

14-55873

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES NICHOLS,

Plaintiff-Appellant,

v.

**EDMUND G. BROWN JR., in his official
capacity as Governor of California, and
XAVIER BECERRA, in his official
capacity as Attorney General of California,**

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California,
Case No. 2:11-cv-09916-SJO-SS,
The Honorable S. James Otero, Judge

**APPELLEES' SUPPLEMENTAL
EXCERPTS OF RECORD**

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California, and Xavier Becerra, Attorney
General of California*

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1. Civil Docket for <i>Nichols v. Brown</i> , U.S. Dist. Ct., Centr. Dist. of Calif., Case No. 2:11-cv-09916-SJO-SS	February 14, 2017	Supp. ER 001- Supp. ER 014
2. Second Amended Complaint, Etc.	March 29, 2013	Supp. ER 015- Supp. ER 056
3. Request for Judicial Notice by Defendant City of Redondo Beach in Support of Motion to Dismiss, Etc.	May 7, 2013	Supp. ER 057- Supp. ER 063
4. Request for Judicial Notice of Legislative History of California Penal Code Sections 26350 and 26400	May 28, 2013	Supp. ER 064- Supp. ER 065
5. Declaration of Jonathan M. Eisenberg in Opposition to Plaintiff Charles Nichols's Motion for Preliminary Injunction, Etc.	May 28, 2013	Supp. ER 066- Supp. ER 067
6. Legislative History of California Assembly	May 28, 2013	Supp. ER 068- Supp. ER 149

¹ Under Federal Rule of Civil Procedure 25(d), Xavier Becerra, presently the Attorney General of the State of California, should have his name substituted into this case in place of Kamala D. Harris, formerly the Attorney General of the State of California.

Document Title	Document Date	Supp. ER Number
Bill No. AB 144 (2011-2012)		
7. Legislative History of California Assembly Bill No. AB 1527 (2011-2012)	May 28, 2013	Supp. ER 150- Supp. ER 222
8. Opposition of Defendant City of Redondo Beach to Plaintiff's Ex Parte Application for Stay; Declaration of T. Peter Pierce in Support	July 16, 2013	Supp. ER 223- Supp. ER 240
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10. Declaration of Jonathan M. Eisenberg Regarding Statement of Genuine Disputes	December 2, 2013	Supp. ER 250- Supp. ER 273

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF
CALIFORNIA (Western Division – Los Angeles)
CIVIL DOCKET FOR CASE #: 2:11-cv-09916-SJO-SS**

Charles Nichols v. Edmund G Brown Jr et al
Assigned to: Judge S. James Otero
Referred to: Magistrate Judge Suzanne H. Segal
Related Case: 2:14-cv-07411-SJO-SS
Case in other court: 9th CCA, 13-56203
9th CCA, 14-55873
Cause: 42:1983 Civil Rights Act

Date Filed: 11/30/2011
Date Terminated: 05/01/2014
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Charles Nichols

represented by **Charles Nichols**
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ATTORNEY TO BE NOTICED

V.

Defendant

Edmund G Brown, Jr
*in his official capacity as Governor of
California*

represented by **Jonathan Michael Eisenberg**
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LEAD ATTORNEY

Defendant

Kamala D Harris
*Attorney General in her official capacity
as Attorney General of California*

represented by **Jonathan Michael Eisenberg**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

City of Redondo Beach
TERMINATED: 08/05/2013

represented by **Lisa M Bond**
Richards Watson & Gershon
355 S Grand Ave, 40th Fl
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ATTORNEY TO BE NOTICED

Defendant

**City of Redondo Beach Police
Department**

represented by **Michael W Webb**
(See above for address)
TERMINATED: 07/02/2012
ATTORNEY TO BE NOTICED

Defendant

Joseph Leonardi
City of Redondo Beach Police Chief

represented by **Lisa M Bond**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael W Webb
(See above for address)
TERMINATED: 07/02/2012
ATTORNEY TO BE NOTICED

Defendant

Does
1 to 10
TERMINATED: 08/05/2013

Defendant

Officer Todd Heywood

represented by **Lisa M Bond**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/30/2011	<u>1</u>	COMPLAINT filed against Defendants Edmund G Brown, Jr, City of Redondo Beach, City of Redondo Beach Police Department, Does 1 to 10, Kamala D Harris, Joseph Leonardi. Case assigned to Judge S. James Otero and referred to Magistrate Judge Suzanne H. Segal.(Filing fee\$350 Paid.), filed by Plaintiff Charles Nichols. [Summons not issued on 11/30/2011] (et) (Additional attachment(s) added on 1/10/2012: # <u>1</u> Summons) (afe). (Entered: 12/01/2011)
11/30/2011	<u>2</u>	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Charles Nichols. (et) (Entered: 12/01/2011)

11/30/2011	<u>3</u>	NOTICE OF REFERENCE to United States Magistrate Judge Suzanne H. Segal. (et) (Entered: 12/01/2011)
12/07/2011	<u>4</u>	STANDING ORDER GOVERNING PRE-TRIAL PROCEEDINGS BEFORE THE MAGISTRATE JUDGE by Magistrate Judge Suzanne H. Segal, See order for details. (jy) (Entered: 12/07/2011)
01/12/2012	<u>5</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Complaint <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
01/12/2012	<u>6</u>	PROOF OF SERVICE filed by PLAINTIFF Charles Nichols, re Complaint <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
01/12/2012	<u>7</u>	PROOF OF SERVICE filed by PLAINTIFF Charles Nichols, re Complaint - <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
01/12/2012	<u>8</u>	PROOF OF SERVICE filed by PLAINTIFF Charles Nichols, Complaint <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
01/12/2012	<u>9</u>	PROOF OF SERVICE filed by PLAINTIFF Charles Nichols, re Complaint <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
01/17/2012	<u>10</u>	EX PARTE APPLICATION to Submit Document Under Seal and Request for Waiver of Notice filed by plaintiff Charles Nichols.(jy) (Entered: 01/19/2012)
01/19/2012	<u>11</u>	MINUTES (IN CHAMBERS): ORDER by Magistrate Judge Suzanne H. Segal: denying <u>10</u> Ex Parte Application to Seal; Plaintiffs Application is DENIED. Plaintiff fails to explain his purpose in filing the Report or provide any compelling reason that would justify filing the Report under seal. There is no pending motion and Defendants have not yet answered the Complaint. Furthermore, the Application fails to comply with the Local Rules governing ex parte applications. See minute order for further details. (jy) (Entered: 01/19/2012)
01/30/2012	<u>12</u>	NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendants City of Redondo Beach, City of Redondo Beach Police Department, Joseph Leonardi. Motion set for hearing on 3/6/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum of Points and Authorities, # <u>2</u> Proposed Order)(Webb, Michael) (Entered: 01/30/2012)
01/30/2012	<u>13</u>	NOTICE OF MOTION AND MOTION to Dismiss for Lack of Jurisdiction filed by Defendant Kamala D Harris. Motion set for hearing on 3/6/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum Supporting P's and A's)(Eisenberg, Jonathan) (Entered: 01/30/2012)
01/31/2012	<u>14</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: re: MOTION to Dismiss Case <u>12</u> and MOTION to Dismiss for Lack of Jurisdiction <u>13</u> . On January 30, 2012, in the above-entitled civil rights action, Motions to Dismiss were filed by Defendants City of Redondo Beach and City of Redondo Beach Police Department and by Defendant Kamala D. Harris. Plaintiff shall have until February 14, 2012 to serve and file an Opposition to the Motions. Defendants shall have seven (7) days from service of the Opposition to serve and file a Reply, if necessary. Thereafter, the Motions will be deemed submitted without oral argument. Accordingly, IT IS ORDERED that the hearings set for March 6, 2012 be taken off calendar. (jy) (Entered: 01/31/2012)
02/01/2012	<u>15</u>	NOTICE of Errata filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 02/01/2012)
02/02/2012	<u>16</u>	CONSENT TO PROCEED before a U. S. Magistrate Judge in accordance with Title 28 Section 636(c) and F.R.CIV.P 73(b), consent is hereby DECLINED by Plaintiff Charles Nichols. (jy) (Entered: 02/02/2012)

02/08/2012	<u>17</u>	REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO MOTION TO DISMISS BY REDONDO BEACH DEFENDANTS AND MOTION TO DISMISS BY DEFENDANT KAMALA D. HARRIS ATTORNEY GENERAL IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA. re MOTION to Dismiss for Lack of Jurisdiction <u>13</u> , filed by plaintiff Charles Nichols.(afe) (Entered: 02/10/2012)
02/08/2012	<u>18</u>	PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT KAMALA HARRIS' MOTION TO DISMISS, filed by Plaintiff Charles Nichols. Re: MOTION to Dismiss for Lack of Jurisdiction <u>13</u> (afe) (Entered: 02/10/2012)
02/08/2012	<u>19</u>	PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TODISMISS BY REDONDO BEACH DEFENDANTS, filed by Plaintiff Charles Nichols. Re: MOTION to Dismiss Case <u>12</u> (afe) (Entered: 02/10/2012)
02/08/2012	<u>20</u>	PLAINTIFF'S NOTICE OF LODGING OF COMPUTER DISC CONTAINING VIDEOS REFERENCED AS EXHIBIT 1-1 TO 1-4 IN PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS BY REDONDO BEACH DEFENDANTS,filed by plaintiff Charles Nichols. re Memorandum of Points and Authorities in Opposition (non-motion) <u>19</u> (afe) (Entered: 02/10/2012)
02/08/2012	<u>21</u>	DECLARATION of Charles Nichols, filed by Plaintiff Charles Nichols. (afe) (Entered: 02/10/2012)
02/08/2012	<u>22</u>	APPLICATION for Entry of Default against defendant Edmund G Brown, Jr filed by plaintiff Charles Nichols. (jy) (Entered: 02/10/2012)
02/10/2012	<u>24</u>	REQUEST FOR JUDICIAL NOTICE of recently decided 9TH CIRCUIT opinion in support of plaintiff's opposition to motions to dismiss by Redondo Beach defendants and Motion to dismiss by defendant Kamala D. Harris, Attorney General in her official capacity as Attorney General of California, re MOTION to Dismiss for Lack of Jurisdiction <u>13</u> , filed by Plainfiff Charles Nichols. (afe) (Entered: 02/14/2012)
02/13/2012	<u>23</u>	Application for Entry of Default Opposition re: APPLICATION for Clerk to Enter Default against defendant Edmund G Brown, Jr <u>22</u> filed by Defendant Edmund G Brown, Jr. (Eisenberg, Jonathan) (Entered: 02/13/2012)
02/14/2012	<u>25</u>	Objection Support re: MOTION to Dismiss Case <u>12</u> <i>Redondo Beach Defendants' Objections To Plaintiff's Two Requests For Judicial Notice; Request for Hearing</i> filed by Defendants City of Redondo Beach, City of Redondo Beach Police Department, Joseph Leonardi. (Webb, Michael) (Entered: 02/14/2012)
02/14/2012	<u>26</u>	Objection Support re: MOTION to Dismiss Case <u>12</u> <i>Objections To Plaintiff's Notice of Lodging</i> filed by Defendants City of Redondo Beach, City of Redondo Beach Police Department, Joseph Leonardi. (Webb, Michael) (Entered: 02/14/2012)
02/14/2012	<u>27</u>	REPLY Reply MOTION to Dismiss Case <u>12</u> <i>Reply</i> filed by Defendants City of Redondo Beach, City of Redondo Beach Police Department, Joseph Leonardi. (Webb, Michael) (Entered: 02/14/2012)
02/14/2012	<u>28</u>	REPLY Support MOTION to Dismiss for Lack of Jurisdiction <u>13</u> filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 02/14/2012)
02/15/2012	<u>29</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: the Court directs Plaintiff to file a response within seven (7) days (February 22, 2012) of the date of this Order stating whether he wishes to withdraw his Application. See minute order for further details. (jy) (Entered: 02/15/2012)
02/16/2012	<u>30</u>	NOTICE of Error in Submission of Application for Default Judgment Against Defendant Brown filed by Plaintiff Charles Nichols. (jy) (Entered: 02/16/2012)
02/17/2012	<u>31</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: DENYING THE REDONDO BEACH DEFENDANTS REQUEST FOR A HEARING (Dkt. Nos. <u>25</u> – <u>26</u>); See minute order for details. (jy) (Entered: 02/17/2012)

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02/21/2012	<u>32</u>	Reply to Order Directing Plaintiff to File Response Regarding Application for Entry of Default filed by Plaintiff Charles Nichols. (jy) (Entered: 02/21/2012)
02/24/2012	<u>33</u>	PROOF OF SERVICE filed by Plaintiff Charles Nichols, Complaint – (Referred) <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 02/16/12. (afe) (Entered: 02/27/2012)
03/08/2012	<u>34</u>	NOTICE OF MOTION AND MOTION to Dismiss for Lack of Jurisdiction filed by Defendant Edmund G Brown, Jr. Motion set for hearing on 4/10/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum Points and Authorities in Support of Motion to Dismiss)(Eisenberg, Jonathan) (Entered: 03/08/2012)
03/09/2012	<u>35</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal re: MOTION to Dismiss for Lack of Jurisdiction <u>34</u> . On March 8, 2012, in the above-entitled civil rights action, a Motion to Dismiss was filed by Defendant Gov. Edmund G. Brown, Jr. Plaintiff shall have until March 23, 2012 to serve and file an Opposition to the Motion. Defendants shall have seven (7) days from service of the Opposition to serve and file a Reply, if necessary. Thereafter, the Motion will be deemed submitted without oral argument. Accordingly, IT IS ORDERED that the hearing set for April 10, 2012 be taken off calendar. See minute order for further details. (jy) (Entered: 03/09/2012)
03/12/2012	<u>36</u>	PLAINTIFF'S MEMORANDUM of Points and Authorities in Opposition to Motion to Dismiss <u>34</u> by defendant Edmund G. Brown, Jr., in his official capacity as governor of California, filed by Plaintiff Charles Nichols. (afe) (Entered: 03/13/2012)
03/12/2012	<u>37</u>	DECLARATION of Charles Nichols re Memorandum of Points and Authorities in Opposition <u>36</u> filed by Plaintiff Charles Nichols. (afe) (Entered: 03/13/2012)
03/19/2012	<u>38</u>	REPLY in Support of MOTION to Dismiss for Lack of Jurisdiction <u>34</u> filed by Defendant Edmund G Brown, Jr. (Eisenberg, Jonathan) (Entered: 03/19/2012)
04/05/2012	<u>39</u>	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Suzanne H. Segal. Objections to R&R due by 4/19/2012 (jy) (Entered: 04/05/2012)
04/05/2012	<u>40</u>	REPORT AND RECOMMENDATION issued by Magistrate Judge Suzanne H. Segal. Re Complaint <u>1</u> (jy) (Entered: 04/05/2012)
04/17/2012	<u>41</u>	NOTICE OF MOTION AND MOTION for Review of Magistrate Judges report and recommendation <u>40</u> filed by plaintiff Charles Nichols. Motion set for hearing on 5/24/2012 at 10:00 AM before Judge S. James Otero. (lc) (Entered: 04/17/2012)
04/17/2012	<u>42</u>	MEMORANDUM in Support of MOTION for Review of Magistrate Judges report and recommendation re Report and Recommendation <u>41</u> filed by Plaintiff Charles Nichols. (lc) (Main Document 42 replaced on 8/8/2014) (tad). (Entered: 04/17/2012)
05/01/2012	<u>43</u>	REPLY TO OBJECTION to Report and Recommendation (Issued) <u>40</u> filed by Defendant Edmund G Brown, Jr. and Defendant Kamala D. Harris (Eisenberg, Jonathan) (Entered: 05/01/2012)
05/02/2012	<u>44</u>	NOTICE OF ERRATA filed by Plaintiff Charles Nichols. correcting MOTION for Review of Magistrate Judges report and recommendation re Report and Recommendation (Issued) <u>40</u> <u>41</u> (jy) (Entered: 05/03/2012)
05/07/2012	<u>45</u>	MINUTES (IN CHAMBERS)by Judge S. James Otero: The Court deems the Plaintiff's MOTION for Review of Magistrate Judges report and recommendation <u>41</u> as an objection. Accordingly, the Court takes the hearing off its calendar. (lc) (Entered: 05/07/2012)
05/07/2012	<u>46</u>	ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE by Judge S. James Otero: Plaintiffs claims against Attorney General Kamala D. Harris are DISMISSED WITH LEAVE TO AMEND for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). See order for further details. (jy) (Entered: 05/08/2012)
05/30/2012	<u>47</u>	FIRST AMENDED COMPLAINT amending Complaint <u>1</u> filed by plaintiff Charles Nichols. (jy) (Additional attachment(s): # <u>2</u> Amended Summons) (Entered: 05/30/2012)

05/30/2012		60 DAY AMENDED Summons Issued re Amended Complaint <u>47</u> as to defendant City of Redondo Beach, City of Redondo Beach Police Department, Kamala D Harris (Attorney General in her official capacity as Attorney General of California), Officer Todd Heywood. (afe) (Entered: 06/18/2012)
06/19/2012	<u>48</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Summons Issued, Amended Complaint <u>47</u> served on 06/07/12. (afe) (Entered: 06/20/2012)
06/19/2012	<u>49</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Summons Issued, Amended Complaint <u>47</u> served on 06/07/12. (afe) (Entered: 06/20/2012)
06/19/2012	<u>50</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Summons Issued, Amended Complaint <u>47</u> served on 06/07/12. (afe) (Entered: 06/20/2012)
06/19/2012	<u>51</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Summons Issued, Amended Complaint <u>47</u> served on 06/07/12. (afe) (Entered: 06/20/2012)
06/27/2012	<u>52</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: ORDER CLARIFYING DEADLINE FOR RESPONSE TO FIRST AMENDED COMPLAINT; the Court extends the deadline by one day and ORDERS Harris, Leonardi and City of Redondo Beach to file a response to the First Amended Complaint by Friday, June 29, 2012. See order for further details. (jy) (Entered: 06/27/2012)
06/28/2012	<u>53</u>	REQUEST to Substitute attorney Lisa Bond in place of attorney Michael W. Webb filed by Defendants City of Redondo Beach, Joseph Leonardi. (Attachments: # <u>1</u> Proposed Order Order on Request for Approval of Substitution of Attorney)(Bond, Lisa) (Entered: 06/28/2012)
06/29/2012	<u>54</u>	NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. Motion set for hearing on 7/31/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Bond, Lisa) (Entered: 06/29/2012)
06/29/2012	<u>55</u>	MEMORANDUM in Support of MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Bond, Lisa) (Entered: 06/29/2012)
06/29/2012	<u>56</u>	DECLARATION of Lisa Bond in support of MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Bond, Lisa) (Entered: 06/29/2012)
06/29/2012	<u>57</u>	SUPPLEMENT to MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> ([Proposed] Order) filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Bond, Lisa) (Entered: 06/29/2012)
06/29/2012	<u>58</u>	NOTICE OF MOTION AND Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> filed by Defendant Kamala D Harris. Motion set for hearing on 7/31/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum of P's and A's Supporting Dismissal, # <u>2</u> Supplement Request for Judicial Notice)(Eisenberg, Jonathan) (Entered: 06/29/2012)
07/02/2012	<u>59</u>	ORDER by Magistrate Judge Suzanne H. Segal: granting <u>53</u> Request to Substitute Attorney. Attorney Michael W Webb terminated (jy) (Entered: 07/02/2012)
07/02/2012	<u>60</u>	PLAINTIFF'S OBJECTION to substitution of attorney <u>53</u> filed by Plaintiff Charles Nichols. (afe) (Entered: 07/05/2012)
07/05/2012	<u>61</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: On June 29, 2012, in the above–entitled civil rights action, Motions to Dismiss were filed by Defendants City of Redondo Beach, Joseph Leonardi, Todd Heywood and California Attorney General Kamala D. Harris. Plaintiff shall have until July 16, 2012 to serve and file Oppositions to the Motions. Defendants shall have seven (7) days from service of the Oppositions to serve and file Replies, if necessary. Thereafter, the Motions will be deemed submitted without oral argument. Accordingly, IT IS ORDERED that the hearings set for July 31, 2012 be taken off calendar. See minute order for details. (jy)

		(Entered: 07/05/2012)
07/12/2012	<u>62</u>	REQUEST to Substitute attorney Michael F. Sisson in place of attorney Charles Nichols filed by Attorney Charles Nichols. Request set for hearing on 7/13/2012 at 01:30 PM before Judge S. James Otero. (Sisson, Michael) (Entered: 07/12/2012)
07/13/2012	<u>63</u>	ORDER by Magistrate Judge Suzanne H. Segal: granting <u>62</u> Request to Substitute Attorney. (jy) (Entered: 07/13/2012)
07/16/2012	<u>64</u>	MEMORANDUM in Opposition to MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> by Defendant Redondo Beach et al filed by Plaintiff Charles Nichols. (Sisson, Michael) (Entered: 07/16/2012)
07/16/2012	<u>65</u>	MEMORANDUM in Opposition to Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> <u>58</u> by Defendant Kamala Harris filed by Plaintiff Charles Nichols. (Sisson, Michael) (Entered: 07/16/2012)
07/16/2012	<u>66</u>	MEMORANDUM in Opposition to MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> , Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> <u>58</u> Request for Judicial Notice filed by Plaintiff Charles Nichols. (Sisson, Michael) (Entered: 07/16/2012)
07/20/2012	<u>67</u>	REPLY REDONDO BEACH DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Bond, Lisa) (Entered: 07/20/2012)
07/20/2012	<u>68</u>	REDONDO BEACH DEFENDANTS' EVIDENTIARY OBJECTIONS AND MOTION TO STRIKE PORTIONS OF NICHOLS DECLARATION FILED IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS FIRST AMENDED COMPLAINT – IN SUPPORT OF re: MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Bond, Lisa) (Entered: 07/20/2012)
07/23/2012	<u>69</u>	REPLY in Support of Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> <u>58</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Declaration of Service)(Eisenberg, Jonathan) (Entered: 07/23/2012)
11/20/2012	<u>70</u>	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Suzanne H. Segal. Objections to R&R due by 12/4/2012 (jy) (Entered: 11/20/2012)
11/20/2012	<u>71</u>	REPORT AND RECOMMENDATION issued by Magistrate Judge Suzanne H. Segal. Re MOTION to Dismiss First Amended Complaint <u>54</u> and Second MOTION to Dismiss for Lack of Jurisdiction <u>58</u> (jy) (Entered: 11/20/2012)
12/04/2012	<u>72</u>	OBJECTION to Report and Recommendation (Issued) <u>71</u> filed by Defendant Kamala D Harris.(Eisenberg, Jonathan) (Entered: 12/04/2012)
12/17/2012	<u>73</u>	PLAINTIFF'S RESPONSE to defendant Kamala D. Harris's Objections <u>72</u> to November 20, 2012 Report and Recommendation of United States Magistrate Judge filed by plaintiff Charles Nichols. (afe) (Entered: 12/17/2012)
12/20/2012	<u>74</u>	NOTICE OF DOCUMENT DISCREPANCIES AND ORDER by Magistrate Judge Suzanne H. Segal ORDERING Request for Approval of Substitution of Attorney submitted by Plaintiff Charles Nichols received on 12/20/12 to be filed and processed; filed date to be the date the document was stamped Received but not Filed with the Clerk. (jy) (Entered: 12/21/2012)
12/20/2012	<u>75</u>	Request for Approval of Substitution of Attorney filed by plaintiff Charles Nichols. (jy) (Entered: 12/21/2012)

