes to California's firearms and weapons laws to address issues raised in several recent Court of Appeals decisions and attempts to bring firearm laws into accordance with recent case law.**

**\* AB 78 is aimed at creating as a statutory basis, as opposed to case law basis, a means whereby persons who find weapons or innocently come into possession of weapons can turn them over to law enforcement without repercussions.**

**\* We want to put this on as a statutory basis so people know what the rules are rather than having conflicting case law.**

**\* This bill would allow possession of a concealed weapon or certain ammunition by a person without a permit to carry a**

**concealed or a person convicted of certain crimes who is prohibited from possessing a firearm provided that: 1) he or she finds the firearm or takes it away from someone committing a crime against him or her and 2) the person is only in possession of the firearm long enough to take it directly to the police. The bill also establishes the burden of proof an ex-convict must show in order to receive relief under this section.**

**\* This bill expands the definition of a dirk or dagger to state that it is only a concealed weapon if the blade is exposed and locked into position.**

**\* For further testimony, I have brought witnesses who can offer their opinions on the subject.**

**I ask for your AYE VOTE.**

*Republican Analysis*

**AB 78 (Granlund)**

**Public Safety Committee**

**AB 78 (GRANLUND)**

**FIREARMS: TRANSPORTING EXEMPTION**

**Version:** 3/17/97 Last Amended

**Vice-Chair:** Jan Goldsmith

**Analyzed:** 4/4/97

**Vote:** Majority

**Recommendation:** Support

**Tax or Fee Increase:** No

**Summary** Exmempt specified person (including ex-convicts and forensic laboratories) from current firearm possession laws, if they are in possession for a specified purpose. Allows concealed knives to be carried in certain kinds of containers. Expands the definition of "dirk" or "dagger." States that persons who are subject to a ten year prohibition on possessing firearms may, in certain circumstances, petition for an exemption. Establishes the burden of proof a defendant must prove to be exempted from firearm restrictions.

**Proposed Amendments** None.

**Potential Effects** Brings firearm laws into accordance with recent case law on the subject.

**Sponsor:** Author

**Support:** California Rifle and Pistol Association, Buck Knives

**Oppose:** None on File

**State Fiscal Effect** Unknown

**Local Fiscal Effect** Unknown

**Fiscal Comments**

**Comments**

1. **EXISTING LAW** makes it a misdemeanor for people who have been convicted of specific offenses to own or possess a firearm for 10 years after the conviction. Allows an exemption for police officers convicted of certain offenses because their livelihood



**AB 78 (Granlund)**

depends upon the ability to carry a firearm. Provides that persons convicted before January 1, 1991 may petition the court to allow them to carry a firearm within 10 years of conviction. People convicted after January 1, 1991 cannot petition for this exemption.

- 2. This bill would allow possession of a concealed weapon or certain ammunition by a person without a permit to carry a concealed weapon or a person convicted of certain crimes who is prohibited from possessing a firearm provided that: 1) he or she finds the firearm or takes it away from someone committing a crime against him or her and 2) the person is only in possession of the firearm long enough to take it directly to the police. The bill also establishes the burden of proof an ex-convict must show in order to receive relief under this section.
- 3. The bill expands the definition of a "dirk" or "dagger" to state that it is only a concealed weapon if the blade is exposed and locked into position.
- 4. In In re Evans 49 Cal.App.4th 1263 (1996), the court found that current law creates an equal protection problem under the California and Federal constitutions. This bill remedies that problem and aligns it with the decision in that case.

**Assembly Republican Committee Votes** ( ) 4/8/97  
 (0-0) Ayes: None  
 Noes: None  
 Abs. / NV: None

**Policy Consultant:** Jean Huston  
**Fiscal Consultant:**

## AB 78 - Weapons Bill

**Author:**

Assemblyman Brett Granlund (R-Yucaipa)

**Co-Authors:**

**Sponsor:**

**Problem the bill addresses:**

AB 78 addresses certain "odds and ends weapons" issues that have come to light by virtue of the lost and found property issue and two issues raised by Granlund's constituents. The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property. Under current California law, there are no "safe harbor" exemptions for persons who are not in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies. This issue has been alluded to by the Court of Appeals in People v. Hurtado, (1996) 47 Cal.App.4th. 805 and People v. Pepper, (1996) 41 Cal.App.4th 1029.

**Proposed solution:**

AB 78 would:

- 1) As to non prohibited persons by amending various Penal Code sections to permit the temporary possession and transportation by non-prohibited persons who find these weapons and transporting the same to a law enforcement agency for disposition according to law.
- 2) The bill amends PC 12021 to create an exemption where the defendant proves by a preponderance of the evidence all of the following
  - a. The person found the firearm or took the same from a person committing a crime against him or her.
  - b. The person possessed the firearm no longer that was necessary to transport the firearm to a law enforcement agency for that agency's disposition according to law.

**For more information, please contact Ash Givargis in  
Assemblyman Brett Granlund's office at (916) 445-7552.**

## Fact Sheet Revised 04/24/97

c. The firearm was transported in accordance with PC 12026.2.

If this language in the bill needs refinement, the author will be happy to amend the same to address any concern.

3) Justice Art McKinister who is a Justice of the Court of Appeal in San Bernardino noted in *IN re Evans*, 49 Cal.App.4th 1263 that the relief from disabilities provisions in Penal Code section 12021 (c) (3) as drafted violated the "equal protection clauses" of the state and federal constitutions.

To save the statute from invalidity, Justice McKinister rewrote the statute to allow anyone who was convicted of an offense subject to the 10 year prohibition prior to the offense being added to the list of offenses for which the 10 year prohibition applied to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinister's opinion.

If we don't fix the problem as McKinister indicated, here is who could get guns:

- Persons convicted of possessing machine guns.
- Persons adjudicated mentally disordered sex offenders.
- Persons convicted of threatening public officials.
- Persons convicted of bringing weapons into YA facilities.
- Persons convicted of certain forms of drive-by shootings.
- Persons convicted of domestic violence offenses.
- Persons convicted of gun trafficking offenses.
- Persons convicted of stalking.
- Persons convicted of possessing weapons with intent to assault another.

4) AB 78 codifies Assembly Member Diane Martinez's letter in the Assembly Journal which clarifies that "a dirk or dagger" for purposes of Penal Code section 12020 includes a folding knife only if the blade of such knife is exposed and locked into position. The language on this issue is being revised to reflect a concern that the switchblade knife regulations are not affected. This codification is included at the request of various hunters in the author's district.

Other legislators have introduced legislation to require the reporting of theft or loss of their handguns. If such reporting legislation is to be pursued -- and there are a number of technical and legal issues involved with such a proposal, it would be irrational, unfair and fruitless to pursue such legislation unless it is linked to the protections and requirements in ABs' 78 and 79 dealing with lost and stolen serialized property.

### Arguments in support:

**For more information, please contact Ash Givargis in  
Assemblyman Brett Granlund's office at (916) 445-7552.**

AB 78 ATTACHMENT

AB 78 addresses certain "odds and ends weapons" issues that have come to light by virtue of the lost and found property issue and two issues raised by Granlund's constituents of mine.

The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the the recovery of lost property.

Under current California law, there are no "safe harbor" exemptions for persons who are not in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies. This issue has been alluded to by the Court of Appeals in People v. Hurtado, (1996) 47 Cal.App.4th. 805 and People v. Pepper, (1996) 41 Cal.App.4th 1029.

AB 78 addresses this issue as follows:

- 1) As to non prohibited persons by amending various Penal Code section to permit the temporary possession and transportation by non-prohibited persons who find these weapons and transporting the same to a law enforcement agency for disposition according to law.
- 2) As to the Pepper-Hurtado issue, the bill amends PC 12021 to create an exemption where the defendant proves by a preponderance of the evidence all of the following:
  - o The person found the firearm or took the same from a person committing a crime against him or her.
  - o The person possessed the firearm no longer that was necessary to transport the firearm to a law enforcement agency for that agency's disposition according to law.
  - o The firearm was transported in accordance with PC 12026.2.

If this language in the bill needs refinement, the author will be happy to amend the same to address any concern.

- 3) Justice Art McKinster who is a Justice of the Court of Appeal in San Bernardino noted in In re Evans, 49 Cal.App.4th 1263 that the relief from disabilities provisions in Penal Code section 12021(c)(3) as drafted violated the "equal protection clauses" of the state and federal constitutions.

To save the statute from invalidity, Justice McKinster

rewrote the statute to allow anyone who was convicted of an offense subject to the 10 year prohibition prior to the offense being added to the list of offense for which the 10 year prohibition applied to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion.

If we don't fix the problem as McKinster indicated, here is who could get guns:

- o Persons convicted of possessing machineguns.
  - o Persons adjudicated mentally disordered sex offenders or having mental infirmities.
  - o Persons convicted of threatening public officials.
  - o Persons convicted of bringing weapons into YA facilities.
  - o Persons convicted of certain forms of drive-by shootings.
  - o Persons convicted of domestic violence offenses.
  - o Persons convicted of gun trafficking offenses.
  - o Persons convicted of stalking.
  - o Persons convicted of possessing weapons with intent to assault another.
- 4) AB 78 codifies Assembly Member Diane Martinez's letter in the Assembly Journal which clarifies that "a dirk or dagger" for purposes of Penal Code section 12020 includes a folding knife only if the blade of such knife is exposed and locked into position. The language on this issue is being revised to reflect a concern that the switchblade knife regulations are not affected. This codification is included at the request of various hunters in the author's district.

Other legislators have introduced legislation to require the theft or loss of their handguns. If such reporting legislation is to be pursued - and there are a number of technical and legal issues involved with such a proposal, it would be irrational, unfair and fruitless to pursue such legislation unless it is linked to the protections and requirements in ABs' 78 and 79 dealing with lost and stolen serialized property.

## AB 78 BACKGROUND SHEET

### I. Dirks and Daggers

AB 78 codifies a letter in the Assembly Journal from last year by Assemblywoman Diane Martinez as to the intent of her AB 1222 Ch. 128/1995.

Last year, Assembly Member Martinez wrote a letter in the Assembly Journal clarified the meaning of AB 1222, which revised the definition of a "dirk or dagger". The prior definition was created by AB 1266 (Martinez), Chapter 357, Statutes of 1993. Both bills were designed to create a statutory definition rather than having conflicting case law.

The letter in the Journal indicates that a folding knife is "a dirk or dagger" for purposes of Penal Code Section 12020 only if the blade of such knife is exposed and locked into position.

AB 78 codifies Mrs. Martinez letter in the Journal without touching switchblade knife regulation or otherwise doing damage to the law. The clarification in this bill protects hunting knives. The bill does not affect the definition of what is a dirk or dagger for purposes of carrying knives on school grounds.

### II. Relief from Disabilities and In re Evans

AB 78 addresses problems with Penal Code section 12021's "relief from misdemeanor disabilities" provision occasioned by In re Evans (1996) 49 Cal.App.4th 1263. In Evan's, the Court of Appeals held that the "relief from disabilities provisions" in Penal Code Section 12021(c)(3) as drafted violated the "Equal Protection Clauses" of the State and Federal Constitutions.

Evans involved a defendant who was convicted of possessing a gun after he had been convicted of spousal abuse. His conviction of spousal abuse occurred after January 1, 1991, but prior to the offense of spousal abuse barring gun possession for 10 years. That occurred in 1993.

Mr. Evans challenged his gun conviction that had he been convicted of spousal abuse prior to 1991, he could have claimed relief. In agreeing with his claim, the Court of Appeal noted that the January 1, 1991 date was irrational as to persons where the offense barring possession was added to the list after January 1, 1991.

There are approximately 25 offenses added to the 10-year prohibition after January 1, 1991. To save the statute from invalidity, the Court of Appeal rewrote the statute to allow anyone who was convicted of an offense subject to the 10-year

prohibition prior to the offense being added to the list of offenses for which the 10-year prohibition applied to apply once for relief from the disability imposed by the 10 year prohibition.

Evans rewrote the statute temporarily to make it constitutional. Since Evans, the Legislature essentially re-enacted the offending provisions in AB 688 (Bowler). AB 688 has chaptering language to pick up this bill. However, it still contains the offending language held invalid in Evans.

AB 78 rewrites the "relief from disabilities" provision to comply with Evans. Failure to enact AB 78 will result in persons convicted of the 25 offenses added to the 10-year prohibition after January 1, 1991 being able acquire guns. Such persons include various categories of mentally infirm persons, adjudicated sex offenders, persons convicted of domestic violence offenses, stalkers, and other similar persons.

### III. Weapons turn in and Pepper-Hurtado

AB 78 addresses the issue of person who turn in weapons. Under current California law, there are no statutory "safe harbor" exemptions for persons who may or may not be in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies.

The "turn in" issue was discussed by the Court of Appeals in People v. Hurtado (1996) 47 Cal.App.4th. 805 and People v. Pepper (1996) 41 Cal.App.4th 1029 in the context of prohibited persons, i.e., persons who cannot legally possess any firearm. One court felt the exemption existed, but held that the defendant could not claim it. The other court disallowed the exemption period.

AB 78 creates distinct safe harbor exemptions for persons who are not, per se, legally prohibited from possessing weapons and for those persons prohibited from possessing weapons. I believe that these exemptions should be placed on a statutory basis. Case law holds that exemption are on the defendant to prove. This bill does not change that. The bill takes the more restrictive view of this defense.

As to non-prohibited persons, they may legally transport conventional firearms and certain contraband to law enforcement agencies provided certain conditions are met. Specifically, the bill covers the following items:

- a) Handguns: The Civil Code contains specific provisions on the responsibilities of finders of lost property. There is no Penal Code concealed carry exemption for the safe transport of lost handguns to a law enforcement agency.

AB 78 amends the locked container exemption section to the concealed carry section (Penal Code Section 12026.2) to add two specific exemptions to allow the transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and the transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law.

Since this bill adds to a laundry list of exemptions, as is the case with the other exemptions, in order for a firearm to be exempted while being transported to or from a place, the firearm shall be unloaded, kept in a locked container and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

Under current law, a "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle. In addition, the bill also requires prior notice to a law enforcement agency that the person is bringing a gun therein.

- b) Section 12020 Items: Penal Code Section 12020 bans the manufacture, distribution, importation and possession of most illegal firearms, a number of knives, certain accessories, and certain forms of ammunition.

AB 78 would allow possession incident to transport of all Section 12020 items other than a short-barreled rifle or short-barreled shotgun found and possessed by a person who is not prohibited from possessing firearms or ammunition and is transporting the listed item to a law enforcement agency for disposition according to law.

Additionally, in the case of guns there must be prior notice to the agency and the gun must be transported in a locked container, as that term is defined under current law.



Your staff agreed that prior notice was not required for non-gun devices as most of these items were not likely to lead to the type of confrontation as the sudden appearance of guns and might in fact discourage persons who are not "prohibited persons" from utilizing these provisions if they became too restrictive.

