No. 10-56971 [DC# CV 09-02371-IEG]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD PERUTA, et. al.,

Plaintiffs-Appellants,

v.

COUNTY OF SAN DIEGO, et. al.,

Defendants-Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

APPELLANTS' OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

CALIFORNIA RIFLE & PISTOL ASSOCIATION FOUNDATION

The California Rifle & Pistol Association Foundation has no parent corporations. Since it has no stock, no publicly held company owns 10% or more of its stock.

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ISSUES PRESENTED

1. Does the Second Amendment right to "bear arms" protect the right to carry a loaded handgun in public in some manner, either openly or concealed?

2. Does allowing restricted open carry of unloaded handguns that may be loaded only *after* one is faced with "immediate, grave danger" provide a reasonable alternative means to bear arms, one that satisfies the Second Amendment right to be "armed and ready" for action in case of confrontation?

3. Was there undisputed, or any, evidence that openly carrying an unloaded handgun allows one to be "armed and ready" for immediate self-defense, or that reducing the number of law-abiding citizens permitted to carry loaded handguns (by denying them concealed carry permits) reduces crime or otherwise serves an important public purpose?

4. Do the classifications created by County's concealed weapon permit issuance policies and practices violate the equal protection clause in light of recent Supreme Court authority that confirms the right to bear arms is fundamental?

5. Did the district court err in relying on cases distinguishing between residents and non-residents in granting County's motion for summary judgment on

Plaintiff Peruta's right to travel, equal protection, and Privileges & Immunities claims, when no determination concerning his residency was ever made?

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Fed. R. App. P. 32(a)(7)(B)(iii) and 34(a)(1), Appellants request the opportunity to present oral argument. Oral argument is required in this case in light of the fact that it is a case of first impression in this Circuit, and involves numerous constitutional issues that once clarified will determine the scope of the Second Amendment's protections of the right to bear arms.

STATEMENT REGARDING ADDENDUM

An addendum setting out relevant statutory and regulatory provisions is bound together with this brief.

STATEMENT OF JURISDICTION

This is a 42 U.S.C. § 1983 action. The district court had jurisdiction pursuant to 28 U.S.C. § 1343. Because this suit arises under the United States Constitution, the district court also had jurisdiction pursuant to 28 U.S.C. § 1331 and, to the extent that state law issues were involved, 28 U.S.C. § 1367.

The district court entered an order granting summary judgment for Defendants-Appellees (hereinafter "County"), and entered judgment in their favor

under Federal Rule of Civil Procedure 56 on December 10, 2010. A clerk's judgment in accordance with that order was entered pursuant to Fed. R. Civ. P. 58 that same day.

Appellants filed a timely notice of appeal on December 14, 2010 in accordance with Federal Rules of Appellate Procedure 3 and 4 and Ninth Circuit Rules 3-1, -2, and -4. This Court of Appeals has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE CASE

This case involves a constitutional challenge to the policies and practices of County in issuing permits to carry a concealed firearm ("CCW"). Each of the Plaintiffs-Appellants (hereinafter "Plaintiffs") seeks to obtain a CCW for self-defense, but is barred by County because they cannot document a "special need" beyond self-defense as County requires, and because Plaintiffs were not exempted, as some are, from that requirement. Plaintiffs contend County's policies and practices violate their Second Amendment right to bear arms and their Fourteenth Amendment right to equal protection under the law.

Plaintiff Edward Peruta filed the original Complaint in this matter on October 23, 2009 after being denied a CCW by County. Appellants' Excerpts of

Record, Volume V, Tab 58.[1] County moved to dismiss Plaintiff Peruta's Complaint on November 12, 2009,[2] and the district court ultimately denied this motion in an order issued on January 14, 2010. ER Vol. I, Tab 3. Leave to amend the Complaint was thereafter granted, adding the remaining Plaintiffs as parties to the case on June 25, 2010. ER, Vol. IV, Tabs 47-48.

After agreeing to a stipulated briefing and hearing schedule, Plaintiffs filed a motion for summary judgment on their Second Amendment and certain Equal Protection claims. ER, Vol. IV, Tabs 35-36. County filed a cross-motion for summary judgment as to all claims. ER, Vol. III, Tab 28. A hearing on both motions was held on November 15, 2010. ER, Vol. I, Tab 2.

On December 10, 2010, the district court issued an order denying Plaintiffs' Motion and granting County's. ER, Vol. I, Tab 1. A clerk's judgment was entered that same day. ER, Vol. II, Tab 5.

Plaintiffs timely filed their notice of appeal on December 14, 2010. ER, Vol.

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[1] Appellants' Excerpts of Record are hereinafter referred to as "ER." All page numbers cited refer to the bate stamp number on the bottom right corner of the documents referenced. For clarity and ease of reference, the leading zeros have been removed in the citations within this brief, and any relevant line numbers are preceded by a colon.

[2] ER, Vol. V, Tab 57.

II, Tab 4.

STATEMENT OF FACTS

A. Applicable State Law Regulatory Scheme

California laws regulating the possession of firearms in public are somewhat complex. Except in a few sparsely populated counties where one may obtain a permit to carry a loaded handgun openly, California law essentially prohibits carrying a loaded firearm on one's person or in a vehicle in public without a CCW. See also ER, Vol. IV, Tab 37 at 847 (Pls.' Statement of Undisputed Facts ("SUF") 1-2). To obtain a CCW one must apply to the Chief of Police or Sheriff (the "Issuing Authority") of the city or county where the applicant either resides or spends substantial time at their business or principal place of employment. ER, Vol. IV, Tab 37 at 847 (Pls.' SUF 3). CCW applicants must pass a criminal background check[3] and successfully complete a handgun training and safety course of up to 16 hours. ER, Vol. IV, Tab 37 at 848 (Pls.' SUF 5). Even then, the Issuing Authority may deny a CCW application if it finds the applicant lacks either "good moral character" or "good cause" to carry a handgun. ER, Vol. IV, Tab 37 at 848 (Pls.' SUF 6).

Without a CCW, the only way to possess a firearm in public is if it is

[3] ER, Vol. IV, Tab 37 at 848 (Pls.' SUF 4).

unloaded and carried either openly – e.g., in an uncovered hip holster – or in a locked container. *See generally* Cal. Penal Code §§ 12031, 12025, 12026.1, and 12026.2. Along with an unloaded unconcealed firearm one may legally possess ammunition in public. But it must be kept separate, and the firearm can only be loaded when the person "reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property;" "immediate" meaning "the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance." Cal. Penal Code § 12031(j)(1).

Any law enforcement officer may inspect a firearm publicly possessed in such a manner to confirm it is unloaded. *See* Cal. Penal § 12031(e). And even possession of an unloaded unconcealed firearm, unless in a locked container, is illegal in large swaths of California due to state and federal prohibitions on possessing a firearm without a CCW within 1,000 feet of any public or private school. *See* Cal. Pen § 626.9; *see also* 18 U.S.C. § 921(a)(25); 922(q); & 924(a).

Plaintiffs provided testimony from a renowned self-defense expert who opined that keeping a firearm unloaded until a threat arises is not a common self-defense practice, nor is it conducive to being ready for self-defense. ER, Vol. II, Tab 12 at

165:16-166:23. County presented no facts or precedent supporting its position that the ability to possess an unloaded firearm along with ammunition is a sufficient self-defense method.

B. San Diego CCW Issuance Policies and Practices

Local Issuing Authorities have traditionally enjoyed broad discretion in deciding whether applicants have "good cause" under state law. This has resulted in some counties, such as San Diego, imposing restrictive standards, while others issue CCWs to most all competent, law-abiding applicants.[4]

To obtain a CCW in San Diego one must apply to the Sheriff. ER, Vol. IV, Tab 37 at 848 (Pls.' SUF 7-8). San Diego County has CCW applicants attend an initial interview with its License Division staff before submitting an official application to evaluate whether they satisfy County's policy. ER, Vol. III, Tab 31 at 441:3-18; ER, Vol. IV, Tab 37 at 852 (Pls.' SUF 17).

County's written policy states that to show "good cause" "[a]pplicants will be required to submit documentation to support and demonstrate their need." ER, Vol.

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[4] See Kelsey M. Swanson, *The Right to Know: An Approach to Gun Licenses and Public Access to Government Records*, 56 UCLA L. REV. 1579, 1591-92 (2009). *See also* California Department of Justice, Bureau of Firearms - Statistics, Carry Concealed Weapons Licenses Report 1987-2007, http://ag.ca.gov/firearms/forms/pdf/ccwissuances2007.pdf (last visited May 23, 2011).

V, Tab 37 at 848 (Pls.' SUF 9). County *requires* applicants who seek a CCW for purely self-defense purposes (*i.e.*, unrelated to a business/profession) to provide evidence of a specific threat of harm to them ("Current police reports and/or other documentation supporting need (*i.e.*, such as restraining orders or other verifiable written statements))." *See* ER, Vol. IV, Tab 37 at 849 (Pls.' SUF 10). County applies a separate "good cause" standard for applicants seeking a CCW because they engage in certain "risky" businesses. In those cases, County does not require the same proof of a specific threat, but acknowledges that they may be a target due to their business. ER, Vol. IV, Tab 37 at 849 (Pls.' SUF 11). The Sheriff's Department does not issue CCWs based on fear alone. *See* ER, Vol. IV, Tab 37 at 850 (Pls.' SUF 12.)

County's "good cause" policy – by requiring applicants to provide documentation of a special need such as a specific threat or "dangerous" business practice as a precondition to obtaining a CCW[5] – deprives Plaintiffs of the only lawful manner to generally carry a loaded firearm in public under California law. ER, Vol. IV, Tab 37 at 847 (Pls.' SUF 2). County admits the purpose of this policy is to reduce the number of CCWs issued. ER, Vol. I, Tab 1 at 12; Vol. III, Tab 29 at 400 (Def.'s SUF 5).

[5] ER, Vol. III, Tab 29 at 400 (Def.'s SUF 5).

When an applicant is denied a CCW by County, the decision can be appealed to the Assistant Sheriff of the Law Enforcement Bureau, who will make the decision to uphold or reverse the denial. ER, Vol. III, Tab 31 at 443:17-444:4.

The evidence shows that certain CCW applicants enjoy special treatment. County granted renewals of self-defense CCWs to certain members of the Honorary Deputy Sheriff's Association ("HDSA") – a private, civilian entity, wherein membership is achieved merely by being sponsored by a current member, passing a background check, making a "donation" and paying annual dues (ER, Vol. IV, Tab 37 at 854 (Pls.' SUF 26); Vols. IV & VII, Tab 38) – whose CCW applications merely stated "personal protection" or "protection." ER, Vol. IV, Tab 37 at 852 (Pls.' SUF 18). One HDSA member provided as his "good cause" that he drives in desolate areas with his wife and wants "self-defense against anyone that might come" upon them. ER, Vols. II & VI, Tab 24 at 319; Vol. II, Tab 18 at 232:12-233:7. Another HDSA member, who had been denied his renewal CCW, sent a letter to Sheriff Gore personally. He cites his 19 year HDSA membership, explains several reasons why he wants a CCW, but never mentions any specific threat against him. He then states: "I ask you [Sheriff Gore] intercede in the process and direct the Licensing division to reissue my CCW." Nine days later he resubmitted his renewal application – instead of doing a formal appeal as is

County's policy (ER, Vols. II & VI, Tab 24 at 311-314; Vol. II, Tab 18 at 233:1-7) – and it was granted that same day. The "good cause" he provided in his accepted application made no mention of a specific threat, simply stating: "Self-protection, a desire to be able to protect myself and my family from criminal activity, in case response to request to law enforcement is delayed." Although County submitted documents from certain HDSA members' CCW files to rebut Plaintiffs' allegations that HDSA members get special treatment, none of those documents concern any of the four HDSA members that Plaintiffs allege never provided a specific threat against them to meet County's "good cause" policy. ER, Vols. IV & VIII, Tab 38 at 934-953. Plaintiffs also provided notes made by County staff in some HDSA members' applications, such as: "Comma[nder] for HDSA (SDSO) considered VIP @ sheriff level – okay to renew standard personal protection." (*See* ER, Vol. II & VI, Tab 24 at 316; *see also* Vol. IV, Tab 37 at 853 (Pls.' SUF 23)). And, Plaintiff Cleary provided a detailed declaration about his application process with County, in which he explains he was denied a CCW but was subsequently issued one, without having to reapply, after joining the HDSA and meeting personally with then Undersheriff Gore. *See generally* ER, Vol. V, Tab 41.

C. Plaintiffs/Appellants

Plaintiffs are individuals who were either denied a CCW by County[6] or opted not to apply, believing they could not meet County's requirements for a CCW,[7] and an organization – California Rifle and Pistol Association Foundation – representing thousands of individuals in California, many of whom are residents of San Diego and in the same predicament as the individual Plaintiffs. ER, Vol. V, Tab 37 at 851 (Pls.' SUF 15).

All individual Plaintiffs are residents of San Diego County. No Plaintiff is prohibited under federal or California law from possessing firearms. ER, Vol. IV, Tab 37 at 847. Plaintiffs allege they are entitled to a CCW from County under the Second Amendment because such a permit is the only lawful means to generally bear arms for self-defense in public in California. ER, Vol. IV, Tab 37 at 847 (Pls.' SUF 1-2). But for being prevented from obtaining a CCW, and the fear of prosecution and other penalties, each Plaintiff would on occasion carry a loaded handgun in public ready for self-defense. ER, Vol. IV, Tab 37 at 851 (Pls.' SUF 14).

All Plaintiffs who applied for a CCW asserted self-defense as their "good

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[6] ER, Vol. IV, Tab 47 at 1104:1-1111:10; Vol. IV, Tab 37 at 851-852 (Pls.' SUF 14, 17).

[7] *Id.*

cause" but were denied for not documenting a specific threat against them. ER, Vol. IV, Tab 37 at 852 (Pls.' SUF 17).

STANDARD OF REVIEW ON SUMMARY JUDGMENT

An order granting summary judgment on the constitutionality of a statute or ordinance is reviewed de novo. *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 940 (9th Cir. 1997). The standard governing this Court's review is the same as that employed by trial courts under Rule 56(c), with the Court determining, after independently viewing the evidence and all inferences therefrom in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact, and whether the district court correctly applied the law. *See Twentieth Century-Fox Film Corp. v. MCA, Inc.*, 715 F.2d 1327, 1328-29 (9th Cir. 1983); *see also, Berger v. City of Seattle*, 569 F.3d 1029, 1035 (9th Cir. 2009) (independent review of questions of law and fact in First Amendment case).

On a motion for summary judgment, as at trial, the substantive law determines burden of proof issues and evidentiary standards. It dictates what the moving party must show to prevail on its motion and what the non-moving party must show, if anything, to resist the motion. *See Nissan Fire & Marine Ins. Co. v. Fritz*, 210 F.3d 1099, 1102-03 (9th Cir. 2000). In this case, County's policy infringes upon an enumerated, fundamental right, so County has the burden of persuasion at trial and

thus must prove "beyond controversy" each element of its defense on summary judgment. *Berger*, 569 F.3d at 1035. The district court did not address this added burden.[8] It is a heavy burden, one County failed to carry.