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12/21/2012	<u>76</u>	ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY by Magistrate Judge Suzanne H. Segal. granting <u>75</u> Motion to Substitute Attorney. Attorney Michael F Sisson terminated. (afe) (Entered: 12/26/2012)
01/11/2013	<u>77</u>	SUPPLEMENTAL AUTHORITY filed by Plaintiff Charles Nichols. (afe) (Entered: 01/11/2013)
01/11/2013	<u>78</u>	SUPPLEMENTAL AUTHORITY Moore, et al. and Shepard, et al.v. Madigan, Nos 12-1269, 12-1788 Seventh Circuit Court of Appeals filed by Plaintiff Charles Nichols. (afe) (Entered: 01/11/2013)
01/11/2013	<u>79</u>	NOTICE of Related Case [Local Rule 83-1.3(b)] filed by plaintiff Charles Nichols. (afe) (Entered: 01/11/2013)
02/25/2013	<u>80</u>	NOTICE OF SUPPLEMENTAL AUTHORITY filed by plaintiff Charles Nichols. (afe) (Entered: 02/27/2013)
02/28/2013	<u>81</u>	NOTICE OF SUPPLEMENTAL AUTHORITY filed by plaintiff Charles Nichols. (afe) (Entered: 03/04/2013)
03/03/2013	<u>82</u>	ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE by Judge S. James Otero. The Motion to Dismiss the First Amended Complaint <u>54</u> filed by the Redondo Beach Defendants is GRANTED. The Motion to Dismiss the First Amended Complaint <u>58</u> filed by Attorney General Kamala D. Harris is DENIED. The First Amended Complaint <u>47</u> is DISMISSED with leave to amend. If Plaintiff desires to proceed with his claims against Attorney General Harris and City of Redondo Beach, Plaintiff shall file a Second Amended Complaint within thirty (30) days of the date of this Order. (See Order for details) (afe) (Entered: 03/05/2013)
03/29/2013	<u>83</u>	SECOND AMENDED COMPLAINT amending First Amended Complaint <u>47</u> , filed by plaintiff Charles Nichols. (afe) (Entered: 04/01/2013)
04/02/2013	<u>84</u>	MINUTE ORDER (IN CHAMBERS) SCHEDULING ORDER RE RESPONSE DEADLINE TO PLAINTIFF'S SECOND AMENDED COMPLAINT (Dkt. No. <u>83</u>) by Magistrate Judge Suzanne H. Segal: On April 1, 2013, Plaintiff in the above-referenced pro se civil rights action filed a Second Amended Complaint. Pursuant to Federal Rule of Civil Procedure 15(a)(3), Defendants shall file a response to the Second Amended Complaint within fourteen (14) days of the date of this Order. (mr) (Entered: 04/02/2013)
04/10/2013	<u>85</u>	NOTICE OF MOTION AND MOTION for Preliminary Injunction. Motion filed by plaintiff: Charles Nichols. Motion set for hearing on 5/20/2013 at 10:00 AM before Judge S. James Otero. (lc) (Entered: 04/12/2013)
04/10/2013	<u>86</u>	MEMORANDUM in Support of MOTION for Preliminary Injunction. Motion <u>85</u> filed by Plaintiff Charles Nichols. (lc) (Entered: 04/12/2013)
04/10/2013	<u>87</u>	DECLARATION of Charles Nichols in support MOTION for Preliminary Injunction. Motion <u>85</u> filed by Plaintiff Charles Nichols. (lc) (Entered: 04/12/2013)
04/10/2013	<u>88</u>	REQUEST FOR JUDICIAL NOTICE re MOTION for Preliminary Injunction. Motion <u>85</u> filed by plaintiff Charles Nichols. (lc) (Entered: 04/12/2013)
04/15/2013	<u>89</u>	NOTICE of Motion and Motion by Defendant City of Redondo Beach to Dismiss the Second and Third Claims in the Second Amended Complaint or, in the Alternative, Motion for More Definite Statement filed by Defendant City of Redondo Beach. (Pierce, Thomas) Modified on 4/16/2013 (mr). (Entered: 04/15/2013)
04/15/2013	<u>90</u>	MEMORANDUM in Support of Defendant City of Redondo Beach's Motion to Dismiss the Second and third Claims in the Second Amended Complaint or, in the Alternative, in Support of Motion for More Definite Statement filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 04/15/2013)
04/16/2013	<u>91</u>	ANSWER to Amended Complaint <u>83</u> filed by Defendant Kamala D Harris.(Eisenberg, Jonathan) (Entered: 04/16/2013)
04/18/2013	<u>92</u>	MINUTE ORDER (IN CHAMBERS) SCHEDULING ORDER RE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (Dkt. No. <u>85</u>) by Magistrate Judge

		Suzanne H. Segal: On April 10, 2013, Plaintiff in the above-referenced pro se civil rights action filed a Motion for Preliminary Injunction. Defendants' Opposition, if any, is due fourteen (14) days from the date of this order, i.e., by May 2, 2013. Plaintiff's Reply is due seven (7) days from the date of service of the Opposition. (mr) (Entered: 04/18/2013)
04/19/2013	<u>93</u>	MINUTE ORDER (IN CHAMBERS) ORDER VACATING HEARING DATE ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (Dkt. No. <u>85</u>) by Magistrate Judge Suzanne H. Segal: On April 10, 2013, Plaintiff in the above-referenced pro se civil rights action filed a Motion for Preliminary Injunction. (Dkt. No. <u>85</u>). Plaintiff set May 20, 2013 as the hearing date on the Motion. Pursuant to Local Rule 7-15, the hearing date of May 20, 2013 is VACATED and no appearance is necessary, unless otherwise advised by the Court. (mr) (Entered: 04/19/2013)
04/19/2013	<u>94</u>	MINUTE ORDER (IN CHAMBERS) SCHEDULING ORDER RE DEFENDANT CITY OF REDONDO BEACH'S MOTION TO DISMISS (Dkt. No. <u>89</u>) by Magistrate Judge Suzanne H. Segal: On April 15, 2013, Defendant City of Redondo Beach filed a Motion to Dismiss the Second and Third Claims in the Second Amended Complaint. (Dkt. No. <u>89</u>). Plaintiff shall have until May 3, 2013 to file and serve an Opposition to the Motion. Defendant shall have seven (7) days from service of the Opposition to file and serve a Reply, if necessary. Thereafter, the Motion will be deemed submitted without oral argument. Accordingly, IT IS ORDERED that the hearing set for May 21, 2013 be taken off calendar. (See document for further details). (mr) (Entered: 04/19/2013)
04/30/2013	<u>95</u>	Plaintiff's Opposition to Motion By Defendant City of Redondo Beach to Dismiss the Second and Third Claims in the Second Amended Complaint or, In the Alternative, Motion for More Definite Statement <u>89</u> , Etc.; Memorandum of Points and Authorities; Declaration of Charles Nichols filed by Plaintiff Charles Nichols. (mr) (Entered: 05/01/2013)
05/02/2013	<u>96</u>	Opposition to Preliminary Injunction Motion Opposition to Mtn. for Preliminary Injunction re: MOTION for Preliminary Injunction. Motion <u>85</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Request for Judicial Notice, # <u>2</u> Declaration of Jonathan M. Eisenberg, # <u>3</u> Exhibit A to JME Decl., # <u>4</u> Exhibit B to JME Decl., # <u>5</u> Evidentiary Objections, # <u>6</u> Proof of Service)(Eisenberg, Jonathan) (Entered: 05/02/2013)
05/07/2013	<u>97</u>	REPLY in support of a motion MOTION to Dismiss Case <u>89</u> <i>the Second and Third Claims in the Second Amended Complaint, or in the Alternative, in Support of Motion for More Definite Statement</i> filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 05/07/2013)
05/07/2013	<u>98</u>	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Case <u>89</u> <i>the Second and Third Claims in the Second Amended Complaint; Declaration of T. Peter Pierce in Support</i> filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 05/07/2013)
05/07/2013	<u>99</u>	Evidentiary Objections in support of re: MOTION to Dismiss Case <u>89</u> <i>the Second and Third Claims in the Second Amended Complaint</i> filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 05/07/2013)
05/07/2013	<u>100</u>	PLAINTIFF'S REPLY TO DEFENDANT KAMALA D. HARRIS'S OPPOSITION TO PLAINTIFF CHARLES NICHOLS'S MOTION FOR PRELIMINARY INJUNCTION <u>85</u> filed by Plaintiff Charles Nichols. (lc) (Entered: 05/08/2013)
05/07/2013	<u>101</u>	PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE AND REPLY TO DEFENDANT KAMALA D. HARRIS'S EVIDENTIARY OBJECTIONS TO DECLARATION OF CHARLES NICHOLS filed by plaintiff Charles Nichols. (lc) (Entered: 05/08/2013)
05/16/2013	<u>102</u>	MINUTES (IN CHAMBERS) by Judge S. James Otero: ORDER STRIKING DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION <u>96</u> ; STRIKING PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION <u>100</u> . Defendant shall re-file her Opposition in accordance with this Court's Initial Standing

		Order on or before May 28, 2013. Plaintiff shall re-file his Reply in accordance with this Court's Initial Standing Order on or before June 3, 2013. The Court finds this matter suitable for disposition without oral argument <u>85</u> , and thus no appearances are necessary. See Fed. R. Civ. P.78(b). (lc) (Entered: 05/16/2013)
05/16/2013	<u>103</u>	Plaintiff's Reply to Defendant City of Redondo Beach's Evidentiary Objections to Plaintiff's Declaration Submitted in Opposition to Motion to Dismiss <u>99</u> . (mr) (Entered: 05/17/2013)
05/28/2013	<u>104</u>	Opposition re: MOTION for Preliminary Injunction. Motion <u>85</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Appendix Request for Judicial Notice, # <u>2</u> Affidavit Jonathan Eisenberg Declaration, # <u>3</u> Exhibit Exh. A, # <u>4</u> Exhibit Exh. B, # <u>5</u> Appendix Evidentiary Objections, # <u>6</u> Declaration Certificate of Service)(Eisenberg, Jonathan) (Entered: 05/28/2013)
06/03/2013	<u>105</u>	PLAINTIFF'S REPLY to defendant Kamala D. Harri's Opposition to Plaintiff Charles Nichols's Motion for Preliminary Injunction <u>96</u> filed by Plaintiff Charles Nichols. (afe) (Entered: 06/04/2013)
06/03/2013	<u>106</u>	PLAINTIFF'S REQUEST for Judicial Notice and REPLY to defendant Kamala D. Harris's Evidentiary Objections <u>96</u> to declaration of Charles Nichols filed by plaintiff Charles Nichols. (afe) (Entered: 06/04/2013)
06/12/2013	<u>107</u>	SCHEDULING ORDER by Magistrate Judge Suzanne H. Segal. This Order governs discovery and pretrial motions. All discovery shall be completed on or before October 31, 2013. All discovery motions shall be filed and served on or before October 31, 2013. All other motions, including but not limited to motions for summary judgment, shall be filed and served on or before November 13, 2013. The deadline for amending pleadings and/or adding parties is June 28, 2013. Each party shall file and serve a Status Report on or before August 12, 2013. (See document for further details). (mr) (Entered: 06/12/2013)
07/03/2013	<u>108</u>	MINUTES (IN CHAMBERS): ORDER by Judge S. James Otero:ORDER DENYING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION <u>58</u> . The Court refers this matter to Magistrate Judge Segal for further proceedings. (lc) (Entered: 07/03/2013)
07/06/2013	<u>113</u>	Order by Judge S. James Otero denying certificate of appealability. (dmap) (Entered: 07/10/2013)
07/08/2013	<u>109</u>	PRELIMINARY INJUNCTION NOTICE OF APPEAL to the 9th CCA filed by plaintiff Charles Nichols. Appeal of Order on Motion for Preliminary Injunction <u>108</u> . Filed On: 7/3/2013; Entered On: 7/3/2013; Filing fee \$455.00 billed. (dmap) (Entered: 07/09/2013)
07/08/2013	<u>112</u>	APPEAL FEE PAID: re Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> as to Plaintiff Charles Nichols; Receipt Number: LA074294 in the amount of \$455. (dmap) (Entered: 07/10/2013)
07/09/2013	<u>110</u>	FILING FEE LETTER issued as to Plaintiff Charles Nichols re Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> . (dmap) (Entered: 07/09/2013)
07/09/2013	<u>111</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 13-56203 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> as to Plaintiff Charles Nichols. (dmap) (Entered: 07/09/2013)
07/10/2013	<u>114</u>	NOTICE OF CLERICAL ERROR: Due to clerical error the Order denying the Certificate of Appealability <u>113</u> for CV 12-2558 GAF, Rranklin Ross Knisley was mistakenly docketed into this case. The order will be docketed in the correct case CV 12-2558 GAF. (dmap) (Entered: 07/10/2013)
07/12/2013	<u>115</u>	Plaintiff's Notice Of Potential Partial Mootness Against Defendant City of Redondo Beach filed by plaintiff Charles Nichols. (dmap) (Entered: 07/15/2013)
07/12/2013	<u>116</u>	PLAINTIFF'S EX PARTE APPLICATION to Stay Pending Appeal filed by plaintiff Charles Nichols.(dmap) (Entered: 07/15/2013)

07/12/2013	<u>117</u>	PLAINTIFF'S NOTICE OF LODGING (Proposed) Order Staying Further District Court Proceedings filed by plaintiff Charles Nichols re EX PARTE APPLICATION to Stay Case pending Pending Appeal <u>116</u> . (dmap) (Entered: 07/15/2013)
07/12/2013	<u>118</u>	MEMORANDUM, Reasons and Points and Authorities in Support Plaintiff's Ex Parte Application to Stay Case Pending Appeal <u>116</u> filed by Plaintiff Charles Nichols. (dmap) (Entered: 07/15/2013)
07/16/2013	<u>119</u>	<i>Opposition of Defendant City of Redondo Beach</i> re: EX PARTE APPLICATION to Stay Case pending Pending Appeal <u>116</u> (Pierce, Thomas) (Entered: 07/16/2013)
07/17/2013	<u>120</u>	Opposition re: EX PARTE APPLICATION to Stay Case pending Pending Appeal <u>116</u> filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 07/17/2013)
07/18/2013	<u>121</u>	MINUTES (IN CHAMBERS) by Judge S. James Otero: ORDER DENYING PLAINTIFF'S EX PARTE APPLICATION FOR STAY PENDING APPEAL <u>116</u> . (lc) (Entered: 07/18/2013)
07/22/2013	<u>122</u>	STATUS REPORT filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 07/22/2013)
07/29/2013	<u>123</u>	STATUS REPORT filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 07/29/2013)
08/02/2013	<u>124</u>	ORDER from 9th CCA filed, CCA # 13-56203. Appellant's emergency motion to stay district court proceedings pending appeal is denied. Appellant's motion to expedite this preliminary injunction appeal is denied as unnecessary. Order received in this district on 8/2/13. (car) (Entered: 08/05/2013)
08/05/2013	<u>125</u>	NOTICE OF VOLUNTARY DISMISSAL without prejudice against defendant City of Redondo Beach and Does 1 to 10 pursuant to FRCP 41a(1) filed by plaintiff Charles Nichols. (afe) (Entered: 08/07/2013)
08/07/2013	<u>127</u>	STATUS REPORT filed by Plaintiff Charles Nichols. (afe) (Entered: 08/08/2013)
08/08/2013	<u>126</u>	MINUTE ORDER (IN CHAMBERS) ORDER DENYING CITY OF REDONDO BEACH'S MOTION TO DISMISS THE SECOND AND THIRD CLAIMS IN THE SECOND AMENDED COMPLAINT AS MOOT (Dkt. No. <u>89</u>) by Magistrate Judge Suzanne H. Segal: On August 5, 2013, Plaintiff in the above-referenced pro se civil rights action filed a Notice of Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1) dismissing his claims against Defendant City of Redondo Beach and Does 1 to 10 without prejudice. (Dkt. No. <u>125</u>). Accordingly, City of Redondo Beach's pending Motion to Dismiss the Second and Third Claims in the Second Amended Complaint is DENIED as MOOT. (Dkt. No. <u>89</u>). (mr) (Entered: 08/08/2013)
10/15/2013	<u>128</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> filed by Charles Nichols, CCA # 13-56203. The court stays proceedings in this appeal pending this court's decisions in Richards v. Prieto, 11-16255, Peruta v. County of San Diego, 10-56971, and Baker v. Kealoha, 12-16258 (arg. & sub. SF 12/6/12 DFO SRT CMC). Order received in this district on 10/15/13. (car) (Entered: 10/17/2013)
11/08/2013	<u>131</u>	NOTICE OF MOTION AND MOTION for Partial Summary Judgment filed by Plaintiff Charles Nichols. Motion set for hearing on 12/17/2013 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Lodged Proposed Order) (lmh) (Entered: 11/15/2013)
11/08/2013	<u>132</u>	MEMORANDUM in Support of MOTION for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 11/15/2013)
11/08/2013	<u>133</u>	DECLARATION of Charles Nichols in Support MOTION for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 11/15/2013)
11/08/2013	<u>134</u>	EXHIBIT A through H to MOTION for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (Attachments: # <u>1</u> Exhibits Part 2)(lmh) (Entered: 11/15/2013)
11/08/2013	<u>135</u>	NOTICE OF LODGING of Proposed Order filed by Plaintiff Charles Nichols re MOTION for Partial Summary Judgment <u>131</u> (lmh) (Entered: 11/15/2013)

11/08/2013	<u>136</u>	NOTICE OF LODGING of Proposed Statement of Uncontroverted Facts and Conclusions of Law; Evidence in Support filed by Plaintiff Charles Nichols re MOTION for Partial Summary Judgment <u>131</u> (lmh) (Entered: 11/15/2013)
11/12/2013	<u>129</u>	NOTICE OF MOTION AND MOTION for Judgment on the Pleadings as to Pleadings of <i>Charles Nichols</i> , filed by Defendant Kamala D Harris. Motion set for hearing on 12/17/2013 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum of P's and A's, # <u>2</u> Appendix (RFJN), # <u>3</u> Declaration of Service)(Eisenberg, Jonathan) (Entered: 11/12/2013)
11/13/2013	<u>130</u>	MINUTE ORDER (IN CHAMBERS) ORDER: (1) SETTING BRIEFING SCHEDULE ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS AND (2) VACATING HEARING DATE (Dkt. No. <u>129</u>) by Magistrate Judge Suzanne H. Segal: The Court sets the following briefing schedule: Plaintiff's Opposition shall be filed within fourteen (14) days of the date of this Order. Defendant's Reply, if necessary, shall be filed within seven (7) days of service of the Opposition. Thereafter, the Motion will be taken under submission without a hearing unless otherwise ordered by the Court. Accordingly, the hearing date currently set for December 17, 2013 is VACATED. If Plaintiff does not intend to oppose the Motion, he may request a voluntary dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a). A Notice of Dismissal form is attached for Plaintiff's convenience. (Attachments: # <u>1</u> Notice of Dismissal Form) (mr) (Entered: 11/13/2013)
11/18/2013	<u>137</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal, On November 8, 2013, Plaintiff filed a Motion for Partial Summary Judgment, which was entered on the Courts docket on November 15, 2013. (Dkt. No. 131). The Court sets the following briefing schedule: Defendants Opposition shall be filed within fourteen (14) days of the date of this Order. Plaintiffs Reply, if necessary, shall be filed within seven (7) days of service of the Opposition. Thereafter, the Motion will be taken under submission without a hearing unless otherwise ordered by the Court. Accordingly, the hearing date currently set for December 17, 2013 is VACATED. re: MOTION for Partial Summary Judgment <u>131</u> . (lmh) (Entered: 11/18/2013)
11/26/2013	<u>138</u>	Plaintiff Nichols' Objection to Evidence re: MOTION for Judgment on the Pleadings as to Pleadings of <i>Charles Nichols</i> , <u>129</u> filed by Plaintiff Charles Nichols. (mr) (Entered: 12/02/2013)
11/26/2013	<u>139</u>	Plaintiff's Opposition to Defendant's Motion for Judgment on the Pleadings <u>129</u> filed by Plaintiff Charles Nichols. (mr) (Entered: 12/02/2013)
12/02/2013	<u>140</u>	Opposition re: MOTION for Partial Summary Judgment <u>131</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Appendix of Genuine Disputes, # <u>2</u> Affidavit of Jonathan M. Eisenberg, # <u>3</u> Affidavit of Service)(Eisenberg, Jonathan) (Entered: 12/02/2013)
12/03/2013	<u>141</u>	NOTICE OF ERRATA filed by Defendant Kamala D Harris. correcting Objection/Opposition (Motion related) <u>140</u> (Attachments: # <u>1</u> Memorandum of P's and A's in Opp'n to MSJ, # <u>2</u> Affidavit of Service)(Eisenberg, Jonathan) (Entered: 12/03/2013)
12/03/2013	<u>142</u>	REPLY in Support of MOTION for Judgment on the Pleadings as to Pleadings of <i>Charles Nichols</i> , <u>129</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Affidavit of Service)(Eisenberg, Jonathan) (Entered: 12/03/2013)
12/09/2013	<u>143</u>	Reply in Support of Plaintiff's Motion for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (lmh) Modified on 12/13/2013 (mr). (Entered: 12/12/2013)
12/09/2013	<u>144</u>	Reply to Defendant's State of Genuine Disputes re Plaintiff's Motion for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (lmh) Modified on 12/13/2013 (mr). (Entered: 12/12/2013)
12/09/2013	<u>145</u>	Plaintiff's Objections to Defendant's Notice of Errata filed in Opposition to Plaintiff's Motion for Partial Summary Judgment, <u>131</u> . (lmh) Modified on 12/13/2013 (mr). (Entered: 12/12/2013)
12/09/2013	<u>146</u>	Plaintiff's Objections to Declaration of Jonathan M. Eisenberg filed in Opposition to Plaintiff's Motion for Partial Summary Judgment, <u>131</u> . (lmh) Modified on 12/13/2013 (mr). (Entered: 12/12/2013)