- c) Armor-Piercing Ammunition. Armor-piercing ammunition (aka "cop killer bullets") are prohibited by Penal Code Section 12320. Under this bill, a person who found the ammunition may possess it incident to transporting it to a law enforcement agency for disposition according to law if he or she is not in a prohibited class of person prohibited from possessing firearms or ammunition.
- d) Obliterated serial numbers on firearms. This bill allows a person not prohibited from possessing firearms or ammunition to possess firearms with obliterated serial incident to turning the same into a law enforcement agency for their disposition. As is the case with other firearms related exemptions the gun must be transported transported in a locked container and there is prior notice to the agency receiving the weapon.
- e) Prohibited Persons: As noted above, case law suggests that felons and other prohibited persons who take possession guns out of necessity and turn them into a law enforcement agency may possess the same incident to transportation thereto. This bill recognizes that but takes a much more restricted view on this issue. Its one thing to allow a person with a non violent record to take a legal gun to an agency which he or she truly finds.

However, it is another thing to allow an illegal possessor to possess even for one moment an item that no one save law enforcement can possess.

This bill makes justifiable a violation of Penal Code Section 12021 (but not other statutes) a possession charge where all of the following conditions are met:

- The person found the firearm or took the firearm from a person who was committing a crime against him or her.
- The person possessed the firearm no longer

V. Law enforcement and military exemptions for possession of firearms with obliterated serial numbers

There are no express exemptions for law enforcement and military personnel to possess guns with obliterated serial numbers in the course and scope of their duties. AB 78 adds such exemptions.

VI. Assignment of Serial numbers for all firearms

AB 78 allows the Department of Justice to assign a distinguishing number or mark to any firearm. The Department can only do that for handguns now. This change was requested by the Department, the firearms groups and insurers so that that persons can obtain theft insurance, insurers can better monitor insurance claims, and enhances the ability to apprehend thieves who steal guns and allows persons to recover their property.

VII. Miscellaneous

Finally, at the request of Legislative Counsel, the bill makes cosmetic code maintenance changes to the machine-gun exemption statute.

than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

- If the firearm was transported to a law enforcement agency, it was transported in accordance with the locked container rules and there was prior notice to the agency.

As to the burden of proof, upon the trial for violating the possession section, the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this bill. The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this bill.

There is similar language to include the same language in Penal Code Section 12316 (prohibited persons possessing ammunition) to include the same provision limited to the same persons set forth in Section 12021

In sum, the weapons turn in provisions of the bill take the more restrictive view of case law. The bill does not affect machineguns, silencers, assault weapons (which are covered under existing law), or sawed off style firearms. Persons with no criminal record or mental infirmity have a narrow turn in window which they bear the burden is showing is legitimate.

Persons with non-violent convictions have a much tougher burden than the average citizen or what case law would suggest. They can only claim "turn in" relief as to guns that the average citizen may possess after meeting very stringent conditions with a high burden of proof which would indicate it is a true "turn in". They may not in any event claim any relief as to illegal weapons or ammunition. And, the bill does not provide any relief to violent felons or the mentally infirm.

#### IV. Lab Personnel

Under a number of code sections, lab personnel have a clear exemption to allow them to possess contraband incident to their official duties. Neither the obliterated serial number section nor Penal Code Section 12020 have such a clear exemption. AB 78 explicitly allows possession of any weapon, device, or ammunition banned by Section 12020 by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0001  
(916) 445-7552  
(916) 445-7660 FAX

DISTRICT OFFICE  
34932 YUCAIPA BLVD.  
YUCAIPA, CA 92399  
(909) 790-4196  
(909) 790-0479 FAX

# Assembly California Legislature

**BRETT GRANLUND**  
ASSEMBLYMEMBER, SIXTY-FIFTH DISTRICT

COMMITTEES

HEALTH, Vice Chair  
APPROPRIATIONS  
GOVERNMENTAL  
ORGANIZATION



To: Steve Boreman  
From: Irwin Nowick  
Re: AB 78

Steve:

In order to comply with Judge Bond's decision, both the buffoons and a number of peace officer groups, i.e. Paul Curry and ALADS (Yaryan), would prefer that in lieu of repealing current 8103(f) that there be a court hearing procedure be imposed at which point the prohibition be imposed. I also think you should talk to Simon Haines to pre-orchestrate the analysis.

I see from the data that 40% of these persons are picked up under 8103(g).

I would appreciate it if as a Plan B, DOJ come up with alternative language to do the court hearing procedure with the appropriate conforming changes to keep 8103(g) in place. Simon will not set Assembly Bills until mid June so you have some time to work on this.

Brett will not amend the bill until there is a united front on this.. Brett has to do a couple of amendments to conform the bill to a Judith request in COPS and he will also include in the bill the serial number stuff in SB 63 (Peace). The bill will not be amended until the 8103 issue is worked out.

00406

AB 78

Jack Horton  
Chief Deputy

James L. Ashford  
Harvey J. Foster  
John T. Studebaker  
Daniel A. Weitzman

David D. Alves  
Diane F. Boyer-Vine  
C. David Dickerson  
Robert Cullen Duffy  
Robert D. Gronke  
Michael J. Kersten  
James A. Marsala  
Robert G. Miller  
Tracy O. Powell II  
Marguerite Roth  
Michael H. Upson  
Christopher Zirkle  
Principal Deputies

# Legislative Counsel of California

BION M. GREGORY

Sacramento, California  
July 25, 1997

Gerald Ross Adams  
Paul Antilla  
Hema Rao Arwar  
Charles C. Asbill  
Joe J. Ayala  
Lara K. Bierman  
Maria L. Bondonno  
Ann M. Burastero  
Eileen J. Buxton  
Cindy M. Cardullo  
Edward Ned Cohen  
Emilia Cutrer  
Ben E. Dale  
Byron D. Damiani, Jr.  
Jeffrey A. DeLand  
Clinton J. deWitt  
Frances S. Dorbin  
Maureen S. Dunn  
Sharon R. Fisher  
Clay Fuller  
Patricia R. Gates  
Debra Zidich Gibbons  
Shira K. Gilbert  
Sonya Anne Grant  
Avin D. Gress  
Elizabeth M. Gress  
Maria Hlakos Hanka  
Jana T. Harrington  
Baldev S. Heir  
Thomas R. Heuer  
Lori Ann Joseph

David B. Judson  
Michael R. Kelly  
Michael Robert Kerr  
Eva B. Krolinger  
Aubrey LaBrie  
L. Erik Lange  
Felicia A. Lee  
Diana G. Lim  
Jennifer Loomis  
Kirk S. Louie  
Marlana Marin  
Anthony P. Marquez  
Francisco A. Merlin  
JudyAnne McGintley  
Peter Melnicoe  
Sheila R. Mohan  
Abel Munoz  
Sharon Reilly  
Tara Rulo  
Michael B. Salerno  
William K. Stark  
Jessica L. Steele  
Christopher H. Stevens  
Ellen Sward  
Mark Franklin Terry  
Jeff Thom  
Richard Thomson  
Richard B. Welsberg  
Thomas D. Whelan  
Karen L. Ziskind  
Jack G. Zorman

Deputies

State Capitol, Suite 3021  
Sacramento, CA 95814-4996  
(916) 445-3057  
Telecopier: (916) 322-0768

Honorable Pete Wilson  
Governor of California  
Sacramento, CA

## REPORT ON ENROLLED BILL

A.B. 78 GRANLUND. Firearms: transporting exemption.

SUMMARY: See Legislative Counsel's Digest on the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS: This bill and Assembly Bill No. 688, which is also before the Governor, would both amend Section 12021 of the Penal Code.

This bill contains provisions that make all of the changes in Section 12021 proposed by A.B. 688 and this bill if both bills are chaptered and this bill is chaptered last (Secs. 2.5 and 10, this bill).

A.B. 688 also contains provisions that purport to make all of the changes in Section 12021 proposed by both bills if both bills are chaptered and A.B. 688 is chaptered last (Secs. 2 and 3, A.B. 688). However, those provisions incorporate most but not all of the changes in Section 12021 proposed by this bill. Those provisions do not incorporate subparagraph (D) into paragraph (1) of subdivision (h) which is added to Section 12021 by the proposed amendment to that section contained in this bill. Subparagraph (D) would justify

a person violating certain provisions that prohibit specified persons from owning, possessing, or having in his or her custody or control, any firearm if the firearm is being transported to a law enforcement agency and the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition (Secs. 2 and 2.5, this bill).

Thus, if both bills are chaptered and this bill is chaptered last, the changes in Section 12021 of the Penal Code proposed by each bill will be given effect. However, if A.B. 688 is chaptered last, the changes proposed by each bill will be given effect, except for the change discussed above proposed by this bill (Sec. 9605, Gov. C.).

Bion M. Gregory  
Legislative Counsel

*Sheila R. Mohan*

By  
Sheila R. Mohan  
Deputy Legislative Counsel

SRM:dil

Two copies to Honorable Brett Granlund  
and Honorable Larry Bowler,  
pursuant to Joint Rule 34.

AB 78

# Legislative Counsel of California

BION M. GREGORY

Sacramento, California  
September 10, 1997

Jack Horton  
Chief Deputy

James L. Ashford  
Harvey J. Foster  
John T. Studebaker  
Daniel A. Weitzman

David D. Alves  
Diane F. Boyer-Vine  
C. David Dickerson  
Robert Cullen Duffy  
Robert D. Gronke  
Michael J. Kersten  
James A. Marsala  
Robert G. Miller  
Tracy O. Powell II  
Marguerite Roth  
Michael H. Upson  
Christopher Zirkle  
Principal Deputies

State Capitol, Suite 3021  
Sacramento, CA 95814-4996  
(916) 445-3057  
Telecopier: (916) 322-0769

Gerald Ross Adams  
Paul Antilla  
Hema Rao Anwar  
Charles C. Asbill  
Joe J. Ayala  
Lara K. Bierman  
Maria L. Bondonno  
Ann M. Burastero  
Eileen J. Buxton  
Cindy M. Cardillo  
Edward Ned Cohen  
Emilia Cutrer  
Ben E. Dale  
Byron D. Damiani, Jr.  
Jeffrey A. DeLand  
Clinton J. deWitt  
Frances S. Dorbin  
Maureen S. Dunn  
Sharon R. Fisher  
Clay Fuller  
Patricia R. Gates  
Debra Zidich Gibbons  
Shira K. Gilbert  
Sonya Anne Grant  
Alvin D. Gress  
Elizabeth M. Gress  
Maria Hlakos Hanke  
Jana T. Harrington  
Baldev S. Heir  
Thomas R. Heuer  
Lori Ann Joseph

David B. Judson  
Michael R. Kelly  
Michael Robert Kerr  
Eve B. Krottinger  
Aubrey LaBrie  
L. Erik Lange  
Felicia A. Lee  
Diana G. Lim  
Jennifer Loomis  
Kirk S. Louie  
Mariana Marin  
Anthony P. Marquez  
Francisco A. Martin  
JudyAnne McGinley  
Peter Meinicke  
Sheila R. Mohan  
Abel Munoz  
Sharon Reilly  
Tara Rufo  
Michael B. Salerno  
William K. Stark  
Jessica L. Steele  
Christopher H. Stevens  
Elien Sward  
Mark Franklin Terry  
Jeff Thom  
Richard Thomson  
Richard B. Welsberg  
Thomas D. Whelan  
Karen L. Ziskind  
Jack G. Zorman

Deputies

Honorable Pete Wilson  
Governor of California  
Sacramento, CA 95814.

## REPORT ON ENROLLED BILL

A.B. 1221 ARONER. Firearms: ammunition and reloaded ammunition.

SUMMARY: See Legislative Counsel's Digest on the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

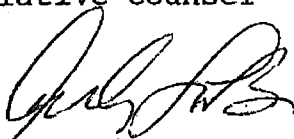
CONFLICTS: This bill and Assembly Bill No. 78, which has been chaptered (Ch. 158, Stats. 1997), both amend Section 12316 of the Penal Code.

This bill contains provisions that make all of the changes in Section 12316 proposed by both bills if this bill is chaptered last (Secs. 2 and 3, this bill).

Report on A.B. 1221 - p. 2

Thus, if this bill is chaptered, the changes in Section 12316 of the Penal Code proposed by each bill will be given effect (Sec. 9605, Gov. C.).

Bion M. Gregory  
Legislative Counsel

By   
Aubrey LaBrie  
Deputy Legislative Counsel

ALB:cfv

Two copies to Honorable Dion Louise Aroner  
and Honorable Brett Granlund,  
pursuant to Joint Rule 34.



DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



FAX TRANSMISSION COVER SHEET

IMPORTANT/CONFIDENTIAL: This communication is intended only for the use of the individual or entity to which it is addressed. This message contains information from the State of California, Attorney General's Office, which may be privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

DATE: 9-16-97 TIME: 1:15 pm NO. OF PAGES: 4  
(INCLUDING COVER SHEET)  
TO:  
NAME: Barbara Brown  
OFFICE: Assemblyman Granlund's Office  
LOCATION: Sacramento  
FAX NO.: 445-7650 PHONE NO.: \_\_\_\_\_

FROM:  
NAME: MIKE BRODERICK  
OFFICE: FIREARMS PROGRAM  
LOCATION: 4949 Broadway, Sacramento  
FAX NO.: (916) 227-3700 PHONE NO.: (916) 227-3500

MESSAGE/INSTRUCTIONS

In response to a request from Irwin Nowick that I received today attached is the Assemblyman's original letter and my associated response which was sent back in June. This letter involved questions concerning dealers assisting in the preparation of voluntary registration forms. If you're getting calls from

PLEASE DELIVER AS SOON AS POSSIBLE!  
FOR ASSISTANCE WITH THIS FAX, PLEASE CALL THE SENDER

JUS 133 (8/98) dealers, I would recommend that you simply refer them to us. - Mike B

00411

# WATCHLIST

June 26, 1997

**TO: Senate Republicans**

**FR: Senator Ray Haynes  
Republican Whip**

**RE: Bills on Daily File**

The following measures are on the Daily File for today's floor session. Below are brief talking points on each bill. For greater detail, please refer to the Senate Floor Analysis. Please note the WORF items at the end of this document.

**SCR 18 (Sher)**

3

File Item #33

Passed Rules 4-0 (AYE: Brulte; ABS: Lewis)

Passed Senate Floor 24-7

(All Republicans opposed this bill except  
Johannessen, Maddy, McPherson)

Passed Assembly Floor 52-20

(All Republicans opposed this bill except  
Bordonaro, Bowler, Cunneen, Firestone,  
Kuykendall, Morrissey, Pacheco)

Vote requirement: 21

## Digest

- SCR 18 would establish, until June 30, 1998, the *Joint Committee on Headwaters Forest and Ecosystem Management Planning* and authorize the joint committee to carry out specified tasks with regard to the September 28, 1996, agreement between the federal government, state of CA, and MAXAAM, Inc. to exchange government assets for Headwaters Forest and surrounding forestlands.
- This joint committee would consist of at least five but not more than seven members appointed by Senate Rules Committee and at least five but not more than seven members appointed by the Speaker of the Assembly.
- The Assembly amendments add co-authors, make minor clarifying changes and correct grammatical errors.

- This appears to be the Democrats' answer to Republican complaints about the current CCW problem -- if law-abiding citizens wish to pack heat, they should aspire to become a security guard in Los Angeles.