SUMMARY OF ARGUMENT

The reason for this lawsuit is that County's policy of denying concealed carry permits to almost all residents, in conjunction with the State's general ban on open carry of loaded firearms, effectively bans bearing arms in public for self-defense purposes. In light of the Supreme Court's ruling in *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008), confirming that the Second Amendment secures an individual, fundamental right to keep and bear arms for self-defense, the general ban on bearing arms in San Diego is unconstitutional.

The least intrusive and disruptive way to remedy this situation is to force County to change its current local CCW policy under which seeking a permit to generally protect oneself and one's family is insufficient. Because "bearing arms" is now acknowledged as a fundamental right, that restrictive policy is no longer valid. But the remedy is simple. "Self-defense" must be considered a "good cause."

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[8] The district court's lengthy explanation of burdens on summary judgment failed to address the added burden placed upon the moving party–County, here, as the party whose motion was granted–when that party has the ultimate burden of persuasion at trial. *See* ER, Vol. I, Tab 1 at 4:5-5:4.

The problem with the district court's decision is that it strains to resolve the conflict between the old County policy and the mandates of the Second Amendment by concocting a novel alternative means of exercising the right to bear arms: unloaded open carry ("UOC"). But as this Court will see, the district court's effort is based on a false legal premise and at least two additional prejudicial errors that require reversal.

First, the court fails to find that the Second Amendment right to "bear arms" protects to some degree a right to bear loaded arms. As addressed in Part I.A., that is an untenable position – and a pernicious error negatively affecting the burden of proof, presumptions of validity/invalidity, and the degree of scrutiny.

Next, the court finds that if there *is* a right to bear loaded arms, it is not significantly burdened because state law allows one to carry an unloaded handgun, openly, in some circumstances, with the right to load it after being attacked. As explained in Part II.B.2, UOC eviscerates the right to armed self-defense. UOC is not a viable alternative means of bearing arms. It is also a novel interpretation of the Second Amendment right that should be rejected.

Finally, the court finds that, even if County's policy burdens protected conduct it survives intermediate scrutiny. This too is error, because, as explained in Part I, bearing arms for self-defense purposes is "core conduct" protected by a

fundamental right, and laws restricting that conduct are subject to strict scrutiny. Further, as shown in Part II.C., under any heightened scrutiny, County failed to connect its goal of reducing violent crime to its policy of denying CCW permits to law-abiding citizens. County's policy fails any heightened scrutiny test.

In addition, as shown in Part II.D, County's policy creates classifications that, pre-*Heller*, may have been rational, but because a fundamental right is now implicated, these classifications are impermissible and violate equal protection. An additional classification based on preferential treatment afforded members of an "Honorary Deputies" association also violates Plaintiffs' equal protection rights.

In sum, the court's decision granting County's motion should be reversed; Plaintiffs' motion should be granted. County's CCW policy – by its own admission–is intended to and does impose a severe burden on the right to bear arms. *It is in direct contravention of the Second Amendment's guarantee*. The Amendment says the right "shall not be infringed," and the policy is intended not only to infringe, but to purposefully deny the right to bear arms to Plaintiffs and almost all law-abiding residents of San Diego.

ARGUMENT

I. THE DISTRICT COURT'S INTERPRETATION OF SECOND AMENDMENT RIGHTS CONFLICTS WITH THE SUPREME COURT'S INTERPRETATION IN *HELLER* AND *MCDONALD*

The foundational error underlying the district court's decision to grant County's summary judgment motion was its failure to find the Second Amendment protects, generally, a right to bear loaded firearms for self-defense. This is evident from the way the court framed the question presented:

> At the heart of the parties' dispute is whether the right recognized by the Supreme Court's rulings in [*Heller* and *McDonald*]–the right to possess handguns in the home for self-defense–extends to the right asserted here: the right to carry a loaded handgun in public, either openly or in a concealed manner.

ER, Vol. I, Tab 1 at 1:20-28.

This reflects the court's "minimalist approach" to *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008), and to the people's right to arms.[9] This view permeates the court's ruling and, ultimately, requires its reversal.

A. The District Court Adopts A Minimalist View of *Heller* that Conflates the Second Amendment *Right* Defined in *Heller* with the

[9] Unless otherwise indicated, the "right to arms" refers to the Second Amendment right to keep and bear arms for lawful purposes, including self-defense. Similarly, Plaintiffs use "self-defense" as shorthand for defense of self, family, and others, as well as hearth and home (property).

Application of the Right in the *Heller* Case

The district court followed the "minimalist view" of *Heller*. Generally speaking, the minimalist view entails narrowly reading the holding and findings that support it, while broadly reading dicta regarding "presumptively lawful" restrictions on the right to arms in an effort to (1) keep the right to arms home-bound, or (2) at least keep "core conduct" protected by the right home-bound, and thereby (3) lower the level of scrutiny applied to regulations of the right outside the home.

Here, the district court's reading of the Second Amendment conflates the *right* defined in *Heller* with the *application* of the right to the narrow facts of that case, asserting that the narrow holding – as opposed to the detailed analysis and findings – *defines* the scope of the fundamental right to arms. This explains why the district court describes the right "recognized" in *Heller* as "the right to possess handguns in the home for self-defense." ER, Vol. I, Tab 1 at 1: 22-26. Of course *Heller* (and *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010))[10] did far more than recognize a right to possess handguns in the home for self-defense. Rather, they

[10] *See alsoU.S. v. Skoien*, 614 F.3d 638, 647 (7th Cir. 2010) (Sykes, J. dissenting) ("I appreciate [my colleagues'] minimalist impulse, but this characterization of *Heller* is hardly fair. It ignores the Court's extensive analysis of the original public meaning of the *Second Amendment* and understates the opinion's central holdings . . .").

confirmed that the Second Amendment secures (not "creates") an individual, natural right of armed defense, *Heller*, 554 U.S. at 598-99, and that at the core of this guarantee is the right to keep and bear arms for "defense of self, family, and property." *Id*. at 591-594; *McDonald*, 130 S. Ct. at 3048 (the "inherent right of self-defense has been central to the *Second Amendment* right").[11]

Further, while the *Heller* Court found "the need for defense of self, family, and property is most acute" in the home, where one's right to defend self, family, and property converge, it never suggested the "right" ended at one's threshold, or somehow became "non-fundamental" beyond that point (though it might be "less acute").[12] *Heller* simply noted that the firearms prohibitions at issue were so severe they obviated the need to fashion and apply any particular standard of review; the laws at issue failed *any* heightened scrutiny. *Heller*, 554 U.S. at 627-28.

The *McDonald* decision, in striking down similar laws, emphasized the fundamental nature of the right to arms. As this Court recently noted, *McDonald* went to "great lengths" to demonstrate the right to keep and to bear arms is "fundamental" and "rejected the suggestion that the Second Amendment should

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[11] Which makes San Diego's policy of denying CCWs to law-abiding residents who seek permission to carry arms "only" for self-defense all the more incongruous.

[12] *See Heller*, 554 U.S. at 628.

receive less protection than the rest of the Bill of Rights." *Nordyke v. King*, No. 07-15763, --- F.3d ----, 2011 WL 1632063 at * 2 (9th Cir. May 2, 2011) ("*Nordyke V*"), *citing McDonald*, at 3041-44.

The Supreme Court's and this Court's descriptions of the fundamental right to arms stand in stark contrast to the district court's treatment of the right. Under its "minimalist" view, the right to arms defined in *Heller* remains an enigma, at least beyond the mere right to possess handguns in the home, ER, Vol. I, Tab 1 at 6:15-20. This view leads the court to question even the existence of a right to bear loaded arms outside the home:

> If it exists, the right to carry a loaded handgun in public cannot be subject to a more rigorous level of judicial scrutiny than the "core right" to possess firearms in the home for self-defense. . . . At most, Defendant's policy is subject to intermediate scrutiny.

ER, Vol. I, Tab 1 at 11:18-12:5 (also, repeating the non sequitur that because in-home firearm possession is a "core right," outside possession cannot be).[13]

Compare the district court's view to the Supreme Court's view of the same

[13] Ultimately, the court declined to decide whether the Second Amendment encompasses a right to carry a loaded handgun in public. ER, Vol. I, Tab 1 at 9:18-10:3. The court decided to review the policy nonetheless, and in keeping with its minimalist view, applied a low level of intermediate scrutiny, more akin to a "reasonableness" test rejected by this Court in *Nordyke*. (see below, part II.C.).

fundamental, enumerated right:

> The very enumeration of the right [to Arms] takes out of the hands of government--even the Third Branch of Government--the power to decide on a case-by-case basis whether the right is *really worth* insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.

Heller, 554 U.S. at 634-35 (emphasis in original).

And further: "The right of the whole people . . .to keep and bear arms of every description, . . . shall not be infringed, curtailed, or broken in upon, in the smallest degree . . . ." *Id*., at 612, *citing Nunn v. State*, 1 Ga. 243, 251 (1846).

In sum, the district court's opinion reflects a view that the Second Amendment is not an affirmative, fundamental right to be exercised responsibly by virtuous citizens, but a right that remains inchoate until one is attacked – a right that is little more than a codification of common law defenses to firearms charges. But it is not. No more than the First Amendment right to free speech is a codification of common law defenses to libel and slander charges. The right to free

speech is not conditioned on having something important to say or a reason for saying it. Likewise, the right to arms is not dependent on first being confronted by grave and immediate danger. That is to confuse the right to arms with the legal justification for acting in self-defense – they are related, but not the same. The rationale for *not* imposing preconditions on the exercise of constitutional rights is particularly evident with respect to the right to bear arms. One cannot use a firearm one does not have or, in this case, does not have "ready" for action in a case of conflict. *Heller*, 554 U.S. at 584.

B. The Court's Failure to Find that the Second Amendment Protects the Right to Bear Loaded Arms Conflicts with *Heller's* Finding that People Have the Right to Be Armed and Ready for Action in Case of Confrontation

The district court's interpretation of the right to bear arms as being inchoate until one's life is in "immediate, grave danger" conflicts with *Heller*'s description of the right to bear arms as "the individual right to possess and carry weapons *in case of confrontation*," *Id.* at 592 (emphasis added), and its adoption of the definition of "carry," which in the context of arms means to "carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being *armed and ready* for offensive or defensive *action* in a case of a conflict with another person." *Id.* at 584 (citation omitted) (emphasis added). The *Heller* Court's choice of

language shows the right to arms contemplates being prepared for danger, being armed and ready for action, i.e., activity which by definition occurs *before* one is under attack – not *after* one is faced with "immediate, grave danger." This is especially so where the definition of "immediate" used by the district court refers to that "brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance." ER, Vol. I, Tab 1 at 7:21-8:2.[14]

People are not "armed and ready for . . .. defensive action" when openly carrying an *unloaded* firearm. The plain language suggests *loaded*, and the Supreme Court's detailed description of the right confirms it. As does a review of dictionary definitions. The Oxford English Dictionary defines the word "armed" as "equipped with or carry a firearm or firearms." Merriam-Webster defines "armed" as "furnished with weapons . . . using or involving a weapon."[15] The word "ready" is defined by Oxford as "in a suitable state for an action or situation; fully prepared . . . made suitable and available for immediate use." Webster defines it as "prepared

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[14] All further statutory references are to the California Penal Code unless otherwise noted.

[15] Oxford Dictionaries Online, http://oxforddictionaries.com/ (select "Version: World English;" then search "armed") (last visited May 22, 2011); Merriam-Webster Online, http://www.merriam-webster.com/dictionary/armed (last visited May 22, 2011).

mentally or physically for some experience or action . . . prepared for immediate use."[16] Put together, "armed and ready" contemplates a loaded firearm.

This is a matter of common sense. Criminal attacks generally are unpredictable, they come unannounced. People carrying unloaded firearms are not "armed and ready" for defensive action when they are legally barred from getting "ready" until the grave threat is immediately upon them.[17] The notion that the "right to keep and bear arms" does not even contemplate bearing loaded arms is untenable. The only valid questions concern the degree to which the government may regulate that right.

II. THE DISTRICT COURT'S APPLICATION OF THE SECOND AMENDMENT IS FLAWED UNDER ANY STANDARD OF REVIEW

After the district court's decision, this Court decided *Nordyke V*, and established an analytical framework for reviewing Second Amendment challenges to firearms regulations and restrictions based, at least in part, on a "substantial burden" test. We discuss that in Part II.B., below. But because *Nordyke V* is not

[16] Oxford Dictionaries, *supra*, at "ready" and Merriam-Webster, *supra*, at "ready."

[17] It is also a matter of expert opinion. See Declaration of Helsley at 4-5.

yet final,[18] we also discuss the categorical/historical approach outlined in *Heller* (Part II.A), as well as the "traditional" levels of scrutiny applied in free speech jurisprudence (Part II.C).

A. Under *Heller's* Categorical Approach, County's Near Ban on Bearing Loaded Arms in Public is Invalid

The state's regulatory scheme generally prohibits carrying a loaded handgun in public either openly or concealed. *See* Statement of Facts ("SOF"), § A. Consequently, County's policy of denying permits for concealed (and loaded) carry, in combination with state laws, effectively bans carrying loaded handguns in public for self-defense purposes, in any manner. As in *Heller*, where a ban on bearing loaded handguns in private for self-defense was invalidated, County's public ban likewise violates the Second Amendment right to arms. Specifically, it impermissibly prohibits the vast majority of law-abiding San Diego residents from being "armed and ready" to defend themselves. This can be seen by applying to this case the same analytical approach used in *Heller*.

The analytical framework for Second Amendment cases under the categorical approach used in *Heller* was summed up by the Fourth Circuit in

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[18] Judgment was entered in *Nordyke V* on May 2, 2011, and on May 12, 2011, Appellants in that case filed a motion to extend time to file a petition for rehearing. The Court granted that motion the same day it was filed, giving the *Nordyke V* Appellants until May 23, 2011 to file their petition for rehearing.

United States v. Chester, 628 F.3d 673 (4th Cir. 2010). In *Chester*, the defendant had been convicted for illegal possession of a firearm because of a previous misdemeanor conviction for domestic violence. The issue was whether defendant's conviction abridged his right to arms. After a panel rehearing, the court vacated its initial opinion (vacating the judgment and remanding the case) and reissued a similar opinion, but with additional guidance provided to the district court on the framework for deciding Second Amendment challenges. *Id*. at 678.

The court instructed the government to demonstrate under the intermediate scrutiny standard[19] that there was a reasonable "fit" between the challenged law providing permanent disarmament of all domestic violence misdemeanants and a "substantial" government objective of reducing domestic gun violence. The court noted that, on the record before it, it was not able to say whether or not the Second Amendment, as historically understood, did or did not apply to persons convicted of domestic violence misdemeanors. *See id.* at 680-81. After reviewing recent right to Arms cases, the court suggested the following analytical framework.

> Thus, a two-part approach to *Second Amendment* claims seems appropriate under *Heller*, as explained by the Third Circuit Court of

[19] The court settled on intermediate scrutiny because Chester was not a "law-abiding citizen," and thus was not within the core scope of the right to arms identified in *Heller*. *Chester*, at 682-83.