12/13/2013	<u>147</u>	NOTICE of Supplemental Authority filed by Plaintiff Charles Nichols. (lmh) (Entered: 12/16/2013)
12/13/2013	<u>148</u>	DECLARATION of Plaintiff Charles Nichols Regarding Notice of Supplemental Authority, <u>147</u> filed by Plaintiff Charles Nichols. (lmh) Modified on 12/16/2013 (mr). (Entered: 12/16/2013)
12/27/2013	<u>149</u>	OBJECTIONS to <i>Supplemental Filing</i> filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 12/27/2013)
01/06/2014	<u>150</u>	NOTICE of Supplemental Authority filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/09/2014)
01/06/2014	<u>151</u>	RESPONSE to Objections – non–motion <u>149</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/09/2014)
01/06/2014	<u>152</u>	DECLARATION re Notice of Supplemental Authority <u>150</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/09/2014)
01/10/2014	<u>153</u>	NOTICE of Supplemental Authority filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/13/2014)
01/10/2014	<u>154</u>	DECLARATION re Notice (Other) <u>153</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/13/2014)
01/13/2014	<u>155</u>	NOTICE of Supplemental Authority filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/16/2014)
01/13/2014	<u>156</u>	DECLARATION re Notice of Supplemental Authority <u>155</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/16/2014)
01/28/2014	<u>157</u>	Objection re: MOTION for Partial Summary Judgment <u>131</u> , MOTION for Judgment on the Pleadings as to Pleadings of <i>Charles Nichols</i> , <u>129</u> <i>Four Supplemental Filings</i> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Affidavit of Service)(Eisenberg, Jonathan) (Entered: 01/28/2014)
02/03/2014	<u>158</u>	Plaintiff's RESPONSE to Defendant Harris' Objection to Plaintiff's Notice of Supplemental Authority <u>157</u> filed by Plaintiff Charles Nichols (es) (Entered: 02/05/2014)
02/05/2014	<u>159</u>	NOTICE OF SUPPLEMENTAL AUTHORITY <u>131</u> filed by Plaintiff Charles Nichols. (es) (Entered: 02/06/2014)
02/05/2014	<u>160</u>	DECLARATION of Plaintiff Charles Nichols Regarding Notice of Supplemental Authority <u>159</u> filed by Plaintiff Charles Nichols. (es) (Entered: 02/06/2014)
03/18/2014	<u>161</u>	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Suzanne H. Segal. Objections to R&R due by 4/1/2014. (mr) (Entered: 03/18/2014)
03/18/2014	<u>162</u>	REPORT AND RECOMMENDATION issued by Magistrate Judge Suzanne H. Segal. Re Complaint, <u>1</u> , MOTION for Partial Summary Judgment, <u>131</u> , MOTION for Judgment on the Pleadings, <u>129</u> . (mr) (Entered: 03/18/2014)
03/31/2014	<u>163</u>	OBJECTION to Report and Recommendation (Issued) <u>162</u> filed by plaintiff Charles Nichols.(mr) (Entered: 04/02/2014)
04/11/2014	<u>165</u>	NOTICE OF DISCREPANCY AND ORDER: by Magistrate Judge Suzanne H. Segal, ORDERING Request for Ruling on Submitted Matter (2) submitted by Plaintiff Charles Nichols received on 4/09/14 is not to be filed but instead rejected. Denial based on: Both parties have not signed the document. (mr) (Entered: 04/16/2014)
04/14/2014	<u>164</u>	REPLY TO OBJECTION to Report and Recommendation (Issued) <u>162</u> filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 04/14/2014)
05/01/2014	<u>166</u>	ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE by Judge S. James Otero. IT IS ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED. IT IS FURTHER ORDERED that Defendant's Motion for Judgment on the Pleadings is GRANTED and that Judgment be entered in favor of Defendant Kamala D. Harris. (mr) (Entered: 05/01/2014)

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05/01/2014	<u>167</u>	JUDGMENT by Judge S. James Otero, Related to: R&R – ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE, <u>166</u> . IT IS HEREBY ADJUDGED that the above-captioned action is dismissed with prejudice. (MD JS-6, Case Terminated). (mr) (Entered: 05/01/2014)
05/27/2014	<u>168</u>	NOTICE OF APPEAL to the 9th CCA filed by Petitioner Charles Nichols. Appeal of Judgment <u>167</u> Filed On: 5/1/14; Entered On: 5/1/14; Filing fee \$505 PAID, receipt number LA096419. (Attachments: # <u>1</u> Appeal Fee receipt) (mat) (Entered: 05/28/2014)
05/29/2014	<u>169</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 14-55873, 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals <u>168</u> as to Petitioner Charles Nichols. (ja) (Entered: 05/30/2014)
06/10/2014	<u>170</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> filed by Charles Nichols CCA # 13-56203. On May 1, 2014, the district court entered a final order dismissing the underlying action. Consequently, this preliminary injunction appeal is dismissed as moot. See SEC v. Mount Vernon Meml Park, 664 F.2d 1358, 1361 (9th Cir. 1982) (district courts entry of final judgment renders pending appeal from preliminary injunction moot). Appellant's appeal from the district court's final judgment is proceeding in this court as appeal number 14-55873. All pending motions are denied as moot. Order received in this district on 6/10/2014. (dmap) (Entered: 06/16/2014)
07/03/2014	<u>171</u>	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> , CCA # 13-56203. On May 1, 2014, the district court entered a final order dismissing the underlying action. Consequently, this preliminary injunction appeal is dismissed as moot. Appellant's appeal from the district court's final judgment is proceeding in this court as appeal number 14-55873. Mandate received in this district on 7/3/2014. (car) (Entered: 07/08/2014)
01/21/2015	<u>172</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>168</u> filed by Charles Nichols, CCA # 14-55873. Appellant's motion to file sur-reply in opposition to appellees motion to stay proceedings is granted. Appellees opposed motion to stay proceedings pending the courts ruling whether to grant the petition for en banc review in Richards v. Prieto, No. 11- 16255 is granted. Within 90 days after the date of this order or within 14 daysafter the court rules on the petition for en banc review in Richards, whichever occurs first, appellees shall file an appropriate motion addressing the status of this appeal and requesting a further stay or other relief. Appellant's unopposed motion for an extension to file a shortened opening brief is granted. Order received in this district on 1/21/15. [See document for details] (mat) (Entered: 01/22/2015)
04/13/2015	<u>173</u>	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>168</u> filed by Charles Nichols. CCA # 14-55873. Appellant's unopposed motion to stay appellate proceedings pending disposition of two en banc cases, Peruta v. County of San Diego, case no. 10-56791, and Richards v. Prieto, case no. 11-16255, is granted. [See document for details] (mat) (Entered: 04/14/2015)
07/22/2016	<u>174</u>	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>168</u> filed by Charles Nichols. CCA # 14-55873. Appellant's unopposed motion (docket entry 23) to further stay appellate proceedings pending disposition of the petitions for full court rehearing in Peruta v. County of San Diego, case no. 10-56971, and Richards v. Prieto, case no. 11-16255, is granted. This case is stayed until November 17, 2016. [See document for further information] (car) (Entered: 07/26/2016)

1 Charles Nichols
 2 PO Box 1302
 3 Redondo Beach, CA 90278
 4 Voice: (424) 634-7381
 5 E-Mail: CharlesNichols@Pykrete.info
 6 In Pro Per

7
 8 United States District Court
 9 Central District of California
 10

2013 MAR 29 AM 10:12
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES
 BY: 

FILED

11 Charles Nichols,

12 PLAINTIFF,

13 vs.

14 KAMALA D. HARRIS, Attorney

15 General, in her official capacity as

16 Attorney General of California, CITY

17 OF REDONDO BEACH and DOES 1

18 to 10,

19 Defendants.
 20
 21
 22
 23
 24
 25
 26
 27
 28

Case No.:

CV-11-9916 SJO (SS)

SECOND AMENDED COMPLAINT

**COMPLAINT FOR
 DECLARATORY AND/OR
 PROSPECTIVE INJUNCTIVE
 RELIEF**

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

42 U.S.C. §§ 1983, 1985, 1986, 1988

FIRST AMENDMENT

SECOND AMENDMENT

FOURTH AMENDMENT

FOURTEENTH AMENDMENT

Second Amended Complaint

Charles Nichols v. Edmund G Brown Jr et al

JURISDICTION AND VENUE

1
2 1. This Court has subject matter jurisdiction over this action pursuant to 28
3 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1985, 1986, 1988.

4
5 2. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).
6

PARTIES

7
8 3. PLAINTIFF CHARLES NICHOLS is a natural person and citizen of the
9 United States and of the State of California and was at all material times a resident
10 of Los Angeles County.
11

12 4. At all relevant times, DEFENDANT KAMALA HARRIS (KAMALA
13 HARRIS, HARRIS) was, and currently is, the Attorney General of the State of
14 California and she is obligated to supervise her agency and comply with all
15 statutory duties under California Law. She is charged with enforcing and
16 interpreting California Statutes including, but not limited to, California Penal Code
17 Sections 25850, 26350, 26400, 26150, 26155, 26165, 26175, 26180, 26185, 26190,
18 26200, 26202, 26205, 26210, and 26215. KAMALA HARRIS has concurrent
19 prosecutorial jurisdiction with the state's 58 District Attorneys, and she is bound
20 by a duty to seek substantial justice and avoid the filing of criminal charges in
21 which she knows (or should know) are not supported by probable cause. HARRIS
22 also has an independent duty to disclose information beneficial to the accused and
23 by extension she has a duty to prevent wrongful arrests in the first place when she
24 has the power to do so. When she deems it advisable or necessary in the public
25 interest, or when directed to do so by the Governor, she shall assist any district
26 attorney in the discharge of his duties, and may, where she deems it necessary, take
27 full charge of any investigation or prosecution of violations of law of which the
28 superior court has jurisdiction. In this respect she has all the powers of a district

1 attorney, including the power to issue or cause to be issued subpoenas or other
2 process. See Article 5, Section 13 of the California Constitution and Cal. Gov't
3 Code §§ 12510, 12511 & 12550. She is being sued solely in her official capacity
4 and solely for Declarative and/or prospective injunctive relief.

5
6 5. At all relevant times, DEFENDANT CITY OF REDONDO BEACH
7 ("CITY") is and was a duly organized public entity, form unknown, existing under
8 the laws of the State of California. At all relevant times, CITY was the employer
9 of the police officers, prosecutors and DOE defendants who injured PLAINTIFF.

10
11 6. PLAINTIFF is uncertain of the exact identity of any additional individual
12 defendants who participated in the violation of his constitutionally protected rights.
13 PLAINTIFF therefore names these individuals as DOE Defendants and reserves
14 the right to amend this complaint when their true names are ascertained.
15 Furthermore, if/when additional persons and entities are discovered to have
16 assisted and/or lent support to the wrongful conduct of the DEFENDANTS named
17 herein, PLAINTIFF reserves the right to amend this complaint to add those persons
18 and/or entities as Defendants.

19
20 **BACKGROUND ALLEGATIONS**

21 7. The United States Supreme Court in its landmark decision on the Second
22 Amendment, *District of Columbia v. Heller*, 128 S. Ct. 2783, 2809 (2008),
23 broadly confirmed the rights of Americans to keep and bear arms. While the
24 opinion recognizes some limits to this right (i.e., prohibitions on concealed
25 weapons in public, prohibitions on dangerous and unusual weapons, limitations on
26 the possession of firearms by felons and the mentally ill, and laws forbidding
27 carrying firearms in sensitive locations like schools and public buildings), the right
28 itself is broad and occupies an important place in our constitutional history. The

1 right to keep and bear arms is implicit in our understanding of ordered liberty and
2 is deeply rooted in the traditions of our country. The Second Amendment right is
3 not the only provision in the Bill of Rights that has controversial public safety
4 implications. The provisions of the Bill of Rights have governed law enforcement
5 practices, the prosecution of cases including criminal cases and the punishment of
6 offenders. All of these have disputed public safety implications. Despite this, self-
7 defense is the central component of the Second Amendment right and is enshrined
8 in Article I, Section 1 our own State Constitution. The core lawful purpose of self-
9 defense does not disappear the moment a private citizen steps outside his home.
10 *Heller* has provided for a number of presumptively lawful regulatory measures
11 noted above such as prohibitions on the carrying of concealed firearms in public,
12 but neither the state nor local governments can prohibit private citizens from
13 carrying firearms openly, except in sensitive places. *Heller* tells us "This [Open
14 Carry] is the right guaranteed by the Constitution of the United States..."

15
16 8. This case involves an important constitutional principle, that neither the state
17 nor local governments may prohibit PLAINTIFF or similarly situated individuals
18 from openly carrying a fully functional firearm (loaded and unloaded) for the
19 purpose of self-defense (or for other lawful purposes) in non-sensitive public
20 places such as public streets, sidewalks, parking lots, open public spaces, his
21 residential property, within his motor vehicle including any attached camper or
22 trailer regardless of whether or not the motor vehicle or attached camper or trailer
23 is used as a primary or temporary residence or no residence at all. Places which
24 are not sensitive places where the carrying of loaded firearms can be prohibited;
25 such as in schools and government buildings and where there exists a State or
26 Federal law which constitutionally prohibits the carrying of a loaded firearm in
27 those sensitive places are not at issue. PLAINTIFF similarly does not challenge
28 any state or Federal prohibition on the carrying of weapons concealed or in the

1 licensing of the carrying of a weapon concealed in a public place or any of the
2 other presumptively lawful prohibitions stated in the *Heller* decision.

3
4 9. California law has expanded its ban on carrying a firearm in public to such a
5 great extent that PLAINTIFF, and tens of millions of similarly situated persons in
6 California, violate the ban by merely stepping outside the door of his home onto
7 his own residential property. In particular, California courts have construed the
8 ban on carrying firearms in a public place to include private residential property.
9 California courts have also construed that a loaded handgun, inside of a chest of
10 drawers, inside of a trailer towed behind a motor vehicle is a public place even
11 though the trailer was being used as a primary residence by the defendant. The
12 California legislature has enacted two recent bans on the open carry of unloaded
13 firearms in public. Assembly Bill 144 made it a crime to openly carry an unloaded
14 handgun in a public place and Assembly Bill 1527 made it a crime to openly carry
15 an unloaded firearm in a public place which is not a handgun (e.g., rifle shotgun) in
16 an incorporated city or city and county. Neither bill provides for a self-defense
17 exception. Both bills prohibit transport of an unloaded firearm except for directly
18 between two places where it is legal to possess a firearm. Prior to the enactment of
19 these two bills it was possible to openly carry an unloaded firearm in public places
20 with ammunition at the ready and to load the firearm should one find himself in
21 "grave, immediate danger," with an exception within 1,000 feet of a K-12 public or
22 private school, where handguns had to be carried unloaded in a fully enclosed,
23 locked container unless one had permission from the school (see Penal Code
24 section 626.9). This prohibition did not apply to the Open Carry of unloaded long
25 guns. However, the California courts are split on what constitutes a "loaded"
26 firearm. One appellate court held (correctly) that a firearm is not loaded unless
27 there is a live round in the firing chamber while another held that an unloaded
28

1 firearm is "loaded" if it simply has a magazine or clip containing ammunition
2 attached to the firearm and there is no ammunition in the firing chamber.
3

4 10. The theoretical ability to secure a license to openly carry a loaded firearm is
5 meaningless in light of Penal Code sections 26150 and 26155 which prevent
6 anyone living in a county with 200,000 or more people from securing a license to
7 openly carry a loaded gun. Virtually everyone in the state of California lives in a
8 place where state law prohibits the issuance of a license to openly carry a loaded
9 firearm (i.e., anyone who lives in a county with 200,000 people or more people)
10 including PLAINTIFF who lives in the County of Los Angeles.
11

12 11. Aside from the population limitation, an individual seeking a license to carry
13 a loaded and exposed weapon or a concealed weapon is required to apply for a
14 license from either the head of a municipal police department or county sheriff.
15 PLAINTIFF'S city of residence does not have a police chief and the custom and
16 policy of the Sheriff of Los Angeles County is to not issue permits absent showing
17 of an extraordinary need which as a practical matter means almost no one can carry
18 a loaded gun in Los Angeles County.
19

20 12. Indeed DEFENDANT HARRIS has instructed all issuing authorities in
21 California not to issue a license to openly carry a handgun to PLAINTIFF and
22 similarly situated individuals on page 1 of her "STANDARD APPLICATION
23 FOR LICENSE TO CARRY A CONCEALED WEAPON (CCW)" prepared by
24 the Attorney General pursuant to California Penal Code section 26175 which also
25 provides for her to revise the application form. DEFENDANT HARRIS has
26 refused to either create or revise the application form to accommodate
27 PLAINTIFF'S and similarly situated individuals Second Amendment right to
28 openly carry a loaded firearm in public for the purpose of self-defense and other

1 lawful purposes. Given the above, the constitutional right to bear arms as
2 enshrined in the Second Amendment and as recently interpreted by the Supreme
3 Court is being violated on a daily basis in California.

4
5 13. This case involves a second important constitutional principle that neither
6 the state nor its local governments can deny a license to PLAINTIFF or similarly
7 situated persons to openly carry a loaded firearm in non-sensitive public places
8 based on the population of the county in which a person who is not prohibited from
9 possessing a firearm resides or because he resides in a city or county within the
10 state in which state law does not provide for the issuance of a license to openly
11 carry a loaded firearm in non-sensitive public places.

12
13 **STATE LAWS AND CITY ORDINANCES**

14 14. All of the above paragraphs are re-alleged and incorporated herein by
15 reference with the same force and effect as if fully set forth herein.

16
17 15. Section 25850 states in pertinent part:

18 25850. (a) A person is guilty of carrying a loaded firearm when the person
19 carries a loaded firearm on the person or in a vehicle while in any public place or
20 on any public street in an incorporated city or in any public place or on any public
21 street in a prohibited area of unincorporated territory.

22 (b) In order to determine whether or not a firearm is loaded for the purpose of
23 enforcing this section, peace officers are authorized to examine any firearm carried
24 by anyone on the person or in a vehicle while in any public place or on any public
25 street in an incorporated city or prohibited area of an unincorporated territory.

26 Refusal to allow a peace officer to inspect a firearm pursuant to this section
27 constitutes probable cause for arrest for violation of this section. (Note that
28

1 California Penal Code **section 25850** does not contain a self-defense exception as
2 did prior section 12031.)

3
4 16. California Penal Code **section 26350** states in pertinent part:

5 26350. (a) (1) A person is guilty of openly carrying an unloaded handgun
6 when that person carries upon his or her person an exposed and unloaded handgun
7 outside a vehicle while in or on any of the following:

8 (A) A public place or public street in an incorporated city or city and county.

9 (B) A public street in a prohibited area of an unincorporated area of a county or
10 city and county.

11 (C) A public place in a prohibited area of a county or city and county.

12 (2) A person is guilty of openly carrying an unloaded handgun when that person
13 carries an exposed and unloaded handgun inside or on a vehicle, whether or not on
14 his or her person, while in or on any of the following:

15 (A) A public place or public street in an incorporated city or city and county.

16 (B) A public street in a prohibited area of an unincorporated area of a county or
17 city and county.

18 (C) A public place in a prohibited area of a county or city and county.

19
20 17. California Penal Code **section 26400** states in pertinent part:

21 26400. (a) A person is guilty of carrying an unloaded firearm that is not a
22 handgun in an incorporated city or city and county when that person carries upon
23 his or her person an unloaded firearm that is not a handgun outside a vehicle while
24 in the incorporated city or city and county.

25
26 18. California Penal Code **section 26150** states in pertinent part:
27
28

1 26150. (a) When a person applies for a license to carry a pistol, revolver, or
2 other firearm capable of being concealed upon the person, the sheriff of a county
3 may issue a license to that person upon proof of all of the following:

4 (1) The applicant is of good moral character.

5 (2) Good cause exists for issuance of the license.

6 (3) The applicant is a resident of the county or a city within the
7 county, or the applicant's principal place of employment or business is in the
8 county or a city within the county and the applicant spends a substantial period of
9 time in that place of employment or business.

10 (4) The applicant has completed a course of training as described in Section
11 26165.

12 (b) The sheriff may issue a license under subdivision (a) in either of the
13 following formats:

14 (1) A license to carry concealed a pistol, revolver, or other firearm capable of
15 being concealed upon the person.

16 (2) Where the population of the county is less than 200,000 persons according to
17 the most recent federal decennial census, a license to carry loaded and exposed in
18 only that county a pistol, revolver, or other firearm capable of being concealed
19 upon the person.

20
21 19. California Penal Code **section 26155** is substantially identical to section
22 26150 except that "the chief or other head of a municipal police department
23 of any city or city and county" is substituted for "the sheriff of a county"
24 and:

25 (c) Nothing in this chapter shall preclude the chief or other head of a municipal
26 police department of any city from entering an agreement with the sheriff of the
27 county in which the city is located for the sheriff to process all applications for
28

1 licenses, renewals of licenses, and amendments to licenses, pursuant to this
2 chapter.

3
4 20. California Penal Code **section 26160** states in pertinent part:

5 26160. Each licensing authority shall publish and make available a written
6 policy summarizing the provisions of Section 26150 and subdivisions (a) and (b)
7 of Section 26155.

8
9 21. California Penal Code **section 26165** requires a course of training of up to
10 24 hours before a license may be issued.

11
12 22. California Penal Code **section 26175** states in pertinent part:

13 26175. (a) (1) Applications for licenses, applications for amendments to
14 licenses, amendments to licenses, and licenses under this article shall be uniform
15 throughout the state, upon forms to be prescribed by the Attorney General.