#### AB 78 (Granlund)

File Item #51

Passed Assembly 76-0

Passed Public Safety 8-0

(AYE: McPherson, Rainey)

Vote requirement: 21

#### Digest

- AB 78 makes a variety of changes to the Dangerous Weapons' Control Law. The provisions of this bill when compared with existing law are as follows:
- Under existing law, any person who is subject to the prohibition on possessing a firearm because of specified misdemeanor convictions prior to January 1, 1991, may petition the court only once for relief from the prohibition.

*This bill would delete the specific reference to January 1, 1991 and instead apply "prior to the offense being added to" the specified offenses that are subject to the prohibition.*

- Existing law provides that any person who, as a result of mental disorder, is a danger to others, or to himself or herself or gravely disabled, and is taken into custody in an evaluation facility for 72-hour treatment and evaluation, is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years after release from the facility.

*This bill would delete the prohibition applicable to a person who is detained for treatment and evaluation for a period not to exceed 72 hours.*

*This bill would enact uncodified language to state legislative intent that this change is being made in order to comply with the decision of the Superior Court of California in and for the county of Sacramento in *Dayacamos v Dept. Of Justice*.*

- **NOTE:** AB 78 was amended on the Senate floor to include "double-jointing" language with AB 1221 (Aroner). *This language raises the minimum age by which one can purchase ammunition for handguns from the current 18 years to the proposed 21 years.*

#### Comments

- This language which is now contained in the Granlund bill was opposed on the Assembly Floor by 23 Republicans. This language is also opposed by the Gun Owners of California. They stated,

*"Gun Owners of California is opposed in general to the concept of treating handguns differently than other legal firearms. We are therefore opposed to the amendments in AB 78 which would segregate handgun ammunition and treat it differently than ammunition for other currently legal weapons. We continue to support certain and swift punishment for those who actually commit crimes with any type of firearms."*

- Unfortunately, this language mirrors current federal law. However, should California endorse a bad federal law? What about the state's rights argument that was so eloquently articulated by Sen. Kopp and the Democrats on the "smoke a joint, lose your license" law?
- If 18 year olds are considered adults when it comes to voting in this country, why are we denying them constitutionally protected rights?
- Any Member who now votes for this bill, which was previously a good bill, will be voting to deny his or her 19 year old son or daughter the ability to purchase ammunition for their handguns, which they are constitutionally allowed to possess.
- This language was written by Irwin Nowick. According to the Senate Public Safety Committee staff, this boiler-plate double-jointing language will be showing up numerous times in the future, so other gun-related measures do not chapter out this gun-control Aroner bill. This probably will not be the last time Republicans will need to oppose this language, if they are concerned about the Second Amendment.
- Unfortunately, the NRA is neutral on this particular amendment, according to their Sacramento lobbyist, because it mirrors federal law and they do not oppose bills which conform with federal law. This leads one to believe that if the federal government ever completely bans handguns, that the California chapter of the NRA will be neutral when this Legislature follows suit.

AB 1004 (Thompson)

6

File Item #52

Passed Assembly 66-3 (Zero Reps opposed)

Passed Industrial Relations 6-0

(AYE: Hurtt, Mountjoy; AB: Johnson)

Vote requirement: 21

Digest

- AB 1004 provides that the Bureau of Fraudulent Claims in the Department of Insurance and local district attorneys would each receive not less than 35 percent of the workers' compensation fraud assessment funds rather than each receiving half of these funds for the investigation and prosecution of workers' compensation fraud. An amendment was taken in committee to increase the percentage for the D.A.'s to 40 percent.

AB 157 (Villaraigosa)

3

I N T E R O F F I C E M E M O R A N D U M

Date: 20-Jun-1997 04:17pm PDT  
From: Judith Garvey  
GARVEY\_JU  
Dept: ASMA11  
Tel No:

O: Barbara Brown

( BROWN\_BA )

subject: journal

June , 1997

Hon. E. Dotson Wilson  
Chief Clerk of the Assembly  
State Capitol  
Sacramento, CA

Re: AB 78

Dear Dotson:

Certain questions have been raised as to the provisions of AB 78.

AB 78 addresses a number of technical firearms issues raised primarily because of recent court decisions in a manner that the courts have indicated need to be done in order to maintain these statutes on the books. In other cases, the bill codifies previous letters in the Assembly Journal or are Legislative Counsel requested cleanup amendments.

The main portions of AB 78 relate two court decisions.

First, in In re Evans, (1996) 49 Cal.App.4th 1263, the Court of Appeals held that the relief from disabilities provisions in Penal Code section 12021(c)(3) as drafted violated the equal protection clauses of the State and Federal Constitutions because of an arbitrary cutoff date for seeking relief from the disability. The Court of Appeals held that this was irrational as to persons, where the offense barring possession was added to the list after that date.

AB 78 conforms the language in Penal Code section 12021(c)(3) to the Evans court's decision. Failure to rewrite Section 12021(c)(3) to reflect Evans could result in the prohibition being invalid and all sorts of persons who no one to gain access to guns being legally able to do so.

Secondly, AB 78 addresses the decision of the Sacramento

Superior Court in Dayacamos v. Department of Justice, Case No. 96 CS 01471. In Dayacamos, the Honorable Cecily Bond, Judge of the Superior Court held that current Welfare and Institutions Code section 8103(f) is unconstitutional as Section 8103(f) it deprives persons subject to its prohibition of the right to possess a firearm without any further court hearing or determination (due process right to counsel, hearing, etc.).

Judge Bond has stayed the effective date of the decision until January 1, 1998, in order to allow the Department of Justice to make the necessary changes in its process and to notify the parties who would otherwise be required to submit information to the department.

The Department of Justice believes there is little or no likelihood of success in appealing Judge Bond's decision. The Department of Justice, therefore, is not going to appeal the decision and now wants to deal with the statutory changes needed to delete the prohibition set forth in Section 8103(f) from possessing firearms.

The Department of Justice and the Department of Mental Health estimate that most of the persons barred from possessing firearms can be prohibited from possessing the same if Section 8103(g)'s certification procedures are followed.

Section 8103(g) was enacted in 1991 precisely because there was an concern that the Section 8103(f) prohibition was invalid. AB 78 repeals the invalid 8103(f) provisions as Judge Bond in her order held that that Section 8103(g) procedure was so intertwined with Section 8103(f) that it should be separated out and repealed for the 8103(g) prohibition to be valid.

Judge Bond held that Section 8103(g) - which is renumbered as Section 8103(f) pursuant to AB 78 - is itself a valid prohibition. As such, AB 78 preserves the valid Section 8103(g) prohibition which will now constitutionally stand.

The expectation is that with AB 78's changes, those mentally infirm persons who should not gain access to firearms and other weapons will still be denied access pursuant to new Section 8103(f). AB 78 also states specifically that these mental health changes are being made to comply with Dayacamos.

AB 78 is the product of much effort and negotiation. In that regard, I wish to express my appreciation for the assistance and input of Assemblyman Bob Hertzberg as Chair of the Public Safety Committee, Judith Garvey, Chief Counsel of the Assembly Public Safety Committee, Senator John Burton, Simon Haines, Chief Counsel of the Senate Public Safety

Committee, Larry Brown, Executive Director of the California District Attorneys Association, and Steve Boreman, Deputy Attorney General of the Attorney General's office.

AB 78 is supported by the Attorney General, the California Attorneys for Criminal Justice, various firearms organizations, and the California State Sheriff's Association.

I trust that this clarifies matters as to the need for AB 78.

Sincerely,

Brett Granlund

**DANIEL E. LUNGREN**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



**BUREAU OF CRIMINAL INFORMATION  
AND ANALYSIS**  
P.O. Box 820200, G221  
SACRAMENTO, CA 94203-0200  
Public: (916) 227-2222

Facsimile: (916) 227-3700  
(916) 227-3500

June 18, 1997

Mr. Brett Granlund  
Assemblyman, 56th District  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0001

**RE: Request for Dealer's Record of Sale Process Information**

Dear Assemblyman Granlund:

Chief Deputy Attorney General Dave Stirling has asked that I respond to your letter of June 10, 1997. To this end, I have reviewed the existing Dealers's Record of Sale (DRoS) obligations as they might apply to qualified exempt individuals desiring to submit voluntary registration forms as provided for within Penal Code section 12078(1).

Assuming that the scenario in question involves someone who qualifies under Penal Code section 12078(1) and the firearms dealer simply assists the customer as outlined in your letter, the transfer of the firearm and/or the submission of the voluntary registration form does not personally obligate the licensed dealer to subject the transfer of the firearm to the DRoS process. However, the individual submitting the voluntary registration form to the Department of Justice will be subjected to our normal firearms eligibility check to ensure that the firearm has not been reported stolen and the new owner is not prohibited from owning or possessing a firearm. The \$14 fee required to be submitted together with a voluntary registration request is used to cover the cost of this eligibility review and associated entry of the new ownership information into our automated database.

Inasmuch as no written request from the dealer relative to this question accompanied your letter of June 10, 1997, my comments are only applicable to the scenario that I've outlined above. Because of further complexities or circumstances that may frequently be associated with what appears to be a simple question, you are welcome to advise the dealer to contact me directly at (916) 227-3500 for further clarification if necessary.

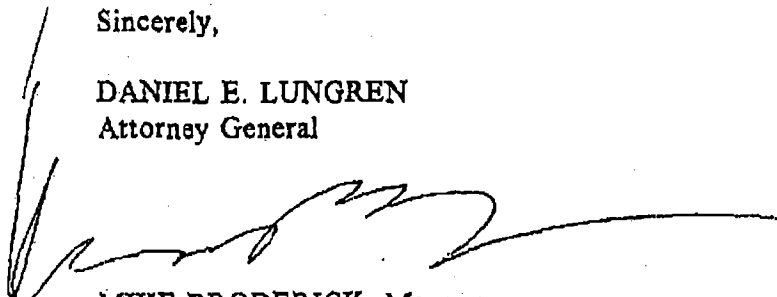


Assemblyman Granlund  
June 18, 1997  
Page 2

I hope that I have been able to satisfactorily respond to your request. Please feel free to call me if you have any further questions.

Sincerely,

DANIEL E. LUNGREN  
Attorney General



MIKE BRODERICK, Manager  
Firearms Program

ts

cc: Steve Boreman  
Deputy Attorney General  
Legislative Affairs Unit

Date: Wed, 18 Jun 1997 22:02:57 -0700  
From: James & Toni Mattis <jkmtsm@earthlink.net>  
To: brett.granlund@assembly.ca.gov, Senator.Schiff@sen.ca.gov  
Subject: AB 78

Dear Assemblyman Grandlund:  
Dear Senator Schiff:

I checked the Legislature's web page this morning, and I see that AB 78 (dirks or daggers and a bunch of stuff about transporting guns) was amended again on 6/17, to delete one the the two good things it did for tool-using animals.

It still decriminalizes pocket knives.

It no longer has a safe harbor for fixed blade knives and other sharp objects which are carried in a backpack, luggage, tool box, purse, or other containers used to transport possessions. So . . . If you buy a chef's knife at a store, how do you get it from the store to your car? Do you carry it "concealed" in its package down in your shopping bag in violation of Section 12020, or do you carry it openly through the mall, scaring people?

A common kitchen paring knife might well be a dirk or dagger if it's in a crude sheath made from cardboard and tape and stuck down the backside of somebody's trousers with his shirt tail out. In a picnic basket, it probably isn't, but does the law say it is? A hunting knife in a sheath with a snap flap or snap strap may actually be slower to deploy than a Buck Crosslock folder.

If somebody thought that the deleted language gave my wife too much of a carte blanche to carry a nine-inch double-barbed Rambotron Ninja I thmonger in her purse, let me suggest some alternative language:

". . . a knife [etcetera] which is, AS CARRIED, capable of IMMEDIATE use as a stabbing weapon [etcetera]. This makes it clear that the object is to discourage nasty surprises on the street, and recognizes that the sheath or other container or lack thereof is an integral part of the whole tool/weapon in question.

Glad to see that somebody remembered to make 626.10 match 12020.

Sincerely,

James K. Mattis

10359 Mt. Gleason Ave., Sunland, CA 91040  
818-353-4734 / daytime 818-247-3400  
<http://home.earthlink.net/~jkmtsm>

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0001  
(916) 445-7552  
(916) 445-7650 FAX

DISTRICT OFFICE  
34932 YUCAIPA BLVD.  
YUCAIPA, CA 92399  
(909) 790-4196  
(909) 790-0479 FAX

# Assembly California Legislature

**BRETT GRANLUND**  
ASSEMBLYMEMBER, SIXTY-FIFTH DISTRICT

COMMITTEES  
HEALTH, Vice Chair  
APPROPRIATIONS  
GOVERNMENTAL  
ORGANIZATION



June 10, 1997

Hon. Dave Stirling  
Department of Justice  
1300 I Street  
Sacramento, CA 95814

Dear Dave:

I wanted to let you know that I appreciate the efforts of Steve Boreman on behalf of my AB 78.

I also wanted to get your office's confirmation as to current law. As you know, there are several exemptions from dealer processing of firearms predicated on the recipient of a handgun reregistering the gun in his name by sending in a "do it yourself" registration form to DOJ. Those exemptions are contained in Section 12078(c) and (i). In addition, Penal Code section 12078(l) allows persons who are not required to register their handguns to do so.

Many persons prudently choose to go to gun dealerships to obtain technical assistance to fill out these forms so that they are filled out correctly. This typically occurs when they fill out 12078(l) forms to make their insurers happy.

I know that in the past DOJ has orally stated that when a gun dealer assists persons in filling out these forms with the person present by finding the make, model, and serial number, and writing the information on the form, he is not taking possession of the gun in such a manner that when he immediately hands the gun back to the person that does not invoke the DROS process. I know that BATF has stated that the bound book and form 4473 process does not apply to this dealer assistance type of action.

A gun dealer in my area wanted written assurance that when he assists persons as described in the preceding paragraph, that when he hands the gun back to the person that does not invoke the DROS process. I would appreciate it if you could give me a short, one page letter that confirms that fact.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Brett Granlund".

Brett Granlund

00421

## Mattis Knives

*Hand-made knives, to sustain life, or at least make life more convenient*  
James K. Mattis • 500 N. Central Ave., Suite 740 Glendale, CA 91203  
(818) 247-3400 day, or (818) 353-4734 • Fax (818) 353-7873  
jkmtsm@earthlink.net • <http://home.earthlink.net/~jkmtsm/index.html>

May 19, 1997

Assemblyman Brett Granlund  
State Capitol, Room 4164  
Sacramento, CA 95814

*"Corrected" version,  
with paragraph # 1  
edited into the  
past tense!*

daytime fax (818) 247-7777

fax (916) 445-7650  
phone (916) 445-7552  
Attn: Ash

### Re: Assembly Bill 78 - the "Dirk or Dagger" part -

Thank you for the invitation last month to come up to Sacramento tomorrow to talk to the committee about AB78. I see it didn't need my help, which is good because I am a CPA in real life, and that was the wrong week for me to leave the office for the honor of participating in the legislative process. Here is, more or less, what I would have told the committee if I was there:

First of all, I regard a knife as primarily a tool, not a weapon. It is the first tool, and the foundation of all other technology. The invention of the knife allowed our species to alter nature, and to peel the fruit of the tree of knowledge, making moral choices both necessary and possible. A knife is also the weakest of all the traditional weapons of war. Any tool that can do work can do damage.