> Appeals, *see Marzzarella*, 614 F.3d at 89, and Judge Sykes in the now-vacated *Skoien* panel opinion, *see* 587 F.3d at 808-09. The first question is "whether the challenged law imposes a burden on conduct falling within the scope of the *Second Amendment's* guarantee." *Id*. This historical inquiry seeks to determine whether the conduct at issue was understood to be within the scope of the right at the time of ratification. *See Heller*, 128 S. Ct. at 2816. If it was not, then the challenged law is valid. *See Marzzarella*, 614 F.3d at 89. If the challenged regulation burdens conduct that was within the scope of the *Second Amendment* as historically understood, then we move to the second step of applying an appropriate form of means-end scrutiny. *See id. Heller* left open the issue of the standard of review, rejecting only rational-basis review. Accordingly, unless the conduct at issue is not protected by the Second Amendment at all, the *Government bears the burden of justifying the constitutional validity of the law*.

Id. at 680 (emphasis added).

Based on the facts in this case, Plaintiffs easily pass the initial inquiries into whether the conduct being prohibited is within the scope of the Second

Amendment, and whether the challenged policy burdens that conduct.

1. Bearing loaded arms in public for self-defense purposes is conduct within the scope of the Second Amendment

The Second Amendment declares that the "right of the people to keep and bear Arms, shall not be infringed." It seems self-evident that this mandate contemplates loaded firearms, particularly while bearing them for self-defense purposes. Moreover, by definition, "being armed" means having a loaded weapon. *See* § I.B. above. To find otherwise ignores the plain meaning of the words and the parameters of the right so thoroughly examined and described in both *Heller* and *McDonald*.

In *Heller*, the Court engaged in a seven-page, in-depth analysis of the meaning of "bear" when used with "arms." *See Heller*, 554 U.S. at 584-91. At the end of its analysis, the Court concluded that, "[p]utting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation." *Id.* at 592. Nowhere in that extensive analysis did the Court consider bearing *unloaded* arms. *Heller* viewed the right to "bear arms" as being the right to carry them for the specific purpose of being "armed and ready" for "defensive *action* in a case of conflict with another person." *Id.* at 584, citing *Muscarello v. United States*, 524 U.S. 125, 143 (1998) (Ginsburg, J.,

dissenting opinion) (quoting Black's Law Dictionary 214 (6th ed. 1998)).

In short, the notion that the right to bear arms extends only to *unloaded* arms was so foreign that it was not considered by the Court.

Nor is there any support to find a Second Amendment exception for County's policy, based on the cases cited in *Heller*. None suggest that the right to bear arms contemplated anything other than loaded arms. The two primary cases upheld concealed carry restrictions because open loaded carry was readily available. *See State v. Chandler*, 5 La. Ann. 489, 489-90 (noting the prohibition on carrying concealed weapons "interfered with no man's right to carry arms . . . 'in full view,' which places men upon an equality") *accord*, *Nunn*, 1 Ga. at 251. Neither case discusses unloaded carry, open or concealed, or suggests it would satisfy the Second Amendment. In fact, *Nunn* suggests just the opposite, stating "[a] statute which, under the pretense of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional." *Nunn*, 1 Ga. at 248. quoting *State v. Reid*, 1 Ala. 612, 616-17 (1840) (emphasis added). Now, as then, an unloaded weapon is useless in a self-defense emergency. ER, Vol. II, Tab 12 at 165:16:166:23.

Further, as seen in Part I.C., the district court correctly noted that "the

unrestricted right to carry weapons openly [w]as recognized in both *Chandler* and *Nunn*," and provided the basis for upholding the restrictions on concealed carry in those cases. ER, Vol. I, Tab 3 at 88:19 n. 7 (emphasis in original). Here, there is no "unrestricted" or even generally available right to carry loaded weapons openly, leaving loaded concealed carry the only option. SOF § A.

Finally, County failed to provide any facts, law, or historical precedent to support the district court's novel interpretation of the right to bear arms, one that does not include a right to bear loaded arms – and the court failed to require any. Thus, there was no historical inquiry like that undertaken in *Heller*. Instead, the court simply opined that UOC and Section 12031satisfy the right to *armed* self-defense. ER, Vol. I, Tab 1 at 8:8-10. Ultimately, the court declined to decide whether loaded carry is protected conduct, at all. ER, Vol. I, Tab 1 at 9:18-10:3.[20]

[20] Because the district court found that "*Heller* does not preclude Second Amendment challenges to laws regulating firearm possession outside of home . . ." ER, Vol. I, Tab 3 at 86:18-87:2, and recognized a right under the Second Amendment to publicly "carry a firearm for self defense" – albeit *unloaded* (ER, Vol. I, Tab 1 at 9:18-10:3) – Plaintiffs feel it unnecessary to reargue here whether such a right to armed self-defense in public exists as it seems beyond dispute that it does, and they fully briefed the issue in their Motion. See generally ER, Vol V, Tab 3 and Vol. II, Tab 18. Moreover, the Ninth Circuit already recognizes the right to carry arms extends beyond the home. *See Nordyke V*; *see also U.S v. Vongxay*, 594 F.3d 1111 (9th Cir. 2010).

In short, the court initially erred by failing to recognize (or protect) the right to bear loaded arms, and by accepting its corollary, that "unloaded" open carry satisfied the right to arms, without any foundation: no historical precedent, no legal authority, no expert opinion. On that flawed basis, the court wrongly found County's CCW policy either did not implicate the fundamental right to arms (because loaded carry is outside the scope) or, if it did, it imposed no significant burden on that right.

2. County's good cause policy, by definition, burdens the right to bear arms

A policy that is designed to and does preclude almost all law-abiding adults who reside in San Diego from bearing loaded arms in the only manner generally available under State law, i.e., pursuant to a CCW permit, necessarily burdens the right to do so.[21] To the extent the court found limiting the right to Arms to *unloaded* arms is a permissible alternative to bearing loaded arms, it is nonetheless a burden on the right to bear arms, generally. As in *Chester*, the government is charged with justifying the constitutional validity of any law that burdens the right to Arms. *Id*. And on summary judgment, County should have been made to do so "beyond controversy." *Berger*, 569 F.3d at 1035.

[21] County does not dispute its intent is to limit the number of CCW permits issued. See ER, Vol. III, Tab 28 at 383:19-23.

Here, County presented no evidence to suggest the Second Amendment, as historically understood, did *not* contemplate a limitation on the government's authority to infringe upon the people's right to bear *loaded* firearms. Nor did it present any evidence that UOC provides a viable alternative means of exercising the right to bear arms for self-defense purposes.

3. County's CCW policy is not saved by its claim that the burden imposed is mitigated by the availability of UOC

As discussed in detail under the "substantial burden" analysis that follows, the district court erred in finding that the limited ability to carry an unloaded firearm (with ammunition ready for "instant" loading) satisfies the mandates of the Second Amendment, or somehow mitigates the burden on loaded carry. Under the *Heller* categorical/historical approach, the error stems from the court's failure to conduct an historical inquiry into whether the Framers thought the "right to bear Arms" for self-defense purposes and to be "armed and ready in case of conflict" referred to anything other than carrying loaded arms, or whether regulations permitting only unloaded, open carry were common at that time. The answer to both is no; and there is no evidence to the contrary. *See* Section II.A.1.

In sum, based on the analytical approach applied in *Heller*, the court may not hold that the right to bear arms operable for self-defense use, i.e., loaded arms, is

not protected – even "core" – conduct under the Second Amendment without some historical inquiry into the Framer's intent similar to the Court's inquiry in *Heller*. Nor may the court rely on an unloaded, open carry scheme to fill the void created by banning both open and concealed loaded carry; not without first providing some evidence that it actually does fill the void (or, more appropriately, placing the burden on County to do so).

UOC is an impractical, unwieldy, and potentially dangerous practice. The district court's finding to the contrary is theoretical. But when fundamental rights are at stake, theories, suppositions, and imaginings are not enough; that is the stuff of "rational basis" review – a standard specifically rejected in *Heller*. *See id.* at 628 n.27.

Had the district court applied the analytical approach used in *Heller* and treated the right to arms with similar regard, it would have denied County's motion in full. Moreover, it would have granted Plaintiffs' partial motion for summary judgment on its Second Amendment claim.

4. The district court should have granted plaintiffs' motion on their Second Amendment claim under *Heller's* categorical approach because County's CCW policy is intended to and does impose a severe burden on the right to arms

As set out above, County failed to prove that its policy, which is intended to

restrict and does restrict core conduct protected by the fundamental right to Arms, was justified under any applicable standard of review. As in *Heller*, such a severe and direct restriction is categorically void.[22] At the very least, as the party with the burden of proof at trial, County should have been required to show "beyond controversy" that its policy survived heightened scrutiny. But it was not (see part II.C, below). The court simply adopted County's unsubstantiated contention that UOC provides sufficient avenue to be "armed and ready" to engage in self-defense and exercise their Second Amendment rights.

Plaintiffs have shown – and County admits – that County's policy works to deny CCW permits to otherwise qualified, law-abiding adults who cannot *prove* they have a "valid reason" to exercise their Second Amendment right to bear arms. See SOF § B. On its face and as applied, County's policy substantially and unduly burdens that right to almost all San Diegans. Plaintiffs submitted expert

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[22] In its ruling, the district court noted that the ordinance in *Heller* required firearms to be inoperable at all times, whereas California has a self-defense exception. ER, Vol. I, Tab 1 at 8:16-21. But that proves little. Using the district court's own minimalist approach (which would be appropriate, here, as we are viewing *restrictions* on a fundamental right), there is nothing to suggest the *Heller* Court would have ruled differently had there been a self-defense exception. Moreover, while County's law does not make it *impossible* to use arms in self-defense, the evidence in the record shows it comes close. See ER, Vol. II, Tab 12 at 165:26-166:23. Of course, fundamental rights are "infringed" long before they are "impossible" to exercise.

declarations regarding the heavy burden. See generally, ER, Vol. II, Tabs 12, 21-23. And there is nothing in the record to rebut that evidence.

County only provided an expert declaration showing that criminals (without CCW permits) use concealed handguns to cause harm. See generally, ER, Vol. III, Tab 30. But County produced no evidence that denying CCWs to law-abiding adults would help solve that problem or reduce gun violence.[23] ER, Vol. I, Tab 1 at 10:4-12:28. There is nothing in the record connecting a reduction in CCW permits to a reduction in crime – and it was County's burden to provide that evidence. In short, the policy and justification for it do not pass constitutional muster under any test. The policy is in direct contravention of the right. As in *Heller*, this Court need look no further or consider what form of heightened scrutiny is appropriate. County's policy of denying CCWs to law-abiding citizens is invalid in a post-*Heller* world, at least in the absence of generally available open loaded carry. *See Heller*, 554 U.S. at 629 (citing *Nunn*, 1. Ga. at 521).

[23] As discussed below, this Court in *Nordyke V* decided against a standard of review that would consider crime reduction as a factor, noting that *Heller* discussed only burdens on the right to arms, and nowhere mentioned reducing crime as a possible justification for imposing burdens on the right of law-abiding adults to keep and bear arms. Thus, County's evidence, in addition to being, on whole, a non sequitur, is irrelevant. *Id*. at *5.

B. Under *Nordyke v. King*'s Substantial Burden Analysis, County's Ban on Bearing Loaded Arms for Self-Defense in Public is Invalid

Subsequent to the district court's ruling, this Court issued its opinion that the proper standard of review for Second Amendment challenges is a "substantial burden" test, finding that "regulations that substantially burden the right to keep and to bear arms trigger heightened scrutiny under the Second Amendment." *Nordyke*, 2011 WL 1632063 at *6.

Nordyke involved a Second Amendment challenge to a county ordinance making it a misdemeanor to possess a firearm or ammunition on county property. *Nordyke*, 2011 WL 1632063 at *1-*3. The Nordykes operated a gun show on county property, and claimed the ordinance's effective ban on their gun show violated the Second Amendment. *Id.* at *1-*2. In answering whether the Nordykes' complaint sufficiently alleged that the ordinance substantially burdens their right to keep and to bear arms, the panel drew on the doctrines generated in the contexts of abortion and content-neutral speech restrictions for guidance, explaining, "we should ask whether the restriction leaves law-abiding citizens with reasonable alternative means for obtaining firearms sufficient for self-defense purposes." *Id.* at *7.

In articulating the particulars of this test, however, the *Nordyke* panel

declined to identify a specific level of heightened scrutiny. But it does provide direction. After rejecting a "strict scrutiny" test that would require courts to engage in "judicially unmanageable" inquiries into the likely effectiveness of gun-control regulations and "make empirical findings or predictive judgments for which they lack competence," *id*. at *5, this Court provided its rationale for a substantial burden-based test:

> By contrast, the substantial burden test, though hardly mechanical, will not produce nearly as many difficult empirical questions as strict scrutiny. *See* Volokh, *supra*, at 1459–60 (arguing that it is easier to determine whether a law substantially burdens the right to bear arms than to figure out whether a law "will reduce the danger of gun crime"). Indeed, courts make similar determinations in other constitutional contexts. *See, e.g., Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992) (holding that pre-viability abortion regulations are unconstitutional if they impose an "undue burden" on a woman's right to terminate her pregnancy); *Clark v. Cmty. for Creative Non–Violence*, 468 U.S. 288, 293 (1984) (stating that content-neutral speech regulations are unconstitutional if they do not "leave open ample alternative channels for communication"). Courts can use the

> doctrines generated in these related contexts for guidance in determining whether a gun-control regulation is impermissibly burdensome, as we suggest below.

Id. at *5.

So under *Nordyke*, the questions here become: (1) whether County's CCW policy substantially burdens Plaintiffs' right to arms and (2), if so, does the policy (a) place an undue burden on the right to armed self-defense in public and/or (b) leave Plaintiffs with no reasonable alternative means for exercising that right, *i.e.*, does it essentially preclude them from being armed and ready for defensive action in case of confrontation.

1. County's CCW policy places preconditions on the right to bear arms in public that the vast majority of otherwise qualified law-abiding adults cannot meet–it does not burden their right, it denies it

Based on the 19th century cases cited in *Heller*, the right to carry arms in public in case of confrontation can be regulated, but not generally banned. The Court cited *Nunn*, *e.g.*, where a concealed carry restriction was allowed to stand only because open carry was unrestricted. *See Heller*, 554 U.S. at 629 (citing *Nunn*, 1. Ga. at 521). Here, we have the opposite situation, with open loaded carry being generally banned and concealed loaded carry allowed subject to permits issued by

local authorities.

Perhaps, as Professor Volokh suggests, the shift away from open carry and toward concealed carry reflects a change in social conventions.[24] But whatever the reason, the Second Amendment nonetheless guarantees a right to bear arms in *some* manner that serves the rights' core purposes, one of which is to bear arms for self-defense. In San Diego, the vast majority of residents cannot do so. And not because such residents are felons or have mental problems, nor because they could not pass the required skills. But because County chose to adopt a policy of denying permits to all but the select few who can document some specific threat. SOF § B. On its face, a policy that is both intended to and does bar people from bearing arms substantially burdens the right to do so.