16 (2) The Attorney General shall convene a committee composed of one
17 representative of the California State Sheriffs' Association, one representative of
18 the California Police Chiefs Association, and one representative of the Department
19 of Justice to review, and as deemed appropriate, revise the standard application
20 form for licenses. The committee shall meet for this purpose if two of the
21 committee's members deem that necessary.

22 (c) The standard application form for licenses described in subdivision (a) shall
23 require information from the applicant, including, but not limited to, the name,
24 occupation, residence, and business address of the applicant, the applicant's age,
25 height, weight, color of eyes and hair, and reason for desiring a license to carry the
26 weapon.

27 (i) Any license issued upon the application shall set forth the licensee's name,
28 occupation, residence and business address, the licensee's age, height, weight, color

1 of eyes and hair, and the reason for desiring a license to carry the weapon, and
2 shall, in addition, contain a description of the weapon or weapons authorized to be
3 carried, giving the name of the manufacturer, the serial number, and the caliber.
4

5 23. California Penal Code **section 26180** states in pertinent part:

6 26180. (a) Any person who files an application required by Section 26175
7 knowing that any statement contained therein is false is guilty of a misdemeanor.
8

9 24. California Penal Code **section 26185** states in pertinent part:

10 26185. (a) (1) The fingerprints of each applicant shall be taken and two
11 copies on forms prescribed by the Department of Justice shall be forwarded to the
12 department.
13

14 (2) Upon receipt of the fingerprints and the fee as prescribed in Section 26190,
15 the department shall promptly furnish the forwarding licensing authority a report of
16 all data and information pertaining to any applicant of which there is a record in its
17 office, including information as to whether the person is prohibited by state or
18 federal law from possessing, receiving, owning, or purchasing a firearm.

19 (3) No license shall be issued by any licensing authority until after receipt of the
20 report from the department.

21 (b) Notwithstanding subdivision (a), if the license applicant has previously
22 applied to the same licensing authority for a license to carry firearms pursuant to
23 this article and the applicant's fingerprints and fee have been previously forwarded
24 to the Department of Justice, as provided by this section, the licensing authority
25 shall note the previous identification numbers and other data that would provide
26 positive identification in the files of the Department of Justice on the copy of any
27 subsequent license submitted to the department in conformance with Section
28 26225 and no additional application form or fingerprints shall be required.

1 (c) If the license applicant has a license issued pursuant to this article and the
2 applicant's fingerprints have been previously forwarded to the Department of
3 Justice, as provided in this section, the licensing authority shall note the previous
4 identification numbers and other data that would provide positive identification in
5 the files of the Department of Justice on the copy of any subsequent license
6 submitted to the department in conformance with Section 26225 and no additional
7 fingerprints shall be required.

8
9 25. California Penal Code **section 26190** requires fees and provides for
10 additional testing costing applicant up to \$150 in addition to the required fees.

11
12 26. California Penal Code **section 26200** states in pertinent part:

13 26200. (a) A license issued pursuant to this article may include any
14 reasonable restrictions or conditions that the issuing authority deems warranted,
15 including restrictions as to the time, place, manner, and circumstances under which
16 the licensee may carry a pistol, revolver, or other firearm capable of being
17 concealed upon the person.

18
19 27. California Penal Code **section 26202** states in pertinent part:

20 26202. Upon making the determination of good cause pursuant to Section
21 26150 or 26155, the licensing authority shall give written notice to the applicant of
22 the licensing authority's determination. If the licensing authority determines that
23 good cause exists, the notice shall inform the applicants to proceed with the
24 training requirements specified in Section 26165. If the licensing authority
25 determines that good cause does not exist, the notice shall inform the applicant that
26 the request for a license has been denied and shall state the reason from the
27 department's published policy, described in Section 26160, as to why the
28 determination was made.

1 28. California Penal Code **section 26205** states in pertinent part:

2 26205. The licensing authority shall give written notice to the applicant
3 indicating if the license under this article is approved or denied. The licensing
4 authority shall give this notice within 90 days of the initial application for a new
5 license or a license renewal, or 30 days after receipt of the applicant's criminal
6 background check from the Department of Justice, whichever is later. If the license
7 is denied, the notice shall state which requirement was not satisfied.

8
9 29. California Penal Code **section 26210** states in pertinent part:

10 (d) Notwithstanding subdivision (c), if a licensee's place of residence was the
11 basis for issuance of a license, any license issued pursuant to Section 26150 or
12 26155 shall expire 90 days after the licensee moves from the county of issuance.

13 (e) If the license is one to carry loaded and exposed a pistol, revolver, or other
14 firearm capable of being concealed upon the person, the license shall be revoked
15 immediately upon a change of the licensee's place of residence to another county.

16
17 30. California Penal Code **section 26215** states in pertinent part:

18 26215. (a) A person issued a license pursuant to this article may apply to the
19 licensing authority for an amendment to the license to do one or more of the
20 following:

21 (1) Add or delete authority to carry a particular pistol, revolver, or other firearm
22 capable of being concealed upon the person.

23 (2) Authorize the licensee to carry concealed a pistol, revolver, or other firearm
24 capable of being concealed upon the person.

25 (3) If the population of the county is less than 200,000 persons according to the
26 most recent federal decennial census, authorize the licensee to carry loaded and
27 exposed in only that county a pistol, revolver, or other firearm capable of being
28 concealed upon the person.

1 (4) Change any restrictions or conditions on the license, including restrictions as
2 to the time, place, manner, and circumstances under which the person may carry a
3 pistol, revolver, or other firearm capable of being concealed upon the person.

4
5 31. California Penal Code **section 26220** states in pertinent part:

6 26220. (a) Except as otherwise provided in this section and in subdivision
7 (c) of Section 26210, a license issued pursuant to Section 26150 or 26155 is valid
8 for any period of time not to exceed two years from the date of the license.

9 (b) If the licensee's place of employment or business was the basis for issuance of
10 a license pursuant to Section 26150, the license is valid for any period of time not
11 to exceed 90 days from the date of the license. The license shall be valid only in
12 the county in which the license was originally issued. The licensee shall give a
13 copy of this license to the licensing authority of the city, county, or city and county
14 in which the licensee resides. The licensing authority that originally issued the
15 license shall inform the licensee verbally and in writing in at least 16-point type of
16 this obligation to give a copy of the license to the licensing authority of the city,
17 county, or city and county of residence. Any application to renew or extend the
18 validity of, or reissue, the license may be granted only upon the concurrence of the
19 licensing authority that originally issued the license and the licensing authority of
20 the city, county, or city and county in which the licensee resides.

21 (c) A license issued pursuant to Section 26150 or 26155 is valid for any period of
22 time not to exceed three years from the date of the license if the license is issued to
23 any of the following individuals:

24 (1) A judge of a California court of record.

25 (2) A full-time court commissioner of a California court of record.

26 (3) A judge of a federal court.

27 (4) A magistrate of a federal court.

28 (d) A license issued pursuant to Section 26150 or 26155 is valid

1 for any period of time not to exceed four years from the date of the license if the
2 license is issued to a custodial officer who is an employee of the sheriff as
3 provided in Section 831.5, except that the license shall be invalid upon the
4 conclusion of the person's employment pursuant to Section 831.5 if the four-year
5 period has not otherwise expired or any other condition imposed pursuant to this
6 article does not limit the validity of the license to a shorter time period.

7 (e) A license issued pursuant to Section 26170 to a peace officer appointed
8 pursuant to Section 830.6 is valid for any period of time not to exceed four years
9 from the date of the license, except that the license shall be invalid upon the
10 conclusion of the person's appointment pursuant to Section 830.6 if the four-year
11 period has not otherwise expired or any other condition imposed pursuant to this
12 article does not limit the validity of the license to a shorter time period.

13
14 32. California Penal Code **section 17030** states in full:

15 17030. As used in this part, "prohibited area" means any place where it is
16 unlawful to discharge a weapon.

17
18 33. Defendant CITY OF REDONDO BEACH broadly defines "Park" to include
19 all "open space." The Redondo Beach City ordinances state in pertinent part:

20 **4-35.01 Definitions.**

21 "Park" shall mean any publicly owned or leased property established, designated,
22 maintained, or otherwise provided by the City for recreational use or enjoyment,
23 including, but not limited to, any public areas located within or directly adjacent to
24 such property such as picnic areas, playgrounds, sports fields, athletic fields, sports
25 courts, trails, walkways, pathways, gardens, parking lots, parkettes, aquatic centers,
26 skateboard parks, community centers, senior centers, land designated by the City
27 as parkland or open space, landscaped or planted areas, and other buildings or
28

1 structures. **The term “park” shall not include the beach as defined in Section 5-**
2 **8.01(a)(1) of this Code.”** Emphasis added.

3
4 **4-35.06 Vehicles in parks.**

5 No person shall drive any motorized vehicle within any portion of any park,
6 excluding park parking lots. This section shall not apply to service vehicles used to
7 maintain or operate the park, or to police or emergency vehicles. (§ 1, Ord. 3051
8 c.s., eff. June 18, 2010)

9
10 **4-35.20 Weapons and explosives in parks.**

11 (a) It shall be unlawful for any person to use, carry, fire or discharge any firearm,
12 air gun, paint gun, BB gun, slingshot, archery device of any kind, or any other
13 form of weapon across, in or into a park. This subsection shall not apply to law
14 enforcement officers.

15
16 34. Redondo Beach municipal ordinance **5-8.01(a)(1)** states:

17 “Beach” means the public beach or shoreline area bordering the Pacific Ocean,
18 owned, managed or controlled by the State of California, County of Los Angeles or
19 the City of Redondo Beach or that is open to the general public and located within
20 the City of Redondo Beach. For the purposes of this section, the beach shall
21 include all indoor and outdoor areas of the land in the City that extends 1,000 feet
22 seaward from the low mean tide line and landward to the following described lines:
23 to the top of the seaward face of the coastal bluffs west of the Esplanade from the
24 City’s southerly border to the southerly edge of the first residential private property
25 on the west side of the Esplanade and to the westerly edge of the private properties
26 on the west side of the Esplanade from Avenue A to Ainsworth Court at George
27 Freeth Way; to the westerly edge of the public sidewalk from Ainsworth Court to
28 the extended line of the southerly edge of the Redondo Beach Pier; to the westerly

1 foundation under the Pier from the southerly edge of the Pier to the southerly edge
2 of the Harbor entrance break wall; from the westerly edge of the road, parking lot
3 or buildings bordering the sandy area from the northerly edge of the Galveston
4 Wall to the City's northern border.

5
6 **FACTS**

7 35. All of the above paragraphs are re-alleged and incorporated herein by
8 reference with the same force and effect as if fully set forth herein.

9
10 36. California law and local City Of Redondo Beach ordinances prohibit
11 PLAINTIFF and similarly situated individuals from openly carrying a firearm in
12 non-sensitive public places which is a violation of the United States Constitution
13 and the fundamental right to openly carry a loaded firearm for the purpose of self-
14 defense and for other lawful purposes. California statutes require that PLAINTIFF
15 and individuals similarly situated "voluntarily" give permission to an
16 unconstitutional search and seizure of his property and person in order to exercise a
17 fundamental constitutional right to openly carry a firearm in non-sensitive public
18 places or risk arrest, prosecution, fine and imprisonment. Defendant City of
19 Redondo Beach ordinances unconstitutionally prohibit the carrying of all weapons
20 in all open spaces. Defendant City of Redondo Beach has interpreted its local
21 ordinance, 4-35.20 to apply to all public, open spaces within the city including the
22 costal parklands and public coastal property not zoned as parkland to which the
23 prohibitions in 4-35.20 are statutorily excluded from its own city ordinances: 4-
24 35.01, 4-35.06, and 5-8.01(a)(1). DEFENDANT HARRIS has taken no steps to
25 correct the unlawful behavior of the CITY or to intervene PLAINTIFF'S behalf in
26 his criminal prosecution. DEFENDANT HARRIS has done nothing to stop the
27 unlawful conduct of the CITY.

1 37. Redondo Beach City ordinances prohibit PLAINTIFF and similarly situated
2 individuals from openly carrying a firearm; loaded and unloaded, openly or
3 concealed and even unloaded within a fully enclosed locked container. Unloaded
4 and in a fully enclosed locked container is the lawful manner of transporting a
5 handgun through areas, such as school zones, where openly carrying a firearm is
6 prohibited. DEFENDANT HARRIS has taken no steps to correct the unlawful
7 behavior of the CITY or to intervene on PLAINTIFF'S behalf in his criminal
8 prosecution.

9
10 38. The State of California has preempted local governments from enacting and
11 enforcing local ordinances regulating the carrying of firearms, loaded and
12 unloaded, openly or concealed. Local governments are prohibited from issuing or
13 denying licenses to openly carry loaded firearms except where provided by state
14 law. DEFENDANT HARRIS has done nothing to stop the unlawful conduct of the
15 CITY.

16
17 39. A publication by the State of California's Office of Attorney General titled
18 "CONCEALABLE FIREARMS CHARGES IN CALIFORNIA 2000-2003" on
19 page 14 in Table N-17 indicates that there were 7,775 charged offenses for
20 violation of California Penal Code Section 12031 during that time period. This
21 number does not reflect arrests which were not charged or searches conducted
22 pursuant to the statute. The most recent publication by DEFENDANT HARRIS
23 titled "Crime In California 2010" indicates that there were 22,216 felony arrests
24 and 5,800 misdemeanor arrests for weapons violations on pages 34 and 43
25 respectively. The documents also contain breakdowns of arrests by race which
26 shows that racial minorities are disproportionately arrested. Effective January 1,
27 2012 California Penal Code Section 12031 was renumbered. Former Penal Code
28 Section 12031(a)(1) is now Penal Code Section 25850(a) and former section

1 12031(e) is now 25850(b). The text of these two subsections was left unchanged
2 when they were renumbered.

3
4 40. The Office of the Attorney General has one or more databases containing
5 arrests made for violations of California Penal Code Section 25850 (formerly
6 PC12031) and other weapons offenses from 1979 to the present.

7
8 41. Pursuant to California Penal Code Section 25850 et al the State of California
9 has clearly and unequivocally set forth an unconstitutional policy of prohibiting
10 firearms (loaded and unloaded) from being openly carried in non-sensitive public
11 places for the purpose of self-defense and other lawful purposes in all incorporated
12 cities and unincorporated county territory where the discharge of firearms is
13 prohibited. DEFENDANT HARRIS has participated in its enforcement.

14
15 42. Pursuant to California Penal Code Sections 25850, 26350, 26150, 26155 et
16 al, the State of California has clearly and unequivocally set forth an
17 unconstitutional policy of rationing licenses to openly carry a loaded and unloaded
18 handgun for the purpose of self-defense and for other lawful purposes. In addition
19 to limiting the exercise of PLAINTIFF'S and similarly situated individuals Second
20 Amendment right, the California licensing and prohibition on openly carrying
21 loaded and unloaded firearms in public places is designed and intended to deny
22 persons of color their Second Amendment right. DEFENDANT HARRIS has
23 participated in their enforcement, promulgates the prohibitions, prepares the forms,
24 conducts the background checks and a license may not be issued without her
25 approval.

26
27 43. The intent of the California Legislature when it enacted California Penal
28 Code Section 12031 (now PC 25850 in part) in July of 1967 was that it apply to

1 openly carried firearms, which the legislative history clearly states. The
2 Legislature did not intend for it to apply to the concealed carry of firearms. The
3 legislation was intended to disarm members of the Black Panther Party for Self-
4 Defense while providing for the Open Carry of a loaded firearm when one
5 reasonably believed himself to be in danger or while hunting within the city limits
6 of an incorporated city, town or village. The self-defense threshold was raised to a
7 grave and immediate danger in 1981. Under California case law, convicted felons
8 and other prohibited persons still fall under the pre-1981 "reasonable fear"
9 threshold whereas PLAINTIFF and all others who fall within the scope of the
10 Second Amendment are subject to the much higher "grave, immediate danger"
11 self-defense threshold.

12
13 44. In 1969, the California courts held that the statute (PC 12031 now
14 renumbered in part as 25850(a) & (b)) could be applied as a separate offense to
15 carrying a concealed firearm in public. In 2012, the California Supreme Court held
16 that a person may not be punished for violating more than one law for the same act
17 pursuant to Penal Code section 654. For example, a person may not presently be
18 punished for both unlawfully carrying a concealed handgun and for a violation of
19 PC 25850 for the same act.

20
21 45. California Penal Code Section 25850 and Redondo Beach City ordinances 4-
22 35.01 and 4-35.20 were enforced on PLAINTIFF on May 21, 2012 when Redondo
23 Beach police officer Heywood enforced subsection (b) of PC 25850 on
24 PLAINTIFF by taking PLAINTIFF'S firearm over PLAINTIFF'S clearly
25 communicated refusal to comply with subsection (b) of PC 25850. Officer
26 Heywood then inspected the firearm to determine whether or not it was loaded
27 pursuant to subsection (b) of PC 25850 which he referred to as a "Chamber
28 Check." City of Redondo Beach Police Officer Heywood then seized

1 PLAINTIFF'S openly carried firearm and other property and an unidentified
2 Redondo Beach police officer informed PLAINTIFF that his firearm was being
3 seized for violating the city ordinances. PLAINTIFF was then informed by this
4 police officer that PLAINTIFF'S violation of the city ordinances had been referred
5 to the Redondo Beach City Attorney and City Prosecutor for criminal prosecution.
6 This police officer stated that PLAINTIFF was neither being cited nor arrested and
7 that he did not have a warrant. PLAINTIFF submits that his person and property
8 were unlawfully seized and searched against his will and that PLAINTIFF was
9 unlawfully arrested and/or detained against his will while engaged in peaceful
10 protest and openly carrying an unloaded firearm as part of his protest and as the
11 only means then not prohibited by state law to defend PLAINTIFF with a firearm
12 in public. PLAINTIFF'S protest of May 21, 2012 for which he was arrested and
13 prosecuted was conducted entirely within the "Beach" zone to which the local
14 ordinance he was charged with violating does not apply according to CITY'S own
15 municipal code. At the time of his arrest, PLAINTIFF posed no threat, imminent
16 or otherwise, of death, personal injury (serious or otherwise) to any police officer
17 or to any other person. PLAINTIFF was arrested, searched and his property seized
18 on a street with a posted 5MPH speed limit open to the public and posted as
19 "PRIVATE PROPERTY." PLAINTIFF and fellow Open Carry activists were
20 threatened with prosecution of Redondo Beach City ordinance 4-35.20 on August
21 7, 2010 at an Open Carry event which PLAINTIFF had scheduled in advance of
22 the date with the CITY but was prohibited from taking place by CITY police
23 officers at the direction of the CITY in retaliation for a member of the South Bay
24 Open Carry movement not wanting to postpone the event until the following
25 month. PLAINTIFF was injured and suffers an ongoing injury. PLAINTIFF'S
26 constitutional rights were violated. PLAINTIFF suffered a personal injury as well.
27 PLAINTIFF was prosecuted for his subsequent protest which was held and then
28 broken up by CITY police officers on May 21, 2012. DEFENDANT HARRIS has

1 not intervened in his prosecution which is her duty to do so. DEFENDANT
2 HARRIS has done nothing to stop the unlawful conduct of the CITY.

3
4 46. PLAINTIFF asked CITY OF REDONDO BEACH Police Chief Joseph
5 Leonardi through his then attorney and through Redondo Beach Captain Jeff Hink
6 for an application and a license to openly carry a loaded handgun on May 17, 2012.
7 Captain Jeff Hink referred PLAINTIFF'S request for an application and a license
8 to openly carry a loaded firearm to the City Attorney and informed PLAINTIFF of
9 this via email.

10
11 47. On May 21, 2012 after both California Penal Code Section 25850 and the
12 Redondo Beach city ordinances 4-35.20 and 4-35.01 had been enforced on
13 PLAINTIFF and his firearm seized, the Redondo Beach Police Chief through his
14 attorney, the Redondo Beach City Attorney, denied PLAINTIFF both an
15 application and a license to openly carry a loaded firearm citing California Penal
16 Code section 26155(b)(2) prohibiting the issuance of licenses in counties with a
17 population of 200,000 or more people and California Penal Code section
18 26155(a)(3) limiting the issuance of licenses only to residents of the city.
19 PLAINTIFF resides in a city adjacent to the City of Redondo Beach and receives
20 his mail from a post office box in the City of Redondo Beach. The City of
21 Redondo Beach is also where PLAINTIFF shops, travels through and frequents on
22 a regular basis. There is no administrative appeal available for PLAINTIFF to
23 appeal the denial of an application for a license to openly carry a loaded handgun
24 in public. DEFENDANT HARRIS has told every police chief and county sheriff
25 in the state that PLAINTIFF and similarly situated individuals may not be issued a
26 license to openly carry a loaded firearm in the state. It is futile for PLAINTIFF to
27 apply for a license to openly carry a loaded handgun from any issuing authority in
28 the State of California.

1 48. PLAINTIFF obtained a Law Enforcement Gun Release Letter from
2 DEFENDANT HARRIS' California Department of Justice and demanded the
3 return of his firearm and other property seized by CITY as required by California
4 law. PLAINTIFF'S property was not returned by CITY. PLAINTIFF has no other
5 appeal or administrative remedy for return of his firearm and other property.
6 DEFENDANT HARRIS has done nothing to stop the unlawful conduct of the
7 CITY.

