

AMENDED IN ASSEMBLY JUNE 29, 2004

AMENDED IN ASSEMBLY JUNE 8, 2004

AMENDED IN SENATE APRIL 29, 2004

AMENDED IN SENATE MARCH 25, 2004

SENATE BILL

No. 1858

Introduced by Senator Dunn

(Principal coauthor: Assembly Member Spitzer)

February 20, 2004

An act to amend Section 53071.5 of the Government Code, to amend Sections 417.4 and 12021 of, to add Sections 12550, 12553, 12554, 12555, and 12556 to, to repeal Section 417.2 of, and to amend the heading of Article 1 (commencing with Section 12550) of Chapter 6 of Title 2 of Part 4 of, the Penal Code, relating to imitation firearms, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1858, as amended, Dunn. Imitation firearms.

Existing law defines "imitation firearm" which definition excludes BB guns.

This bill would include a BB device within the definition of "imitation firearm" for certain purposes.

Existing law generally regulates commerce in imitation firearms, as specified. This bill would repeal, recast and add those provisions, and expand certain exceptions to the scope of those provisions regulating commerce of imitation firearms.

Existing law, subject to exceptions, makes it an offense to draw or exhibit an imitation firearm in a threatening manner, as specified.

This bill would expand the definition of imitation firearm for purposes of that crime.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

This bill would provide that, subject to exceptions, any person who alters a device that is not an imitation firearm with the result that the device appears more like a firearm, as specified, is punishable as a misdemeanor.

By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that any manufacturer, importer, or distributor of imitation firearms that fails to comply with any applicable federal law or regulation governing the marking of a toy, look-alike or imitation firearm as defined by federal law or regulation is punishable as a misdemeanor.

By creating a new crime, this bill would impose a state-mandated local program.

This bill would require an advisory label for imitation firearms, as specified. The bill would provide that failure to provide the advisory would make a manufacturer, importer, or distributor liable for a civil fine, as specified.

This bill would, subject to exceptions, make it an offense to openly display or expose any imitation firearm in a public place.

By creating a new crime, this bill would impose a state-mandated local program.

The bill would make other conforming changes.

The bill would declare that it is to take effect immediately as an urgency statute.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ~~majority~~ ^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



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

SECTION 1. Section 53071.5 of the Government Code is amended to read:

53071.5. By the enforcement of this section, the Legislature occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms, as defined in Section 12550 of the Penal Code, and that section shall preempt and be exclusive of all regulations relating to the manufacture, sale, or possession of imitation firearms, including regulations governing the manufacture, sale, or possession of BB devices and air rifles described in subdivision (g) of Section 12001 of the Penal Code.

SEC. 2. Section 417.2 of the Penal Code is repealed.

SEC. 3. Section 417.4 of the Penal Code is amended to read:

417.4. Every person who, except in self-defense, draws or exhibits an imitation firearm, as defined in Section 12550, in a threatening manner against another in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a misdemeanor punishable by imprisonment in a county jail for a term of not less than 30 days.

SEC. 4. 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, purchases, receives, 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, purchases, receives, 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.

1 (c) (1) Except as provided in subdivision (a) or paragraph (2)
2 of this subdivision, any person who has been convicted of a
3 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
4 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
5 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6,
6 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or
7 (d) of Section 12034, Section 12040, subdivision (b) of Section
8 12072, subdivision (a) of former Section 12100, Section 12220,
9 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare
10 and Institutions Code, any firearm-related offense pursuant to
11 Sections 871.5 and 1001.5 of the Welfare and Institutions Code,
12 or of the conduct punished in paragraph (3) of subdivision of
13 Section 12072, and who, within 10 years of the conviction, owns,
14 purchases, receives, or has in his or her possession or under his or
15 her custody or control, any firearm is guilty of a public offense,
16 which shall be punishable by imprisonment in a county jail not
17 exceeding one year or in the state prison, by a fine not exceeding
18 one thousand dollars (\$1,000), or by both that imprisonment and
19 fine. The court, on forms prescribed by the Department of Justice,
20 shall notify the department of persons subject to this subdivision.
21 However, the prohibition in this paragraph may be reduced,
22 eliminated, or conditioned as provided in paragraph (2) or (3).