2. The restricted ability to carry unloaded arms openly, and the limitations on loading them in a self-defense emergency, does not provide a reasonable alternative means of exercising the right to bear arms

Under the abortion and time, place, and manner doctrines applied in *Nordyke*, County's policy constitutes an "impermissible burden" on the right to bear arms. The *Nordyke* panel found the ordinance there was not a "substantial burden" on the plaintiffs' Second Amendment rights because it allowed for

[24] *See* Volokh, *infra*, note 27.

sufficient alternative avenues to engage in commerce of firearms (e.g., sales on private land). *Nordyke V*, 2011 WL 1632063 at *7-*8. In so holding, the panel relied in part on *Frisby v. Schultz*, 487 U.S. 474 (1988), which upheld an ordinance banning picketing in a neighborhood because the would-be picketers were still able to march, go door-to-door, distribute literature, and call residents via phone, which provided sufficient avenues for First Amendment activity. *Nordyke* also relied on *Gonzalez v. Carhart*, 550 U.S. 124, 164 (2007), which held a ban on a method of abortion did not constitute an undue burden because "[a]lternatives [were] available" that were methods "commonly used and generally accepted." *Id.* at *7 (internal citation and quotation marks omitted).

Unlike the activities restricted in *Nordyke*, *Frisby*, and *Carhart*, California provides no reasonable alternatives to a CCW for bearing arms in self-defense. The district court found (assumed) that UOC coupled with the 12031(j) exception allowing one to load a firearm when faced with grave and immediate danger provided a reasonable alternative. ER, Vol. I, Tab 1 at 9:13-18 & n.7 ("As a practical matter, should the need for self-defense arise, nothing in *section 12031* restricts the open carry of unloaded firearms and ammunition ready for instant loading"). But there is nothing instant about it. Plaintiffs provided expert testimony showing UOC is *uncommon* for self-defense, and having to load a firearm while

under attack does not generally allow one to be "*armed and ready* for offensive or defensive action in a case of conflict with another person," *Heller*, 554 U.S. at 584. *See also* ER, Vol. II, Tab 12 at 165:26-166:23.[25]

The statutory allowance for UOC is severely restricted geographically, to the point of being practically useless for effective self-defense. Cal. Pen § 626.9, 18 U.S.C. §§ 921(a)(25); 922(q) & 924(a). Those who UOC must learn the location of every school in their route, determine what areas are within 1,000 feet thereof, and either plan to travel around them (which in urban areas is virtually impossible), or stop and place the firearm in a locked container each time they enter such a zone,[26] or risk felony prosecution.[27]

UOC also subjects individuals to random stops and searches to insure the

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[25]Another practical problem with relying upon the availability of open carry (limited though it may be) to justify a ban on concealed carry for most people is that social norms have changed such that an open carry-only restriction may no longer be a viable alternative. *See* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda*, 56 UCLA L. REV. 1443, 1523-24 (2009).

[26] See Cal. Penal Code § 626.9(c)(2).

[27] Nor did the court address the unintended legal consequences of declaring UOC the constitutionally protected method of carry. For instance, such a ruling may place in jeopardy the lawfulness of Cal. Pen § 626.9 (Gun Free School Zone Act, banning open carry within 1000 feet of a school facility), a far more drastic result than granting Plaintiffs the relief they seek.

handgun is unloaded. While following their serpentine route through the city to avoid prohibited areas, those who UOC can be stopped and subjected to a search of their firearm by each officer they come into contact with. *See* Cal. Pen § 12031(e).

Each of these limitations alone is a substantial burden on the right to bear arms, but their aggregate is undoubtedly so. Such a scheme is not a reasonable alternative to a CCW.

3. County's policy "unduly burdens" Plaintiffs' right to bear arms under *Casey*; it's purpose and effect is to obstruct plaintiffs' right

In *Casey*, the Supreme Court noted that "[a] finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." *Casey*, 505 U.S. at 877. Employing the *Casey* analysis per this Court's direction in *Nordyke V*, a regulation that has the purpose *or* effect of placing a substantial obstacle in the path of persons seeking to exercise the right to bear arms would constitute an unlawful burden. Here, it does both.

As set out above, the purpose of County's policy is to restrict the number of CCWs. County asserted that the interest being furthered by its policy, which the court accepted as valid, was reducing the number of firearms in public, even those carried pursuant to a CCW. ER, Vol. III, Tab 28 at 383:19-22; see also Vol. I, Tab

1 at 12:15-23. County's express purpose is to obstruct people like Plaintiffs from exercising their right to be "armed and ready" for self-defense in public, and leaves Plaintiffs with UOC as the only option for carrying a firearm in public at all. For the reasons explained above, limiting Plaintiffs to UOC with all of its limitations obstructs Plaintiffs' rights. Plaintiffs have thus met their burden to show that County's policy places an "*undue* burden" on their right to bear arms based on the doctrines set forth by the *Nordyke* panel. And, under *Nordyke*, public safety is not an acceptable reason for imposing such a burden. (See part II.C, below) .

4. At minimum, a material issue of fact exists over whether County's policy places a "substantial burden" on the right to bear arms for self-defense

This Court has explained that where an undue burden claim is raised "the usual summary judgment standards apply, and all inferences from the evidence must be made in favor of the nonmoving party." *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 541 (9th Cir. 2004). A grant of summary judgment is inappropriate if plaintiffs have submitted evidence sufficient to create an issue of material fact from which a reasonable fact-finder could find that the challenged regulation constitutes a substantial burden. *Id*. at 541-42.

The evidence Plaintiffs have submitted, at minimum, created factual disputes

over whether limiting lawful carry to UOC is a substantial burden on the right to bear arms for self-defense. *See* ER, Vol. II, Tab 10 at 152:1-155:1; Tab 12 at 165:26-166:23.

5. Under *Nordyke*, Plaintiffs' Motion on their Second Amendment challenge to County's policy should be granted

The doctrines promoted in *Nordyke* support granting Plaintiffs' Second Amendment facial challenge because County's policy burdens "a large fraction" of the people seeking a CCW. *See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 895 (1992). *Casey* explains an abortion law is facially unconstitutional if, "in a large fraction of the cases in which [the statute] is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion." *Casey*, 505 U.S. at 895.[28] And, in determining whether there is a substantial burden, "[t]he proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." *Id.* at 894.

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[28] Facial challenges made under the First Amendment also need only show that the law challenged is unconstitutional in a "substantial number" of its applications. See *New York v. Ferber*, 458 U.S. 747, 769-71 (1982).. As the Supreme Court explained in *McDonald*, the Second Amendment right is no less fundamental than others. See *McDonald*, 130 S.Ct. at 3037. Thus, Plaintiffs' facial challenge easily passes either the abortion "large fraction" or free speech "substantial number" test. (In any event, because County's application of the policy to Plaintiffs blocked them from obtaining CCWs, County's policy also is invalid "as applied.")

County "defines 'good cause' under Penal Code section 12050 as a set of circumstances that distinguishes the applicant from other members of the general public." ER, Vol. I, Tab 1 at 2:22-3:3. Thus, the policy is designed to operate as an obstacle in obtaining a CCW for a "large fraction" of applicants (i.e., those unable to distinguish themselves from everyone else). Because UOC is not an adequate alternative to a CCW for armed self-defense, County's policy of denying CCWs to the vast majority of law-abiding adults is facially invalid under *Nordyke*. Accordingly, Plaintiffs' Motion should be granted as to their Second Amendment claim.

C. The District Court Erred in Applying Intermediate Scrutiny and in Holding That County's Policy Survived That Level of Scrutiny

1. County had the burden of justifying its policy

County has the ultimate burden of proving its policy satisfies whatever level of heightened scrutiny applies. *See, e.g.,United States v. Chester*, 628 F.3d at 680 ("unless the conduct at issue is not protected by the Second Amendment at all, the Government bears the burden of justifying the constitutional validity of the law"). Moreover, under heightened scrutiny, *the presumption of validity is reversed*, with the challenged law presumed unconstitutional. *See Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989); *R.A.V.v. City of St. Paul*, 505 U.S. 377, 382

(1992) (opinion by Scalia, J.) (content-based regulations on speech are presumptively invalid).

As the party with the burden of proof at trial, County must establish "beyond controversy" that its policy satisfies each element of the applicable test for heightened scrutiny and thus passes constitutional muster. *See, Southern Calif. Gas Co.*, 336 F.3d 885, 888 (2003).

2. Strict scrutiny is the appropriate standard of review

The district court held "[i]f it exists, the right to carry a loaded handgun in public cannot be subject to a more rigorous level of judicial scrutiny than the "core right" to possess firearms in the home for self-defense," and so at best, intermediate scrutiny is the appropriate standard. ER, Vol. I, Tab 1 at 11:21-12:5.

The court erred as to both its characterization of the right and its selection of intermediate as opposed to strict scrutiny. The district court's incorrect, minimalist view of the right explained above led it to adopt intermediate scrutiny, reasoning "[t]o date, a majority of cases citing to *McDonald* and employing some form of heightened scrutiny—most of which are challenges to *criminal convictions*—have employed intermediate scrutiny. *E.g., United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85, 97 (3rd Cir. 2010)." ER, Vol. I, Tab 1 at 11:9-13. The key phrase is "criminal convictions." Multiple courts,

including this one, have recognized that individuals disqualified from possessing arms or who illegally use arms do not enjoy the same rights as law-abiding citizens. *See*., *e.g.*, *Vongxay*. This simple yet important distinction was made clear by this Court in *Nordyke V*, with its repeated references to the right to arms as applied to "law-abiding citizens." *Nordyke*, 2011 WL 1632063 at *7.

It is true that "fundamental constitutional rights are not invariably subject to strict scrutiny." ER, Vol. I, Tab 1 at 11:18-20. Like the First Amendment, certain restrictions on less important activities are subject to lesser scrutiny. But Plaintiffs dispute the court's treatment of the right to be "armed and ready" for self-defense as something less than "core conduct" under the Second Amendment. *See generally*, ER, Vol. IV, Tab 36.

If laws infringing criminals' right to arms are subject to intermediate scrutiny, restrictions on the rights of law-abiding citizens must be held to a higher standard. The general rule, the one that should apply here, is: when a law interferes with "fundamental constitutional rights," it is subject to "strict judicial scrutiny." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16 (1973).

3. County's "good cause" policy is not reasonably fitted to

achieve an important public interest

"A law will be struck down under intermediate scrutiny unless it can be shown that it is substantially related to achievement of an important governmental purpose." *Stop H-3 Ass'n v. Dole*, 870 F.2d 1419, 1430 n. 7 (9th Cir. 1989). In defending content-neutral regulations under the First Amendment, the Supreme Court has noted that the government "must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 664 (1994) (plurality opinion). To meet the standards of intermediate scrutiny, County must show evidence that depriving people of the right to be "armed and ready" for self-defense simply because they cannot document a specific threat against them furthers an important state interest. County can make no such showing.

This Court's decision in *Nordyke* rejects the relevancy of the only justification shown for County's CCW restrictions: crime reduction. This Court found that "*Heller* specifically renounced an approach that would base the constitutionality of gun-control regulations on judicial estimations of the extent to which each regulation is likely to reduce such crime." *Nordyke*, 2011 WL 1632063 at *4. Further, under heightened scrutiny, the only interest considered is the

government's actual asserted interest.[29] As this Court rejected the justification provided by County, County's policy fails even intermediate scrutiny.

In any event, County's evidence was both flawed and disputed. Even if crime reduction were relevant, County provided no evidence that denying qualified people CCWs furthers that interest. The only "evidence" provided was the declaration of Professor Frank Zimring, which merely recited statistics of the misuse of firearms *by unlicensed criminals*. Professor Zimring provided no evidence that people with CCWs threaten public safety. See generally, ER, Vol. III, Tab 30. County failed to show the "fit" or any connection at all between denying CCWs to law-abiding adults and reducing crime, and thus cannot meet its burden under either intermediate or strict scrutiny.

Being a motion for summary judgment, County had the burden of proving "beyond controversy" that its policy furthers its interest of reducing crime. At minimum, Plaintiffs provided evidence to controvert whether County's purported interest is furthered by its "good cause" policy. See generally, ER, Vol. II, Tabs 21-23.

[29] *See Carey v. Population Services, Int'l*, 431 U.S. 678, 696 (1977)

D. SHERIFFS NO LONGER ENJOY THE UNFETTERED DISCRETION IN ISSUING CCWS THAT THEY DID BEFORE *HELLER*, AND PENAL CODE SECTION 12050 MUST BE CONSTRUED TO REFLECT THAT CHANGE TO AVOID THE INVALIDATION OF BOTH PENAL CODE SECTIONS 12050 AND 12031

According to the district court "Plaintiffs' challenge cannot be properly construed as a mere challenge to [County's] policy" because to hold that a desire for self-defense alone satisfies the "good cause" criterion of Cal. Pen. § 12050 "would eliminate the discretion afforded sheriffs under section 12050." ER, Vol. I, Tab 1 at 10-11 n.7. But the basic premise of Plaintiffs' lawsuit is that sheriffs no longer enjoy unfettered discretion in issuing CCWs post-*Heller*. Plaintiffs are challenging County's "policy *in implementing* section 12050's 'good cause' requirement," (ER, Vol. II, Tab 18 at 218:1-220:8) (emphasis added), instead of 12050 and 12031 themselves. Those sections are not unconstitutional *so long as* 12050's "good cause" requirement is construed as being satisfied by an assertion of self-defense, a "central component" of the Second Amendment right, *Heller*, 554 U.S. at 599.

1. Construing 12050 as conferring unfettered discretion on Sheriffs in determining who has "good cause" to exercise a fundamental right is inconsistent with *Heller*

To the extent the district court found sheriffs still enjoy unfettered discretion

in deciding who is entitled to carry a firearm for self-defense post-*Heller*, it is mistaken. In *Heller*, the Court negated the discretionary aspect of one of the challenged ordinances and directed the District to issue a license that would satisfy the prayer for relief, finding:

> Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and *must* issue him a license to carry it in the home.

Heller, 554 U.S. at 635 (emphasis added). *Heller* plainly holds that those, like County, charged with licensing the means of exercising the right to arms do not have wide discretion to deny such licenses.

The judicial treatment of state "right to bear arms" provisions supports this view. For example, in 1980 the Supreme Court of Indiana found that a state constitutional right to "bear arms" protected the right to carry handguns, and it accordingly overturned a state law that allowed officials to deny permits to carry handguns on the grounds that such an approach "would supplant a right with a mere administrative privilege." *Schubert v. De Bard*, 398 N.E.2d 1339, 1341 (Ind. 1980). Similarly, the Supreme Court of Rhode Island opined:

> One does not need to be an expert in American history to understand the fault inherent in a gun-permitting system that would allow a licensing body

> *carte blanche* authority to decide who is worthy of carrying a concealed weapon. The constitutional right to bear arms would be illusory, of course, if it could be abrogated entirely on the basis of an unreviewable unrestricted licensing scheme.