8
9 49. PLAINTIFF has frequently and countless times violated California Penal
10 Code Section 25850, the Redondo Beach City Ordinances and other California
11 statutes prohibiting firearms from being carried in non-sensitive public places.
12 PLAINTIFF continues to violate California Penal Code Section 25850, the
13 Redondo Beach City Ordinances and other California statutes prohibiting firearms
14 from being carried in public places and will continue to violate California Penal
15 Code Section 25850, the Redondo Beach City Ordinances and other California
16 statutes prohibiting firearms from being carried in public places on the 7th day of
17 every month by carrying a firearm (a holstered handgun, rifle or shotgun of a type
18 in common use by the public) in a public place. PLAINTIFF will violate
19 California Penal Code Sections 25850, 26350, 26400 and the Redondo Beach City
20 Ordinances and other California statutes prohibiting firearms from being carried in
21 public places on August 7, 2013 in the same location in the City of Redondo Beach
22 where he was prevented from openly carrying a firearm under threat of arrest on
23 August 7, 2010 and where California Penal Code Section 25850 and the Redondo
24 Beach City Ordinances 4-35.20 and 4-35.01 prohibiting the carrying of firearms in
25 public places were enforced against PLAINTIFF on May 21, 2012. PLAINTIFF
26 will then proceed from the Redondo Beach Pier and environs to the South Bay
27 Shopping Center in the City of Redondo Beach to do some shopping. PLAINTIFF
28 will then travel outside of the City of Redondo Beach to visit relatives in Torrance,

1 California where he will openly carry firearms along the public streets and on
2 public sidewalks and on his relatives' residential property. PLAINTIFF will openly
3 carry a loaded holstered handgun, loaded rifle and loaded shotgun of a type in
4 common use by the public. PLAINTIFF will openly carry an unloaded holstered
5 handgun, unloaded rifle and unloaded shotgun of a type in common use by the
6 public. PLAINTIFF will openly carry, loaded and unloaded, a holstered handgun,
7 rifle and shotgun of a type in common use by the public while travelling within the
8 state of California within and without a motor vehicle. PLAINTIFF will openly
9 carry a firearm when confronted by aggressors, it is impossible to know when such
10 occasions will arise, if it were, PLAINTIFF would avoid them even though there is
11 no "duty to retreat" in the State of California. At all times, PLAINTIFF will refuse
12 to consent to the inspection of his firearm to see if it is loaded in violation of
13 California Penal Code Section 25850.

14
15 50. Although both the state statutes (California Penal Code Section 25850 &
16 26155) and Redondo Beach City Ordinances (4-35.20 and 4-35.01) have already
17 been enforced against PLAINTIFF and others. Each and every year, there are over
18 1,000 arrests for violating California Penal Code Section 25850 alone and
19 Defendant HARRIS continues to prosecute the upholding of criminal convictions
20 for violation of the statute which are appealed. PLAINTIFF personally knows two
21 persons who are members of his California non-profit association of which he is
22 the President (California Right To Carry – An Open Carry advocacy group) who
23 were prosecuted for having a "loaded" handgun in their vehicles even though the
24 handgun was unloaded. Charges in both cases were eventually dismissed after a
25 year of prosecution. A third member was arrested for lawfully transporting an
26 unloaded handgun in a fully enclosed locked container but not prosecuted.
27 DEFENDANT HARRIS had been made aware of the first two cases by
28 PLAINTIFF and yet she refused to exercise her authority under California law to

1 end those prosecutions and prevent current and future unconstitutional
2 prosecutions of the statute. Neither has DEFENDANT HARRIS instructed the
3 Redondo Beach Defendants that their city ordinances prohibiting the carrying of
4 firearms in public places are preempted by state law and is unconstitutional under
5 Federal law nor has she intervened on behalf of PLAINTIFF in the criminal
6 prosecution by the DEFENDANT CITY OF REDONDO BEACH or in the two
7 prosecutions mentioned previously despite her duty to do so. Given the history of
8 zealous enforcement of California's laws prohibiting the carrying of firearms in
9 non-sensitive public places by HARRIS and others including by members of her
10 own Department of Justice, with arrests, prosecutions and imprisonments
11 numbering in the tens of thousands; future enforcement of the statute on
12 PLAINTIFF is far more than likely - It is a certainty. The active enforcement by
13 CITY against PLAINTIFF and enforcement by others on similarly situated parties
14 constitutes a real threat of enforcement against PLAINTIFF as both members of
15 PLAINTIFF'S non-profit were openly carrying an unloaded handgun at the time of
16 their arrest which is the manner PLAINTIFF usually carried a firearm in non-
17 sensitive public places unless he reasonably believed he was in danger; an
18 inadvertent violation of former penal code section 12031(a)(1). PLAINTIFF was
19 not even aware that the threshold for carrying a loaded firearm had been raised to
20 grave, immediate danger until relatively recently. There is no knowledge
21 requirement to the statutes. PLAINTIFF'S ignorance of the change in the law
22 would not have prevented his arrest, prosecution fine and imprisonment.
23 DEFENDANT HARRIS has done nothing to stop the unlawful conduct of the
24 CITY, or of law enforcement officers, prosecutors and judges.

25
26 51. When officer Todd Heywood enforced California Penal Code Section 25850
27 against PLAINTIFF against his will and seized PLAINTIFF'S firearm and
28 property against his will a definite and concrete dispute regarding the lawfulness of

1 that search and enforcement of that statute came into existence. Officer Heywood
2 is an employee of CITY. DEFENDANT HARRIS has done nothing to stop the
3 unlawful conduct of the CITY and its employees.

4
5 52. When officer Todd Heywood and others enforced Redondo Beach City
6 ordinances 4-35.01 and 4-35.20 against PLAINTIFF and seized PLAINTIFF'S
7 firearm and property against his will a definite and concrete dispute regarding the
8 lawfulness of that seizure and enforcement of those city ordinances came into
9 existence. DEFENDANT HARRIS has done nothing to stop the unlawful conduct
10 of the CITY and its employees.

11
12 53. The Federal Bureau of Investigation (FBI) has a National Instant Criminal
13 Background Check System (NICS) which has been operational since 1998. The
14 NICS Section is accessible via a toll-free telephone number or electronically on the
15 Internet through the NICS E-Check System to request a background check with the
16 descriptive information provided on the ATF Form 4473. NICS is customarily
17 available 17 hours a day, seven days a week, including holidays (except for
18 Christmas). The NICS can be used to instantly determine whether a prospective
19 buyer is eligible to buy firearms.

20
21 54. In this case, injuries to PLAINTIFF have already occurred and are ongoing,
22 thereby eliminating any concerns that PLAINTIFF'S fear of enforcement is purely
23 speculative. PLAINTIFF'S injury is ongoing.

24
25 **FIRST CLAIM FOR RELIEF:**

26 **SECOND AMENDMENT, FOURTH AMENDMENT, FOURTEENTH**

27 **AMENDMENT UNITED STATES CONSTITUTION**

28 **42 USC § 1983, 1988 - INJUNCTIVE/DECLARATORY RELIEF**

PLAINTIFF vs DEFENDANT KAMALA HARRIS

1
2 55. All of the above paragraphs are re-alleged and incorporated herein by
3 reference with the same force and effect as if fully set forth herein.

4
5 56. The Second Amendment “guarantee[s] the individual right to possess and
6 carry weapons in case of confrontation.” District of Columbia v. Heller, 554 U.S.
7 570, 592 (2008) and was applied to all state and local governments in McDonald v.
8 Chicago, 561 U.S. 3025 (2010).

9
10 57. California Penal Code Section 25850 is unconstitutional on its face and as
11 applied to firearms openly carried in non-sensitive public places. Mere possession
12 or carrying of a loaded firearm, (i.e., exercising a fundamental right) when
13 otherwise lawful under law cannot support the unlawful detention, arrest,
14 prosecution, imprisonment or search of a person and seizure of a firearm when
15 openly carried in non-sensitive public places (25850(a)). Mere possession of a
16 firearm, (i.e., exercising a fundamental right) when otherwise lawful, cannot
17 support a finding of probable cause to believe a crime has been committed, such
18 that the Fourth Amendment’s warrant requirement can be legislatively disregarded
19 (25850(b)). Openly carrying a loaded firearm in non-sensitive public places such
20 as public streets, sidewalks, shopping centers, parking lots, piers, open spaces; of a
21 type in common use for the purpose of self-defense or for other lawful purposes is
22 a right guaranteed by the Second Amendment of the United States Constitution and
23 is a fundamental right which cannot be denied to PLAINTIFF or the People under
24 the Second and Fourteenth Amendments because PLAINTIFF happens to be in a
25 non-sensitive public place in ALL incorporated cities or in ANY unincorporated
26 county territory where the discharge of a firearm is prohibited. PC25850 should be
27 construed as a Loaded Open Carry ban, which is what the legislature intended and
28 is clear in the legislative history.

1 58. PLAINTIFF requests declaratory and/or prospective injunctive relief under
2 42 U.S.C. § 1983 against DEFENDANT HARRIS to prevent future violations of
3 his constitutional right to be free from unreasonable search and seizure under the
4 Fourth Amendment to the United States Constitution while he is exercising his
5 Second Amendment right to openly carry a loaded firearm in non-sensitive places
6 for the purpose of self-defense and for other lawful purposes. PLAINTIFF desires
7 to exercise his Second Amendment right. PLAINTIFF desires a judicial
8 declaration of his rights and DEFENDANT'S duties namely, that California Penal
9 Code Section 25850 infringes on PLAINTIFF'S Second, Fourth and Fourteenth
10 Amendment rights to openly carry a loaded firearm in non-sensitive public places
11 and/or prospective injunctive relief under 42 U.S.C. § 1983.

12
13 59. The Second Amendment invalidates California Statutes to the extent they
14 prevent private citizens who are not otherwise barred from exercising their Second
15 Amendment Right (examples of prohibited persons include convicted felons,
16 mentally ill, etc) from openly carrying firearms in non-sensitive public places,
17 loaded and unloaded, for the purpose of self-defense and for other lawful purposes.

18
19 60. California Penal Code Section 25850 is invalid as applied to prohibit, or
20 infringe, a private citizen who is otherwise eligible to possess firearms from openly
21 carrying a loaded and operable firearm in non-sensitive public places for the
22 purpose of self-defense and for other lawful purposes.

23
24 61. California Penal Code Section 25850 is unconstitutionally vague. A
25 reasonable person would not conclude that either his private residential property or
26 the inside of his motor vehicle is a public place. Neither would a reasonable
27 person conclude that an unloaded firearm is loaded simply by having a magazine
28 or clip attached to his firearm unless there was also a live round in the firing

1 chamber of the firearm. Prior to July of 1967 when former Penal Code section
2 12031 went into effect a revolver was considered to be unloaded if it did not have a
3 live round in the firing chamber even though it had live rounds in the cylinder.
4 The exceptions and numerous subsections to former Penal Code section 12031, of
5 which PC 25850 is a part, have been scattered throughout the California Penal
6 code to such an extent that PC 25850 is unconstitutionally vague. It subjects the
7 exercise of the right of bear arms to an unascertainable standard, and
8 unconstitutionally broad because it authorizes the punishment of constitutionally
9 protected conduct. PC 25850 is also unconstitutionally vague because a reasonable
10 person would have to spend days searching through the California statutes and case
11 law and still be uncertain as to whether or not a particular act, or being in a
12 particular place, is in violation of PC 25850. Most of the subsections of former
13 Penal Code section 12031 are now to be found in 16750(b), 16840(b), 17030,
14 25850-26025 (inclusive), 26030(a)-(c), 26035-26055 (inclusive).

15
16 62. California Penal Code Section 26350 is facially invalid and as applied to
17 prohibit, or infringe, PLAINTIFF and private citizens who are otherwise eligible to
18 possess a firearm from openly carrying an unloaded and operable handgun for the
19 purpose of self-defense in non-sensitive public places. Mere possession of
20 matching ammunition cannot make an unloaded handgun "loaded."

21
22 63. California Penal Code Section 26400 is facially invalid and as applied to
23 prohibit, or infringe, a private citizen who is otherwise eligible to possess an
24 unloaded firearm that is not a handgun from openly carrying an unloaded and
25 operable firearm that is not a handgun for the purpose of self-defense in non-
26 sensitive public places. Mere possession of matching ammunition cannot make an
27 unloaded firearm "loaded."

64. California Penal Code Sections 26150, 26155, 26160, 26165, 26175, 26180, 26185, 26190, 26200, 26202, 26205, 26210, 26215, 26220, are facially invalid and as applied to prohibit, or infringe, PLAINTIFF and private citizens who are otherwise eligible to possess a firearm from openly carrying a loaded and operable handgun for the purpose of self-defense in non-sensitive public places.

65. California Penal Code Sections 26150, 26155, 26160, 26165, 26175, 26180, 26185, 26190, 26200, 26202, 26205, 26210, 26215, 26220 are unconstitutional on their face and as applied in this case to the extent that they restrict licenses to openly carry a loaded handgun only to persons within counties of a population of fewer than 200,000 persons which is valid only in those counties, to only those residents who reside within those counties and leaves the issuance of such licenses solely to the discretion of the issuing authority and prohibiting the issuing authority from issuing a license to other than a resident of the city, county or city and county thereby prohibiting PLAINTIFF from obtaining a license to openly carry a loaded handgun for the purpose of self-defense in non-sensitive public places afforded to similarly situated persons which is a violation of PLAINTIFF'S rights under the Second and Fourteenth Amendments.

66. The invalidities of the aforesaid statutes, and Defendants' application of same, infringe PLAINTIFF'S Second, Fourth and Fourteenth Amendments right and damage PLAINTIFF in violation of 42 U.S.C. § 1983.

67. PLAINTIFF is proceeding pro-se. None of his challenges should be construed as challenging any California statute as it pertains to the carrying of a weapon concealed on one's person in a public place. For example, "good cause," "good moral character," "training," "fingerprinting," "residency," and the requirement for a license itself, etc., are only at issue in this case as they pertain to

1 licenses to carry firearms openly in non-sensitive public places and those places
2 which PLAINTIFF submits are not public places, sensitive or otherwise, such as
3 the curtilage of his home, within his motor vehicle including within any attached
4 campers or trailers regardless of whether or not they are being used as a residence.
5

6 68. PLAINTIFF'S injuries are irreparable because PLAINTIFF is entitled to
7 enjoy his Constitutional rights in fact.
8

9 69. PLAINTIFF requests declaratory and/or prospective injunctive relief under
10 42 U.S.C. § 1983 against DEFENDANT HARRIS to prevent future violations of
11 his Second Amendment right to openly carry a loaded firearm in non-sensitive
12 public places for the purpose of self-defense and for other lawful purposes, his
13 Fourth Amendment Right, and his Fourteenth Amendment rights to equal
14 protection under the law and to due process. PLAINTIFF submits that no license
15 is required to openly carry a firearm for the purpose of self-defense but if a license
16 is required then PLAINTIFF and persons not prohibited from possessing a firearm
17 have a liberty and/or property interest in a license and must be issued one. It is
18 futile for PLAINTIFF and similarly situated individuals to apply for a license from
19 any and all police chiefs, county sheriffs or other issuing authorities. ALL of the
20 laws at issue in this case fail to survive even rational review. There is no rational
21 basis to uphold them even absent the Constitution. Similarly, they cannot survive
22 facial, as applied, and vagueness challenges and PLAINTIFF makes these
23 challenges against all laws at issue in this complaint.
24

25 **SECOND CLAIM FOR RELIEF:**

26 **UNREASONABLE SEARCH AND SEIZURE AND DUE PROCESS AND**
27 **FIRST, SECOND, FOURTH, FOURTEENTH AMENDMENT -**
28 **MUNICIPAL LIABILITY FOR UNCONSTITUTIONAL CUSTOM OR**

POLICY PLAINTIFF vs DEFENDANT CITY OF REDONDO BEACH &
DOES 1-8

70. All of the above paragraphs are re-alleged and incorporated herein by reference with the same force and effect as if fully set forth herein. PLAINTIFF realizes that this court has indicated that this count will likely be dismissed pursuant to the Younger Abstention just as his count against the CITY ordinances were but given that the condition for the Younger Abstention may be lifted, PLAINTIFF is keeping this claim in for now but is not seeking to move it forward until the Abstention is lifted.

71. DEFENDANT CITY OF REDONDO BEACH ongoing and unjustified violation of PLAINTIFF'S First, Second, Fourth and Fourteenth Amendment rights deprived PLAINTIFF of his right to peaceful protest and assembly under the First Amendment, his right to openly carry a firearm under the Second Amendment, his right against unreasonable search and seizure as guaranteed by the Fourth Amendment, all applied to states, local governments, state actors and agents of the states by the Fourteenth Amendment and his right to due process. The deprivation began on August 7, 2010 and continues to the present date. PLAINTIFF brought his initial suit on November 30, 2011 and amended his suit for damages on May 30, 2012 (within the statute of limitations). The criminal prosecution of his injuries sustained on May 21, 2012 has tolled the statute of limitations for that part of his damages claim.

72. As a result of the conduct of the CITY and DOE DEFENDANTS 1-8, PLAINTIFF suffered and is suffering extreme pain and suffering and loss of earning either because they were integral participants or failed to intervene to prevent these violations. They acted with gross negligence and with reckless and deliberate indifference to the rights and liberties of the public in general, and of

1 PLAINTIFF, and of persons in their class, situation and comparable position in
2 particular, knowingly maintained, enforced, and applied an official recognized
3 custom policy and practice of:

4 (a) Employing and retaining as police officers and other personnel who at
5 all times material herein knew or reasonably should have known had
6 dangerous propensities for abusing their authority and for mistreating
7 citizens by failing to follow Federal law, state law, and CITY's own
8 municipal ordinances and policies.

9 (b) Of inadequately supervising, training, controlling, assigning, and
10 disciplining CITY police officers and other personnel including
11 DEFENDANTS DOES 1-8 who CITY knew or in the exercise of reasonable
12 care should have known had the mentioned propensities and character traits.

13 (c) By maintaining grossly inadequate procedures for reporting,
14 supervising, investigating, reviewing, disciplining and controlling the
15 intentional misconduct by DEFENDANTS DOES 1-8.

16 (d) By failing to discipline CITY police officers' conduct, including but
17 not limited to unlawful detention, arrest, search and seizure of
18 PLAINTIFF'S person and property.

19 (e) By ratifying the intentional misconduct of police officers of CITY.

20 (f) By having and maintaining an unconstitutional policy, custom, and
21 practice of detaining and/or arresting individuals without probable cause or
22 reasonable suspicion which also is demonstrated by inadequate training
23 regarding these subjects. The policies, customs and practices of DOES 1-8,
24 were done with a deliberate indifference to individuals' rights.

25
26 73. DEFENDANT CITY and DOES 1-8, together with various other officials
27 whether named or unnamed, had either actual knowledge or constructive
28 knowledge of the deficient policies, practices and customs alleged. Despite having

1 knowledge as stated these defendants condoned, tolerated and through actions and
2 inactions thereby ratified such policies. Said defendants also acted with deliberate
3 indifference to the foreseeable effects and consequences of these policies with
4 respect to the Constitutional rights of PLAINTIFF and other individuals similarly
5 situated.

6
7 74. By perpetrating, sanctioning, tolerating and ratifying the outrageous conduct
8 and other wrongful acts, CITY and DOES 1-8 acted with an intentional, reckless,
9 and callous disregard for the safety, life and Constitutional rights of PLAINTIFF.
10 Each of their actions was willful, wanton, oppressive, malicious, fraudulent, and
11 extremely offensive and unconscionable to any person of normal sensibilities.

12
13 75. Furthermore, the policies, customs and practices implemented and maintained
14 and still tolerated by CITY and DOES 1-7, were affirmatively applied to and were
15 a significantly influential force behind the injuries of PLAINTIFF.

16
17 76. By reason of the mentioned acts and omissions of CITY and DOES 1-8,
18 PLAINTIFF was caused to incur legal expenses, loss of earning and health
19 problems.

20
21 77. Accordingly, CITY and DOES 1-8 are each liable for to PLAINTIFF for
22 compensatory damages under 42 U.S.C. 1983.

23
24 78. The conduct of CITY and DOE DEFENDANTS 1-8 was willful, wanton,
25 malicious, oppressive and done with reckless disregard for the rights and safety of
26 PLAINTIFF and thereby warrants the imposition of exemplary and punitive
27 damages as to DEFENDANT CITY OF REDONDO BEACH and DOE
28 DEFENDANTS 1-8.

79. PLAINTIFF seeks damages against the DEFENDANT CITY OF REDONDO BEACH and DOE DEFENDANTS 1-8 in an amount according to proof for losses incurred as a result of their ongoing violations of PLAINTIFF'S rights since August 7, 2010, for the warrantless search of PLAINTIFF'S firearm, his detention, seizure, search and the subsequent illegal seizure of his valuable property (firearm, firearm's case, padlock and key) on May 21, 2012 and for expenditures (fees/costs) associated with the defense of criminal charges due to its officially promulgated policy, custom and/or persistent practice and/or deliberately indifferent training.

THIRD CLAIM FOR RELIEF:

**FIRST AMENDMENT, SECOND AMENDMENT, FOURTH
AMENDMENT, FOURTEENTH AMENDMENT UNITED STATES
CONSTITUTION**

42 USC § 1983, 1988 - INJUNCTIVE/DECLARATORY RELIEF

PLAINTIFF vs DEFENDANT CITY OF REDONDO BEACH

80. All of the above paragraphs are re-alleged and incorporated herein by reference with the same force and effect as if fully set forth herein. PLAINTIFF realizes that this count has been temporarily dismissed but given that the condition for the Younger Abstention may be lifted, PLAINTIFF is keeping the claim in for now but is not seeking to move it forward until the Abstention is lifted.

81. Redondo Beach City ordinances 4-35.01 AND 4-35.20 are unconstitutional on their face, and as applied in this case. Mere possession or carrying of a firearm, (i.e., exercising a fundamental right) when otherwise lawful cannot support the unlawful detention, search, arrest, prosecution, and seizure of a firearm and other property which is lawfully possessed and carried under both state and Federal law. California law preempts local governments from regulating the possession and

1 carrying of firearms. The Second Amendment guarantees the right to carry a
2 firearm for the purpose of self-defense and for other lawful purposes. The First
3 Amendment guarantees the right to engage in peaceful protest with an unloaded
4 firearm. The Fourth Amendment guarantees PLAINTIFF the right to be secure
5 from unreasonable searches and seizures. CITY'S ongoing and unjustified
6 violation of PLAINTIFF'S First, Second, Fourth and Fourteenth Amendment
7 rights deprived PLAINTIFF of his right to peaceful protest and assembly under the
8 First Amendment, his right to openly carry a firearm under the Second
9 Amendment, his right against unreasonable search and seizure as guaranteed by the
10 Fourth Amendment, all applied to states, local governments, state actors and agents
11 of the states by the Fourteenth Amendment and his right to due process. The
12 deprivation began on August 7, 2010 and continues to the present date.

13
14 82. PLAINTIFF requests declaratory and/or prospective injunctive relief under
15 42 U.S.C. § 1983 that Redondo Beach City ordinances 4-35.01 AND 4-35.20 are
16 unconstitutional on their face and as applied in this case and are a violation of his
17 Second Amendment Right to Openly Carry a firearm for the purpose of self-
18 defense and for other lawful purposes, a violation of Plaintiff's Fourth Amendment
19 rights from unlawful search and seizure and Plaintiff's Fourteenth Amendment
20 right to equal protection due to DEFENDANT'S officially promulgated policy,
21 custom and/or persistent practice and/or deliberately indifferent training..