The definition of "dirk or dagger" in the Penal Code needs work. For a long time, there was none. Then we briefly had a definition which depended on the intent of the manufacturer, which made it hard to get convictions unless the label said "Acme Dirk or Dagger." It's the intent of the bearer that matters, not the intent of the manufacturer. In 1995 the Legislature, at the request of prosecutors, passed AB 1222, which made it much easier to get convictions because it made the definition so broad that practically everybody now breaks the law at one time or another.

If you are fishing, and you have a modest sheath knife on your belt, and you put on a jacket when the wind comes up, you are breaking the law. If you buy a kitchen knife and "conceal" it in your shopping bag to take it home, you are breaking the law. Far-fetched? The Public Defender in Los Angeles has a pending case of a homeless guy who had a steak knife in his backpack, charged under §12020. If you carry a ball-point pen in your pocket, you are breaking the law. Far-fetched? A poke in the eye with a sharp stick is a great bodily injury, and there are martial artists who will happily teach an advanced student how to kill with one. There is nothing in the statute about intent.

*Most of the time* the police will probably read intent into the law. Last fall, when I openly carried some of my hand-made knives from my car and up the elevator to my office, and an easily frightened person called the Glendale police, I had two law enforcement officers politely tell me that they would prefer that I should discretely break the law than openly obey it!

AB 78, in its latest form, does two things to improve the law. For one thing, it makes it clear that a knife carried in a container is not a concealed dirk or dagger, because a knife in a closed container can't suddenly appear in the middle of a heated argument. This makes it legally possible to bring a kitchen knife home from the store. The bill doesn't say it, but a fixed-blade knife in a snap-flap sheath requires as many motions to deploy as a folding knife. Perhaps "closed container" would be better language than the list in the bill as it stands.

AB 78 also makes it clear that folding knives are not "dirks or daggers" unless the blade is exposed and locked into position. I don't know why it mentions non-locking folding knives separately from non-switchblade folders and pocket knives, and I presume that it means that a lock-blade folder is also not a dirk or dagger unless the blade is exposed and locked into position. The reference to switchblades brings up the matter of §653K, and I can't think of any good reason why §653K needs to be in the Penal Code at all. I don't care how you open your pocket knife; I only care what you do with it after you open it.

AB 78 does *not* as it now stands do anything for a fisherman on a cold day, or us folks who carry concealed ball-point pens. A lot of jurisdictions have safe-harbor blade length (4" single-edged?) and lawful use exceptions in their dirk or daggers laws, and it would help if California did too. The Los Angeles city ordinance (LA Municipal Code §55.10) on *open carry* of cutlery says,

"(c) The prohibitions in this section shall not apply where a person is wearing or carrying a knife or dagger for use in a lawful occupation, for lawful recreational purposes, or as a recognized religious practice, or while the person is traveling to or returning from participation in such activity."

I would possibly be willing to give up my right to carry concealed a 4½" double-edged Gerber Applegate Combat Folder in exchange for the right to put on a jacket when I have my home-made fixed-blade 3" gentleman's steak knife on my belt. I carry a fixed-blade knife because, when I cut something edible, I don't want organic stuff getting into a folder's joint and breeding germs. A fixed blade is easier to clean. By way of comparison the FAA at last report allows folding knives, including one-hand locking folders, with blades under 4" on board airplanes.

One technical note: The definition of dirk or dagger in §12020 is also to be found in §626.10, concerning cutlery on school and college campuses. Any change in §12020 should be referenced there too. Why a college or university, whose students are mostly legal adults, needs a state law on cutlery, as opposed to an internal regulation if the administration thinks necessary, is another question entirely.

The basic problem in this discussion is that we are focussing on the **object**, when the problem is **intent**. Whether it's a warm and sunny shirtsleeve day or a cold and rainy jacket day, a six-inch K-Bar Marine knife on a hunter's or hiker's belt is innocent, but a box-cutter brandished in a heated argument is not innocent. Intent is everything. The object is nothing. The problem is that DA's hate having to prove intent.

As written, the law allows people to be busted for being up to no good, without anybody having to prove what sort of no good they were up to, if they have any kind of sharp object on their persons. I had a first-hand experience with this a week and a half ago, when I got a call from a desperate deputy public defender in Los Angeles, who needed an expert witness on knives, but had to settle for me instead.

The defendant was a homeless guy who had a peculiar folding knife stuffed into his pocket when the police were unable to find any drugs or drug money on him. The knife was a cheap import from Pakistan, with a blade that was longer than the handle, making it either a short fixed-blade knife, or an absurdly long folder. He was charged with violating §12020, concealed dirk or dagger, and §653K, because one could "flip" the blade into the long position on the fourth try (at least I could *after* the city attorney oiled the evidence!). It was my job to persuade the jury that the gravity knife theory was bogus, because almost *any* lock-blade folder can be made "contraband" by that test with practice, and to plant in the jury the thought that the definition of dirk or dagger might need an application of common sense not to be found in the statute, because it is so broad it makes criminals of all of us.

The trial was all about the object, and not about intent. Since intent is everything, the jury was given an absurd problem and asked to come up with a logical answer. They spent two and a half days deliberating on two misdemeanor counts before giving up and finding him not guilty on both counts. The public defender had done her job right, and I must have given a few right answers, but a week of court time was consumed by a case of a man charged with doing what I do every day. Unfortunately, I can't get it in writing from anybody that the law will only be enforced on "gang-bangers" and "bums."

The law needs better logic. I wish you well in your attempt to give it some. Thank you for your attention

Sincerely,



James K. Mattis

*[Text of memo from James K. Mattis to Deputy Public Defender Celine Bonillo, late March, 1997]*

**Memo Re. Dirks, Daggers, Switchblades, Etcetera:**

I have been making knives, as a hobby and micro-business for about eight years, and collecting them and using them for a lot longer than that, and talking to and corresponding with numerous other knife makers and knife users. I have been a member of the California Knifemakers Association (Cal-Knives) for several years, including one year as president of the group and at least five years as the guy who does the bulletin. Cal-Knives is 90-odd guys, a few normal guys, and two women at last count.

In my experience, several common knife terms are used as follows:

If you come to a knife maker and ask for a **switchblade**, the maker will take a quick look at local law, and, if properly coaxed and rewarded, make you a pocket knife whose blade is held closed, against spring tension, by a positive catch of some sort. Releasing that catch allows the blade to spring open and normally to lock in the open position. Rapid one-hand opening is the main convenience in this design, as long as one knows where all one's fingers are when one opens it. Disadvantages include legal and mechanical complications, spring tension that resists blade closure all the way in, the possibility of accidental opening inside the pocket (embarrassing!), and the possibility of dropping the knife if the blade "opens hard" while one is holding the handle only with fingertips along the sides thereof.

*[Note: Switchblade, or "automatic" knives are legal in a lot of states, including Oregon, where Benchmade makes some very practical utility designs with that kind of mechanism. Oregon treats switchblades like "dirks or daggers," which may not be carried concealed. If the knife's pocket clip is visible, it isn't concealed.—JKM 5/19]*

If you come to a knife maker and ask for a **gravity knife**, the maker will take a quick look at local law, and, if properly coaxed and rewarded, make you a pocket knife whose blade is held closed, against gravity, by a positive catch of some sort. Releasing that catch allows the blade to fall and to lock in the open position. Rapid one-hand opening is the main convenience in this design, as long as one knows where all one's fingers are when one opens it. The main disadvantage is legal complications in some jurisdictions.

One variation of the gravity knife concept is the **balisong** or **butterfly knife**. This design, popular in the Philippines among other places, consists of a blade with two handles that swing freely on two pivots, to open the knife or to enclose the blade between them. This design is considered a "gravity knife" by U.S. Customs officers and by many law enforcement people in California, but it circulates freely and openly in interstate commerce and in most other states. Benchmade makes butterfly knives in Oregon and ships them to any state other than California.

The term, "gravity knife" is sometimes questionably applied to individual pocket knives which have come to the attention of law enforcement, which may be "flipped" open with a hard flip of the wrist, in one or several tries, though the knife was designed to be opened less dramatically. The hard flip puts unnecessary stress on the pivot and locking mechanism, and carries a danger of accidentally throwing the (partly) opened knife in a random direction of one doesn't hold it firmly enough with the fingertips while flipping it. Since this method doesn't work every time, and is often slower than opening the knife as the maker intended, one would normally not want to open a knife that way, especially in an emergency, though it is possible that one would need to attempt it with a two-hand knife such as a classic "Buck knife" in a situation where one's other hand was occupied, trapped, or injured.

Any pocket knife whose blade is held in the handle by a combination of friction and spring tension—in other words the majority of all pocket knives—may be "flipped open" with enough velocity and a hard enough stop, depending on the agility of the person attempting it. This is rather difficult with a "Swiss Army" type knife, but easier with almost any conventional single-blade lock-blade folding knife. It is especially easy with a folding knife that has been broken in as a working knife and properly maintained. Also, many knives which cannot easily be "flipped open" in normal use can be "flipped open" with the use of a cord attached to the rear of the handle to prevent loss, though there is danger of accidentally cutting one's leg or other body parts on the rebound if one attempts this.

A definition of gravity knives, for purposes of enforcing a prohibition on such things, that includes the

"hard flip" turns into contraband most of the pocket knives that are currently and openly made, sold, and/or carried in California and elsewhere.

If you come to a knife maker and ask for a **dagger**, the maker will make a quick assessment of the odds (usually remote) that the knife will end up in a police report, and, if properly coaxed and rewarded, make you a double-edged knife with fearful symmetry that is mainly useful for opening letters and wearing to a renaissance fair. If you ask for a **dirk**, you will probably get a large single-edged "sticker" with some Celtic decorative elements, suitable for wearing with a kilt. If you ask for a **Bowie knife**, you will probably get a large knife that would not clash with 19th century casual dress. If you ask for a **combat knife**, you will probably get something with a non-glare finish and sturdily built, to cut inanimate objects in an abusive environment, with the possibility that it might become a weapon under the same dire circumstances where a soldier would also kick an enemy with his combat boots. If you ask for a **fighting knife**, you will get any of a wild variety of things, from a growl from a knife maker who prefers to make cutting tools, to a knife designed by a martial artist of one school or another, to something that only works a long time ago in a galaxy far far away.

A knife maker or collector would not ordinarily refer to any single edged knife suitable for utility use in the woods, in the kitchen, or around town, as a "dirk or dagger," though if any such knife was coming toward me, blade first, I would want to get out of the way.

As an editorial comment, I would expect any homeless person, who is perhaps involuntarily engaged in a sort of primitive camping, to own, and to carry on his person since he or she has no secure home to store it in, a knife of some sort, as a general purpose tool which can modify a refrigerator box, cut away the fuzzy part of discarded food, and perhaps discourage assault as well. I would expect even a bad person or a crazy person who is homeless to own a knife of some sort, since, with a knife, it is possible to live like a human being and not like an animal.

I hope some of this helps.

Sincerely,

A handwritten signature in cursive script, appearing to read 'J. Mattis', followed by '(copy)' in parentheses.

James K. Mattis

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA. 94244-2550  
(916) 445-9555

FACSIMILE: (916) 322-2630  
(916) 324-5413

May 1, 1997

The Hon. Assemblyman Brett Granlund  
State Capitol  
Sacramento, CA 95814

RE: AB 78 (Granlund), firearms.

Dear Assemblyman Granlund:

Thank you for your offer to amend AB 78 (Granlund), your bill relating to firearms, in order to address firearm possession prohibition issues raised in *Dayacamos v. Department of Justice*, Sacramento County Superior Court Case No. 96 CS 01471, relative to persons detained by peace officers under Penal Code § 5150.

Attached is an analysis of the issue and our legislative proposal, including the specific language which we request that you adopt for amendment of AB 78. In our analysis you will also find answers to the inquiries you posed in your letter of April 28, 1997, including the fiscal impact on the DROS program.

It is the Attorney General's policy to request that all authors of sponsored bills agree to allow our office to review any proposed amendments to this measure in advance, and that adoption of any amendment be subject to our prior approval. Adoption of unauthorized amendments may result in withdrawal of sponsorship. Should this policy present any difficulties for you, please advise our office immediately.

Again, thank you for your assistance. Please advise when you wish to meet pursuant to your letter of April 28, 1997.

Sincerely,

DANIEL E. LUNGREN  
Attorney General

  
STEPHEN M. BOREMAN  
Deputy Attorney General



The Hon. Assemblyman Brett Granlund  
May 1, 1997  
Page 2

cc: Charlie Fennessey, Governor's Office  
Assembly Public Safety Committee  
Assembly Appropriations Committee  
Assembly Minority Appropriations Staff

State of California

Department of Justice  
4949 Broadway, J231  
Sacramento, CA 95820

## M e m o r a n d u m

T : [REDACTED]  
[REDACTED]

Date: April 23, 1997

Telephones: CALNET (8) 498-3500  
(916) 227-3500  
FACSIMILE: (916) 227-3700From : Mike Broderick, Manager  
Firearms Program  
Criminal Justice Information Services DivisionSubject : Dayacamos vs. Department of Justice, Legislative Proposal

As you are aware, the recent *Dayacamos vs. Department of Justice* court decision has held that the reporting of W&I 5150 (72-hour hold) information and the associated 5-year prohibition from owning or possessing firearms is unconstitutional. In light of the Attorney General's decision not to appeal or pursue any legislative remedy to the court ruling, we are moving ahead to fully comply with this decision.

One of the important tasks is a revision to W&I 8103 to remove all reporting requirements currently mandated of mental health facilities with respect to W&I 5150 commitments. In addition, all associated references in W&I 8103 prohibiting W&I 5150s from owning or possessing a firearm will also need to be removed.

Attached find the necessary legislative proposal package that will accomplish this task. All appropriate W&I 8103 language modifications are enclosed in this draft proposal.