Mosby v. Devine, 851 A.2d 1031, 1050 (R.I. 2004). *See also Kellogg v. City of Gary*, 562 N.E.2d 685, 696 (Ind. 1990) (city officials could not refuse to distribute applications for permits to carry handguns).

Moreover, drawing on First Amendment jurisprudence (as this Court, the district court, and the Supreme Court have done), construing 12050 as conferring unfettered discretion on County in determining "good cause," creates the equivalent of an unlawful prior restraint. A permissible prior restraint must not place "unbridled discretion in the hands of a government official or agency" and must not allow "a permit or license [to] be granted or withheld in the discretion of such official." *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225-26 (1990); *see also Staub* v. *City of Baxley*, 355 U.S. 313, 322 (1958).

A licensing scheme such as County's, where it exercises "unbridled discretion" in determining who may have a permit which is required to exercise the fundamental right to bear arms is impermissible post-*Heller*.

2. The doctrine of constitutional avoidance requires that 12050 be construed as limiting sheriffs' discretion to avoid the invalidation of that section and 12031

Construing 12050 as Plaintiffs suggest is not only consistent with, but likely mandated by, the doctrine of constitutional avoidance.[30] Under that doctrine, the court should *uphold* California's licensing scheme and ban on unlicensed carrying of loaded firearms by construing 12050's "good cause" criterion to be satisfied where CCW applicants of good moral character assert "self-defense" as their basis, thereby only voiding County's local policy.

Plaintiffs' suggested construction of 12050 also comports with how courts often interpret the word "may." By simply construing "may" in 12050 as permission from the Legislature, it would be read to say "[*only*] upon [completing all the other requirements] may the Sheriff [be permitted to] issue a CCW." In other words, it can be read as prohibiting sheriffs from issuing a CCW to people who do not meet the qualifications, and requiring them to issue a CCW to those who do. In fact, this is the construction 12050 is given, at least in practice, by the *majority* of

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[30] The canon of constitutional avoidance provides that "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (quoting *Hooper v. California*, 155 U.S. 648, 657 (1895)).

California counties. Thus, it can hardly be considered an "unreasonable" interpretation.

III. PLAINTIFFS' EQUAL PROTECTION CHALLENGE TO COUNTY'S "GOOD CAUSE" POLICY IMPLICATES A FUNDAMENTAL RIGHT; THE DISTRICT COURT ERRED IN TREATING IT OTHERWISE

A. The court improperly distinguished between similarly situated persons seeking to exercise their right to armed self-defense

The district court held that County's "good cause" policy was valid because "not all law-abiding citizens are similarly situated, as Plaintiffs contend. Those who can document circumstances demonstrating 'good cause' are situated differently than those who cannot." *Peruta*, 2010 WL 5137137 at *9. The court apparently so held because it found County's policy valid under the Second Amendment (*i.e.*, due process).

The district court's equal protection analysis depends on the prerequisite finding that plaintiff's Second Amendment rights are not unconstitutionally infringed by County's policy. Once that unconstitutional infringement is recognized, the equal protection analysis changes dramatically.

County's policy necessarily creates classifications of people: 1) those like Plaintiffs, who do not qualify for a CCW under County's "good cause" policy

because they have no specific threat against them; and 2) those who do qualify because, according to County, they have a *special* need for a CCW.

Those who can document a special need for a CCW acceptable to County are situated differently from Plaintiffs in a legally insignificant, factual sense. There is a more readily identifiable potential danger to them, and arguably a more immediate *need* to exercise their right to self-defense. But any difference in the degree of need to exercise the fundamental right to self-defense is not an appropriate distinction for this constitutional analysis.

All law-abiding persons *are* similarly situated in their worthiness to exercise fundamental rights. *City of Cleburne* v. *Cleburne Living Center*, 473 U.S. 432, 440, and *Hussey* v. *City of Portland*, 64 F.3d 1260, 1265 (9th Cir. 1995) (quoting *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 670 (1966)). ER, Vol. IV, Tab 36 at 839:3-843:19; Vol. II, Tab 18 at 232:2-234:20. *Hussey* ruled: "where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized . . .." *Id*., at 1265, quoting *Harper*, 383 U.S. at 670; and citing *Kramer v. Union Free School Dist.*, 395 U.S. 621, 628-29 (1969).

In *Kramer*, the Supreme Court struck down a law limiting the right to vote in school district elections to property owners and parents of school children, finding

the classification failed to survive strict scrutiny. *Kramer*, 395 U.S. at 626-629. The court explained, where fundamental rights are concerned, the issue is not whether the legislative judgment and resulting classification had some basis, but whether the distinctions "do in fact sufficiently further a compelling state interest to justify denying the franchise to appellant and members of his class." *Kramer*, 395 U.S. at 633.

As in *Hussey* and *Kramer*, Plaintiffs allege County's official policy creates impermissible classifications that "severely and unreasonably interferes with" their fundamental rights because they cannot obtain a CCW where others can. *Hussey*, 64 F.3d at 1266. County denies Plaintiffs and other law-abiding San Diegans the right to bear arms by depriving them of the only manner available to be "armed and ready" in public. ER, Vol. IV, Tab 36 at 823:10-22. Since the rights of those who show a constitutionally irrelevant "special need" for armed self-defense are not so infringed, County must justify its different treatment of the two classes.

Any restriction on a class in exercising a fundamental right must pass strict scrutiny review.[31] The court erred in failing to apply strict scrutiny to the

[31] This Court has already indicated strict scrutiny is appropriate in equal protection challenges concerning the right to carry. *See U.S. v. Vongxay*, 594 F.3d 1111 (2010 9th Cir.). It was Vongxay's felony status, not that he was in public or lacked a "special need," that precluded strict scrutiny.

classifications created by County's official "good cause" policy. County's admitted goal of limiting the number of CCWs in attempts to reduce crime is not a valid state interest, and does satisfy its burden to show a compelling interest is furthered by preferring those County subjectively deems have a "special need" for a CCW over plaintiffs more general desire for one.

B. Even if section 12031 were enough to satisfy Second Amendment mandates, this alone would not defeat Plaintiffs' equal protection claim

Even if County's policy were valid under the Second Amendment (*i.e.*, Due Process) because people can UOC, an Equal Protection challenge nonetheless requires a separate analysis. The 14th Amendment's Due Process and Equal Protection clauses are "not mutually exclusive," nor "always interchangeable phrases." *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *see also Ross v. Moffitt*, 417 U.S. 600, 609, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974) distinguishing claims under those clauses.

It is the carrying of arms – i.e., to be "armed and ready" for self-defense – that is the fundamental right protected by the Second Amendment. Even if limiting carry to unconcealed and unloaded firearms were a valid regulation of that right under due process, creating classifications of people who are allowed to exercise the right to self-defense by carrying a *loaded* firearm (i.e., to exercise a *superior*

form of the right) while others are limited to UOC (an *inferior* form of exercising the right), still violates the rules of equal protection. *Cf. Kramer*, at 628-29 (once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection).

IV. THE DISTRICT COURT ERRED IN MATTERS OF LAW AND FACT ON PLAINTIFFS' EQUAL PROTECTION CLAIM ALLEGING PREFERENTIAL TREATMENT OF COUNTY'S "HONORARY DEPUTIES"

A. The District Court Applied the Wrong Standard of Review

The district court erred in relying on *March v. Rupf* to find Plaintiffs failed to prove an "impermissible" classification. First, *March v. Rupf* 2001 WL 1112110 (2001) was pre-*Heller*, before California was compelled to recognize a fundamental right to bear arms for self-defense. *Id*., at * 2. The law in *March* was subject to rational basis review. *Id*. Classifications which restrict the exercise of fundamental rights are subject to strict scrutiny, and under and heightened scrutiny the burden is on the government to justify its classification. *See Hussey*, at 1265, quoting *Harper*, 383 U.S. at 670.

In any case, *March* is not binding precedent and should not be followed. Even if rational basis were the appropriate standard, there is nothing rational about exempting "Honorary Deputies" from its policy requirements, while denying

CCWs to others because they do not meet those requirements.[32] *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (a "class of one," may bring equal protection claim for being intentionally treated differently from others similarly situated where there is no rational basis for that treatment).

B. Plaintiffs Provided Compelling Evidence That County Treated Them Differently than "Honorary Deputies" County Provided No Evidence to the Contrary

The court's main basis for granting County's Motion on this claim appears to be Plaintiffs' alleged failure to provide evidence of disparate treatment sufficient to survive summary judgment. *Id*., at *31. The evidence showed, however, that all Plaintiffs who applied for a CCW asserted self-defense as their "good cause" but were denied for not documenting a specific threat against them. ER, Vol. IV, Tab 37 at 852 (Pls.' SUF 17). It also showed that County did not hold certain HDSA members to that heightened need standard. SOF § B.

The court dismisses this evidence by simply relying on County's assertion that renewals of CCWs, as opposed to initial issuance, are subject to less scrutiny, *see*, *id*., at *31-32. But the court did so on blind faith. Plaintiffs have never seen,

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[32] In addition, the court relied upon a unique brand of rational basis applicable to equal protection challenges in cases of selective prosecution, which has an additional showing of "impermissible grounds." *see id*., at * 30 , citing *Kuzinich v. County of Santa Clara*, 689 F.2d 1345, 1349 (9th Cir. 1983).

nor has County produced, evidence from those HDSA members' initial CCW applications that show they *ever* documented specific threats. Plaintiffs assume such documents do not exist based on County's response to Plaintiffs' allegations about these HDSA members: "documentation has been provided *in nearly all cases* by these applicants." ER, Vol. III, Tab 28 at 378:20 (emphasis added). Not only does County admit here that it did not demand a showing of specific threats from *all* those HDSA members, but the documents provided as supporting its assertion do not concern any of the four HDSA members Plaintiffs alleged sought a CCW for self-defense without documenting a specific threat. SOF § B.

Even in the absence of original CCW applications, some of the renewal records show unmistakably that certain HDSA members were not required to document a specific threat for a self-defense CCW as Plaintiffs were. In short, the evidence showed: 1) an HDSA member, subject to no apparent threat, skipped the appeal process (SOF § B) and had his second renewal application immediately granted, after contacting the Sheriff (*Id.*); 2) another HDSA member was granted a renewal application despite having "good cause" almost *identical* to that of Mr. Peruta, with no evidence of any specific threat (*Id.*); 3) notes made by County staff in some applications indicating special treatment of HDSA members; and 4) that

Plaintiff Cleary experienced preferential treatment himself as an HDSA member in obtaining a CCW. ER, Vol. IV, Tab 37 at 854 (Pls.' SUF 24).

Viewing this evidence in a light most favorable to Plaintiffs, as the district court was required to do, a finder of fact could easily conclude Plaintiffs were similarly situated to HDSA members but treated differently; at least to survive summary judgment (and allow for additional discovery).

V. THE DISTRICT COURT RELIED ON ERRONEOUS AUTHORITY IN ANALYZING PLAINTIFF PERUTA'S RESIDENCY CLAIMS

The district court never found Peruta was not a resident of San Diego. In fact, the court itself previously opined "even if the Court adopts the definition [of resident] suggested by [County], [Peruta] appears to be a 'resident' of San Diego County." ER, Vol. I, Tab 3, at 94 n.14. And, County insists Peruta was a resident. ER, Vol. III, Tab 28 at 377:9-11. Yet, the court relied on case law distinguishing between residents and non-residents in granting County's motion on Peruta's equal protection, right to travel, and Privileges & Immunities claims, even though the issue was whether he, as a resident of San Diego, was treated differently than other

residents.[33] ER, Vol. IV, Tab 36 at 839:3-843:19. The court applied irrelevant analysis in evaluating these claims, and must be reversed.

CONCLUSION

This Court should reverse the district court's rulings.

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Plaintiffs-Appellants identify the following cases as related:

- David Mehl, et al. v. Lou Blanas, et al., No. 08-15773
- *James Rothery, et al. v. County of Sacramento, et al.*, No. 09-16852

[33] Peruta's Privileges & Immunities claim is pled *in the alternative* of the right to travel claim. They are distinct claims. Peruta asserts that *if he is not* a resident, his rights thereunder are violated. Because County does not dispute he is a resident now, Peruta has no standing, as indicated in Plaintiffs' Opposition and the court had no reason to rule on it.

Rothery and *Mehl* contain numerous questions presented for review that seem to be unrelated to the case at hand. Nonetheless, to the extent that the *Mehl* and *Rothery* cases challenge the denial of CCWs for lack of self-defense being considered "good cause," the cases are related.

Date: May 23, 2011

MICHEL & ASSOCIATES, P.C.

s/ C. D. Michel
C. D. Michel
Attorneys for *Plaintiffs -Appellants*

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ADDENDUM

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Amendment II. Right To Bear Arms

Currentness

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

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Part I. Crimes (Refs & Annos)

Chapter 44. Firearms (Refs & Annos)

18 U.S.C.A. § 921

§ 921. Definitions

Effective: January 5, 2006
Currentness

(a) As used in this chapter--

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) 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; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means--

(A) any explosive, incendiary, or poison gas--

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "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 an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term "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 an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

(10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term "antique firearm" means--

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica--

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(17)(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm.

(B) The term "armor piercing ammunition" means--

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term "Attorney General" means the Attorney General of the United States" [1]

(19) The term "published ordinance" means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include--

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means--

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: *Provided,* That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "terrorism" means activity, directed against United States persons, which--

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended--

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means--

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term "school" means a school which provides elementary or secondary education, as determined under State law.

(27) The term "motor vehicle" has the meaning given such term in section 13102 of title 49, United States Code.

(28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term "handgun" means--

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

[(30), (31) Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33)(A) Except as provided in subparagraph (C), [2] the term "misdemeanor crime of domestic violence" means an offense that--

(i) is a misdemeanor under Federal, State, or Tribal [3] law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(34) The term "secure gun storage or safety device" means--

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(35) The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

Credits

(Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 226, and amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1214; Pub.L. 93-639, § 102, Jan. 4, 1975, 88 Stat. 2217; Pub.L. 99-308, § 101, May 19, 1986, 100 Stat. 449; Pub.L. 99-360, § 1(b), July 8, 1986, 100 Stat. 766; Pub.L. 99-408, § 1, Aug. 28, 1986, 100 Stat. 920; Pub.L. 101-647, Title XVII, § 1702(b)(2), Title XXII, § 2204(a), Nov. 29, 1990, 104 Stat. 4845, 4857; Pub.L. 103-159, Title I, § 102(a)(2), Nov. 30, 1993, 107 Stat. 1539; Pub.L. 103-322, Title XI, §§ 110102(b), 110103(b), 110105(2), 110401(a), 110519, Title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1997, 1999, 2000, 2014, 2020, 2150; Pub.L. 104-88, Title III, § 303(1), Dec. 29, 1995, 109 Stat. 943; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title VI, § 658(a)], Sept. 30, 1996, 110 Stat. 3009-371; Pub.L. 105-277, Div. A, § 101(b) [Title I, § 119(a)], § 101(h) [Title I, § 115], Oct. 21, 1998, 112 Stat. 2681-69, 2681-490; Pub.L. 107-273, Div. C, Title I, § 11009(e)(1), Nov. 2, 2002, 116 Stat. 1821; Pub.L. 107-296, Title XI, § 1112(f)(1) to (3), (6), Nov. 25, 2002, 116 Stat. 2276; Pub.L. 109-162, Title IX, § 908(a), Jan. 5, 2006, 119 Stat. 3083.)