22
23 **SCOPE OF REQUESTED INJUNCTIVE RELIEF**

24 83. All of the above paragraphs are re-alleged and incorporated herein by
25 reference with the same force and effect as if fully set forth herein.

26
27 84. An injunction against California Penal Code Sections 25850, 26350 and
28 26400 would enable PLAINTIFF and persons not prohibited from possessing

1 firearms to openly carry a firearm, loaded and unloaded, in places not otherwise
2 prohibited by state or Federal law. For example, an injunction against 25850 would
3 enable Plaintiff and similarly situated individuals to openly carry a loaded firearm
4 in many places where it is now legal to openly carry a sheath knife with the notable
5 exception of within 1,000 feet of a K-12 public or private school (see Penal Code
6 section 626.9) wherein firearms must be unloaded and handguns unloaded and in a
7 fully enclosed lock container (other than the vehicle's glove compartment). An
8 injunction against 26350 & 26400 would restore the status quo which existed when
9 this action was first filed (Nov. 30, 2011).

10
11 85. An injunction against California Penal Code Sections 26150, 26155, 26160,
12 26165, 26175, 26180, 26185, 26190, 26200, 26202, 26205, 26210, 26215, 26220
13 would enable PLAINTIFF and persons not prohibited from possessing firearms to
14 obtain a license to openly carry a loaded handgun in the same places in which a
15 person with an unrestricted license can carry a loaded handgun concealed. Unlike
16 the numerous and burdensome licensing provisions for licenses to carry a
17 concealed handgun, PLAINTIFF and persons not prohibited from possessing
18 firearms would not have to provide any identifying information beyond that which
19 is required to undergo a background check through the FBI National Instant
20 Criminal Background Check System (NICS). The issuance of a license is
21 PLAINTIFF'S alternate position. PLAINTIFF submits that no license is required
22 for a private citizen to exercise his Second Amendment right to self-defense.

23
24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, PLAINTIFF prays for the following relief:

26 A. Declaratory judgment that Penal Code section 25850 is invalid in that
27 and to the extent that it is applied to prohibit private citizens who are
28 otherwise qualified to possess firearms from openly carrying loaded firearms

1 for the purpose of self-defense on their own property, in their vehicles and in
2 non-sensitive public places;

3 B. Injunctive relief restraining Defendants and their officers, agents,
4 servants, employees, and all persons in concert or participation with them
5 who receive notice of this injunction, from enforcing PC 25850 against
6 private citizens who are otherwise qualified to possess firearms from openly
7 carrying loaded firearms for the purpose of self-defense on their own
8 property, in their vehicles and in non-sensitive public places;

9 C. Declaratory judgment that Penal Code section 26350 is invalid in that
10 and to the extent that it is applied to prohibit private citizens who are
11 otherwise qualified to possess firearms from openly carrying unloaded
12 handguns for the purpose of self-defense on their own property, in their
13 vehicles and in non-sensitive public places;

14 D. Injunctive relief restraining Defendants and their officers, agents,
15 servants, employees, and all persons in concert or participation with them
16 who receive notice of this injunction, from enforcing PC 26350 against
17 private citizens who are otherwise qualified to possess firearms from openly
18 carrying unloaded firearms for the purpose of self-defense on their own
19 property, in their vehicles and in non-sensitive public places;

20 E. Declaratory judgment that Penal Code section 26400 is invalid in that
21 and to the extent that it is applied to prohibit private citizens who are
22 otherwise qualified to possess firearms from openly carrying unloaded
23 firearms that are not handguns for the purpose of self-defense on their own
24 property, in their vehicles and in non-sensitive public places;

25 F. Injunctive relief restraining Defendants and their officers, agents,
26 servants, employees, and all persons in concert or participation with them
27 who receive notice of this injunction, from enforcing PC 26400 against
28 private citizens who are otherwise qualified to possess firearms from openly

1 carrying firearms for the purpose of self-defense on their own property, in
2 their vehicles and in non-sensitive public places;

3 G. Declaratory judgment that Penal Code sections 26150, 26155, 26165,
4 26175, 26180, 26185, 26190, 26200, 26202, 26205, 26210, 26215, and
5 26220 are invalid in that and to the extent that it is applied to prohibit or
6 infringe private citizens, beyond that which is required to conduct an FBI
7 instant background check, who are otherwise qualified to possess firearms,
8 from being issued a license to openly carry firearms, loaded and unloaded,
9 for the purpose of self-defense on their own property, in their vehicles and in
10 non-sensitive public places;

11 H. Injunctive relief restraining Defendants and their officers, agents,
12 servants, employees, and all persons in concert or participation with them
13 who receive notice of this injunction, from enforcing Penal Code sections
14 26150, 26155, 26165, 26175, 26180, 26185, 26190, 26200, 26202, 26205,
15 26210, 26215, and 26220 to the extent that it is applied to prohibit or
16 infringe private citizens, beyond that which is required to conduct an FBI
17 instant background check, who are otherwise qualified to possess firearms,
18 from being issued a license to openly carry firearms, loaded and unloaded,
19 for the purpose of self-defense on their own property, in their vehicles and in
20 non-sensitive public places;

21 I. General damages in the amount to be proven at trial (excluding
22 DEFENDANT HARRIS);

23 J. Special damages according to proof; including medical expenses and
24 loss of earnings (excluding DEFENDANT HARRIS);

25 K. For punitive damages against the individual defendants (excluding
26 DEFENDANT HARRIS) in an amount to be proven at trial;

27 L. For interest (excluding DEFENDANT HARRIS);

28 M. Award costs of this action to PLAINTIFF;

1 N. Award reasonable attorney fees and costs to the PLAINTIFF on all
2 Claims of the complaint, including but not limited to fee/cost awards under
3 42 USC § 1983, 1988 and California Code of Civil Procedure § 1021.5;

4 O. Compel the immediate return of PLAINTIFF'S property;

5 P. A Declaration that Open Carry is the right guaranteed by the
6 Constitution in non-sensitive public-places;

7 Q. A Declaration that firearms openly carried which do not have live
8 ammunition in the firing chamber are unloaded and that possession of
9 matching ammunition with an openly carried unloaded firearm does not
10 make the firearm "loaded" regardless of whether or not the ammunition is
11 attached in any way to the firearm;

12 R. A Declaration that no license is required to openly carry a firearm for
13 the purpose of self-defense;

14 S. A Declaration that private residential property is not a public place
15 regardless of whether or not it is fully enclosed by a fence or barrier.

16 T. A Declaration that a private motor vehicle and any attached campers
17 or trailers are not public places and firearms may be carried therein.

18 U. Damages and/or Declaratory relief under 28 USC §§ 2201, 2202;

19 V. Declaratory judgment that Redondo Beach Municipal Code section 4-
20 35.20 is invalid in that and to the extent that it is applied to prohibit private
21 citizens who are otherwise qualified to possess weapons from openly
22 carrying weapons for the purpose of self-defense;

23 W. Injunctive relief restraining Defendants and their officers, agents,
24 servants, employees, and all persons in concert or participation with them
25 who receive notice of this injunction, from enforcing Redondo Beach
26 Municipal Code section 4-35.20 against private citizens who are otherwise
27 qualified to possess weapons for the purpose of self-defense;

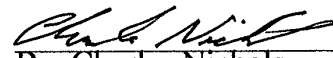
28 X. Such other and further relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby requests a jury trial on all issues raised in this complaint.

Dated: March 12, 2013

Respectfully submitted,


By: Charles Nichols
PLAINTIFF in Pro Per
PO Box 1302
Redondo Beach, CA 90278
Voice: (424) 634-7381
E-Mail:
CharlesNichols@Pykrete.info

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **SECOND AMENDED COMPLAINT** was served via United States Mail, postage prepaid, on this 29, day of March, 2013; on the following:

KAMALA D. HARRIS
Attorney General of California
PETER K. SOUTHWORTH
Supervising Deputy Attorney General
JONATHAN M. EISENBERG
Deputy Attorney General
State Bar No. 184162
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Attorneys for Defendant California Attorney General Kamala Harris

AND

T. PETER PIERCE
LISA BOND
AARON C. O'DELL
RICHARDS WATSON & GERSHON
A Professional Corporation
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Attorney for Defendants:
CITY OF REDONDO BEACH and DOES 1 to 10



Charles Nichols
Plaintiff, In Pro Per
Case No. CV-11-9916 SJO (SS)

1 T. PETER PIERCE (Bar No. 160408)
ppierce@rwglaw.com
2 LISA BOND (Bar No. 172342)
lbond@rwglaw.com
3 RICHARDS, WATSON & GERSHON
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4 355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
5 Telephone: 213.626.8484
Facsimile: 213.626.0078

6 Attorneys for Defendant
7 CITY OF REDONDO BEACH

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 CHARLES NICHOLS,

12 Plaintiff,
13 vs.

14 KAMALA D. HARRIS, Attorney
General, in her official capacity as
Attorney General of California, CITY
15 OF REDONDO BEACH and DOES 1 to
10,

16 Defendants.
17

Case No. CV-11-9916 SJO (SS)

**REQUEST FOR JUDICIAL NOTICE
BY DEFENDANT CITY OF
REDONDO BEACH IN SUPPORT OF
MOTION TO DISMISS SECOND
AND THIRD CLAIMS IN THE
SECOND AMENDED COMPLAINT;
DECLARATION OF T. PETER
PIERCE IN SUPPORT**

Magistrate Judge: Hon. Suzanne H. Segal

Date: May 21, 2013
Time: 10:00 a.m.
Ctrm: 23

Action Filed: November 30, 2011

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REQUEST FOR JUDICIAL NOTICE BY DEFENDANT CITY OF REDONDO BEACH

REQUEST FOR JUDICIAL NOTICE

Defendant City of Redondo Beach (City) requests that the Court take judicial notice of the October 24, 2012 ruling ("Demurrer Denied") of the Superior Court of the State of California, County of Los Angeles, Southwest Judicial District, in Case No. 2SY05163, captioned "People of the State of California v. Charles Nichols". A true and correct certified copy of the ruling is attached hereto as Exhibit A. Declaration of T. Peter Pierce at ¶ 2.

Federal courts may "take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to the matters at issue." *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); *see also* Fed. R. Evid. 201. The attached ruling from a proceeding before the California Superior Court is "directly related" to this case because it reveals the defenses plaintiff has raised in state court.

Dated: May 7, 2013

RICHARDS, WATSON & GERSHON
A Professional Corporation
T. PETER PIERCE
LISA BOND

By: 

T. PETER PIERCE
Attorneys for Defendant
CITY OF REDONDO BEACH

DECLARATION OF T. PETER PIERCE

I, T. Peter Pierce, declare:

1. I am attorney licensed to practice before this Court and all courts of the State of California. I am a member of the law firm of Richards, Watson & Gershon, counsel of record for defendant City of Redondo Beach and I am one of the attorneys in that firm primarily responsible for representing the City in this case. I have personal knowledge of the matter set forth below.

2. Attached here as Exhibit "A" is a true and correct certified copy of a ruling I obtained from the files of the Superior Court of the State of California, for the County of Los Angeles, on May 6, 2013.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 7, 2013



T. Peter Pierce

IRW RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FILED
LOS ANGELES SUPERIOR COURT

OCT 24 2012

John A. Clarke, Clerk
By: [Signature] Deputy

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

v.)

CHARLES NICHOLS,)

Defendant)

Case No. 2SY05163

DEMURRER DENIED

The City of Redondo Beach ordinance that prohibits a person from carrying a **firearm** "in or into" a Redondo Beach "city park" (R.B.M.C. 4-35.20) is unambiguous and the filed criminal complaint clearly gives defendant Charles Nichols adequate notice of the public offense charged, and that he must defend. The complaint complies with California Penal Code sections 950 and 952. Defendant definitely knows what a firearm is (he staged this event and video-taped himself carrying a shotgun, including his citation by police officers) and he should know what a City of Redondo Beach park is (he selected Veterans Park at the City of Redondo Beach pier and boardwalk for his news-file presentation.). The Motion for Demurrer denied.

Defendant has not met his burden of demonstrating that California general law has preempted the entire field of firearms regulation. "A conflict exists if the local legislation duplicates, contradicts, or enters an area occupied by general law, either expressly or by legislative implication." Great Western Shows, Inc. v. County of Los

Angeles. Local legislation is duplicative of general law when it is coextensive therewith; is contradictory when it is inimical to it; local law enters the area that is fully occupied when the legislature has expressly shown intent to fully occupy the area or has impliedly done so. Since there is no bar to prosecution based on preemption the Motion for Demurrer is denied.

Even though the Second Amendment protects the general right to carry a gun in public, the United States Supreme Court has not recognized that right as stated therein, holding instead—even recently--that the “right secured by the Second Amendment is not unlimited.” District of Columbia v. Heller (2008) 554 U.S. 570 The Heller court emphasized that “nothing in [its’] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, . . .” Id. at 627 (emphasis added).

Because the prohibition of carrying a firearm “in or into” a Redondo Beach City park is not a substantial burden on defendant’s right to bear arms to defend his hearth, home or self, there is no Second Amendment violation. If there ever was a “sensitive place” that the City of Redondo Beach is permitted to regulate the carrying of firearms--it is its’ city parks. Given the uniqueness of the City of Redondo Beach as beach community immediately west of Cities such as Los Angeles, Compton and Carson, its’ parks on the Pacific Ocean shoreline draw visitors not just these cities but every county, city and neighborhood inland. There is no Second Amendment violation and the Demurrer is denied.

October 24, 2012

I CERTIFY THAT THIS IS A TRUE, CORRECT, AND COMPLETE COPY OF THE ORIGINAL RECORD IN MY CUSTODY

DATED 05/06/2013

JOHN A. CLARKE, CLERK
SUPERIOR COURT, TORRANCE JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY Michelle Luther DEPUTY



David Sotelo
Judge David Sotelo

PROOF OF SERVICE

I, Clotilde Bigornia, declare:

I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On May 7, 2013, I served the within document(s) described as:

REQUEST FOR JUDICIAL NOTICE BY DEFENDANT CITY OF REDONDO BEACH IN SUPPORT OF MOTION TO DISMISS SECOND AND THIRD CLAIMS IN THE SECOND AMENDED COMPLAINT; DECLARATION OF T. PETER PIERCE IN SUPPORT

on the interested parties in this action as stated below:

Charles Nichols
P.O. Box 1302
Redondo Beach, CA 90278
Tel: (424) 634-7381

Jonathan Michael Eisenberg
Office of the California Attorney General
Government Law Section
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel: (213) 897-6505
Fax: (213) 897-1071
Email: jonathan.eisenberg@doj.ca.gov

[X] (BY MAIL) By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth above. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this affidavit.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 7, 2013, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.


Clotilde Bigornia

1 KAMALA D. HARRIS
 Attorney General of California
 2 MARK R. BECKINGTON
 Supervising Deputy Attorney General
 3 JONATHAN M. EISENBERG
 Deputy Attorney General
 4 State Bar No. 184162
 300 South Spring St., Ste. 1702
 5 Los Angeles, CA 90013
 Telephone: (213) 897-6505
 6 Fax: (213) 897-1071
 E-mail: jonathan.eisenberg@doj.ca.gov
 7 Attorneys for Defendant California Attorney
 General Kamala D. Harris
 8

9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION
 12

13 **CHARLES NICHOLS,**

14 Plaintiff,

15 v.

16 **EDMUND G. BROWN, JR., in his**
official capacity as Governor of
California, KAMALA D. HARRIS,
Attorney General, in her official
capacity as Attorney General of
California, CITY OF REDONDO
BEACH, CITY OF REDONDO
BEACH POLICE DEPARTMENT,
CITY OF REDONDO BEACH
POLICE CHIEF JOSEPH
LEONARDI and DOES 1 to 10,
 21

22 Defendants.
 23

CV-11-09916 SJO (SS)

**REQUEST FOR JUDICIAL
 NOTICE OF LEGISLATIVE
 HISTORY OF CALIFORNIA
 PENAL CODE SECTIONS 26350
 AND 26400
 (FED. R. EVID. 201)**

Date: N/A
 Time: N/A
 Courtroom: 23 – 3d Flr.
 Judge: Hon. Suzanne Segal
 Trial Date: Not Set
 Action Filed: Nov. 30, 2011

24 Under Federal Rule of Evidence 201, Defendant Kamala D. Harris, Attorney
 25 General of California (the “Attorney General”), requests that the Court take judicial
 26 notice of certain legislative history that are relevant to the instant motion of *Pro Se*
 27 Plaintiff Charles Nichols for a preliminary injunction against enforcement of three
 28

1 California firearms laws. The legislative history is of two of the laws in question,
2 California Penal Code sections 26350 and 26400, and illuminates the governmental
3 objectives behind the laws. It is appropriate for this Court to take judicial notice of
4 California legislative history. *Chaker v. Crogan*, 428 F.3d 1215, 1223 n.8 (9th Cir.
5 2005); *Louis v. McCormick & Schmick Restaurant Corp.*, 460 F.Supp.2d 1153,
6 1155 n.4 (C.D. Cal. 2006); *Joseph v. J.J. Mac Intyre Co.*, 238 F.Supp.2d 1158,
7 1165 n.5 (N.D. Cal. 2002). The materials are authenticated by and presented in the
8 declaration of Jonathan M. Eisenberg, accompanying the Attorney General's
9 opposition to the instant motion.

10 Dated: May 28, 2013

Respectfully submitted,

11 KAMALA D. HARRIS
12 Attorney General of California
13 MARK R. BECKINGTON
Supervising Deputy Attorney General

14
15 /s/ Jonathan M. Eisenberg
JONATHAN M. EISENBERG
16 Deputy Attorney General
17 Attorneys for Defendant California
Attorney General Kamala D. Harris
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28

1 KAMALA D. HARRIS
 Attorney General of California
 2 MARK R. BECKINGTON
 Supervising Deputy Attorney General
 3 JONATHAN M. EISENBERG
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 6 Fax: (213) 897-1071
 E-mail: jonathan.eisenberg@doj.ca.gov
 7 *Attorneys for Defendant California Attorney*
General Kamala D. Harris
 8

9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION
 12

13 **CHARLES NICHOLS,**

14 Plaintiff,

15 v.

16 **EDMUND G. BROWN, JR., in his**
official capacity as Governor of
 17 **California, KAMALA D. HARRIS,**
Attorney General, in her official
 18 **capacity as Attorney General of**
California, CITY OF REDONDO
 19 **BEACH, CITY OF REDONDO**
 20 **BEACH POLICE DEPARTMENT,**
 21 **CITY OF REDONDO BEACH**
POLICE CHIEF JOSEPH
LEONARDI and DOES 1 to 10,

22 Defendants.
 23

CV-11-09916 SJO (SS)

DECLARATION OF JONATHAN
M. EISENBERG IN OPPOSITION
TO PLAINTIFF CHARLES
NICHOLS'S MOTION FOR
PRELIMINARY INJUNCTION
(FED. R. CIV. P. 65(A))

Date: N/A
 Time: N/A
 Courtroom: 1 – 2d Flr.
 Judge: Hon. S. James Otero
 Trial Date: Not Set
 Action Filed: Nov. 30, 2011

24 I, Jonathan M. Eisenberg, declare as follows:

25 1. I have personal knowledge of the following facts, except where my
 26 knowledge is based on information and belief, as indicated, and if called as a
 27 witness in I could and would testify competently to the facts.
 28



California

LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

Assembly Bill No. 144

CHAPTER 725

An act to amend Sections 7574.14 and 7582.2 of the Business and Professions Code, and to amend Sections 16520, 16750, 16850, 25595, and 25605 of, to add Sections 626.92, 16950, 17040, 17295, 17512, and 25590 to, and to add Chapter 6 (commencing with Section 26350) to Division 5 of Title 4 of Part 6 of, the Penal Code, relating to firearms.

[Approved by Governor October 09, 2011. Filed Secretary of State October 09, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 144, Portantino. Firearms.

Existing law, subject to certain exceptions, makes it an offense to carry a concealed handgun on the person or in a vehicle, as specified. Existing law provides that firearms carried openly in belt holsters are not concealed within the meaning of those provisions.

This bill would establish an exemption to the offense for transportation of a firearm between certain areas where the firearm may be carried concealed, or loaded, or openly carried unloaded, as specified.

Existing law prohibits, with exceptions, a person from possessing a firearm in a place that the person knows or reasonably should know is a school zone, as defined.

This bill would additionally exempt a security guard authorized to openly carry an unloaded handgun and an honorably retired peace officer authorized to openly carry an unloaded handgun from that prohibition.

Existing law, subject to certain exceptions, makes it an offense to carry a loaded firearm on the 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.

The bill would, subject to exceptions, make it a misdemeanor to openly carry an unloaded handgun on the person or openly and exposed in a motor vehicle in specified public areas and would make it a misdemeanor with specified penalties to openly carry an exposed handgun in a public place or public street, as specified, if the person at the same time possesses ammunition capable of being discharged from the handgun, and the person is not in lawful possession of the handgun, as specified.

Existing law makes it a misdemeanor for any driver or owner of a motor vehicle to allow a person to bring a loaded firearm into the motor vehicle in a public place, as specified.

This bill would expand the scope of that crime to include allowing a person to bring an open and exposed unloaded handgun into the vehicle, as specified.

By creating a new offense, and expanding the scope of existing crimes, this bill would impose a state-mandated local program.

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The bill would make conforming and nonsubstantive technical changes.

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

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

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7574.14 of the Business and Professions Code is amended to read:

7574.14. This chapter shall not apply to the following:

(a) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(b) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(c) A charitable philanthropic society or association incorporated under the laws of this state that is organized and duly maintained for the public good and not for private profit.

(d) 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 (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) 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.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(h) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(i) A person engaged solely in the business of securing information about persons or property from public records.

(j) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training

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requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Sections 25450 to 25475, inclusive, of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(l) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(m) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(n) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(o) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(p) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

SEC. 2. Section 7582.2 of the Business and Professions Code is amended to read:

7582.2. This chapter does not apply to the following:

(a) A person who does not meet the requirements to be a proprietary private security officer, as defined in Section 7574.1, and is employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

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(d) A charitable philanthropic society or association, duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit.