Please review and approve the attached legislative proposal. Please forward to Director Dedier for his sign-off and return to me so that I can move forward and work with DAG Steve Boreman of the Legislative Unit to quickly introduce the attached proposal.

tf

Attachment

**DEPARTMENT OF JUSTICE****LEGISLATIVE PROPOSAL FORMAT****I. DIVISION AND BUREAU/SECTION SUBMITTING THE PROPOSAL**

*Division: Criminal Justice Information Services Division*

*Bureau: Bureau of Criminal Information and Analysis*

*Section: Firearms Program*

**II. TITLE**

*Court imposed revisions to Welfare & Institutions (W&I) Code section 8103 (mental health database)*

**III. SUMMARY**

*In light of a recent court decision (Dayacamos vs. Department of Justice) which has ruled that aspects of W&I Code section 8103 are unconstitutional inasmuch as individuals detained under the provisions of W&I 5150 (72-hour hold) are not afforded any type of a judicial review prior to their inclusion within the Firearms Program's mental health database. Inclusion prohibits them from owning or possessing a firearm for five years. Essentially, the court has held that the statute does not provide for adequate notice and an opportunity for a hearing within a meaningful time (prior to inclusion in our mental health database). DAG Eileen Gray is the Department's attorney who has been handling this case.*

*This legislative proposal makes required changes to W&I Code section 8103 which has historically mandated that mental health facilities report W&I 5150 detainees to the Department of Justice for inclusion in our mental health database. In addition, W&I 8103 also contains the specific language prohibiting such individuals from owning or possessing a firearm for five years. The attached proposed legislative revisions will remove all of these references.*

**IV. BACKGROUND****A. Existing Law**

*The proposed legislation will remove all references to the current mandatory reporting of W&I section 5150 detainees to the Department of Justice and all language pertaining to the prohibition of such individuals from owning or possessing a firearm. These changes are mandatory based upon the court ruling associated with the recent Dayacamos vs. Department of Justice court case.*

**B. Problem**

*DAG Eileen Gray (324-5442) recently contacted the Firearms Program relative to a court case she was handling (Dayacamos vs. Department of Justice) which ruled that aspects of W&I Code section 8103 were unconstitutional inasmuch as individuals detained under W&I 5150 (72-hour hold) are not afforded any type of judicial review prior to their inclusion within the Firearm Program's mental health database which prohibits them from owning or possessing a firearm for five years. Essentially, the court has held that the statute does not provide for adequate notice and an opportunity for a hearing within a meaningful time (prior to inclusion in our mental health database).*

*In light of this decision coupled with confirmation from the Attorney General that he does not wish to appeal or pursue any type of legislative remedy to the recent court decision, the Firearms Program must immediately take action to implement the court's order by purging its mental health database of all W&I 5150 entries and submitting the necessary corrective legislation removing current statutory language requiring mental health facilities to report W&I 5150s to the Department of Justice and prohibiting such individuals from owning or possessing a firearm for five years.*

*Based upon contact with the Department of Mental Health, it is estimated that approximately 40% of our existing mental health database represents individuals that have been held beyond the 72-hour hold limitations contained within W&I 5150. Because such individuals have also gone through the necessary judicial review before their 14-day hold was imposed, these individuals would continue to remain in our mental health database. However, 60% of our existing 413,000 entries will need to be purged from our database in order to comply with the court's order. In addition, changes must be made to the existing mental health database reporting form prepared and distributed by the Department of Justice, associated instructions/procedures, previously released Information Bulletins, and related training materials in order to ensure that future W&I 5150 detainees are not reported to the department and erroneously imputed into our mental health database.*

**V. PROPOSAL****A. Suggested Legislation**

*As previously indicated, the attached suggested legislative changes provide for revisions to W&I sections 8103 (f), (g), and (h). Other than legislative changes specifically designed to comply with the court order, no other changes to this*

**C. Public Policy**

*The proposed legislative changes are not of a "public policy" nature but instead represent the department's full compliance with the court's ruling.*

**VI. FISCAL IMPACT**

*As indicated by the attached funding summary, it is estimated that the cost to refine our mental health database in response to the requirements of the court order will cost approximately \$196,000. At the present time, CJISD management is working with the Administrative Services Division to identify possible funding options to undertake this one time activity.*

**VII. TECHNOLOGY**

*Not Applicable; a minimal expenditure of \$6,000 by HDC to separate the existing database for distribution and verification by each submitting mental health facility.*

**VIII. SUPPORT/OPPOSITION**

*This proposal is in response to a court order imposed as a result of a court case involving Dayacamos vs. the Department of Justice. DAG Eileen Gray is the Department's attorney handling this case. Ms Gray can be reached at 324-5442.*

**IX. EXPERTS/WITNESSES**

*Mike Broderick, Manager, Firearms Program*

*Paul Bishop, Deputy Attorney General*

*Eileen Gray, Deputy Attorney General*

Prepared by

  
MIKE BRODERICK, Manager  
Firearms Program

Telephone:

227-3500

## DEPARTMENT OF JUSTICE

### EXECUTIVE SUMMARY

A recent court case (*Dayacamos vs. Department of Justice*) has ruled that sections of Welfare and Institutions (W&I) Code 8103 are unconstitutional inasmuch as it does not provide for adequate notice and an opportunity for a formal hearing prior to the inclusion of W&I 5150 detainees (72-hour holds) in our mental health database thereby prohibiting them from owning and possessing a firearm for five years. This court decision has major programmatic implications and inherent costs for both the Department of Justice and mental health facilities who have historically reported W&I 5150 information.

In light of this judicial direction, arrangements need to be made with our Legislative Affairs Unit to submit revised statutory language which would amend the necessary sections of the Welfare and Institutions Code section 8103 that currently restrict the ownership and purchase of a firearm due to an individual's assessment and admittance to a mental health facility under W&I 5150 as well as the mandatory reporting of such W&I 5150 information to the Department of Justice for inclusion in our mental health database. The necessary statutory revisions to accomplish this are reflected in this legislative proposal.

DEPARTMENT OF JUSTICE - FISCAL IMPACT  
5150 ISSUECreate 5150 Listing by Facility:

Programmer II (100 hours @ \$22.14 per hour [includes staff benefits])	\$ 2,214.00
Computer time (2 hours @ \$150 per hour)	\$- 300.00
Computer paper (1 box @ \$20 per box)	\$ 20.00
Total to Create 5150 Listing	\$ 2,534.00

Print and Mail Form

Print revised carboned mental health reporting forms (BCIA 4075) and distribute to mental health facilities	\$ 20,000.00
---	--------------

Modify Records:

Program Technician (4,986.3 hours @ \$13.26 per hour plus staff benefits @ 38.88%)	\$ 91,824.42
Program Technician II (3.3 hours @ \$14.29 per hour plus staff benefits @ 38.88%)	\$ 65.02
Total to Modify Records	\$ 91,889.43

Facility Reimbursement:

Report reimbursement (164,000 reports @ \$.50 per report)	\$ 82,000.00
---	--------------

TOTAL COST	<u>\$196,423.43</u>
------------	---------------------



# California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

## Officers

*President*  
**Ronald D. Jarrell**  
*Sheriff*  
*Lassen County*

*1st Vice President*  
**Charles Byrd**  
*Sheriff*  
*Siskiyou County*

*2nd Vice President*  
**Glenn Seymour**  
*Sheriff*  
*Madera County*

*Secretary*  
**Charles C. Plummer**  
*Sheriff*  
*Alameda County*

*Treasurer*  
**Steve Magarian**  
*Sheriff*  
*Fresno County*

*Sergeant-at-Arms*  
**Les Weidman**  
*Sheriff*  
*Stanislaus County*

## Directors

**Warren Rupp**  
*Sheriff*  
*Contra Costa County*

**Don McDonald**  
*Sheriff*  
*El Dorado County*

**Sherman Block**  
*Past President*  
*Sheriff*  
*Los Angeles County*

**Tom Sawyer**  
*Sheriff*  
*Merced County*

**Brad Gates**  
*Past President*  
*Sheriff*  
*Orange County*

**Bill Kolender**  
*Sheriff*  
*San Diego County*

**Jim Thomas**  
*Sheriff*  
*Santa Barbara County*

**Jim Pope**  
*Immediate Past President*  
*Sheriff*  
*Shasta County*

**Gary Tindel**  
*Sheriff*  
*Yuba County*

\*\*\*

*Executive Director*  
**Joe Muncy**

April 11, 1997

The Honorable Brett Granlund  
Assembly Member, 65th District  
State Capitol Building  
Sacramento, CA 95814

Dear Assembly Member Granlund:

Please be advised that the California State Sheriffs' Association (CSSA) is no longer opposed to AB 78 as amended March 28, 1997.

Should you have any questions or wish to discuss CSSA's position on this legislation, please don't hesitate to contact me.

Sincerely,

Alva S. Cooper  
Legislative Advocate

ASC/cmc

cc: Assembly Committee on Public Safety  
Attention: Judith Garvey



Support AB 78



**CAUSE**

California Union of  
Safety Employees  
2029 H Street  
Sacramento, CA 95814  
1-800-522-2873  
916-447-5262  
916-447-2530 fax  
2900 Bristol Street  
Suite H-201  
Costa Mesa, CA 92626  
1-800-551-1414  
714-708-7576  
714-708-7582 fax

- Affiliates**
- Association of Conservation Employees
  - Association of Criminalists-DOJ
  - Association of Deputy Commissioners
  - Association of Motor Carrier Operations Specialists
  - Association of Motor Vehicle Investigators of California
  - Association of Special Agents-DOJ
  - California Association of Criminal Investigators
  - California Association of Food & Drug Investigators
  - California Association of Fraud Investigators
  - California Association of Regulatory Investigators and Inspectors
  - California Association of State Investigators
  - California Organization of Food and Agriculture Inspectors
  - California Organization of Licensing Registration Examiners
  - California State Police Association
  - CHS Radio Dispatchers Association
  - Fire Marshals & Emergency Services Association
  - Fish & Game Wardens & Game Association
  - Hospital Police Association of California
  - State Employed Fire Fighters Association

April 1, 1997

Honorable Brett Granlund  
California State Assembly  
State Capitol, Room 4164  
Sacramento, CA 95814

**AB 78 - SUPPORT**

Dear Assemblyman Granlund:

The California Union of Safety Employees (CAUSE), representing more than 6,400 state employed peace officers, regulatory investigators and safety personnel, support AB 78.

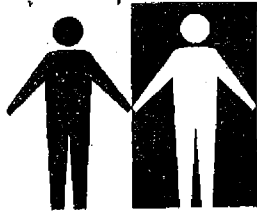
This bill recognizes a glaring loophole in the law with regard to forensic laboratories and the possession and transport of certain types of evidence, and attempts to correct that problem. CAUSE and the Association of Criminalists-Department of Justice (affiliated with CAUSE), strongly endorse this corrective measure.

Should you have any questions, please call either myself at the CAUSE office or CAUSE Lobbyist Peter Jensen at (916) 441-0258.

Sincerely,

John A. Miller  
Director of Governmental Affairs

JAM:tdd



*Doris Tate*

**Crime  
Victims  
Bureau**

Jan Miller  
Chairman

March 24, 1997

Susan Fisher  
Vice Chairman

Kelly Rudiger  
Executive Director

**Board and Advisory Members**

Jennifer Anderson

Steve Baker

Cynthia Duarte

Maggie Elvey

Dan Felizzatto

Jeff Fraser

1 Lane

Judy Luecke

Alexandria Matteucci

Evan Miller

Paula Myers

Anne Poverello

Jackie Ravel Knezevich

Mike Reynolds

Valerie Richards

Anne Marie Schubert

Patti Tate

Christine Ward

Ray Wieser

Marianne Wrede

(partial listing)

The Honorable Brett Granlund  
State Capitol, Room 4164  
Sacramento, CA 95814

**Re: AB 78 - Support**

Dear Assemblyman Granlund:

On behalf of the Doris Tate Crime Victims Bureau, we would like convey our support for AB 78 regarding exemptions for transportation of firearms. Please feel free to reference our support for the measure in any forum you deem appropriate.

Sincerely,

Jeff Thompson  
Legislative Advocate  
Doris Tate Crime Victims Bureau

cc: Assembly Public Safety Committee  
Minority Consultant



**Personal  
Insurance  
Federation**  
of California

March 6, 1997

Honorable Brett Granlund  
State Capitol, Room 4164  
Sacramento, CA 95814

**Re: Assembly Bill 79 (Granlund): Request For Input**

Dear Assemblyman Granlund:

On February 5, 1997, you asked me to request input from PIFC member companies seeking their support of your Assembly Bill 79. In addition to this request for support, you asked me to explain the procedures our member companies use in order to verify the validity of claims payments. Finally, you asked whether our companies would be supportive of legislation that would mandate, on a prospective basis, that in order for an insurer to pay a claim on lost or stolen materials, that the make, model and number of the property be provided to the insurer and kept on file with the Department of Justice.

Here is our response to each of these questions:

**Question No. 1:** What are the current procedures insurers use to verify the validity of claims for payments of insurance when property is lost or stolen? Specifically, in order to approve a claim, do insurers require that claimants provide serial numbers, make and model in order to pay the claim?

**Answer:** Our companies do not have identical claims payment procedures, but generally all of them responded in the following manner. To date, our companies do not require insureds to provide serial numbers, make and model in order to pay a claim. Although such material, if provided, will expedite the payment of claims, other items such as photographs of the property, owners manual, a video tape of a home's contents, verification through credit card payments, as well as other objective verification, are used for purposes of verifying a claim. Furthermore, many of our companies request insureds to fill out, at the time of the initial interview, a complete property inventory worksheet which describes items, dates purchased, where purchased, and the cost of insured properties. These approaches are the most common used in handling the payment of claims. Finally, it is not the current claims handling policy of our companies to require serial numbers on lost or stolen properties in order for the claim to be paid.

**Question No. 2:** Would insurers be supportive of legislation which would mandate, on a prospective basis, that in order for an insurer to pay claims on lost or stolen property, that the property's make, model and number be provided and kept on file with the Department of Justice?

**Answer:** Although such a requirement would certainly go a long way in insuring that fraudulent claims would be less common, we believe that such a requirement would prove to be unduly

Honorable Brett Granlund  
AB 79  
Page 2

onerous and possibly discriminatory to our policyholders. Let me explain. First, from a technical perspective, all insurers would be required to amend their existing policies that they provide to their policyholders requesting that they provide various information to the insurer. Many insurers have a section within their policies labeled "your duties after loss." This section outlines what a policyholder must do in order to have a claim paid. Most of these policy documents simply request the preparation of an inventory of damaged or stolen personal property showing, in detail, the quantity, description, actual cash value, and amount of loss. We have found that this document, as well as receipts and other proof of payment, are more than adequate to address claims. One of the fears that was raised by our companies is that to request a more detailed maintenance of information with the Department of Justice, as well as requesting the policyholder to maintain this type of information, would require the purchase of a safety deposit box or some sort of fire-safe box. Generally, we believe that this requirement would be viewed by our policyholders as an onerous method for compliance with our policies and thus would generate a bad relationship with our customer.

On a final note on this issue, in disasters, such as the Oakland Hills Fire, we found that even specifically requesting individual itemized detailed reports of property was viewed as unfair and onerous to our policyholders. We received scores of attacks from the press for requesting this information during the Oakland Hills Fire. We have found that some politicians choose to use our efforts to properly assess claims payments as unfair and onerous tactics to our customers. As a matter of fact, former Insurance Commissioner John Garamendi made this one of his chief bully pulpit items in 1991.

**Question No. 3:** Will we support AB 79?

**Answer:** In its current form, the Personal Insurance Federation is able to support AB 79. However, if you were to amend it in a manner to include the above mentioned items -- which I realize, are intended to assist us -- we believe our support would actually hurt the prospects of your measure being enacted.

As a final comment, I hope you realize that we recognize your efforts to be very positive and, frankly, very much in our own personal interest. However, we have learned that when we support issues that benefit us directly, other legislators who are not as inclined to view business as favorable as you do, use this self-interest as a reason to attack the measure. For that reason, we are urging you, at this point, to carefully consider whether you should include the other requirements on our customers, even though we realize that your intent is to decrease fraudulent claims and to ensure the proper payment of claims.