1 So in original. Probably should be followed by a period.

2 So in original. No subparagraph (C) was enacted in subsec. (a)(33).

3 So in original. Probably should not be capitalized.

Notes of Decisions (241)

Current through P.L. 112-9 approved 4-14-11

End of Document

United States Code Annotated

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part I. Crimes (Refs & Annos)

Chapter 44. Firearms (Refs & Annos)

18 U.S.C.A. § 922

§ 922. Unlawful acts

Currentness

(a) It shall be unlawful--

(1) for any person--

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that--

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained

in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless--

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery--

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General; [1]

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver--

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the

licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if--

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are .....

Signature ..... Date ....."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who [2] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment--

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to--

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm--

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

(B) 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.

(2) For purposes of this subsection--

(A) the term “firearm” does not include the frame or receiver of any such weapon;

(B) the term “major component” means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General, that is--

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which--

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that--

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary the[3] House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves--even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm--

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is--

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm--

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to--

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless--

(A) after the most recent proposal of such transfer by the transferee--

(i) the transferor has--

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that--

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because--

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only--

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee--

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who--

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to--

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law--

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages--

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term “chief law enforcement officer” means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless--

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall--

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if--

(A)(i) such other person has presented to the licensee a permit that--

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because--

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after

notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages--

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[(v), (w) Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to--

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile--

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except--

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term “juvenile” means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions relating to aliens admitted under nonimmigrant visas--

(1) Definitions.--In this subsection--

(A) the term “alien” has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term “nonimmigrant visa” has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) Exceptions.--Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is--

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is--

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver--

(A) Conditions for waiver.--Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if--

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) Petition.--Each petition under subparagraph (B) shall--

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition.--The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner--

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) Secure gun storage or safety device.--

(1) In general.--Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) Exceptions.--Paragraph (1) shall not apply to--

(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) Liability for use.--

(A) In general.--Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions.--A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term.--As used in this paragraph, the term "qualified civil liability action"--

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if--

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

[APPENDIX A Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]

Credits

(Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 228, and amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1216; Pub.L. 97-377, Title I, § 165(a), Dec. 21, 1982, 96 Stat. 1923; Pub.L. 99-308, § 102, May 19, 1986, 100 Stat. 451; Pub.L. 99-408, § 2, Aug. 28, 1986, 100 Stat. 920; Pub.L. 100-649, § 2(a), (f)(2)(A), Nov. 10, 1988, 102 Stat. 3816, 3818; Pub.L. 100-690, Title VII, § 7060(c), Nov. 18, 1988, 102 Stat. 4404; Pub.L. 101-647, Title XVII, § 1702(b)(1), Title XXII, §§ 2201, 2202, 2204(b), Title XXXV, § 3524, Nov. 29, 1990, 104 Stat. 4844, 4856, 4857, 4924; Pub.L. 103-159, Title I, § 102(a)(1), (b), Title III, § 302(a) to (c), Nov. 30, 1993, 107 Stat. 1536, 1539, 1545; Pub.L. 103-322, Title XI, §§ 110102(a), 110103(a), 110105(2), 110106, 110201(a), 110401(b), (c), 110511, 110514, Title XXXII, §§ 320904, 320927, Title XXXIII, § 330011(i), Sept. 13, 1994, 108 Stat. 1996, 1998, 2000, 2010, 2014, 2019, 2125, 2131, 2145; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title VI, §§ 657, 658(b)], Sept. 30, 1996, 110 Stat. 3009-369, 3009-372; Pub.L. 104-294, Title VI, § 603(b), (c)(1), (d) to (f)(1), (g), Oct. 11, 1996, 110 Stat. 3503, 3504; Pub.L. 105-277, Div. A, § 101(b) [Title I, § 121], Oct. 21, 1998, 112 Stat. 2681-71; Pub.L. 107-273, Div. B, Title IV, § 4003(a)(1), Nov. 2, 2002, 116 Stat. 1811; Pub.L. 107-296, Title XI, § 1112(f)(4), (6), Nov. 25, 2002, 116 Stat. 2276; Pub.L. 109-92, §§ 5(c)(1), 6(a), Oct. 26, 2005, 119 Stat. 2099, 2101.)

1 So in original. Probably should be followed with "and".

2 So in original. The word "who" probably should not appear.

3 So in original. Probably should be "of the".

Editors' Notes

REPEAL OF SUBSEC. (P)

<Pub.L. 100-649, § 2(f)(2)(A), Nov. 10, 1988, 102 Stat. 3818, as amended Pub.L. 105-277, Div. A, § 101(h) [Title VI, § 649], Oct. 21, 1998, 112 Stat. 2681-528; Pub.L. 108-174, § 1(1), Dec. 9, 2003, 117 Stat. 2481, provided that, effective 25 years after the 30th day beginning after Nov. 10, 1988 [see section 2(f)(1) of Pub.L. 100-649, set out as a note under this section], subsec. (p) of this section is repealed.>

Notes of Decisions (2398)

Current through P.L. 112-9 approved 4-14-11

End of Document

United States Code Annotated

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part I. Crimes (Refs & Annos)

Chapter 44. Firearms (Refs & Annos)

18 U.S.C.A. § 924

§ 924. Penalties

Effective: October 6, 2006
Currentness

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever--

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

(D) willfully violates any other provision of this chapter,
shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly--

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,
shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if--

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)--

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime--

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection--

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall--

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law--

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and--

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section--

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition--

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are--

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection--

(A) the term “serious drug offense” means--

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that--

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which--

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall--

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that--

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(l) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) Penalties relating to secure gun storage or safety device.--

(1) In general.--

(A) Suspension or revocation of license; civil penalties.--With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing--

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

(B) Review.--An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) Administrative remedies.--The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

Credits

(Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 233, and amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1223; Pub.L. 91-644, Title II, § 13, Jan. 2, 1971, 84 Stat. 1889; Pub.L. 98-473, Title II, §§ 223(a), 1005(a), Oct. 12, 1984, 98 Stat. 2028, 2138; Pub.L. 99-308, § 104(a), May 19, 1986, 100 Stat. 456; Pub.L. 99-570, Title I, § 1402, Oct. 27, 1986, 100 Stat. 3207-39; Pub.L. 100-649, § 2(b), (f)(2)(B), (D), Nov. 10, 1988, 102 Stat. 3817, 3818; Pub.L. 100-690, Title VI, §§ 6211, 6212, 6451, 6460, 6462, Title VII, §§ 7056, 7060(a), Nov. 18, 1988, 102 Stat. 4359, 4360, 4371, 4373, 4374, 4402, 4403; Pub.L. 101-647, Title XI, § 1101, Title XVII, § 1702(b)(3), Title XXII, §§ 2203(d), 2204(c), Title XXXV, §§ 3526, 3527, 3528, 3529, Nov. 29, 1990, 104 Stat. 4829, 4845, 4857, 4924; Pub.L. 103-159, Title I, § 102(c), Title III, § 302(d), Nov. 30, 1993, 107 Stat. 1541, 1545; Pub.L. 103-322, Title VI, § 60013, Title XI, §§ 110102(c), 110103(c), 110105(2), 110201(b), 110401(e), 110503, 110504(a), 110507, 110510, 110515(a), 110517, 110518(a), Title XXXIII, §§ 330002(h), 330003(f)(2), 330011(i), (j), 330016(1)(H), (K), (L), Sept. 13, 1994, 108 Stat. 1973, 1998, 1999, 2000, 2011, 2015, 2016, 2018, 2019, 2020, 2140, 2141, 2145, 2147; Pub.L. 104-294, Title VI, § 603(m)(1), (n) to (p)(1), (q) to (s), Oct. 11, 1996, 110 Stat. 3505; Pub.L. 105-386, § 1(a), Nov. 13, 1998, 112 Stat. 3469; Pub.L. 107-273, Div. B, Title IV, § 4002(d)(1)(E), Div. C, Title I, § 11009(e)(3), Nov.

2, 2002, 116 Stat. 1809, 1821; Pub.L. 109-92, §§ 5(c)(2), 6(b), Oct. 26, 2005, 119 Stat. 2100, 2102; Pub.L. 109-304, § 17(d)(3), Oct. 6, 2006, 120 Stat. 1707.)

Editors' Notes

AMENDMENT OF SECTION

<Pub.L. 100-649, § 2(f)(2)(B), (D), Nov. 10, 1988, 102 Stat. 3818, as amended Pub.L. 101-647, Title XXXV, § 3526(b), Nov. 29, 1990, 104 Stat. 4924; Pub.L. 105-277, Div. A, § 101(h) [Title VI, § 649], Oct. 21, 1998, 112 Stat. 2681-528; Pub.L. 108-174, § 1, Dec. 9, 2003, 117 Stat. 2481, provided that, effective 25 years after the 30th day beginning after Nov. 10, 1988 [see section 2(f)(1) of Pub.L. 100-649, set out as a note under 18 U.S.C.A. § 922], subsec. (a)(1) of this section is amended by striking "this subsection, subsection (b), (c), or (f) of this section, or in section 929" and inserting "this chapter"; subsec. (f) of this section is repealed; and subsecs. (g) through (o) of this section are redesignated as subsecs. (f) through (n), respectively.>

Notes of Decisions (2670)

Current through P.L. 112-9 approved 4-14-11

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)

Part 1. Of Crimes and Punishments

Title 15. Miscellaneous Crimes
Chapter 1. Schools (Refs & Annos)

West's Ann.Cal.Penal Code § **626.9**

§ **626.9**. Gun-Free School Zone Act

Effective: January 1, 2012

Currentness

<Section as amended by Stats.2010, c. 178 (S.B.1115), § 59, operative Jan. 1, 2012. See, also, section as amended by Stats.1999, c. 83 (S.B.966), § 146, section as amended by Stats.2011, c. 15 (A.B.109), § 421, eff. April 4, 2011, operative no earlier than July 1, 2011, and only upon the creation and funding of a community corrections grant program, and section as amended by Stats.2011, c. 15 (A.B.109), § 422, eff. April 4, 2011, operative no earlier than Jan. 1, 2012, and only upon the creation and funding of a community corrections grant program.>

(a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished as specified in subdivision (f).

(c) Subdivision (b) does not apply to the possession of a firearm under any of the following circumstances:

(1) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

(2) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

This section does not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

(3) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(4) When the person is exempt from the prohibition against carrying a concealed firearm pursuant to Section 25615, 25625,

25630, or 25645.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(2) "Firearm" has the same meaning as that term is given in subdivisions (a) to (d), inclusive, of Section 16520.

(3) "Locked container" has the same meaning as that term is given in Section 16850.

(4) "Concealed firearm" has the same meaning as that term is given in Sections 25400 and 25610.

(f)(1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment in the state prison for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment in the state prison for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by any provision listed in Section 16580.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 25400.

(B) By imprisonment in a county jail for not more than one year or by imprisonment in the state prison for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) Any person who violates subdivision (d) shall be punished by imprisonment in the state prison for three, five, or seven years.

(g)(1) Every person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(2) Every person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 23515, if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(3) Every person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by any provision listed in Section 16580, if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the execution or imposition of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 25605, any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment in the state prison for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(i) Notwithstanding Section 25605, any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment in the state prison for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section does not require that notice be posted regarding the proscribed conduct.

(*l*) This section does 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 arrests 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 Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, or an armored vehicle guard, engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code.

(m) This section does not apply to a security guard authorized to carry a loaded firearm pursuant to Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

(n) This section does not apply to an existing shooting range at a public or private school or university or college campus.

(o) This section does not apply to an honorably retired peace officer authorized to carry a concealed or loaded firearm pursuant to any of the following:

(1) Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

(2) Section 25650.

(3) Sections 25900 to 25910, inclusive.

(4) Section 26020.

Credits

(Added by Stats.1970, c. 259, p. 524, § 2. Amended by Stats.1974, c. 546, p. 1359, § 17; Stats.1976, c. 1139, p. 5133, § 256, operative July 1, 1977; Stats.1983, c. 143, § 207; Stats.1983, c. 1292, § 5; Stats.1985, c. 295, § 7; Stats.1988, c. 854, § 1; Stats.1991, c. 1202 (S.B.377), § 4; Stats.1994, c. 1015 (A.B.645), § 1; Stats.1995, c. 659 (A.B.624), § 1; Stats.1998, c. 115 (A.B.2609), § 1; Stats.1999, c. 83 (S.B.966), § 146; Stats.2010, c. 178 (S.B.1115), § 59, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Amendment

Section **626.9** is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

Subdivision (c) is amended to make a technical revision.

For guidance in applying this section, see Section 16015 (determining existence of prior conviction). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions containing your search terms (0)
View all 11

Current with urgency legislation through Ch. 24 of 2011 Reg.Sess. and Ch. 2 of 2011-2012 1st Ex.Sess.

§ 626.9. Gun-Free School Zone Act, CA PENAL § 626.9

End of Document

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 4. Prevention of Crimes and Apprehension of Criminals (Refs & Annos)

Title 2. Control of Deadly Weapons (Refs & Annos)

Chapter 1. Firearms (Refs & Annos)

Article 2. Unlawful Carrying and Possession of Weapons (Refs & Annos)

West's Ann.Cal.Penal Code § 12025

§ 12025. Carrying weapon concealed within vehicle or on person; offense; arms in holster or sheath

Effective: January 1, 2000
Currentness

<Section prior to amendment by Stats.2011, c. 15 (A.B.109), eff. April 4, 2011, operative no earlier than July 1, 2011, and only upon the creation and funding of a community corrections grant program. See, also, section as amended by Stats.2011, c. 15 (A.B.109), eff. April 4, 2011, operative no earlier than July 1, 2011, and only upon the creation and funding of a community corrections grant program.>

(a) A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, as defined in this section, or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) By imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment if both of the following conditions are met:

(A) Both the pistol, revolver, or other firearm capable of being concealed upon the person and the unexpended ammunition capable of being discharged from that firearm are either in the immediate possession of the person or readily accessible to that person, or the pistol, revolver, or other firearm capable of being concealed upon the person is loaded as defined in subdivision (g) of Section 12031.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106, as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (b) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (b) is met.

(d)(1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by this chapter, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(g) For purposes of this section, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

(h)(1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

Credits

(Added by Stats.1953, c. 36, p. 654, § 1. Amended by Stats.1955, c. 1520, p. 2799, § 1; Stats.1975, c. 1161, p. 2877, § 2; Stats.1976, c. 1139, p. 5163, § 306.5, operative July 1, 1977; Stats.1982, c. 136, § 8, eff. March 26, 1982, operative April 25, 1982; Stats.1983, c. 1092, § 327, eff. Sept. 27, 1983, operative Jan. 1, 1984; Stats.1983, c. 1129, § 2; Stats.1992, c. 1340 (A.B.1180), § 6; Stats.1994, c. 23 (A.B.482), § 8; Stats.1996, c. 787 (A.B.632), § 2; Stats.1997, c. 459 (A.B.304), § 1; Stats.1999, c. 571 (A.B.491), § 2.)