23 (2) Any person employed as a peace officer described in
24 Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose
25 employment or livelihood is dependent on the ability to legally
26 possess a firearm, who is subject to the prohibition imposed by this
27 subdivision because of a conviction under Section 273.5, 273.6, or
28 646.9, may petition the court only once for relief from this
29 prohibition. The petition shall be filed with the court in which the
30 petitioner was sentenced. If possible, the matter shall be heard
31 before the same judge that sentenced the petitioner. Upon filing the
32 petition, the clerk of the court shall set the hearing date and shall
33 notify the petitioner and the prosecuting attorney of the date of the
34 hearing. Upon making each of the following findings, the court
35 may reduce or eliminate the prohibition, impose conditions on
36 reduction or elimination of the prohibition, or otherwise grant
37 relief from the prohibition as the court deems appropriate:

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



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

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

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

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

39 (B) Finds that the petitioner is not within a prohibited class as
40 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,

1 and the court is not presented with any credible evidence that the
2 petitioner is a person described in Section 8100 or 8103 of the
3 Welfare and Institutions Code.

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

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

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

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

36 (2) For any person who is subject to subdivision (a), (b), or (c),
37 the court shall, at the time judgment is imposed, provide on a form
38 supplied by the Department of Justice, a notice to the defendant
39 prohibited by this section from owning, purchasing, receiving,
40 possessing or having under his or her custody or control, any



firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(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), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, 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) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order issued pursuant to Section 136.2 or

1 646.91 of this code, or by a protective order issued pursuant to
2 Section 15657.03 of the Welfare and Institutions Code, is guilty of
3 a public offense, which shall be punishable by imprisonment in a
4 county jail not exceeding one year or in the state prison, by a fine
5 not exceeding one thousand dollars (\$1,000), or by both that
6 imprisonment and fine.

7 (2) Every person who owns or possesses a firearm knowing that
8 he or she is prohibited from doing so by a temporary restraining
9 order or injunction issued pursuant to Section 527.6 or 527.8 of the
10 Code of Civil Procedure, a protective order as defined in Section
11 6218 of the Family Code, a protective order issued pursuant to
12 Section 136.2 or 646.91 of this code, or by a protective order
13 issued pursuant to Section 15657.03 of the Welfare and
14 Institutions Code, is guilty of a public offense, which shall be
15 punishable by imprisonment in a county jail not exceeding one
16 year, by a fine not exceeding one thousand dollars (\$1,000), or by
17 both that imprisonment and fine.

18 (3) Judicial Council shall provide notice on all protective
19 orders that the respondent is prohibited from owning, possessing,
20 purchasing, receiving, or attempting to purchase or receive a
21 firearm while the protective order is in effect. The order shall also
22 state that the firearm shall be relinquished to the local law
23 enforcement agency for that jurisdiction or sold to a licensed gun
24 dealer, and that proof of surrender or sale shall be filed within a
25 specified time of receipt of the order. The order shall state the
26 penalties for a violation of the prohibition. The order shall also
27 state on its face the expiration date for relinquishment.

28 (4) If probation is granted upon conviction of a violation of this
29 subdivision, the court shall impose probation consistent with the
30 provisions of Section 1203.097.

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

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

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

38 (C) If the firearm was transported to a law enforcement agency,
39 it was transported in accordance with paragraph (18) of
40 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.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 5. *The heading of Article 1 (commencing with Section 12550) of Chapter 6 of Title 2 of Part 4 of the Penal Code is amended to read:*

Article 1. BB Devices and Imitation Firearms

SEC. 6. Section 12550 is added to the Penal Code, to read:
12550. As used in this article, the following definitions apply:

- (a) "BB device" is defined in subdivision (g) of Section 12001.
- (b) "Firearm" is defined in subdivision (b) of Section 12001.
- (c) "Imitation firearm" means any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in

1 coloration and overall appearance to an existing firearm as to lead
2 a reasonable person to perceive that the device is a firearm.

3 SEC. 7. Section 12553 is added to the Penal Code, to read:

4 12553. Any person who changes, alters, removes, or
5 obliterates any coloration or markings that are required for by any
6 applicable state or federal law or regulation, for any imitation
7 firearm, or device described in subdivision (c) of Section 12555,
8 in any way that makes the imitation firearm or device look more
9 like a firearm is guilty of a misdemeanor. This subdivision shall
10 not apply to manufacturer, importer, or distributor of imitation
11 firearms or to the lawful use in theatrical productions, including
12 motion pictures, television, and ~~state~~ *stage* productions.

13 (b) Any manufacturer, importer, or distributor of imitation
14 firearms that fails to comply with any applicable federal law or
15 regulation governing the marking of a toy, look-alike or imitation
16 firearm as defined by federal law or regulation is guilty of a
17 misdemeanor.