Assemblyman Granlund, thank you for requesting our input. I would be very happy to sit down with you or your staff to further amplify our thoughts on your very important Assembly Bill 79.

Sincerely,



Dan C. Dunmoyer  
President

2 AB 79/Granlund

00438



## California Rifle and Pistol Association, Inc.

1127 11th Street • Suite 610 • Sacramento, California 95814  
(916) 447-C<sub>2</sub>R<sub>7</sub>P<sub>7</sub>A<sub>2</sub> • FAX (916) 446-3531

Bill J. Chapman  
President  
Martin J. Miller, Jr.  
Vice President  
Robert A. Frushon  
Secretary  
George V. Barr  
Treasurer  
James H. Erdman, Jr.  
Executive Director  
Gerald H. Upholt  
Manager - Governmental Affairs

January 31, 1997

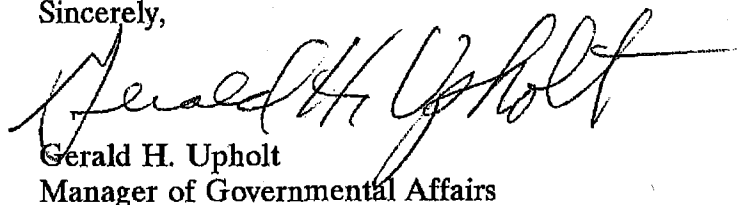
The Honorable Brett Granlund  
California State Assembly  
P.O. Box 942849  
Sacramento, CA 94249

Dear Assemblymember Granlund:

RE: AB 78 Firearms: Transporting exemption  
Position: Support as introduced December 18, 1996

This is to notify you of the support of the California Rifle and Pistol Association for legislation introduced by you, AB 78, that would provide for the lawful transportation of firearms "found" by a person to a law enforcement agency; that allows anyone convicted of an offense subject to the 10-year prohibition on the possession of a firearm prior to that offense being added to the 10-year prohibition list to apply to the courts for relief; and which seeks to clarify the provisions relating to the prohibition against the possession of a dirk or dagger concealed upon the person.

Sincerely,



Gerald H. Upholt  
Manager of Governmental Affairs

cc: Assembly Public Safety Committee

**DANIEL E. LUNGREN**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
(916) 445-9555

FACSIMILE: (916) 322-2630  
(916) 324-5477

January 22, 1997

Honorable Brett Granlund  
Assembly Member  
California State Assembly  
P.O. Box 942849  
Sacramento, CA 94249-0001

RE: Letter dated January 9, 1997 concerning AB 78 & 79

Dear Assembly Member Granlund:

Thank you for the letter regarding your recently introduced legislation dealing with procedures for returning lost and serialized property recovered by law enforcement agencies to their owners.

Assembly Bills 78 and 79 deal with complex and sensitive issues that are important not only to this office but also to the public. Accordingly, our program staff will carefully analyze this legislation and advise Attorney General Lungren of a position we deem appropriate.

Again, thank you for your letter and please contact our office if you have any questions or concerns.

Sincerely,

**DANIEL E. LUNGREN**  
Attorney General

**JACK R. STEVENS**  
Assistant Attorney General  
Legislative Affairs

James K. Mattis  
10359 Mt. Gleason Ave., Sunland, CA 91040  
(818) 247-2400, daytime, or (818) 353-4734 — fax (818) 247-7777

July 31, 1995

To Assemblywoman Diane Martinez  
&/or Nolice Edwards  
Fax (916) 324-1393

Subject: Dirks and Daggers - Things the law should say, but doesn't:

You may be carrying a concealed dirk or dagger if the object in question is out of sight, and capable of ready use as a stabbing weapon to cause great bodily injury or death, AND

1. You would flunk the background check if you tried to buy a gun from a licensed dealer, or
2. You said your reason for carrying it was "protection," or
3. You have attacked somebody with it, or threatened to do so, or
4. You are committing a crime with a potential for violence while you are carrying it, or
5. You are carrying it during a legal activity with a high risk of a violent quarrel, such as picketing, or gathering with known street gang members, or going to visit your former lover's new friend, or
6. You are drunk or otherwise impaired, and therefore not to be trusted with sharp things or heavy machinery, or
7. You can't quickly, and without hesitation, mention some peaceful and lawful thing you did with the object recently, including but not limited to gainful employment or wholesome recreation, or
8. You have a knife which has been optimized for combat at the expense of utility, such as one with two sharpened edges, or a large double handguard, or a carrying system that makes a knife fast to draw, but slow or awkward to put away (shuriken and ballistic knives are two specialized types of knives not readily usable as tools, and I've seen some concealment sheaths where you would have trouble putting the knife away without partly disrobing!), or
9. You are carrying a fixed blade knife or other sharp tool hazardously on your person with no sheath, or a temporary or improvised sheath made with cardboard and tape, evidence that you don't carry it every day, but are carrying it now for some special occasion, or
10. You are carrying a knife or other sharp tool in a manner calculated to evade detection, such as up a shirt sleeve or inside pants or under a skirt, or inside a boot, as opposed to the customary ways to carry possessions in a given context (a pocket knife in a pocket or a belt knife on a belt, covered by a jacket worn on account of the weather or dictates of fashion, or anything in a woman's purse, is not necessarily being carried that way to evade detection), or
11. You are carrying a knife or other sharp tool disguised as something other than what it is, such as a sword cane (this is a special case of #10, above), or
12. You are carrying a knife that is almost large enough to sneak into a discussion of swords, so that carrying it inconspicuously requires some effort (conversely, a knife with a single-edged three-inch blade might be presumed innocent even on an airplane).

Sincerely,

*JM* *copy* 5/19/97

00441

The documents following this page were  
photocopied from the files of the

Attorney General's  
Law Library



CONCURRENCE IN SENATE AMENDMENTS  
AB 78 (Granlund)  
As Amended July 7, 1997  
Majority vote

ASSEMBLY: 76-0 (April 17, 1997) SENATE: 26-5 (July 17, 1997)

Original Committee Reference: PUB. S.

SUMMARY: Makes a series of changes to California's firearms and weapons laws to address issues raised in several recent Court of Appeals decisions and a letter in the Assembly Journal.

The Senate amendments:

- 1) Add an exemption to the existing prohibition on the acquisition, possession or transportation of firearms with obliterated ID marks for military members, peace officers, forensic lab employees, and persons otherwise in lawful possession who are taking the firearm to a law enforcement agency for disposal.
- 2) Condition all the exemptions added by the bill as passed by the Assembly for turning in firearms to a law enforcement agency on the following additional factors:
  - a) The person gives prior notice to the law enforcement agency that he or she is bringing the firearm into those premises.
  - b) The firearm is transported in a "locked container," as defined under existing law.
- 3) Allow non-violent, prohibited persons who were not mentally infirm to avoid prosecution on possession of ammunition, where they delivered the ammunition to law enforcement agencies.
- 4) Delete a duplicative provision of this bill as it passed the Assembly relating to when a dirk or dagger was not concealed upon the person.
- 5) Allow the Department of Justice (DOJ) to assign a distinguished mark to any firearm, not just a pistol or revolver, when the regular mark is obliterated.
- 6) Double-join this bill to AB 688 (Bowler), enrolled to Governor, and AB 1221 (Aroner), pending in the Senate.

EXISTING LAW:

- 1) Provides it is illegal to carry a concealed "dirk or dagger" upon one's person.
- 2) Provides it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.
- 3) Prohibits the manufacture, import, distribution or possession of specified weapons and firearms, and prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

- 4) Provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.
- 5) Allows the DOJ to assign a new serial number on request to any pistol or revolver.

AS PASSED BY THE ASSEMBLY, this bill:

- 1) Created a locked container exemption for persons who were not in a prohibited class to transport to law enforcement agency handguns they found for disposition according to law.
- 2) Allowed persons not otherwise prohibited from possessing firearms to possess incident to transportation to transport certain firearms and ammunition to law enforcement agencies of those items they found for disposition according to law.
- 3) Allowed non-violent, prohibited persons who were not mentally infirm to avoid prosecution on possession of conventional firearms which they found and deliver conventional firearms to law enforcement agencies.
- 4) Re-wrote a relief from disability statute to conform to a ruling of the Court of Appeal.
- 5) Exempted from the prohibition against the manufacture, import, distribution or possession of specified weapons and firearms, the possession of these items by a forensic laboratory or any authorized agent or employee thereof in the course and scope of their authorized activities.
- 6) Excluded from the definition of "dirk or dagger," a non-locking folding knife, a folding knife that was not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that would inflict great bodily injury or death only if the blade of the knife was exposed and locked into position.

FISCAL EFFECT: None

COMMENTS: This bill addresses a constitutional issue resulting from relief from disabilities issues in In re Evans 49 Cal.App.4th 1263 which rewrote the statute to make it valid. This bill conforms to Evans.

This bill creates "safe harbor" exemptions for persons who may or may not be in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies to address the suggestions of the Courts of Appeal in People v. Hurtado (1996) 47 Cal.App.4th. 805 and People v. Pepper (1996) 41 Cal.App.4th 1029.

Analysis prepared by: Judith M. Garvey / apubs / (916) 445-3268

FN 033874

ASSEMBLY THIRD READING  
AB 78 (Granlund)  
As Amended March 20, 1997  
Majority vote

PUBLIC SAFETY 12-0

---

Ayes: Hertzberg, Goldsmith, Aroner,  
Baugh, Bowler, House, Kuehl,  
Martinez, Migden, Murray,  
Pacheco, Washington

SUMMARY: Makes a series of changes to California's firearms and weapons laws to address issues raised in several recent Court of Appeals decisions and a letter in the Assembly Journal. Specifically, this bill:

- 1) Creates a locked container exemption for persons who are not in a prohibited class to transport to law enforcement agency handguns they find for disposition according to law.
- 2) Allows persons not otherwise prohibited from possessing firearms to possess incident to transportation to transport certain firearms and ammunition to law enforcement agencies of those items they find for disposition according to law.
- 3) Allows non-violent, prohibited persons who are not mentally infirm to avoid prosecution on possession of conventional firearms where they deliver conventional firearms to law enforcement agencies which they find.
- 4) Rewrites a relief from disability statute to conform to a ruling of the Court of Appeal and in so doing permits any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.
- 5) Exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.
- 6) Excludes from the definition of "dirk or dagger," a non-locking folding knife, a folding knife that is not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.
- 7) Codifies case law that a dirk or dagger is not concealed upon the person where the dirk or dagger that is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.

EXISTING LAW:

- 1) Provides it is illegal to carry a concealed dirk or dagger upon one's person.

- 2) Provides it is illegal to carry a concealed handgun on one's person or in a vehicle. There are numerous exemptions from this prohibition.
- 3) Prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.
- 4) Prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.
- 5) Prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.
- 6) Provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

FISCAL EFFECT: None

COMMENTS:

- 1) According to the author, "AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the the recovery of lost property.

"Also, Justice Art McKinster who is a Justice of the Court of Appeal in San Bernardino noted in In re Evans 49 Cal.App.4th 1263 that the relief from disabilities provisions in Penal Code section 12021(c)(3) as drafted violated the 'equal protection clauses' of the state and federal constitutions.

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the 10 year prohibition prior to the offense being added to the list of offense for which the 10 year prohibition applied to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

- 2) Please see the policy committee analysis for a more comprehensive discussion of this bill.

Analysis prepared by: Judith M. Garvey / apubs / (916) 445-3268

FN 030487

The documents following this page were  
printed from the Legislative Counsel's web site,  
[leginfo.ca.gov](http://leginfo.ca.gov)

SENATE RULES COMMITTEE  
Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

AB 78

---

THIRD READING

---

Bill No: AB 78  
Author: Granlund (R)  
Amended: 7/7/97 in Senate  
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 8-0, 6/10/97  
AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson,  
Polanco, Schiff, Watson

ASSEMBLY FLOOR : 76-0, 4/17/97

---

SUBJECT : Dangerous Weapons' Control Law: clarifying  
changes

SOURCE : Author

---

DIGEST : This bill makes a variety of changes to the  
Dangerous Weapons' Control Law.

Senate Floor Amendments of 7/7/97 provide for prior notice  
to be given to a law enforcement agency prior to the  
delivery of a weapon to that agency.

Senate Floor Amendments of 6/30/97 delete proposed changes  
pertaining to persons subject to a 72-hour hold/observation  
and add double-joining language.

Senate Floor Amendments of 6/23/97 delete provisions  
relative to "dirks or daggers" and add double-joining  
language.

ANALYSIS : Existing law provides that it is illegal to

carry a concealed handgun on one's person or in a vehicle.

There are numerous exemptions from this prohibition.

This bill provides that in all situations where an individual is transporting a firearm to a law enforcement agency, prior notice be given to that agency prior to delivery of the weapon.

This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who, after prior notice is given to the agency, is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person, after prior notice is given to the agency, is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for

disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption and must give prior notice to the agency prior to the delivery of the firearm.

Existing law provides that any person who is subject to the

prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

This bill makes related changes to the Dangerous Weapons' Control Law.

This bill is double-joined with AB 1211 (Aroner) and AB 688

(Bowler).

FISCAL EFFECT : Appropriation: No Fiscal Com.: No  
Local: No

SUPPORT : (Verified 7/8/97)

Attorney General  
California Union of Safety Employees  
Buck Knives  
California Attorneys for Criminal Justice



California State Sheriffs Association

ARGUMENTS IN SUPPORT : According to the author, "AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The main issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property."

RJG:sl 7/8/97 Senate Floor Analyses  
SUPPORT/OPPOSITION: SEE ABOVE  
\*\*\*\* END \*\*\*\*

SENATE RULES COMMITTEE AB 78  
Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

---

THIRD READING

---

Bill No: AB 78  
Author: Granlund (R)  
Amended: 6/30/97 in Senate  
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 8-0, 6/10/97  
AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson,  
Polanco, Schiff, Watson

ASSEMBLY FLOOR : 76-0, 4/17/97

---

SUBJECT : Dangerous Weapons' Control Law: clarifying  
changes

SOURCE : Author

---

DIGEST : This bill makes a variety of changes to the  
Dangerous Weapons' Control Law.

Senate Floor Amendments of 6/23/97 delete provisions  
relative to "dirks or daggers" and add double-joining  
language.

Senate Floor Amendments of 6/30/97 delete proposed changes  
pertaining to persons subject to a 72-hour hold/observation  
and add double-joining language.

ANALYSIS : Existing law provides that it is illegal to  
carry a concealed handgun on one's person or in a vehicle.  
There are numerous exemptions from this prohibition.

This bill adds additional exemptions for persons who find

the firearm in order to return it to an owner or to a law

enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to

assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

This bill makes related changes to the Dangerous Weapons Control Law.

This bill is double-joined with AB 1211 (Aroner) and AB 688 (Bowler).

FISCAL EFFECT : Appropriation: No Fiscal Com.: No  
Local: No

SUPPORT : (Verified 7/1/97)

Attorney General  
California Union of Safety Employees  
Buck Knives  
California Attorneys for Criminal Justice

California State Sheriffs Association

ARGUMENTS IN SUPPORT : According to the author:

"AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt

to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

"Also, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the 'equal protection clauses' of the state and federal constitutions.