Editors' Notes

REPEAL

<Stats.2010, c. 711 (S.B.1080), § 4, provides for repeal of Title 2, "Control of Deadly Weapons", operative Jan. 1, 2012.>

LAW REVISION COMMISSION COMMENTS

2010 Repeal

The provisions of the repealed title are continued without substantive change, as follows:

(1) The repealed provisions that relate to sentence enhancements are continued without substantive change in new Title 2 (commencing with Section 12001), entitled "Sentence Enhancements."

(2) The portions of former Section 12590 relating to picketing in the uniform of a peace officer are continued in new Section 830.95.

(3) All other repealed provisions are continued without substantive change in new Part 6 (commencing with Section 16000), entitled "Control of Deadly Weapons." [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (126)

Current with urgency legislation through Ch. 24 of 2011 Reg.Sess. and Ch. 2 of 2011-2012 1st Ex.Sess.

End of Document

West's Annotated California Codes

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Title 2. Control of Deadly Weapons (Refs & Annos)

Chapter 1. Firearms (Refs & Annos)

Article 2. Unlawful Carrying and Possession of Weapons (Refs & Annos)

West's Ann.Cal.Penal Code § 12026

§ 12026. Persons exempt; weapons at residence, place of business, or private property owned or possessed by citizen

Currentness

(a) Section 12025 shall not apply to or affect any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, who carries, either openly or concealed, anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other firearm capable of being concealed upon the person within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

(c) Nothing in this section shall be construed as affecting the application of Section 12031.

Credits

(Added by Stats.1953, c. 36, p. 655, § 1. Amended by Stats.1988, c. 577, § 2; Stats.1989, c. 958, § 1; Stats.1995, c. 322 (A.B.92), § 1.)

Editors' Notes

REPEAL

<Stats.2010, c. 711 (S.B.1080), § 4, provides for repeal of Title 2, operative Jan. 1, 2012.>

LAW REVISION COMMISSION COMMENTS

2010 Repeal

The provisions of the repealed title are continued without substantive change, as follows:

(1) The repealed provisions that relate to sentence enhancements are continued without substantive change in new Title 2 (commencing with Section 12001), entitled "Sentence Enhancements."

(2) The portions of former Section 12590 relating to picketing in the uniform of a peace officer are continued in new Section 830.95.

(3) All other repealed provisions are continued without substantive change in new Part 6 (commencing with Section 16000), entitled "Control of Deadly Weapons." [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (19)

Current with urgency legislation through Ch. 24 of 2011 Reg.Sess. and Ch. 2 of 2011-2012 1st Ex.Sess.

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Chapter 1. Firearms (Refs & Annos)

Article 2. Unlawful Carrying and Possession of Weapons (Refs & Annos)

West's Ann.Cal.Penal Code § 12026.1

§ 12026.1. Authority to transport or carry concealable firearms

Effective: January 1, 2009
Currentness

(a) Section 12025 shall not be construed to prohibit any citizen of the United States over the age of 18 years who resides or is temporarily within this state, and who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, from transporting or carrying any pistol, revolver, or other firearm capable of being concealed upon the person, provided that the following applies to the firearm:

(1) The firearm is within a motor vehicle and it is locked in the vehicle's trunk or in a locked container in the vehicle other than the utility or glove compartment.

(2) The firearm is carried by the person directly to or from any motor vehicle for any lawful purpose and, while carrying the firearm, the firearm is contained within a locked container.

(b) The provisions of this section do 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.

(c) 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.

Credits
(Added by Stats.1986, c. 998, § 1. Amended by Stats.1995, c. 322 (A.B.92), § 2; Stats.2008, c. 698 (A.B.837), § 13.)

Editors' Notes

REPEAL

<Stats.2010, c. 711 (S.B.1080), § 4, provides for repeal of Title 2, operative Jan. 1, 2012.>

LAW REVISION COMMISSION COMMENTS

2010 Repeal

The provisions of the repealed title are continued without substantive change, as follows:

(1) The repealed provisions that relate to sentence enhancements are continued without substantive change in new Title 2 (commencing with Section 12001), entitled "Sentence Enhancements."

(2) The portions of former Section 12590 relating to picketing in the uniform of a peace officer are continued in new Section 830.95.

(3) All other repealed provisions are continued without substantive change in new Part 6 (commencing with Section 16000), entitled "Control of Deadly Weapons." [38 Cal.L.Rev.Comm. Reports 217 (2009)].

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Chapter 1. Firearms (Refs & Annos)

Article 2. Unlawful Carrying and Possession of Weapons (Refs & Annos)

West's Ann.Cal.Penal Code § 12026.2

§ 12026.2. Carrying concealed firearms offenses; exemptions

Effective: January 1, 2006
Currentness

(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 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.

(12) 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.

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

(14) 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 478.100 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.

(15) The transportation of a firearm by a person in order to utilize paragraph (6) of subdivision (a) of Section 12078 as it pertains to that firearm.

(16) 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.

(17) The transportation of a firearm by a person in order to comply with paragraph (2) of subdivision (f) of Section 12072 as it pertains to that firearm.

(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.

(19) The transportation of a firearm by a person in order to comply with paragraph (3) of subdivision (f) of Section 12072 as it pertains to that firearm.

(20) The transportation of a firearm by a person for the purpose of obtaining an identification number or mark assigned for that firearm from the Department of Justice pursuant to Section 12092.

(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, keylock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

Credits

(Added by Stats.1987, c. 700, § 1. Amended by Stats.1988, c. 577, § 3; Stats.1991, c. 5 (A.B.36), § 2, eff. Dec. 13, 1990, operative Jan. 1, 1991; Stats.1991, c. 951 (A.B.664), § 2; Stats.1993, c. 606 (A.B.166), § 5, eff. Oct. 1, 1993; Stats.1994, c. 23 (A.B.482), § 9; Stats.1994, c. 451 (A.B.2470), § 5; Stats.1994, c. 716 (S.B.1308), § 3; Stats.1995, c. 322 (A.B.92), § 3; Stats.1997, c. 158 (A.B.78), § 3; Stats.1997, c. 462 (A.B.991), § 4; Stats.1998, c. 911 (A.B.2011), § 5, eff. Sept. 28, 1998, operative Nov. 30, 1998; Stats.2004, c. 247 (A.B.1232), § 8, eff. Aug. 23, 2004; Stats.2005, c. 715 (A.B.1060), § 6.)

Editors' Notes

REPEAL

<Stats.2010, c. 711 (S.B.1080), § 4, provides for repeal of Title 2, operative Jan. 1, 2012.>

LAW REVISION COMMISSION COMMENTS

2010 Repeal

The provisions of the repealed title are continued without substantive change, as follows:

(1) The repealed provisions that relate to sentence enhancements are continued without substantive change in new Title 2 (commencing with Section 12001), entitled "Sentence Enhancements."

(2) The portions of former Section 12590 relating to picketing in the uniform of a peace officer are continued in new Section 830.95.

(3) All other repealed provisions are continued without substantive change in new Part 6 (commencing with Section 16000), entitled "Control of Deadly Weapons." [38 Cal.L.Rev.Comm. Reports 217 (2009)].

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Chapter 1. Firearms (Refs & Annos)

Article 2. Unlawful Carrying and Possession of Weapons (Refs & Annos)

West's Ann.Cal.Penal Code § 12031

§ 12031. Carrying loaded firearms; punishment; exceptions

Effective: January 1, 2010
Currentness

(a)(1) A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

(2) Carrying a loaded firearm in violation of this section is punishable, as follows:

(A) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(B) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(C) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(D) Where the person is not in lawful possession of the firearm, as defined in this section, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(E) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(F) Where the person is not listed with the Department of Justice pursuant to Section 11106, as the registered owner of the handgun, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or both that fine and imprisonment.

(G) In all cases other than those specified in subparagraphs (A) to (F), inclusive, as a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) For purposes of this section, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully acquired and lawfully owns the firearm or has the permission of the lawful owner or person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission

of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

(4) Nothing in this section shall preclude prosecution under Sections 12021 and 12021.1 of this code, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a greater penalty than this section.

(5)(A) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(i) When the person arrested has violated this section, although not in the officer's presence.

(ii) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(B) A peace officer may arrest a person for a violation of subparagraph (F) of paragraph (2), if the peace officer has probable cause to believe that the person is carrying a loaded handgun in violation of this section and that person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that handgun.

(6)(A) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in a county jail, or, if granted probation or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

(B) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(7) A violation of this section which is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

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

(1) Peace officers listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have an endorsement in

the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a loaded firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke for good cause the retired officer's privilege to carry a loaded firearm. A peace officer who is listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who is retired prior to January 1, 1981, shall have his or her privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate "No CCW privilege."

(3) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of those clubs.

(6) The carrying of handguns by persons as authorized pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977, or (B) if hired on or after that date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies, including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, (A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age or more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons, or by persons who are authorized to carry the weapons pursuant to Section 14502 of the Corporations Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. The certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as a peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (A) if hired prior to January 1, 1977, or (B) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residences or their places of employment, and security guards and alarm agents en route to or from their residences or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

(j)(1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(l) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

Credits

(Added by Stats.1967, c. 960, p. 2459, § 1, eff. July 28, 1967. Amended by Stats.1968, c. 1222, p. 2323, § 62; Stats.1969, c. 1164, p. 2256, § 1; Stats.1970, c. 938, p. 1696, § 1; Stats.1970, c. 1292, p. 2390, § 2; Stats.1972, c. 579, p. 1007, § 39; Stats.1974, c. 1090, p. 2317, § 2; Stats.1975, c. 1170, p. 2889, § 1, operative Jan. 1, 1977; Stats.1976, c. 1425, p. 6362, § 9; Stats.1976, c. 1426, p. 6379, § 4; Stats.1978, c. 380, p. 1189, § 127; Stats.1978, c. 1023, p. 3160, § 4; Stats.1979, c. 296, p. 1104, § 5, eff. July 25, 1979; Stats.1980, c. 1340, § 25, eff. Sept. 30, 1980; Stats.1981, c. 1065, § 1; Stats.1982, c. 136, § 9, eff. March 26, 1982, operative April 25, 1982; Stats.1982, c. 1262, p. 4651, § 23; Stats.1983, c. 1196, § 3; Stats.1984, c. 351, § 2; Stats.1986, c. 937, § 3; Stats.1987, c. 115, § 2; Stats.1988, c. 998, § 2; Stats.1988, c. 1212, § 3.5; Stats.1990, c. 1249 (S.B.2065), § 2; Stats.1991, c. 952 (A.B.1904), § 3; Stats.1991, c. 1022 (A.B.637), § 1.1; Stats.1992, c. 163 (A.B.2641), § 117, operative Jan. 1, 1994; Stats.1993, c. 219 (A.B.1500), § 221.7; Stats.1993, c. 224 (A.B.578), § 2; Stats.1993, c. 428, (A.B.141), § 5; Stats.1996, c. 787 (A.B.632), § 3; Stats.1997, c. 598 (S.B.633), § 15; Stats.1998, c. 760 (S.B.1690), § 8; Stats.1999, c. 571 (A.B.491), § 3; Stats.2009, c. 288 (A.B.1363), § 1.)

Editors' Notes

REPEAL

<Stats.2010, c. 711 (S.B.1080), § 4, provides for repeal of Title 2, "Control of Deadly Weapons", operative Jan. 1, 2012.>

LAW REVISION COMMISSION COMMENTS

1992 Amendment

Subdivision (j)(2) of Section 12031 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 4359 and to include similar mutual restraining orders issued under other domestic violence provisions. The word "mutual" has been substituted for "reciprocal" to conform to the terminology of the Family Code provisions. [22 Cal.L.Rev.Comm.Reports 1 (1992)].

2010 Repeal

The provisions of the repealed title are continued without substantive change, as follows:

(1) The repealed provisions that relate to sentence enhancements are continued without substantive change in new Title 2 (commencing with Section 12001), entitled "Sentence Enhancements."

(2) The portions of former Section 12590 relating to picketing in the uniform of a peace officer are continued in new Section 830.95.

(3) All other repealed provisions are continued without substantive change in new Part 6 (commencing with Section 16000), entitled "Control of Deadly Weapons." [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (89)

Current with urgency legislation through Ch. 24 of 2011 Reg.Sess. and Ch. 2 of 2011-2012 1st Ex.Sess.

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Chapter 1. Firearms (Refs & Annos)

Article 3. Licenses to Carry Pistols and Revolvers (Refs & Annos)

West's Ann.Cal.Penal Code § 12050

§ 12050. Issuance of licenses; qualifications of licensee; restrictions, conditions, prohibitions, revocations; amendments to licenses; changes in addresses; renewals

Effective: January 1, 2010
Currentness

(a)(1)(A) The sheriff of a county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying satisfies any one of the conditions specified in subparagraph (D) and has completed a course of training as described in subparagraph (E), may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of that city and has completed a course of training as described in subparagraph (E), may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county in which the city is located is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(C) The sheriff of a county or the chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a person who has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 by that sheriff or that chief of police or other head of a municipal police department, may issue to that person a license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person. Direct or indirect fees for the issuance of a license pursuant to this subparagraph may be waived. The fact that an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 shall be considered only for the purpose of issuing a license pursuant to this subparagraph, and shall not be considered for the purpose of issuing a license pursuant to subparagraph (A) or (B).

(D) For the purpose of subparagraph (A), the applicant shall satisfy any one of the following:

(i) Is a resident of the county or a city within the county.

(ii) Spends a substantial period of time in the applicant's principal place of employment or business in the county or a city within the county.

(E)(i) For new license applicants, the course of training may be any course acceptable to the licensing authority, shall not exceed 16 hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. Notwithstanding this clause, the licensing authority may require a community college course certified by the Commission on Peace Officer Standards and Training, up to a maximum of 24 hours, but only if required uniformly of all license applicants without exception.

(ii) For license renewal applicants, the course of training may be any course acceptable to the licensing authority, shall be no less than four hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. No course of training shall be required for any person certified by the licensing authority as a trainer for purposes of this subparagraph, in order for that person to renew a license issued pursuant to this section.

(2)(A)(i) Except as otherwise provided in clause (ii), subparagraphs (C) and (D) of this paragraph, and subparagraph (B) of paragraph (4) of subdivision (f), a license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed two years from the date of the license.

(ii) If the licensee's place of employment or business was the basis for issuance of the license pursuant to subparagraph (A) of paragraph (1), the license is valid for any period of time not to exceed 90 days from the date of the license. The license shall be valid only in the county in which the license was originally issued. The licensee shall give a copy of this license to the licensing authority of the city, county, or city and county in which he or she resides. The licensing authority that originally issued the license shall inform the licensee verbally and in writing in at least 16-point type of this obligation to give a copy of the license to the licensing authority of the city, county, or city and county of residence. Any application to renew or extend the validity of, or reissue, the license may be granted only upon the concurrence of the licensing authority that originally issued the license and the licensing authority of the city, county, or city and county in which the licensee resides.