(e) 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 (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) 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.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(l) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(p) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(q) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person

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at no time carries or uses any deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

- (1) The screening and monitoring access of employees of the same employer.
 - (2) The screening and monitoring access of prearranged and preauthorized invited guests.
 - (3) The screening and monitoring of vendors and suppliers.
 - (4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.
- (r) The changes made to this section by the act adding this subdivision during the 2005–06 Regular Session of the Legislature shall apply as follows:

- (1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.
- (2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

SEC. 3. Section 626.92 is added to the Penal Code, to read:

626.92. Section 626.9 does not apply to or affect any of the following:

- (a) A security guard authorized to openly carry an unloaded handgun pursuant to Chapter 6 (commencing with Section 26350) of Division 5 of Title 4 of Part 6.
- (b) An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to Section 26361.

SEC. 4. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.
- (4) Section 16990.
- (5) Section 17070.
- (6) Section 17310.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26600 to 27140, inclusive.
- (9) Sections 27400 to 28000, inclusive.
- (10) Section 28100.
- (11) Sections 28400 to 28415, inclusive.
- (12) Sections 29010 to 29150, inclusive.
- (13) Sections 29610 to 29750, inclusive.
- (14) Sections 29800 to 29905, inclusive.
- (15) Sections 30150 to 30165, inclusive.
- (16) Section 31615.

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(17) Sections 31705 to 31830, inclusive. #1582

(18) Sections 34355 to 34370, inclusive.

(19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

(6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

(1) Subdivisions (a) and (c) of Section 16730.

(2) Section 16550.

(3) Section 16960.

(4) Section 17310.

(5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.

(6) Sections 26500 to 26588, inclusive.

(7) Sections 26700 to 26915, inclusive.

(8) Section 27510.

(9) Section 27530.

(10) Section 27540.

(11) Section 27545.

(12) Sections 27555 to 27570, inclusive.

(13) Sections 29010 to 29150, inclusive.

(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

SEC. 5. Section 16750 of the Penal Code is amended to read:

16750. (a) As used in Section 25400, "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.

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(b) As used in Article 2 (commencing with Section 25850), Article 3 (commencing with Section 25900), and Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4, and Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, "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.

SEC. 6. Section 16850 of the Penal Code is amended to read:

16850. As used in Sections 17740, 23925, 25105, 25205, and 25610, in Article 3 (commencing with Section 25505) of Chapter 2 of Division 5 of Title 4, and in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, "locked container" means a secure container that 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.

SEC. 7. Section 16950 is added to the Penal Code, to read:

16950. As used in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed to be carried openly or exposed if the handgun is not carried concealed within the meaning of Section 25400.

SEC. 8. Section 17040 is added to the Penal Code, to read:

17040. As used in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, "public place" has the same meaning as in Section 25850.

SEC. 9. Section 17295 is added to the Penal Code, to read:

17295. For purposes of Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

SEC. 10. Section 17512 is added to the Penal Code, to read:

17512. It is a misdemeanor for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, to knowingly permit any other person to carry into or bring into the vehicle a firearm in violation of Section 26350.

SEC. 11. Section 25590 is added to the Penal Code, to read:

25590. Section 25400 does not apply to, or affect, the transportation of a firearm by a person if done directly between any of the places set forth below:

(a) A place where the person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25400.

(b) A place where that person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25850, or a place where the prohibition set forth in subdivision (a) of Section 25850 does not apply.

(c) A place where that person may carry a firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 26350, or a place where the prohibition set forth in subdivision (a) of Section 26350 does not apply.

SEC. 12. Section 25595 of the Penal Code is amended to read:

25595. This article does not prohibit or limit the otherwise lawful carrying or transportation of any handgun in accordance with the provisions listed in Section 16580.

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SEC. 13. Section 25605 of the Penal Code is amended to read:
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25605. (a) Section 25400 and Chapter 6 (commencing with Section 26350) of Division 5 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 Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, 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 handgun.

(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 Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a handgun 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 Sections 25850 to 26055, inclusive.

SEC. 14. Chapter 6 (commencing with Section 26350) is added to Division 5 of Title 4 of Part 6 of the Penal Code, to read:

CHAPTER 6. Openly Carrying an Unloaded Handgun

Article 1. Crime of Openly Carrying an Unloaded Handgun

26350. (a) (1) A person is guilty of openly carrying an unloaded handgun when that person carries upon his or her person an exposed and unloaded handgun outside a vehicle while in or on any of the following:

- (A) A public place or public street in an incorporated city or city and county.
- (B) A public street in a prohibited area of an unincorporated area of a county or city and county.
- (C) A public place in a prohibited area of a county or city and county.

(2) A person is guilty of openly carrying an unloaded handgun when that person carries an exposed and unloaded handgun inside or on a vehicle, whether or not on his or her person, while in or on any of the following:

- (A) A public place or public street in an incorporated city or city and county.
- (B) A public street in a prohibited area of an unincorporated area of a county or city and county.
- (C) A public place in a prohibited area of a county or city and county.

(b) (1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

(2) A violation of subparagraph (A) of paragraph (1) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if both of the following conditions exist:

- (A) The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.
- (B) The person is not in lawful possession of that handgun.

(c) (1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

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(d) Notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a distinct and separate offense under this section.

Article 2. Exemptions

26361. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any peace officer or any honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

26362. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person to the extent that person may openly carry a loaded handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

26363. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

26364. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

26365. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.

26366. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while engaged in hunting or while transporting that handgun when going to or returning from that hunting expedition.

26367. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

26368. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

26369. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

26370. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a school zone, as defined in Section 626.9, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.

26371. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when in accordance with the provisions of Section 171b.

26372. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest.

26373. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to loaning, selling, or transferring that handgun in accordance with Article 1 (commencing with Section 27500) of

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Chapter 4 of Division 6, or in accordance with any of the exemptions from Section 27545, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property.

26374. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.

26375. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

26376. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice pursuant to Section 23910.

26377. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun at any established target range, whether public or private, while the person is using the handgun upon the target range.

26378. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

26379. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to any of the following:

- (a) Complying with Section 27560 or 27565, as it pertains to that handgun.
- (b) Section 28000, as it pertains to that handgun.
- (c) Section 27850 or 31725, as it pertains to that handgun.
- (d) Complying with Section 27870 or 27875, as it pertains to that handgun.
- (e) Complying with Section 27915, 27920, or 27925, as it pertains to that handgun.

26380. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

26381. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

26382. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to and at the request of a sheriff or chief or other head of a municipal police department.

26383. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when done within a place of business, a place of residence, or on private property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605, may carry openly an unloaded handgun within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

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26384. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun if all of the following conditions are satisfied:

(a) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation, at which firearms are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

(b) The unloaded handgun is to be auctioned or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

(c) The unloaded handgun is to be delivered by a person licensed pursuant to, and operating in accordance with, Sections 26700 to 26925, inclusive.

26385. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to paragraph (3) of subdivision (b) of Section 171c.

26386. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to Section 171d.

26387. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to subparagraph (F) of paragraph (1) subdivision (c) of Section 171.7.

26388. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying that handgun is in lawful possession of that handgun.

26389. Section 26350 does not apply to, or affect, the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

AG0013



California
LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

Date	Result	Location	Ayes	Noes	NVR	Motion
09/09/11	(PASS)	Assembly Floor	48	30	2	AB 144 PORTANTINO Concurrence in Senate Amendments
		Ayes: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Furutani, Gatto, Gordon, Hall, Hayashi, Roger Hernández, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, V. Manuel Pérez, Portantino, Skinner, Solorio, Swanson, Wieckowski, Williams, Yamada, John A. Pérez				
		Noes: Achadjian, Bill Berryhill, Conway, Cook, Donnelly, Fletcher, Beth Gaines, Galgiani, Garrick, Grove, Hagman, Halderman, Harkey, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Perea, Silva, Smyth, Valadao, Wagner				
		No Votes Recorded: Gorell, Torres				
09/08/11	(FAIL)	Senate Floor	15	20	5	Assembly 3rd Reading AB144 Portantino By De León Reconsider
		Ayes: Anderson, Berryhill, Blakeslee, Cannella, Dutton, Emmerson, Fuller, Gaines, Harman, Huff, La Malfa, Runner, Strickland, Walters, Wyland				
		Noes: Alquist, Calderon, Corbett, De León, DeSaulnier, Evans, Hancock, Hernandez, Kehoe, Leno, Lieu, Liu, Negrete McLeod, Padilla, Pavley, Price, Steinberg, Vargas, Wolk, Yee				
		No Votes Recorded: Correa, Lowenthal, Rubio, Simitian, Wright				
09/08/11	(PASS)	Senate Floor	21	18	1	Assembly 3rd Reading AB144 Portantino By De León
		Ayes: Alquist, Calderon, Corbett, De León, DeSaulnier, Evans, Hancock, Hernandez, Kehoe, Leno, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Simitian, Steinberg, Vargas, Wolk, Yee				
		Noes: Anderson, Berryhill, Blakeslee, Cannella, Correa, Dutton, Emmerson, Fuller, Gaines, Harman, Huff, La Malfa, Rubio, Runner, Strickland, Walters, Wright, Wyland				
		No Votes Recorded: Lieu				
06/07/11	(PASS)	Sen Public Safety	4	2	1	Do pass, but re-refer to the Committee on Appropriations.
		Ayes: Hancock, Liu, Price, Steinberg				
		Noes: Anderson, Harman				
		No Votes Recorded: Calderon				
05/16/11	(PASS)	Assembly Floor	46	29	5	AB 144 PORTANTINO Assembly Third Reading
		Ayes: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Furutani, Gatto, Gordon, Hall, Hayashi, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mitchell, Monning, Pan, V. Manuel Pérez, Portantino, Skinner, Solorio, Swanson, Wieckowski, Williams, Yamada, John A. Pérez				
		Noes: Achadjian, Bill Berryhill, Conway, Cook, Donnelly, Fletcher, Beth Gaines, Garrick, Grove, Hagman, Halderman, Harkey, Roger Hernández, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Olsen, Perea, Silva, Smyth, Valadao, Wagner				
		No Votes Recorded: Galgiani, Gorell, Mendoza, Norby, Torres				
05/04/11	(PASS)	Asm Appropriations	12	5	0	Do pass.
		Ayes: Blumenfield, Bradford, Charles Calderon, Campos, Davis, Fuentes, Gatto, Hall, Hill, Lara, Mitchell, Solorio				
		Noes: Donnelly, Harkey, Nielsen, Norby, Wagner				
		No Votes Recorded:				

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#1589

Date	Result	Location	Ayes	Noes	NVR	Motion
04/12/11	(PASS)	Asm Public Safety	5	2	0	Do pass and be re-referred to the Committee on Appropriations.
Ayes: Ammiano, Cedillo, Hill, Mitchell, Yamada						
Noes: Hagman, Knight						
No Votes Recorded:						

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California

LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

Date	Action
10/09/11	Chaptered by Secretary of State - Chapter 725, Statutes of 2011.
10/09/11	Approved by the Governor.
09/21/11	Enrolled and presented to the Governor at 3:30 p.m.
09/09/11	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 48. Noes 30. Page 3208.)
09/09/11	In Assembly. Concurrence in Senate amendments pending.
09/08/11	Read third time. Passed. Ordered to the Assembly. (Ayes 21. Noes 18. Page 2398.)
09/06/11	Read second time. Ordered to third reading.
09/02/11	Ordered to second reading.
09/02/11	From inactive file.
08/30/11	Ordered to inactive file at the request of Senator De León.
06/28/11	Read second time. Ordered to third reading.
06/27/11	From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
06/07/11	From committee: Do pass and re-refer to Com. on APPR. (Ayes 4. Noes 2.) (June 7). Re-referred to Com. on APPR.
06/01/11	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.
05/26/11	Referred to Com. on PUB. S.
05/16/11	In Senate. Read first time. To Com. on RLS. for assignment.
05/16/11	Read third time. Passed. Ordered to the Senate. (Ayes 46. Noes 29. Page 1389.)
05/09/11	Read second time. Ordered to third reading.
05/05/11	From committee: Do pass. (Ayes 12. Noes 5.) (May 4).
05/03/11	Re-referred to Com. on APPR.
05/02/11	From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
04/13/11	From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (April 12). Re-referred to Com. on APPR.
04/05/11	In committee: Set, first hearing. Hearing canceled at the request of author.
02/03/11	Referred to Com. on PUB. S.
01/14/11	From printer. May be heard in committee February 13.
01/13/11	Read first time. To print.

AG0016



California
LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

Bill Analysis
<u>09/09/11- Assembly Floor Analysis</u>
<u>06/28/11- Senate Floor Analyses</u>
<u>06/06/11- Senate Public Safety</u>
<u>05/11/11- Assembly Floor Analysis</u>
<u>05/03/11- Assembly Appropriations</u>
<u>04/11/11- Assembly Public Safety</u>

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CONCURRENCE IN SENATE AMENDMENTS
AB 144 (Portantino and Ammiano)
As Amended June 1, 2011
Majority vote

ASSEMBLY: 46-29 (May 16, 2011) SENATE: 21-18 (September 8, 2011)

Original Committee Reference: PUB. S.

SUMMARY: Makes it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.

The Senate amendments exempt a security guard authorized to openly carry an unloaded handgun and an honorably retired peace officer authorized to openly carry an unloaded handgun from prohibitions against a firearm in a school zone.

AS PASSED BY THE ASSEMBLY, this bill made it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Specifically, this bill:

- 1) Made it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person, or when that person carries an exposed and unlocked handgun inside or on a vehicle, whether or not is in on his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.
- 2) Made the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.
- 3) Stated that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 4) Provided that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 5) Stated that notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.
- 6) Stated that the open carrying of an unloaded handgun does not apply to the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in

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a locked container.

- 7) Provided that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:
- a) The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun;
 - b) The open carrying of an unloaded handgun by any person authorized to carry a loaded handgun;
 - c) The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative of that business;
 - d) The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;
 - e) The open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
 - f) The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;
 - g) The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
 - h) The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
 - i) The open carrying of an unloaded handgun within a gun show;
 - j) The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
 - k) The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
 - l) The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;

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- m) The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property;
- n) The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;
- o) The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;
- p) The open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- q) The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- r) The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;
- s) The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;
- t) The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;
- u) The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;
- v) The open carrying of an unloaded handgun within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property; and,
- w) The open carrying of an unloaded handgun when all of the following conditions are satisfied:
 - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
 - ii) The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation;

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- iii) The unloaded handgun is delivered by a licensed dealer;
 - iv) The open carrying of an unloaded handgun does not apply to person authorized to carry handguns in the State Capitol or residences of the Governor or other constitutional officers; and,
 - v) The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.
- 8) Made conforming and non-substantive technical changes.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS: According to the author, "The absence of a prohibition on 'open carry' has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals causing issues for law enforcement.

"Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of 'open carry' creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

Please see the policy committee analysis for a full discussion of this bill.

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

FN: 0001386

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SENATE RULES COMMITTEE

AB 144

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 144
Author: Portantino (D), et al
Amended: 6/1/11 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-2, 6/7/11

AYES: Hancock, Liu, Price, Steinberg

NOES: Anderson, Harman

NO VOTE RECORDED: Calderon

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 46-29, 5/16/11 - See last page for vote

SUBJECT: Open Carrying of unloaded handguns

SOURCE: California Police Chiefs Association

DIGEST: This bill (1) makes it a misdemeanor punishable by up to six months in jail and a \$1,000 fine to openly carry an unloaded handgun on one's person or in a vehicle; (2) makes it a misdemeanor punishable by up to one year in county jail and a \$1,000 fine to openly carry an unlawfully possessed unloaded handgun and ammunition in public in an incorporated city; (3) establishes specified exceptions to this prohibition; (4) makes it a misdemeanor, punishable by up to six months in jail and a fine of up to \$1,000 for the driver of a vehicle to knowingly allow a person to bring an openly carried, unloaded handgun into the vehicle; and (5) makes conforming and nonsubstantive technical changes to affected statutes.

CONTINUED

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ANALYSIS: Existing law defines “handgun” as any “pistol,” “revolver,” or “firearm capable of being concealed upon the person.” (Penal Code Section 16640(a).)

Existing law prohibits carrying a concealed weapon, loaded or unloaded, unless granted a permit to do so. Except as otherwise provided, a person is guilty of carrying a concealed firearm when he/she:

- Carries concealed within any vehicle which is under his/her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.
- Causes to be concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.
- Carries concealed upon his/her person any pistol, revolver, or other firearm capable of being concealed upon the person. (Penal Code Section 25400(a).)

Existing law provides that carrying a concealed firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which carrying a concealed weapon may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law.
- A felony where the firearm is stolen and the person knew, or had reasonable cause to believe, that the firearm was stolen.
- A felony where the person is an active participant in a criminal street gang.
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm.

CONTINUED

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- An alternate felony-misdemeanor where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor where:
 - Both the concealable firearm and the unexpended ammunition for that firearm are either in the immediate possession of the person or readily available to that person or where the firearm is loaded.
 - The person is not listed with the Department of Justice (DOJ) as the registered owner of the firearm. (Penal Code Section 25400(c).)

Existing law provides a number of exceptions and limitations to the prohibition on carrying a concealed firearm including methods to lawfully carry firearms in a vehicle, a home, or a business, etc. (Penal Code Sections 25600, 25605, 25610, 25505-25595, 25450-25475, 25615-25655, and 26150-26255.)

Existing law authorizes 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 satisfies any one of specified conditions, and has completed a course of training, as specified, to 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:

- A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.
- 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.

(Penal Code Sections 26150-26255.)

Existing law prohibits the carrying of a loaded firearm on his/her person or in a vehicle while in any public place or on any public street in an incorporated city or a prohibited area of unincorporated territory. The penalty provisions for this prohibition are substantially similar to those

CONTINUED

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provided in Penal Code Section 25400(c) and provide numerous exceptions and limitation to this prohibition. (Penal Code Section 25850.)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of Penal Code Section 12031 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. (Penal Code Section 16840(b).)

Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code Section 2006.)

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine.

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law.
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen.
- A felony where the person is an active participant in a criminal street gang.
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm.

CONTINUED

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- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the DOJ as the registered owner of the firearm.

(Penal Code Section 25858(c).)

Existing law, the "Gun-Free School Zone Act," prohibits a person, without appropriate permission, as specified, from possessing a firearm within an area that the person knew or reasonably should have known was a "school zone," defined as an area in or on the grounds of or within 1,000 feet of the grounds of any public or private K-12 school. (Penal Code Section 626.9.)

Existing law provides that any person who has ever been convicted of a felony and who owns or has in his/her possession or under his/her custody or control a firearm is guilty of a felony, punishable by 16 months, two or three years in prison. (Penal Code Section 29800(b).)

Existing law provides that every person who, except in self-defense, draws or exhibits any firearm in public, loaded or unloaded, in the presence of another person, in a rude, angry or threatening manner is guilty of a misdemeanor and shall be imprisoned for not less than three months nor more than one year in the county jail; fined \$1,000; or both. (Penal Code Section 417(a).)

Existing law provides that every person who, except in self-defense, draws or exhibits any firearm, loaded or unloaded, in a rude, angry or threatening manner in public, in the presence of a peace officer, who a reasonable person would know was in the performance of his/her duty, is guilty of an alternate misdemeanor/felony and shall be imprisoned for not less than nine months and up to one year in the county jail or in the state prison for 16 months, two or three years. (Penal Code Section 417(c).)

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This bill provides that it shall be a misdemeanor, punishable by up to six months in the county jail, a fine of up to \$1,000, or both, for any person to carry an exposed and unloaded handgun outside a vehicle upon his/her person or inside or on a vehicle, whether or not on his/her person, while in:

- A public place or public street in an incorporated city or city and county.
- A public street in a prohibited area of an unincorporated area of a county or city and county.
- A public place in a prohibited area of a county or city and county.

This bill provides that it shall be a misdemeanor punishable by imprisonment in a county jail for up to one year, a fine of up to \$1,000, or both, for any person to carry an exposed and unloaded handgun inside or on a vehicle, whether or not on his/her person, while in a public place or public street in an incorporated city or city and county is, if both of the following conditions exist:

- The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.
- The person is not in lawful possession of that handgun.

This bill provides that the above-stated provisions shall not preclude prosecution under any other law with a penalty that is greater.

This bill provides that the above-stated provisions are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that, notwithstanding the fact that the term "an unloaded handgun" is used in this section; each handgun shall constitute a separate and distinct offense.

This bill provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:

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- The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun, as specified.
- The open carrying of an unloaded handgun by any person authorized to openly carry a loaded handgun, as specified.
- The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative of that business.
- The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading or the members thereof when at the meeting places of their respective organizations.
- The open carrying of an unloaded handgun upon the person by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting.
- The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.
- The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- The open carrying of an unloaded handgun upon the person within a gun show, as specified.

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- The open carrying of an unloaded handgun within a schoolzone, as defined, with the written permission of the school district superintendent, his/her designee, or equivalent school authority.
- The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest.
- The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, as specified, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property.
- The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while rehearsing or practicing, or while the participant or authorized employee or agent is at that production event or rehearsal or practice.
- The open carrying of an unloaded handgun upon the person incident to obtaining an identification number or mark assigned for that handgun from the DOJ.
- The open carrying of an unloaded handgun upon the person at any established target range, whether public or private, while the person is using the handgun upon the target range.
- The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he/she is actually engaged in assisting that officer.

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- The open carrying of an unloaded handgun upon the person incident to any of the following:
 - Complying with requirements for importing that handgun or curio or relic into California.
 - Reporting disposition of a handgun to DOJ, as specified.
 - The sale or transfer of that firearm to a government entity, as specified.
 - Complying with requirements related to the transfer of a handgun obtained by gift or inheritance.
 - Complying with requirements for taking possession or title of that handgun.
- The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer.
- The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer.
- The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon.
- The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department.
- The open carrying of an unloaded handgun upon the person within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property.
- The open carrying of an unloaded handgun upon the person when all of the following conditions are satisfied:
 - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities.

CONTINUED

AG0030

- The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation.
- The unloaded handgun is delivered by a licensed dealer.
- The open carrying of an unloaded handgun by a person authorized to carry a handgun in the State Capitol or residences of the Governor or other constitutional officers.
- The open carrying of an unloaded handgun by authorized public transit officials, as specified.
- The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is in lawful possession of that handgun.
- The carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

This bill provides that the "Gun Free School Zones Act" described above does not apply to or affect the following persons:

- A security guard authorized to openly carry an unloaded handgun pursuant to the provisions of this bill.
- An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to the provisions of this bill.

This bill provides that it shall be a misdemeanor, punishable by up to 6 months in county jail, a fine of up to \$1,000, or both, for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, to knowingly permit any other person to carry into or bring into the vehicle an openly carried unloaded handgun, as specified.