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the ten year prohibition prior to the offense being added to the list of offenses for which the ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made "to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice ,

Case No. 96 CS 01471." That decision was made February 7, 1997, and the order was stayed until January 1, 1998, in order to allow the Department of Justice to comply.

RJG:sl 7/1/97 Senate Floor Analyses  
SUPPORT/OPPOSITION: SEE ABOVE  
\*\*\*\* END \*\*\*\*

SENATE RULES COMMITTEE  
Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

AB 78

---

THIRD READING

---

Bill No: AB 78  
Author: Granlund (R)  
Amended: 6/23/97 in Senate  
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 8-0, 6/10/97  
AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson,  
Polanco, Schiff, Watson

ASSEMBLY FLOOR : 76-0, 4/17/97

---

SUBJECT : Dangerous Weapons' Control Law: clarifying  
changes

SOURCE : Author

---

DIGEST : This bill makes a variety of changes to the  
Dangerous Weapons' Control Law.

Senate Floor Amendments of 6/23/97 delete provisions  
relative to "dirks or daggers" and add double-joining  
language.

ANALYSIS : Existing law provides that it is illegal to  
carry a concealed handgun on one's person or in a vehicle.  
There are numerous exemptions from this prohibition.

This bill adds additional exemptions for persons who find  
the firearm in order to return it to an owner or to a law  
enforcement agency for disposal, in accordance with the law  
(unloaded, locked container, direct travel route to  
destination).

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign

a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not.

This bill deletes that restriction for persons held only under WIC 5150 (and not otherwise certified for additional intensive treatment).

This bill contains uncodified language that:

"It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice , Case No. 96 CS 01471."

This bill makes related changes to the Dangerous Weapons'



Control Law.

This bill is double-joined with AB 1211 (Aroner).

FISCAL EFFECT : Appropriation: No Fiscal Com.: No  
Local: No

SUPPORT : (Verified 6/23/97)

Attorney General  
California Union of Safety Employees  
Buck Knives  
California Attorneys for Criminal Justice  
California State Sheriffs Association

ARGUMENTS IN SUPPORT : According to the author:

"AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

"Also, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the 'equal protection clauses' of the state and federal constitutions.

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the ten year prohibition prior to the offense being added to the list of offenses for which the

ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made "to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471."

00459

That decision was made February 7, 1997, and the order was stayed until January 1, 1998, in order to allow the Department of Justice to comply.

RJG:sl 6/23/97 Senate Floor Analyses  
SUPPORT/OPPOSITION: SEE ABOVE  
\*\*\*\* END \*\*\*\*

SENATE RULES COMMITTEE AB 78  
Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

---

THIRD READING

---

Bill No: AB 78  
Author: Granlund (R)  
Amended: 6/17/97 in Senate  
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 8-0, 6/10/97  
AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson,  
Polanco, Schiff, Watson

ASSEMBLY FLOOR : 76-0, 4/17/97

---

SUBJECT : Dangerous Weapons' Control Law: clarifying  
changes

SOURCE : Author

---

DIGEST : This bill makes a variety of changes to the  
Dangerous Weapons' Control Law.

ANALYSIS : Existing law provides that it is illegal to  
carry a concealed "dirk or dagger" upon one's person.

This bill excludes from the definition of "dirk or dagger"  
a non-locking folding knife, a folding knife that is not a  
switchblade knife having a blade two or more inches in  
length, or a pocketknife capable of ready use as a stabbing  
weapon that may inflict great bodily injury or death only  
if the blade of the knife is exposed and locked into  
position. The above are conforming changes to existing  
law.

Existing law provides that it is illegal to carry a

concealed handgun on one's person or in a vehicle. There

are numerous exemptions from this prohibition.

This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms.

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition.

This bill adds to the exemptions from that prohibition such ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition.

This bill creates an exemption from that prohibition for those persons by making it "justifiable" for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm

under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition.

This bill deletes that reference to "January 1, 1991" and

changes it to "that offense being added to" the list of offenses which triggers the prohibition.

Existing law allows the Department of Justice (DOJ) to assign a distinguishing number or mark to a "pistol or revolver" which is without such a mark.

This bill changes that provision to allow the DOJ to assign a number to any "firearm."

Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks.

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

Existing law provides that every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not.

This bill deletes that restriction for persons held only under WIC 5150 (and not otherwise certified for additional intensive treatment).

This bill contains uncodified language that:

"It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of

the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice , Case No. 96 CS 01471."

This bill makes related changes to the Dangerous Weapons' Control Law.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No  
Local: No

SUPPORT : (Verified 6/17/97)

Attorney General  
California Union of Safety Employees  
Buck Knives  
California Attorneys for Criminal Justice  
California State Sheriffs Association

ARGUMENTS IN SUPPORT : According to the author:

"AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

"Also, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the 'equal protection clauses' of the state and federal constitutions.

"To save the statute from invalidity, Justice McKinster

rewrote the statute to allow anyone who was convicted of an offense subject to the ten year prohibition prior to the offense being added to the list of offenses for which the ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made "to

comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471." That decision was made February 7, 1997, and the order was stayed until January 1, 1998, in order to allow the Department of Justice to comply.

RJG:sl 6/17/97 Senate Floor Analyses  
SUPPORT/OPPOSITION: SEE ABOVE  
\*\*\*\* END \*\*\*\*

SENATE COMMITTEE ON Public Safety  
 Senator John Vasconcellos, Chair A  
 1997-98 Regular Session B

7  
 8

AB 78 (Granlund)  
 As amended May 29, 1997  
 Hearing date: June 10, 1997  
 Penal Code and Uncodified Law  
 SH:jm

THE DANGEROUS WEAPONS' CONTROL LAW -  
A VARIETY OF PROPOSED CHANGES

HISTORY

Source: Author

Prior Legislation: See text/Comments for relevant references

Support: California Union of Safety Employees; Buck Knives; California Attorneys for Criminal Justice

Opposition: None known

Assembly Floor Vote: Ayes 76 - Noes 0

KEY ISSUES

SHOULD A VARIETY OF CHANGES BE MADE TO THE DANGEROUS WEAPONS' CONTROL LAW, INCLUDING THE FOLLOWING:

(1) Under existing law, any person who is subject to the prohibition on possessing a firearm because of specified misdemeanor convictions prior to January 1, 1991, may



petition the court only once for relief from the prohibition.

(CONTINUED)

should the law be changed to delete the specific reference to oJanuary 1, 1991o and instead apply oprior to the offense being added too the specified offenses that are subject to the prohibition?

(2) existing law provides that any person who, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, and is taken into custody in an evaluation facility for 72-hour treatment and evaluation, is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years after release from the facility.

should that prohibition applicable to a person who is detained for treatment and evaluation for a period not to exceed 72 hours (and not otherwise certified for treatment) be deleted?

should uncodified language be enacted to state LEGISLATIVE intent that this change is being made in order to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice , Case No. 96 CS 01471?

should numerous other amendments be made to the dangerous weapons' control Law, as specified?

#### PURPOSE

(1) Existing law provides that it is illegal to carry a concealed odirk or daggero upon one's person. (Penal Code Section 12020(a))

This bill excludes from the definition of odirk or daggero a non-locking folding knife, a folding knife that is not a

switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing

00467

weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(2) Existing law provides that it is illegal to carry a concealed handgun on one's person or in a vehicle. (Penal Code Section 12025) There are numerous exemptions from this prohibition. (Penal Code Sections 12026, 12026.1, 12026.2, and 12027)

This bill adds additional exemptions for persons who find the firearm in order to return it to an owner or to a law enforcement agency for disposal, in accordance with the law (unloaded, locked container, direct travel route to destination).

(3) Existing law prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. (Penal Code Section 12020)

This bill exempts from that prohibition any person not otherwise prohibited from possessing a firearm who is transporting that firearm to a law enforcement agency for disposal.

This bill exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(4) Existing law prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition. (Penal Code Sections 12320 to 12323)

This bill adds to the exemptions from that prohibition such

ammunition possessed by a person not otherwise prohibited from possessing a firearm or ammunition if that person is transporting it to a law enforcement agency for disposal according to law.

(5) Existing law prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from

possessing any firearm or ammunition. (Penal Code Sections 12021 and 12021.1, and Welfare and Institutions Code Sections 8100 and 8103)

This bill creates an exemption from that prohibition for those persons by making it justifiable for them to possess firearms they find or take from persons committing a crime against them, and if they follow specified procedures to deliver them to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

(6) Existing law provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition. (Penal Code Section 12021)

This bill deletes that reference to January 1, 1991 and changes it to that offense being added to the list of offenses which triggers the prohibition.

(7) Existing law allows the Department of Justice to assign a distinguishing number or mark to a pistol or revolver which is without such a mark. (Penal Code Section 12092)

This bill changes that provision to allow the DOJ to assign a number to any firearm.

(8) Existing law makes it a misdemeanor for any person with knowledge of any change, alteration, or obliteration, to

buy, receive, dispose of, sell, or possess any pistol, revolver, or other firearm with changed, altered, or obliterated identification marks. (Penal Code Section 12094)

This bill exempts from this provision persons in specified classes, including certain on duty peace officers and persons transporting a firearm to a law enforcement agency for disposition, as specified.

(9) Existing law prohibits persons otherwise prohibited from possessing firearms from possessing ammunition.

(Penal Code Section 12316)

This bill creates an exemption for persons prohibited from possessing a firearm by Section 12021 if they found the ammunition or took it from a person committing a crime against him or her and if they follow specified procedures to deliver it to a law enforcement agency for disposal. Such a defendant would have the burden of proving by a preponderance of the evidence that they are subject to this new exemption.

(10) Existing law provides that every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not. (Welfare and Institutions Code Section 8103)

This bill deletes that restriction for persons held only under WIC 5150 (and not otherwise certified for additional intensive treatment.

This bill contains uncodified language that:

It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471.o

This bill makes related changes to the Dangerous Weapons' Control Law.

The purpose of this bill is to make all of the changes specified to the existing law.

COMMENTS

00470

1. Need for This Bill .

According to the author:

oAB 78 addresses certain odds and ends weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

oThe first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the recovery of lost property.

oAlso, Justice Art McKinster, who is a Justice of the Court of Appeal in San Bernardino, noted in In re Evans (1996) 49 Cal.App.4th 1263, that the relief from disabilities provisions in Penal Code Section 12021(c)(3), as drafted, violated the equal protection clauses of the state and federal constitutions.

oTo save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the ten year prohibition prior to the offense being added to the list of offenses for which the ten year prohibition applied, to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion.o

The author has also now amended this bill at the request of the Attorney General to comply with the order of Sacramento County Superior Court Judge Bond to cease restricting persons held for 72-hour observation, pursuant to Welfare and Institutions Code Section 5150, from possessing firearms for five years, unless those persons are subsequently certified for intensive treatment. That change is reflected in this bill and uncodified language is included to indicate that the amendments are being made to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice, Case No. 96 CS 01471.o That decision was made February 7, 1997, and the order was

00471

stayed until January 1, 1998, in order to allow the Department of Justice to comply.

2. Relief from the Prohibition on Possessing a Firearm after Specified Misdemeanor Offenses

In In re Evans (1996) 49 Cal.App.4th 1263, the Court of Appeals (Fourth Appellate District) held that the relief from disabilities provisions in Penal Code Section 12021(c)(3) as drafted violated the Equal Protection Clauses of the State and Federal Constitutions. Evans involved a defendant who was convicted of possessing a gun after he had been convicted of spousal abuse. His conviction of spousal abuse occurred after January 1, 1991, but prior to the offense of spousal abuse barring gun possession for ten years. That occurred in 1993.

Evans challenged his gun conviction that, had he been convicted of spousal abuse prior to 1991, he could have claimed relief. In agreeing with his claim, the Court of Appeal noted that the January 1, 1991 date was irrational as to persons, where the offense barring possession was added to the list after January 1, 1991.

There are approximately twenty-five offenses added to the ten-year prohibition after January 1, 1991. To save the statute from invalidity, the Court of Appeal rewrote the statute to allow anyone who was convicted of an offense subject to the ten-year prohibition prior to the offense being added to the list of offenses for which the ten-year prohibition applied, to apply once for relief from the disability imposed by the prohibition.

This bill conforms the language in Penal Code Section 12021(c)(3) to the court's decision.

3. The Deletion of WIC Section 5150 72-Hour Holds from the Prohibitions on Firearms Possession

Under current law, every person who is held for 72-hours for observation for a mental disorder pursuant to Welfare and Institutions Code Section 5150 is reported to DOJ (Firearms Program data base) and is forbidden from possessing a firearm for five years (but can petition for

right to do so with test of preponderance of the evidence that person is likely to use firearm in safe way). That same requirement exists for persons subsequently adjudicated as mentally disordered and committed to a mental health facility, whether first subject to WIC 5150 or not.

Sacramento Superior Court Judge Bond has now held that it is unconstitutional to deprive a o5150o of the right to possess a firearm without any further court hearing or determination (due process right to counsel, hearing, etc.). Dayacamos v. Department of Justice , Case No. 96 CS 01471, February 7, 1997. Judge

Bond stayed the effective date of the decision until January 1, 1998, in order to allow the Department of Justice to make the necessary changes in its process and to notify the parties who would otherwise be required to submit information to the department.

The Department of Justice is not going to appeal the decision and now wants to deal with the statutory changes needed to delete the prohibition on o5150'so from possessing firearms. DOJ and the Department of Mental Health estimate that approximately 40% of existing 413,000 o5150'so in the system will have been held beyond 72-hours with a requisite court hearing, so those individuals are still subject to firearms possession prohibitions. That means 60% of those persons will be deleted and no longer subject to such restrictions (presumably the same ratio will exist for future persons first held pursuant to WIC o5150o).

AB 78 now has amendments which delete the WIC o5150o prohibition. The alternative would be to require a full blown court proceeding for all o5150's,o however, the whole point of the 72-hour hold is to decide whether to go forward to seek further commitment. How would a hearing take place for those persons not certified for intensive treatment, for purposes only of the imposition of firearms possession?

AB 78 also now contains the following uncodified language to make clear that the change is being made to comply with the court decision:

SEC. 11. It is the intent of the Legislature, in enacting the amendments to Section 12076 of the Penal Code and Section 8103 of the Welfare and Institutions Code made by this act, to comply with the decision of the Superior Court of the State of California in and for the County of Sacramento in Dayacamos v. Department of Justice , Case No. 96 CS 01471.

4. Additional Information Provided by Staff Working on This Bill

The staff person working on this bill provides the following information pertaining to some of the numerous other changes made by this bill:

(1) Under current California law, there are no statutory safe harbor exemptions for persons who may or may not be in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies.

This issue has been discussed by the Court of Appeals in People v. Hurtado (1996) 47 Cal.App.4th. 805, and People v. Pepper (1996) 41 Cal.App.4th 1029, in the context of prohibited persons, i.e., persons who cannot legally possess any firearm. One court felt the exemption existed, but held that the defendant could not claim it. The other court disallowed the exemption period.

