

ASSEMBLY BILL

No. 633

Introduced by Assembly Member Lee

February 21, 1995

An act to amend Section 12028 of the Penal Code, relating to weapons.

LEGISLATIVE COUNSEL'S DIGEST

AB 633, as introduced, Lee. Weapons: destruction.

Existing law authorizes specified officers to whom weapons have been surrendered to sell any of the weapons the officers in charge consider to have value with respect to sporting, recreational, or collection purposes to persons licensed to engage in the business involving the weapon purchased. Other weapons that cannot be sold are to be destroyed. These provisions do not apply to firearms in the possession of the Department of Fish and Game, or to firearms forfeited pursuant to the Public Resources Code.

This bill would add the California State Police to the list of specified officers. The bill would also delete the authorization to offer the surrendered weapons for sale and would instead require that these weapons be destroyed, thereby creating a state-mandated local program. The bill would also delete the exemption of the Department of Fish and Game and the exemption of firearms forfeited pursuant to the Public Resources Code.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 12028 of the Penal Code is
2 amended to read:

3 12028. (a) The unlawful concealed carrying upon the
4 person or within the vehicle of the carrier of any explosive
5 substance, other than fixed ammunition, dirk, or dagger,
6 as provided in Section 12020, the unlawful concealed
7 carrying upon the person or within the vehicle of the
8 carrier of any weapons in violation of Section 12025, and
9 the unlawful possession or carrying of any item in
10 violation of Section 653k is a nuisance.

11 (b) A firearm of any nature owned or possessed in
12 violation of Section 12021, 12021.1, or 12101 or used in the
13 commission of any misdemeanor as provided in this code,
14 any felony, or an attempt to commit any misdemeanor as
15 provided in this code or any felony, is, upon a conviction
16 of the defendant or upon a juvenile court finding that an
17 offense ~~which~~ *that* would be a misdemeanor or felony if
18 committed by an adult was committed or attempted by
19 the juvenile with the use of a firearm, a nuisance. A
20 finding that the defendant was guilty of the offense but
21 was insane at the time the offense was committed is a
22 conviction for the purposes of this section.

23 (c) Any weapon described in subdivision (a), or, upon
24 conviction of the defendant, or upon a juvenile court
25 finding that an offense which would be a misdemeanor or
26 felony if committed by an adult was committed or
27 attempted by the juvenile with the use of a firearm, any



1 weapon described in subdivision (b) shall be surrendered
2 to the sheriff of a county ~~or~~ the chief of police or other
3 head of a municipal police department of any city or city
4 and county ~~or~~ the Commissioner of the California
5 Highway Patrol *or the Chief of the California State Police*
6 *Division*. For purposes of this subdivision, the
7 Commissioner of the California Highway Patrol shall
8 receive only weapons that were confiscated by a member
9 of the California Highway Patrol *and the Chief of the*
10 *California State Police Division shall receive only*
11 *weapons that were confiscated by a member of the*
12 *California State Police Division*. The officers to whom the
13 weapons are surrendered, except upon the certificate of
14 a judge of a court of record, or of the district attorney of
15 the county, that the retention thereof is necessary or
16 proper to the ends of justice, ~~may annually, between the~~
17 ~~1st and 10th days of July, in each year, offer the weapons,~~
18 ~~which the officers in charge of them consider to have~~
19 ~~value with respect to sporting, recreational, or collection~~
20 ~~purposes, for sale at public auction to persons licensed~~
21 ~~pursuant to Section 12071 to engage in businesses~~
22 ~~involving any weapon purchased shall destroy the~~
23 *weapon*. If any weapon has been stolen and is thereafter
24 recovered from the thief or his or her transferee, or is
25 used in such a manner ~~as to constitute that the weapon~~
26 *constitutes* a nuisance pursuant to subdivision (a) or (b)
27 without the prior knowledge of its lawful owner that it
28 would be so used, it ~~shall not be so offered for sale but~~ shall
29 be restored to the lawful owner, as soon as its use as
30 evidence has been served, upon his or her identification
31 of the weapon and proof of ownership.

32 (d) ~~If, under this section, a weapon is not of the type~~
33 ~~that can be sold to the public, generally, or is not sold~~
34 ~~pursuant to subdivision (c), the weapon, in the month of~~
35 ~~July, next succeeding, or sooner, if necessary to conserve~~
36 ~~local resources including space and utilization of~~
37 ~~personnel who maintain files and security of those~~
38 ~~weapons, shall be destroyed so that it can no longer be~~
39 ~~used as such a weapon except upon the certificate of a~~
40 ~~judge of a court of record, or of the district attorney of the~~



1 county, that the retention of it is necessary or proper to
2 the ends of justice.

3 ~~(e) This section does not apply to any firearm in the~~
4 ~~possession of the Department of Fish and Game or which~~
5 ~~was used in the violation of any provision of the Fish and~~
6 ~~Game Code or any regulation adopted pursuant thereto,~~
7 ~~or which is forfeited pursuant to Section 5008.6 of the~~
8 ~~Public Resources Code.~~

9 ~~(f) No stolen weapon shall be sold or destroyed~~
10 ~~pursuant to subdivision (c) or (d) unless reasonable~~
11 ~~notice is given to its lawful owner, if his or her identity and~~
12 ~~address can be reasonably ascertained.~~

13 *(e) Notwithstanding subdivision (c), any weapons*
14 *that the custodial officers determine meet the definitions*
15 *of paragraph (5) or (7) of subdivision (b) of Section 12020*
16 *as antique firearms or relics, may be offered for sale*
17 *periodically at public auction to persons licensed*
18 *pursuant to Section 12071 to engage in businesses*
19 *involving those weapons.*

20 *(f) Nothing in this section shall be construed to apply*
21 *to firearms that have been purchased by law enforcement*
22 *agencies.*

23 SEC. 2. Notwithstanding Section 17610 of the
24 Government Code, if the Commission on State Mandates
25 determines that this act contains costs mandated by the
26 state, reimbursement to local agencies and school
27 districts for those costs shall be made pursuant to Part 7
28 (commencing with Section 17500) of Division 4 of Title
29 2 of the Government Code. If the statewide cost of the
30 claim for reimbursement does not exceed one million
31 dollars (\$1,000,000), reimbursement shall be made from
32 the State Mandates Claims Fund.

33 Notwithstanding Section 17580 of the Government
34 Code, unless otherwise specified, the provisions of this act
35 shall become operative on the same date that the act
36 takes effect pursuant to the California Constitution.

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