(B) A license issued pursuant to subparagraph (C) of paragraph (1) to a peace officer appointed pursuant to Section 830.6 is valid for any period of time not to exceed four years from the date of the license, except that the license shall be invalid upon the conclusion of the person's appointment pursuant to Section 830.6 if the four-year period has not otherwise expired or any other condition imposed pursuant to this section does not limit the validity of the license to a shorter time period.

(C) A license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed three years from the date of the license if the license is issued to any of the following individuals:

(i) A judge of a California court of record.

(ii) A full-time court commissioner of a California court of record.

(iii) A judge of a federal court.

(iv) A magistrate of a federal court.

(D) A license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed four years from the date of the license if the license is issued to a custodial officer who is an employee of the sheriff as provided in Section 831.5, except that the license shall be invalid upon the conclusion of the person's employment pursuant to Section 831.5 if the four-year period has not otherwise expired or any other condition imposed pursuant to this section does not limit the validity of the license to a shorter time period.

(3) For purposes of this subdivision, a city or county may be considered an applicant's "principal place of employment or business" only if the applicant is physically present in the jurisdiction during a substantial part of his or her working hours for purposes of that employment or business.

(b) A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Any restrictions imposed pursuant to subdivision (b) shall be indicated on any license issued.

(d) A license shall not be issued if the Department of Justice determines that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(e)(1) The license shall be revoked by the local licensing authority if at any time either the local licensing authority is notified by the Department of Justice that a licensee is prohibited by state or federal law from owning or purchasing firearms, or the local licensing authority determines that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) If at any time the Department of Justice determines that a licensee is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the local licensing authority of the determination.

(3) If the local licensing authority revokes the license, the Department of Justice shall be notified of the revocation pursuant to Section 12053. The licensee shall also be immediately notified of the revocation in writing.

(f)(1) A person issued a license pursuant to this section may apply to the licensing authority for an amendment to the license to do one or more of the following:

(A) Add or delete authority to carry a particular pistol, revolver, or other firearm capable of being concealed upon the person.

(B) Authorize the licensee to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(C) If the population of the county is less than 200,000 persons according to the most recent federal decennial census, authorize the licensee to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) Change any restrictions or conditions on the license, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) When the licensee changes his or her address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to paragraph (3).

(3) If the licensing authority amends the license, a new license shall be issued to the licensee reflecting the amendments.

(4)(A) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee's place of residence.

(B) If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license and has not become prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. However, any license issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) shall expire 90 days after the licensee moves from the county of issuance if the licensee's place of residence was the basis for issuance of the license.

(C) If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately if the licensee changes his or her place of residence to another county.

(5) An amendment to the license does not extend the original expiration date of the license and the license shall be subject to renewal at the same time as if the license had not been amended.

(6) An application to amend a license does not constitute an application for renewal of the license.

(g) Nothing in this article shall preclude the chief or other head of a municipal police department of any city from entering an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this article.

Credits

(Added by Stats.1953, c. 36, p. 656, § 1. Amended by Stats.1969, c. 1188, p. 2318, § 1; Stats.1970, c. 1478, p. 2923, § 1; Stats.1977, c. 987, p. 2970, § 3; Stats.1992, c. 1340 (A.B.1180), § 9; Stats.1993, c. 1167 (A.B.155), § 2; Stats.1997, c. 408 (S.B.146), § 1; Stats.1997, c. 744 (A.B.1468), § 2; Stats.1998, c. 110 (A.B.1795), § 2; Stats.1998, c. 910 (A.B.2022), § 1; Stats.1999, c. 142 (A.B.1322), § 1; Stats.2000, c. 123 (A.B.719), § 1; Stats.2008, c. 698 (A.B.837), § 14; Stats.2009, c. 288 (A.B.1363), § 2.)

Editors' Notes

REPEAL

<Stats.2010, c. 711 (S.B.1080), § 4, provides for repeal of Title 2, operative Jan. 1, 2012.>

LAW REVISION COMMISSION COMMENTS

2010 Repeal

The provisions of the repealed title are continued without substantive change, as follows:

(1) The repealed provisions that relate to sentence enhancements are continued without substantive change in new Title 2 (commencing with Section 12001), entitled "Sentence Enhancements."

(2) The portions of former Section 12590 relating to picketing in the uniform of a peace officer are continued in new Section 830.95.

(3) All other repealed provisions are continued without substantive change in new Part 6 (commencing with Section 16000), entitled "Control of Deadly Weapons." [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (25)

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Chapter 1. Firearms (Refs & Annos)

Article 3. Licenses to Carry Pistols and Revolvers (Refs & Annos)

West's Ann.Cal.Penal Code § 12050.2

§ 12050.2. Applicant qualifications; publication of licensing authority policy

Currentness

Within three months of the effective date of the act adding this section, each licensing authority shall publish and make available a written policy summarizing the provisions of subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Section 12050.

Credits

(Added by Stats.1998, c. 910 (A.B.2022), § 2.)

Editors' Notes

REPEAL

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Chapter 1. Firearms (Refs & Annos)

Article 3. Licenses to Carry Pistols and Revolvers (Refs & Annos)

West's Ann.Cal.Penal Code § 12051

§ 12051. Standard application form for licenses; contents; uniformity; review; false statements; violations

Effective: January 1, 2004
Currentness

(a)(1) The standard application form for licenses described in paragraph (3) shall require information from the applicant including, but not limited to, the name, occupation, residence and business address of the applicant, his or her age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. Applications for licenses shall be filed in writing, and signed by the applicant. Any license issued upon the application shall set forth the licensee's name, occupation, residence and business address, his or her age, height, weight, color of eyes and hair, the reason for desiring a license to carry the weapon, and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated.

(2) Applications for amendments to licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought pursuant to subdivision (f) of Section 12050 and the reason for desiring the amendment.

(3)(A) Applications for amendments to licenses, applications for licenses, amendments to licenses, and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. The Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the California Police Chiefs' Association, and one representative of the Department of Justice to review, and as deemed appropriate, revise the standard application form for licenses. The committee shall meet for this purpose if two of the committee's members deem that necessary. The application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license.

(B) The forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application.

(C) An applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form described in subparagraph (A), except to clarify or interpret information provided by the applicant on the standard application form.

(D) The standard application form described in subparagraph (A) is deemed to be a local form expressly exempt from the requirements of the Administrative Procedures Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Any person who files an application required by subdivision (a) knowing that statements contained therein are false is guilty of a misdemeanor.

(c) Any person who knowingly makes a false statement on the application regarding any of the following shall be guilty of a felony:

(1) The denial or revocation of a license, or the denial of an amendment to a license, issued pursuant to Section 12050.

(2) A criminal conviction.

(3) A finding of not guilty by reason of insanity.

(4) The use of a controlled substance.

(5) A dishonorable discharge from military service.

(6) A commitment to a mental institution.

(7) A renunciation of United States citizenship.

Credits

(Added by Stats.1953, c. 36, p. 656, § 1. Amended by Stats.1953, c. 692, p. 1960, § 1; Stats.1977, c. 996, p. 2994, § 1; Stats.1981, c. 945, § 1; Stats.1992, c. 1340 (A.B.1180), § 10; Stats.1993, c. 1167 (A.B.155), § 3; Stats.1994, c. 716 (S.B.1308), § 4; Stats.1998, c. 910 (A.B.2022), § 3; Stats.2003, c. 541 (A.B.1044), § 2.)

Editors' Notes

REPEAL

<Stats.2010, c. 711 (S.B.1080), § 4, provides for repeal of Title 2, operative Jan. 1, 2012.>

LAW REVISION COMMISSION COMMENTS

2010 Repeal

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(3) All other repealed provisions are continued without substantive change in new Part 6 (commencing with Section 16000), entitled "Control of Deadly Weapons." [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (3)

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Article 3. Licenses to Carry Pistols and Revolvers (Refs & Annos)

West's Ann.Cal.Penal Code § 12052

§ 12052. Fingerprints; necessity of taking; report pertaining to applicant; exception

Effective: January 1, 2009
Currentness

(a) The fingerprints of each applicant shall be taken and two copies on forms prescribed by the Department of Justice shall be forwarded to the department. Upon receipt of the fingerprints and the fee as prescribed in Section 12054, the department shall promptly furnish the forwarding licensing authority a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. No license shall be issued by any licensing authority until after receipt of the report from the department.

(b) However, if the license applicant has previously applied to the same licensing authority for a license to carry firearms pursuant to Section 12050 and the applicant's fingerprints and fee have been previously forwarded to the Department of Justice, as provided by this section, the licensing authority shall note the previous identification numbers and other data that would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 12053 and no additional application form or fingerprints shall be required.

(c) If the license applicant has a license issued pursuant to Section 12050 and the applicant's fingerprints have been previously forwarded to the Department of Justice, as provided in this section, the licensing authority shall note the previous identification numbers and other data that would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 12053 and no additional fingerprints shall be required.

Credits

(Added by Stats.1953, c. 36, p. 657, § 1. Amended by Stats.1953, c. 692, p. 1960, § 2; Stats.1959, c. 1856, p. 4410, § 1; Stats.1971, c. 1309, p. 2602, § 3, eff. Nov. 1, 1971; Stats.1972, c. 1377, p. 2845, § 91; Stats.1992, c. 1340 (A.B.1180), § 11; Stats.1992, c. 1341 (A.B.2917), § 12; Stats.2008, c. 698 (A.B.837), § 15.)

Editors' Notes

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Chapter 1. Firearms (Refs & Annos)

Article 3. Licenses to Carry Pistols and Revolvers (Refs & Annos)

West's Ann.Cal.Penal Code § 12052.5

§ 12052.5. Notice to applicant for license or renewal; approval or denial; time

Currentness

The licensing authority shall give written notice to the applicant indicating if the license is approved or denied within 90 days of the initial application for a new license or a license renewal or 30 days after receipt of the applicant's criminal background check from the Department of Justice, whichever is later.

Credits

(Added by Stats.1998, c. 910 (A.B.2022), § 4.)

Editors' Notes

REPEAL

<Stats.2010, c. 711 (S.B.1080), § 4, provides for repeal of Title 2, operative Jan. 1, 2012.>

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Chapter 1. Firearms (Refs & Annos)

Article 3. Licenses to Carry Pistols and Revolvers (Refs & Annos)

West's Ann.Cal.Penal Code § 12053

§ 12053. Records and filing of copies; denials, issuances, amendments, revocations

Currentness

(a) A record of the following shall be maintained in the office of the licensing authority:

(1) The denial of a license.

(2) The denial of an amendment to a license.

(3) The issuance of a license.

(4) The amendment of a license.

(5) The revocation of a license.

(b) Copies of each of the following shall be filed immediately by the issuing officer or authority with the Department of Justice:

(1) The denial of a license.

(2) The denial of an amendment to a license.

(3) The issuance of a license.

(4) The amendment of a license.

(5) The revocation of a license.

(c) Commencing on or before January 1, 2000, and annually thereafter, each licensing authority shall submit to the Attorney General the total number of licenses issued to peace officers, pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 12050, and to judges, pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) of Section 12050. The Attorney General shall collect and record the information submitted pursuant to this subdivision by county and licensing authority.

Credits

(Added by Stats.1993, c. 1167 (A.B.155), § 4.5. Amended by Stats.1998, c. 910 (A.B.2022), § 5.)

Editors' Notes

REPEAL

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Penal Code (Refs & Annos)

Part 4. Prevention of Crimes and Apprehension of Criminals (Refs & Annos)

Title 2. Control of Deadly Weapons (Refs & Annos)

Chapter 1. Firearms (Refs & Annos)

Article 3. Licenses to Carry Pistols and Revolvers (Refs & Annos)

West's Ann.Cal.Penal Code § 12054

§ 12054. Authorized license fees for new and amended licenses or renewals; psychological testing fees

Currentness

(a) Each applicant for a new license or for the renewal of a license shall pay at the time of filing his or her application a fee determined by the Department of Justice not to exceed the application processing costs of the Department of Justice for the direct costs of furnishing the report required by Section 12052. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget. The officer receiving the application and the fee shall transmit the fee, with the fingerprints if required, to the Department of Justice. The licensing authority of any city, city and county, or county may charge an additional fee in an amount equal to the actual costs for processing the application for a new license, excluding fingerprint and training costs, but in no case to exceed one hundred dollars ($100), and shall transmit the additional fee, if any, to the city, city and county, or county treasury. The first 20 percent of this additional local fee may be collected upon filing of the initial application. The balance of the fee shall be collected only upon issuance of the license.

The licensing authority may charge an additional fee, not to exceed twenty-five dollars ($25), for processing the application for a license renewal, and shall transmit an additional fee, if any, to the city, city and county, or county treasury. These local fees may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations.

(b) In the case of an amended license pursuant to subdivision (f) of Section 12050, the licensing authority of any city, city and county, or county may charge a fee, not to exceed ten dollars ($10), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations, for processing the amended license and shall transmit the fee to the city, city and county, or county treasury.

(c) If psychological testing on the initial application is required by the licensing authority, the license applicant shall be referred to a licensed psychologist used by the licensing authority for the psychological testing of its own employees. The applicant may be charged for the actual cost of the testing in an amount not to exceed one hundred fifty dollars ($150). Additional psychological testing of an applicant seeking license renewal shall be required only if there is compelling evidence to indicate that a test is necessary. The cost to the applicant for this additional testing shall not exceed one hundred fifty dollars ($150).

(d) Except as authorized pursuant to subdivisions (a), (b), and (c), no requirement, charge, assessment, fee, or condition that requires the payment of any additional funds by the applicant may be imposed by any licensing authority as a condition of the application for a license.

Credits

(Added by Stats.1953, c. 36, p. 657, § 1. Amended by Stats.1953, c. 692, p. 1961, § 4; Stats.1971, c. 1309, p. 2602, § 4, eff. Nov. 1, 1971; Stats.1972, c. 1377, p. 2846, § 93; Stats.1984, c. 1562, § 2; Stats.1993, c. 1167 (A.B.155), § 5; Stats.1998, c. 910 (A.B.2022), § 6.)

Editors' Notes

REPEAL

<Stats.2010, c. 711 (S.B.1080), § 4, provides for repeal of Title 2, operative Jan. 1, 2012.>

LAW REVISION COMMISSION COMMENTS

2010 Repeal

The provisions of the repealed title are continued without substantive change, as follows:

(1) The repealed provisions that relate to sentence enhancements are continued without substantive change in new Title 2 (commencing with Section 12001), entitled "Sentence Enhancements."

(2) The portions of former Section 12590 relating to picketing in the uniform of a peace officer are continued in new Section 830.95.

(3) All other repealed provisions are continued without substantive change in new Part 6 (commencing with Section 16000), entitled "Control of Deadly Weapons." [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Current with urgency legislation through Ch. 24 of 2011 Reg.Sess. and Ch. 2 of 2011-2012 1st Ex.Sess.

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