18 SEC. 8. Section 12554 is added to the Penal Code, to read:

19 12554. (a) Any imitation firearm manufactured after July 1,
20 2005, shall, at the time of offer for sale in this state, be
21 accompanied by a conspicuous advisory to the effect that the
22 product may be mistaken for a firearm by law enforcement officers
23 or others, that altering the coloration or markings required by state
24 or federal law or regulations so as to make the product look more
25 like a firearm is dangerous, and may be a crime, and that
26 brandishing or displaying the product in public may cause
27 confusion and may be a crime.

28 (b) Any manufacturer, importer, or distributor that fails to
29 comply with this advisory for any imitation firearm manufactured
30 after July 1, 2005, shall be liable for a civil fine for each action
31 brought by a city attorney or district attorney of not more than one
32 thousand dollars (\$1,000) for the first action, five thousand dollars
33 (\$5,000) for the second action, and ten thousand dollars (\$10,000)
34 for the third action and each subsequent action.

35 SEC. 9. Section 12555 is added to the Penal Code, to read:

36 12555. Any person who, for commercial purposes, purchases,
37 sells, manufactures, ships, transports, distributes, or receives, by
38 mail order or in any other manner, an imitation firearm except as
39 authorized by this section shall be liable for a civil fine in an action

brought by the city attorney or the district attorney of not more than ten thousand dollars (\$10,000) for each violation.

(b) The manufacture, purchase, sale, shipping, transport, distribution, or receipt, by mail or in any other manner, of imitation firearms is authorized if the device is manufactured, purchased, sold, shipped, transported, distributed, or received for any of the following purposes:

(1) Solely for export in interstate or foreign commerce.

(2) Solely for lawful use in theatrical productions, including motion picture, television, and stage productions.

(3) For use in a certified or regulated sporting event or competition.

(4) For use in military or civil defense activities, or ceremonial activities.

(5) For public displays authorized by public or private schools.

(c) As used in this section, “imitation firearm” does not include any of the following:

(1) A nonfiring collector’s replica of an antique firearm that was designed prior to 1898, is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A BB device, as defined in subdivision (g) of Section 12001.

(3) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, as provided by federal regulations governing imitation firearms, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device’s complete contents, as provided by federal regulations governing imitation firearms.

SEC. 10. Section 12556 is added to the Penal Code, to read:

12556. (a) No person may openly display or expose any imitation firearm, as defined in Section 12550, in a public place.

(b) Violation of this section, except as provided in subdivision (c), is an infraction punishable by a fine of one hundred dollars (\$100) for the first offense, and three hundred dollars (\$300) for a second offense.

- 1 (c) A third or subsequent violation of this section is punishable
2 as a misdemeanor.
- 3 (d) Subdivision (a) shall not apply to the following, when the
4 imitation firearm is:
- 5 (1) Packaged or concealed so that it is not subject to public
6 viewing.
- 7 (2) Displayed or exposed in the course of commerce, including
8 commercial film or ~~vide~~ *video* productions, or for service, repair,
9 or restoration of the imitation firearm.
- 10 (3) Used in a theatrical production, a motion picture, video,
11 television, or stage production.
- 12 (4) Used in conjunction with a certified or regulated sporting
13 event or competition.
- 14 (5) Used in conjunction with lawful hunting, or lawful pest
15 control activities.
- 16 (6) Used or possessed at certified or regulated public or private
17 shooting ranges.
- 18 (7) Used at fairs, exhibitions, expositions, or activities
19 permitted by a government agency or museum collection.
- 20 (8) Used in military ~~ceremonies or civil defense ceremonies~~,
21 *civil defense, or civic activities, including flag ceremonies, color*
22 *guards, parades, award presentations, historical reenactments,*
23 *and memorials.*
- 24 (9) Used for public displays authorized by public or private
25 schools.
- 26 (10) Used in parades, ceremonies, or activities permitted by
27 local or state government.
- 28 (11) Displayed on a wall plaque or in a presentation case.
- 29 (12) *Used in areas where the discharge of a firearm is lawful.*
- 30 (13) A device where the entire exterior surface of the device is
31 white, bright red, bright orange, bright yellow, bright green, bright
32 blue, bright pink, or bright purple, either singly or as the
33 predominant color in combination with other colors in any pattern,
34 or where the entire device is constructed of transparent or
35 translucent materials which permits unmistakable observation of
36 the device's complete contents. Merely having an orange tip as
37 provided in federal law and regulations does not satisfy this
38 requirement. The entire surface must be colored or transparent or
39 translucent.



(e) For purposes of this section, the term “public place” means an area open to the public ~~or exposed to public view~~ and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, *front yards*, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those that serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings ~~and the grounds enclosing them.~~

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 12. *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:*

In order to effectively regulate imitation firearms for purposes of promoting public safety, it is necessary that this act take effect immediately.