This bill creates distinct safe harbor exemptions for persons who are not, per se, legally prohibited from possessing weapons and for those persons prohibited from possessing weapons. The author believes that these exemptions should be placed on a statutory basis.

As to non-prohibited persons, they may legally transport conventional firearms and certain contraband to law enforcement agencies provided certain conditions are met.

The Civil Code contains specific provisions on the responsibilities of finders of lost property. There is no Penal Code concealed carry exemption for the safe transport of lost handguns to a law enforcement agency. This bill amends the locked container exemption section to add two specific exemptions to allow the



transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the

Civil Code as it pertains to that firearm and the transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law.

Since this bill adds to a laundry list of exemptions, as is the case with the other exemptions, in order for a firearm to be exempted while being transported to or from a place, the firearm shall be unloaded, kept in a locked container and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

Penal Code Section 12020 bans the manufacture, distribution, importation and possession of most illegal firearms and certain forms of ammunition. AB 78 would allow possession incident to transport of all Section 12020 items other than a short-barreled rifle or short-barreled shotgun found and possessed by a person who is not generally prohibited from possessing firearms or ammunition and is transporting the listed item to a law enforcement agency for disposition according to law.

Under this bill, a person who found armor piercing ammunition may possess it incident to transporting it to a law enforcement agency for disposition according to law if he or she is not in a prohibited class of person generally prohibited from possessing firearms or ammunition.

As is the case in various weapons statutes, the defendant has the burden that he or she falls under the exemption.

(2) As noted above, case law suggests that felons and other prohibited persons who take possession guns out of necessity and turn them into a law enforcement agency may possess the same incident to transportation thereto.

This bill makes justifiable a violation of Penal Code Section 12021 (but not other statutes)--a possession charge--if the specified conditions are met.

(3) When is a knife a dirk or a dagger? See AB 1222 (Martinez), Chapter 128, Statutes of 1995 . Last year, Assemblymember Martinez wrote a letter in the Assembly Journal clarifying the meaning of AB 1222, which revised the definition of odirk or dagger.o The prior definition was created by AB 1266 (Martinez), Chapter 357, Statutes of 1993. Both bills were designed to create a statutory definition rather than having conflicting case law.

The letter in the Journal indicates that a folding knife is oa dirk or dagger,o for purposes of Penal Code Section 12020, only if the blade of such knife is exposed and locked into position.

This bill attempts to codify the letter in the Journal without touching switchblade knife regulation or otherwise doing major damage to the law. The author is doing this at the request of Buck Knives.

(4) Under a number of code sections, lab personnel have a clear exemption to allow them to possess contraband incident to their official duties. Penal Code Section 12020 does not have such a clear exemption. AB 78 explicitly allows possession of any weapon, device, or ammunition banned by Section 12020 by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(5) At the request of Legislative Counsel, the bill makes cosmetic code maintenance changes to the machine-gun exemption statute.

5. Suggested Amendment

In order to prevent possible confusion, committee staff

recommends deleting the language on page 7, lines 36-38, of this bill pertaining to odirks and daggers.o Staff and interested parties appear to have agreed to that amendment.

SHOULD THIS AMENDMENT BE MADE?

\*\*\*\*\*

AB 78  
Page 1

Date of Hearing: April 8, 1997  
Chief Counsel: Judith M. Garvey

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Robert M. Hertzberg, Chair

AB 78 (Granlund) - As Amended: March 20, 1997

SUMMARY : Makes a series of changes to California's firearms and weapons laws to address issues raised in several recent Court of Appeals decisions and a letter in the Assembly Journal.

Specifically, this bill :

- 1) Creates a locked container exemption for persons who are not in a prohibited class to transport to law enforcement agency handguns they find for disposition according to law.
- 2) Allows persons not otherwise prohibited from possessing firearms to possess incident to transportation to transport certain firearms and ammunition to law enforcement agencies of those items they find for disposition according to law.
- 3) Allows non-violent, prohibited persons who are not mentally infirm to avoid prosecution on possession of conventional firearms where they deliver conventional firearms to law enforcement agencies which they find.
- 4) Rewrites a relief from disability statute to conform to a ruling of the Court of Appeal and in so doing permits any person who is subject to the prohibition because of a conviction of an offense prior to the offense being added to the specified offenses that are subject to the prohibition, to petition the court only once for relief from the prohibition.
- 5) Exempts from the prohibition against the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms, the possession of any weapon, device, or ammunition by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.
- 6) Excludes from the definition of "dirk or dagger", a non-locking folding knife, a folding knife that is not a switchblade knife having a blade two or more inches in length, or a pocketknife capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.
- 7) Codifies case law that a dirk or dagger is not concealed upon the person where the dirk or dagger that is carried in a

backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions.

AB 78  
Page 2

EXISTING LAW :

- 1) Provides it is illegal to carry a concealed "dirk or dagger" upon one's person. (Penal Code Section 12020(a).)
- 2) Provides it is illegal to carry a concealed handgun on one's person or in a vehicle. (Penal Code Section 12025.) There are numerous exemptions from this prohibition. (Penal Code Sections 12026, 12026.1, 12026.2, and 12027.)
- 3) Prohibits the manufacture, import, sale, giving, lending, or possession of specified weapons and firearms. (Penal Code Section 12020.)
- 4) Prohibits the manufacture, import, sale, giving, lending, or possession of armor-piercing ammunition. (Penal Code Sections 12320 to 12323.)
- 5) Prohibits felons, violent misdemeanants, the mentally infirm, drug addicts, and the like from possessing any firearm or ammunition. (Penal Code Sections 12021 and 12021.1, and Welfare and Institutions Code Section 8100 and 8103.)
- 6) Provides that any person who is subject to the prohibition on owning, possessing, or having a firearm under his or her custody or control because of specified misdemeanor convictions prior to January 1, 1991 may petition the court only once for relief from the prohibition. (Penal Code Section 12021.)

COMMENTS :

- 1) Author's Statement . According to the author, "AB 78 addresses certain 'odds and ends' weapons issues that have come to light by virtue of the lost and found property issue and two issues raised by constituents of mine.

"The first issue relates to the transportation and possession of weapons that individuals discover and attempt to turn over to local law enforcement agencies. This issue was raised in connection with the the recovery of lost property.

"Also, Justice Art McKinster who is a Justice of the Court of Appeal in San Bernardino noted in In re Evans 49 Cal.App.4th 1263 that the relief from disabilities provisions in Penal Code section 12021(c)(3) as drafted violated the 'equal protection clauses' of the state and federal constitutions.

00479

"To save the statute from invalidity, Justice McKinster rewrote the statute to allow anyone who was convicted of an offense subject to the 10 year prohibition prior to the offense being added to the list of offense for which the 10 year prohibition applied to apply once for relief from the disability imposed by the prohibition. AB 78 codifies Justice McKinster's opinion."

- 2) Relief from Disabilities . In re Evans (1996) 49 Cal.App.4th

AB 78  
Page 3

1263, the Court of Appeals held that the "relief from disabilities provisions" in Penal Code Section 12021(c)(3) as drafted violated the "Equal Protection Clauses" of the State and Federal Constitutions. Evans involved a defendant who was convicted of possessing a gun after he had been convicted of spousal abuse. His conviction of spousal abuse occurred after January 1, 1991, but prior to the offense of spousal abuse barring gun possession for 10 years. That occurred in 1993.

Evans challenged his gun conviction that had he been convicted of spousal abuse prior to 1991, he could have claimed relief. In agreeing with his claim, the Court of Appeal noted that the January 1, 1991 date was irrational as to persons where the offense barring possession was added to the list after January 1, 1991.

There are approximately 25 offenses added to the 10-year prohibition after January 1, 1991. To save the statute from invalidity, the Court of Appeal rewrote the statute to allow anyone who was convicted of an offense subject to the 10-year prohibition prior to the offense being added to the list of offenses for which the 10-year prohibition applied to apply once for relief from the disability imposed by the prohibition.

- 3) Persons Who Turn In Weapons .

- a) Case Law . Under current California law, there are no statutory "safe harbor" exemptions for persons who may or may not be in prohibited classes who discover weapons or devices and endeavor to turn them over to law enforcement agencies.

This issue has been discussed by the Court of Appeals in People v. Hurtado (1996) 47 Cal.App.4th. 805 and People v. Pepper (1996) 41 Cal.App.4th 1029 in the context of prohibited persons, i.e., persons who cannot legally possess any firearm. One court felt the exemption existed, but held that the defendant could not claim it. The other court disallowed the exemption period.

- b) AB 78 . This bill creates distinct safe harbor exemptions for persons who are not, per se, legally prohibited from possessing weapons and for those persons prohibited from possessing weapons. The author believes that these exemptions should be placed on a statutory basis.
- c) Specific Provisions as to Non-Prohibited Persons . As to non-prohibited persons, they may legally transport conventional firearms and certain contraband to law enforcement agencies provided certain conditions are met.

The bill covers the following items:

- i. Handguns . The Civil Code contains specific provisions on the responsibilities of finders of lost

AB 78  
Page 4

property. There is no Penal Code concealed carry exemption for the safe transport of lost handguns to a law enforcement agency.

This bill amends the locked container exemption section to add two specific exemptions to allow the transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and the transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law.

Since this bill adds to a laundry list of exemptions, as is the case with the other exemptions, in order for a firearm to be exempted while being transported to or from a place, the firearm shall be unloaded, kept in a locked container and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

Under current law, a "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

- ii. 12020 Items . Penal Code Section 12020 bans the manufacture, distribution, importation and possession of most illegal firearms and certain forms of ammunition. These items include a cane gun or a wallet gun, an undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm.

container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multi-burst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

AB 78 would allow possession incident to transport of all Section 12020 items other than a short-barreled rifle or short-barreled shotgun found and possessed by a person who is not generally prohibited from possessing firearms or ammunition and is transporting the listed item to a law enforcement agency for disposition according to law.

iii. Armor-Piercing Ammunition . Armor-piercing

AB 78  
Page 5

ammunition (aka "cop killer bullets") are prohibited by Penal Code Section 12320. Under this bill, a person who found the ammunition may possess it incident to transporting it to a law enforcement agency for disposition according to law if he or she is not in a prohibited class of person generally prohibited from possessing firearms or ammunition.

As is the case of various weapons statutes, the defendant has the burden that he or she falls under the exemption.

- d) Pepper-Hurtado Issue as to Prohibited Persons . As noted above, case law suggests that felons and other prohibited persons who take possession guns out of necessity and turn them into a law enforcement agency may possess the same incident to transportation thereto.

This bill makes justifiable a violation of Penal Code Section 12021 (but not other statutes) a possession charge where all of the following conditions are met:

- i. The person found the firearm or took the firearm from a person who was committing a crime against him or her.
- ii. The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according



to law.

iii. If the firearm was transported to a law enforcement agency, it was transported in accordance with the locked container rules.

iv. Upon the trial for violating the possession section, the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this bill.

v. The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this bill.

Should there be an amendment to include the same language in Penal Code Section 12316 (prohibited persons possessing ammunition) to include the same provision limited to the same persons set forth in Section 12021? Should not this be done?

4) When are Knives Dirk or Daggers ?

- a) AB 1222 (Martinez), Chapter 128, Statutes of 1995 . Last year, Assembly Member Martinez wrote a letter in the Assembly Journal clarified the meaning of AB 1222, which revised the definition of a "dirk or dagger". The prior

AB 78  
Page 6

definition was created by AB 1266 (Martinez), Chapter 357, Statutes of 1993. Both bills were designed to create a statutory definition rather than having conflicting case law.

The letter in the Journal indicates that a folding knife is "a dirk or dagger" for purposes of Penal Code Section 12020 only if the blade of such knife is exposed and locked into position.

- b) AB 78 . This bill attempts to codify the letter in the Journal without touching switchblade knife regulation or otherwise doing major damage to the law. The author is doing this at the request of Buck Knives.

5) When are Dirks and Daggers Illegally Carried Concealed ?

- a) Case Law . Under current Section 12020, dirks or daggers are considered to be illegally carried only if carried concealed upon the person. Case law suggests that this is under the person's clothes.
- b) AB 78 . At the request of the Buck Knives, AB 798 also

provides that a dirk or dagger is not illegally carried concealed if it is carried in a backpack, tool belt, tackle box, briefcase, purse, or similar container that is used to carry or transport possessions. This appears to be consistent with current case law.

6) Forensic Laboratories .

- a) Background . Under a number of code sections, lab personnel have a clear exemption to allow them to possess contraband incident to their official duties. Penal Code Section 12020 does not have such a clear exemption.
- b) AB 78 . AB 78 explicitly allows possession of any weapon, device, or ammunition banned by Section 12020 by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

7) Machine-Guns . At the request of Legislative Counsel, the bill makes cosmetic code maintenance changes to the machine-gun exemption statute.

ARGUMENTS IN SUPPORT AND OPPOSITION . The California Attorneys for Criminal Justice support the proposed amendments to Section 22 relating to exemptions for possession and transportation of weapons as the provision will increase public safety by encouraging the removal of firearms from communities. CACJ does not believe, however, that expanding criminal liability for possession of certain knives will deter criminal conduct, but only further clog the courts and penal institutions.

REGISTERED SUPPORT/OPPOSITION :

AB 78  
Page 7

Support

California Attorneys for Criminal Justice (partial support)  
California Rifle and Pistol Association, Inc.  
Doris Tate Crime Victims Bureau

Opposition

California Attorneys for Criminal Justice (partial opposition)

Analysis prepared by : Judith M. Garvey / apubs / (916) 445-3268





**DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE**

Case Name: **People v. Emmanuel Castillolopez**  
No.: **S218861**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 29, 2014, I served the attached **REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

San Diego County District Attorney's Office  
Hall of Justice  
330 West Broadway, Ste. 1300  
San Diego, CA 92101-3826

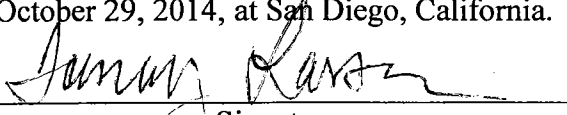
Clerk of the Court  
Central Courthouse  
San Diego County Superior Court  
220 West Broadway  
San Diego, CA 92101-3409

Fourth Appellate District, Division One  
Court of Appeal of the State of California  
Symphony Towers  
750 B Street, Suite 300  
San Diego, CA 92101

and furthermore, I declare in compliance with California Rules of Court, rules 2.251(i)(1) and 8.71(f)(1); I electronically served a copy of the above document on Appellate Defenders, Inc.'s electronic service address [eservice-criminal@adi-sandiego.com](mailto:eservice-criminal@adi-sandiego.com) and on Raymond M. DiGuissepe, appellant's attorney, via the registered electronic service address [diguisepe228457@gmail.com](mailto:diguisepe228457@gmail.com) by 5:00 p.m. on the close of business day. The Office of the Attorney General's electronic service address is [ADIEService@doj.ca.gov](mailto:ADIEService@doj.ca.gov).

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 29, 2014, at San Diego, California.

Tammy Larson  
Declarant

  
Signature