This bill makes conforming and nonsubstantive technical changes.

Related/Prior Legislation

CONTINUED

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AB 144
Page 11

AB 1934 (Saldana, 2010) passed the Senate Floor (21-16) on August 31, 2010. This bill died on Assembly Concurrence; AB 98 (Cohn, 2005) was held on Suspense in the Assembly Appropriations Committee; AB 2501 (Horton, 2004) failed passage in the Assembly Public Safety Committee; AB 2828 (Cohn, 2004) failed passage in the Assembly Public Safety Committee

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 6/28/11)

California Police Chiefs Association (source)
Brady Campaign to Prevent Gun Violence (California Chapters)
City of Beverly Hills
City of Los Angeles
City of West Hollywood
Coalition Against Gun Violence
Friends Committee on Legislation
Legal Community Against Violence
Los Angeles Sheriff's Department
Peace Officers Research Association of California

OPPOSITION: (Verified 6/28/11)

California Rifle and Pistol Association
California Right To Carry
Capitol Resource Family Impact
Contra Costa Open Carry
Diablo Valley Gun Works
Gun Owners of California
National Rifle Association
Open Carry Organization
Redline Ballistic
Responsible Citizens of California
South Bay Open Carry

ARGUMENTS IN SUPPORT: According to the author's office, the absence of a prohibition on "open carry" has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals and causing issues for law enforcement. Simply put, open carry creates a potentially dangerous situation for the Citizens of California.

CONTINUED

AG0032

AB 144
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Often, when an individual is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more armed individuals are present at a location.

In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of "open carry" creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other people who happen to be in the line of fire.

Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways.

ARGUMENTS IN OPPOSITION: The National Rifle Association and the California Rifle and Pistol Association state:

By denying individuals the ability to carry an unloaded firearm, SB 144 directly violates the constitutional right to keep and bear arms for self-defense. We urge you to oppose this attack on the rights of the law abiding population to carry a firearm in case of a self-defense emergency should they so choose.

In addition, we write to notify you that the problems facing SB 144 are compounded by the current state of California's concealed carry weapons (CCW) permitting system. Should AB 144 pass, it will wreak havoc on California's CCW permitting system. In most areas of California, CCW permits are rarely issued, and are usually reserved for those with political clout and the wealthy elite. Because of this reality, "open carrying" is the only method available to the overwhelming majority of law-abiding individuals who wish to carry a firearm for self-defense. Accordingly, by banning the open carrying of even unloaded firearms, SB 144 effectively shuts the door on the ability of law-abiding Californians to carry a firearm for self-defense at all.

ASSEMBLY FLOOR:

AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos,

CONTINUED

AG0033

AB 144
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Carter, Cedillo, Chesbro, Davis, Dickinson, Eng, Feuer, Fong, Fuentes,
Furutani, Gatto, Gordon, Hall, Hayashi, Hill, Hueso, Huffman, Lara,
Bonnie Lowenthal, Ma, Mitchell, Monning, Pan, V. Manuel Pérez,
Portantino, Skinner, Solorio, Swanson, Wieckowski, Williams, Yamada,
John A. Pérez

NOES: Achadjian, Bill Berryhill, Conway, Cook, Donnelly, Fletcher, Beth
Gaines, Garrick, Grove, Hagman, Halderman, Harkey, Roger Hernández,
Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell,
Nestande, Nielsen, Olsen, Perea, Silva, Smyth, Valadao, Wagner.
NO VOTE RECORDED: Galgiani, Gorell, Mendoza, Norby, Torres

RJG:do 6/28/11 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

AG0034

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2011-2012 Regular Session

A
B

1
4
4

AB 144 (Portantino)
As Amended June 1, 2011
Hearing date: June 7, 2011
Business and Professions Code and
Penal Code
SM:dl

OPEN CARRYING OF UNLOADED HANDGUNS

HISTORY

Source: California Police Chiefs Association

Prior Legislation: AB 1934 (Saldana) - 2010, died on Assembly Concurrence
AB 98 (Cohn) - 2005, held on Suspense in Assembly Appropriations
AB 2501(Horton) - 2004, failed passage in Assembly Public Safety
AB 2828 (Cohn) - 2004, failed passage in Assembly Public Safety

Support: Brady Campaign to Prevent Gun Violence (California Chapters); City of Beverly Hills; City of Los Angeles; City of West Hollywood; Coalition Against Gun Violence; Friends Committee on Legislation; Legal Community Against Violence; Los Angeles Sheriff's Department; Peace Officers Research Association of California (PORAC); over 200 individual citizens

Opposition: California Rifle and Pistol Association; Capitol Resource Family Impact; Diablo Valley Gun Works; Gun Owners of California; National Rifle Association; Responsible Citizens of California; 20 individual citizens

Assembly Floor Vote: Ayes 46 - Noes 29

KEY ISSUES

SHOULD IT BE A MISDEMEANOR PUNISHABLE BY UP TO SIX MONTHS IN COUNTY JAIL AND A \$1,000 FINE TO OPENLY CARRY AN UNLOADED HANDGUN ON ONE'S PERSON OR IN A VEHICLE?

(Continued)

(More)

AG0035

SHOULD IT BE A MISDEMEANOR PUNISHABLE BY UP TO ONE YEAR IN COUNTY JAIL AND A \$1,000 FINE TO OPENLY CARRY AN UNLAWFULLY POSSESSED UNLOADED HANDGUN AND AMMUNITION IN PUBLIC IN AN INCORPORATED CITY?

SHOULD SPECIFIED EXCEPTIONS TO THIS PROHIBITION BE ESTABLISHED?

SHOULD IT BE A MISDEMEANOR, PUNISHABLE BY UP TO SIX MONTHS IN JAIL AND A FINE OF UP TO \$1,000 FOR THE DRIVER OF A VEHICLE TO KNOWINGLY ALLOW A PERSON TO BRING AN OPENLY CARRIED, UNLOADED HANDGUN INTO THE VEHICLE?

PURPOSE

The purpose of this bill is to (1) make it a misdemeanor punishable by up to 6 months in jail and a \$1,000 fine to openly carry an unloaded handgun on one's person or in a vehicle; (2) make it a misdemeanor punishable by up to one year in county jail and a \$1,000 fine to openly carry an unlawfully possessed unloaded handgun and ammunition in public in an incorporated city; (3) establish specified exceptions to this prohibition; (4) make it a misdemeanor, punishable by up to six months in jail and a fine of up to \$1,000 for the driver of a vehicle to knowingly allow a person to bring an openly carried, unloaded handgun into the vehicle; and (5) make conforming and nonsubstantive technical changes to affected statutes.

Existing law defines "handgun" as any "pistol," "revolver," or "firearm capable of being concealed upon the person." (Penal Code § 16640(a).)¹

Existing law prohibits carrying a concealed weapon, loaded or unloaded, unless granted a permit to do so. Except as otherwise provided, a person is guilty of carrying a concealed firearm when he or she:

- 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;
- Causes to be concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person; or,

¹ SB 1080, Chap. 711, Stats. 2010, and SB 1115, Chap. 178, Stats. 2010, recast and renumbered most statutes relating to deadly weapons without any substantive change to those statutes. Those changes will become operative January 1, 2012. All references to affected code sections will be to the revised version unless otherwise indicated.

(More)

AG0036

- Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person. (Penal Code § 25400(a).)

Existing law provides that carrying a concealed firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which carrying a concealed weapon may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
- A felony where the firearm is stolen and the person knew, or had reasonable cause to believe, that the firearm was stolen;
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation; and,
- An alternate felony-misdemeanor where:
 - Both the concealable firearm and the unexpended ammunition for that firearm are either in the immediate possession of the person or readily available to that person or where the firearm is loaded; and,
 - The person is not listed with the Department of Justice (DOJ) as the registered owner of the firearm. (Penal Code § 25400(c).)

Existing law provides a number of exceptions and limitations to the prohibition on carrying a concealed firearm including methods to lawfully carry firearms in a vehicle, a home, or a business, etc. (Penal Code §§ 25600, 25605, 25610, 25505-25595, 25450-25475, 25615-25655, and 26150-26255.)

Existing law authorizes 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 satisfies any one of specified conditions, and has completed a course of training, as specified, to 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:

- A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.
- 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.

(Pen Code § 26150-26255.)

(More)

AG0037

Existing law prohibits the carrying of 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 a prohibited area of unincorporated territory. The penalty provisions for this prohibition are substantially similar to those provided in Penal Code Section 25400(c) and provide numerous exceptions and limitation to this prohibition. (Penal Code § 25850.)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of Penal Code Section 12031 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. (Penal Code § 16840(b).)

Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code § 2006.)

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine. (*Id.*)

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen ;
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the DOJ as the registered owner of the firearm.

(Penal Code § 25858(c).)

(More)

AG0038

Existing law, the "Gun-Free School Zone Act," prohibits a person, without appropriate permission, as specified, from possessing a firearm within an area that the person knew or reasonably should have known was a "school zone," defined as an area in or on the grounds of or within 1,000 feet of the grounds of any public or private K-12 school. (Penal Code § 626.9.)

Existing law provides that any person who has ever been convicted of a felony and who owns or has in his or her possession or under his or her custody or control a firearm is guilty of a felony, punishable by 16 months, 2 or 3 years in prison. (Penal Code § 29800(b).)

Existing law provides that every person who, except in self-defense, draws or exhibits any firearm in public, loaded or unloaded, in the presence of another person, in a rude, angry or threatening manner is guilty of a misdemeanor and shall be imprisoned for not less than three months nor more than one year in the county jail; fined \$1,000; or both. (Penal Code § 417(a).)

Existing law provides that every person who, except in self-defense, draws or exhibits any firearm, loaded or unloaded, in a rude, angry or threatening manner in public, in the presence of a peace officer, who a reasonable person would know was in the performance of his or her duty, is guilty of an alternate misdemeanor/felony and shall be imprisoned for not less than nine months and up to one year in the county jail or in the state prison for 16 months, 2 or 3 years. (Penal Code § 417(c).)

This bill provides that it shall be a misdemeanor, punishable by up to 6 months in the county jail, a fine of up to \$1,000, or both, for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person or inside or on a vehicle, whether or not on his or her person, while in:

- A public place or public street in an incorporated city or city and county.
- A public street in a prohibited area of an unincorporated area of a county or city and county.
- A public place in a prohibited area of a county or city and county.

This bill provides that it shall be a misdemeanor punishable by imprisonment in a county jail for up to one year, a fine of up to \$1,000, or both, for any person to carry an exposed and unloaded handgun inside or on a vehicle, whether or not on his or her person, while in a public place or public street in an incorporated city or city and county is, if both of the following conditions exist:

- The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.
- The person is not in lawful possession of that handgun.

This bill provides that the above-stated provisions shall not preclude prosecution under any other law with a penalty that is greater.

(More)

AG0039

This bill provides that the above-stated provisions are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that, notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.

This bill provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:

- The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun, as specified;
- The open carrying of an unloaded handgun by any person authorized to openly carry a loaded handgun, as specified;
- The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative of that business;
- The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;
- The open carrying of an unloaded handgun upon the person by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
- The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;
- The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
- The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
- The open carrying of an unloaded handgun upon the person within a gun show, as specified;
- The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;

(More)

AG0040

- The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
- The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;
- The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, as specified, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property;
- The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;
- The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while rehearsing or practicing, or while the participant or authorized employee or agent is at that production event or rehearsal or practice;
- The open carrying of an unloaded handgun upon the person incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- The open carrying of an unloaded handgun upon the person at any established target range, whether public or private, while the person is using the handgun upon the target range.
- The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- The open carrying of an unloaded handgun upon the person incident to any of the following:
 - Complying with requirements for importing that handgun or curio or relic into California;
 - Reporting disposition of a handgun to DOJ, as specified;
 - The sale or transfer of that firearm to a government entity, as specified;
 - Complying with requirements related to the transfer of a handgun obtained by gift or inheritance;
 - Complying with requirements for taking possession or title of that handgun;
- The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;

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- The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;
- The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;
- The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;
- The open carrying of an unloaded handgun upon the person within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property;
- The open carrying of an unloaded handgun upon the person when all of the following conditions are satisfied:
 - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities.
 - The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation.
 - The unloaded handgun is delivered by a licensed dealer.
- The open carrying of an unloaded handgun by a person authorized to carry a handgun in the State Capitol or residences of the Governor or other constitutional officers;
- The open carrying of an unloaded handgun by authorized public transit officials, as specified;
- The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is in lawful possession of that handgun;
- The carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

This bill provides that the "Gun Free School Zones Act" described above does not apply to or affect the following persons:

- A security guard authorized to openly carry an unloaded handgun pursuant to the provisions of this bill;
- An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to the provisions of this bill.

This bill provides that it shall be a misdemeanor, punishable by up to 6 months in county jail, a fine of up to \$1,000, or both, for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, to knowingly permit any other person to carry into or bring into the vehicle an openly carried unloaded handgun, as specified.

(More)

AG0042

This bill makes conforming and nonsubstantive technical changes.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation. As these cases have progressed, prison conditions have continued to be assailed, and the scrutiny of the federal courts over California's prisons has intensified.

On June 30, 2005, in a class action lawsuit filed four years earlier, the United States District Court for the Northern District of California established a Receivership to take control of the delivery of medical services to all California state prisoners confined by the California Department of Corrections and Rehabilitation ("CDCR"). In December of 2006, plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a three-judge federal panel issued an order requiring California to reduce its inmate population to 137.5 percent of design capacity -- a reduction at that time of roughly 40,000 inmates -- within two years. The court stayed implementation of its ruling pending the state's appeal to the U.S. Supreme Court.

On May 23, 2011, the United States Supreme Court upheld the decision of the three-judge panel in its entirety, giving California two years from the date of its ruling to reduce its prison population to 137.5 percent of design capacity, subject to the right of the state to seek modifications in appropriate circumstances.

In response to the unresolved prison capacity crisis, in early 2007 the Senate Committee on Public Safety began holding legislative proposals which could further exacerbate prison overcrowding through new or expanded felony prosecutions.

This bill does not appear to aggravate the prison overcrowding crisis described above.

COMMENTS

1. Need for This Bill

According to the author:

The absence of a prohibition on "open carry" has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals and causing issues for law enforcement. Simply put, open carry creates a potentially dangerous situation for the Citizens of California.

(More)

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Often, when an individual is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more armed individuals are present at a location.

In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of "open carry" creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other people who happen to be in the line of fire.

Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways.

2. Background – The "Open Carry Movement" in California

California has some of the nation's strictest regulations regarding gun ownership. One practice that has remained unregulated is carrying an unconcealed, unloaded handgun. In 2004 and 2005, and then again last year there were unsuccessful attempts to prohibit this practice. (AB 2828 (Cohn) (2004); AB 2501 (Horton) (2004); AB 98 (Cohn) (2005), AB 1934 (Saldana) (2010).) A new movement to promote the open carrying of firearms in California and around the country has heightened debate around the issue, as reported in the New York Times:

For years, being able to carry a concealed handgun has been a sacred right for many gun enthusiasts. In defending it, Charlton Heston, the actor and former president of the National Rifle Association, used to say that the flock is safer when the wolves cannot tell the difference between the lions and the lambs. But a grass-roots effort among some gun rights advocates is shifting attention to a different goal: exercising the right to carry unconcealed weapons in the 38 or more states that have so-called open-carry laws allowing guns to be carried in public view with little or no restrictions. The movement is not only raising alarm among gun control proponents but also exposing rifts among gun rights advocates.

The call for gun owners to carry their guns openly in the normal course of business first drew broad attention last summer, when opponents of the Obama administration's health care overhaul began appearing at town-hall-style meetings wearing sidearms. But in recent weeks, the practice has expanded as gun owners in California and other states that allow guns to be openly carried have tested the law by showing up at so-called meet-ups, in which gun owners appear at Starbucks, pizza parlors and other businesses openly bearing their weapons.

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"Our point is to do the same thing that concealed carriers do," said Mike Stollenwerk, a co-founder of OpenCarry.org, which serves as a national forum. "We're just taking off our jackets."

The goal, at least in part, is to make the case for liberalized concealed weapon laws by demonstrating how uncomfortable many people are with publicly displayed guns. The tactic has startled many business owners like Peet's Coffee and Tea and California Pizza Kitchen, which forbid guns at their establishments. So far, Starbucks has resisted doing the same. (*Locked, Loaded, and Ready to Caffeinate*, New York Times, March 7, 2010.
<http://www.nytimes.com/2010/03/08/us/08guns.html?pagewanted=print>.)

3. Is Banning Open Carrying of Handguns Unconstitutional?

The Second Amendment to the United States Constitution states, "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". (U.S. Const., Second Amend.) For many years, courts have wrestled with the question of whether the Second Amendment protects the individual's right to own a weapon. In *United States vs. Cruikshank* (1875) 92 U.S. 542, the Supreme Court held that the Second Amendment guaranteed states the right to maintain militias but did not guarantee to individuals the right to possess guns. Subsequently, in *United States vs. Miller* (1939), the Court upheld a federal law banning the interstate transportation of certain firearms. Miller, who had been arrested for transporting a double-barreled sawed-off shotgun from Oklahoma to Arkansas, claimed the law was a violation of the Second Amendment.

The Court rejected Miller's argument, stating:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. (*United States v. Miller*, 307 U.S. 174, 178 (1939).)

For many years following the Supreme Court's decision in *United States vs. Miller*, the orthodox opinion among academics and federal appeals courts alike was that the Second Amendment to the United States Constitution did not protect possession of firearms unrelated to service in the lawfully established militia. (Merkel, *Parker v. District of Columbia and the Hollowness of the Originalist Claims to Principled Neutrality*, 18 Geo. Mason U. Civil Right L. Journal, 251, 251.)

(More)

AG0045

That changed in June 2008, when the United States Supreme Court ruled in *District of Columbia vs. Heller* that a District of Columbia complete ban on possession of a handgun in the home was an unconstitutional violation of the Second Amendment. (*District of Columbia v. Heller* (2008) 128 S. Ct. 2783, 2797.) After a lengthy discussion of the historical context and meaning of the Second Amendment, the Court stated:

Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it ‘shall not be infringed.’ As we said in *United States v. Cruikshank* [citation omitted] ‘[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed ...’ “ (*Heller* at 2797.)

However, in the *Heller* decision, the Supreme Court also stated:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.
n26

FOOTNOTES

n26 We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive. (*District of Columbia v. Heller*, 128 S. Ct. 2783, 2816-2817 (2008), citations omitted.)

Therefore, while the *Heller* decision established that the right to own a firearm is a personal right, not one limited to ownership while serving in a “well-regulated militia,” it also held that the government may place reasonable restrictions on that right such as restricting “carrying

(More)

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firearms in sensitive places.” It is not clear whether the Supreme Court would include in its list of lawful regulatory measures prohibiting the open carrying of unloaded handguns in public.

IS A BAN ON OPEN CARRYING OF HANDGUNS IN PUBLIC CONSTITUTIONAL?

4. Arguments in Support

The Peace Officer Research Association of California states:

The practice by individuals and organizations to “openly carry” firearms in public places in order to challenge law enforcement and firearm statutes in California is increasing in frequency. While PORAC understands that most of these open carry demonstrations are being done by law abiding citizens, it places law enforcement and the public in a precarious and possibly dangerous situation. Most often, law enforcement is called to the scene based on a citizen or merchant complaint. When the officer arrives at the scene, it is their obligation to question those persons carrying the firearms and to inquire as to whether the firearm is loaded. Until that officer has physically seen if the firearm is loaded, that officer must assume that their lives and the lives of those around them may be in danger.

Again, these situations are potentially dangerous and should not occur in a public place wherein any number of things could go wrong. We believe this bill will be very helpful in preventing these potentially unsafe incidents from happening.

5. Arguments in Opposition

The National Rifle Association and the California Rifle and Pistol Association state:

By denying individuals the ability to carry an unloaded firearm, SB 144 directly violates the constitutional right to keep and bear arms for self-defense. We urge you to oppose this attack on the rights of the law abiding population to carry a firearm in case of a self-defense emergency should they so choose.

In addition, we write to notify you that the problems facing SB 144 are compounded by the current state of California’s concealed carry weapons (CCW) permitting system. Should AB 144 pass, it will wreak havoc on California’s CCW permitting system. In most areas of California, CCW permits are rarely issued, and are usually reserved for those with political clout and the wealthy elite. Because of this reality, “open carrying” is the only method available to the overwhelming majority of law-abiding individuals who wish to carry a firearm for self-defense. Accordingly, by banning the open carrying of even unloaded firearms, SB 144 effectively shuts the door on the ability of law-abiding Californians to carry a firearm for self-defense at all.

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ASSEMBLY THIRD READING
AB 144 (Portantino and Ammiano)
As Amended May 2, 2011
Majority vote

PUBLIC SAFETY	5-2	APPROPRIATIONS	12-5
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Ayes: Ammiano, Cedillo, Hill, Mitchell,
Yamada

Ayes: Fuentes, Blumenfield, Bradford,
Charles Calderon, Campos, Davis,
Gatto, Hall, Hill, Lara, Mitchell,
Solorio

Nays: Knight, Hagman

Nays: Harkey, Donnelly, Nielsen, Norby,
Wagner

SUMMARY: Makes it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Specifically, this bill:

- 1) Makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person, or when that person carries and exposed and unlocked handgun inside or on a vehicle, whether or not is in on his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.
- 2) Makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.
- 3) States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 4) Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 5) States that notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.
- 6) States that the open carrying of an unloaded handgun does not apply to the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

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- 7) Provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:
- a) The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun;
 - b) The open carrying of an unloaded handgun by any person authorized to carry a loaded handgun;
 - c) The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative of that business;
 - d) The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;
 - e) The open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
 - f) The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;
 - g) The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
 - h) The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
 - i) The open carrying of an unloaded handgun within a gun show;
 - j) The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
 - k) The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
 - l) The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;
 - m) The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, so long as that handgun is possessed within private property and the possession and

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carrying is with the permission of the owner or lessee of that private property;

- n) The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;
- o) The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;
- p) The open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- q) The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- r) The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;
- s) The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;
- t) The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;
- u) The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;
- v) The open carrying of an unloaded handgun within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property; and,
- w) The open carrying of an unloaded handgun when all of the following conditions are satisfied:
 - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
 - ii) The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation;
 - iii) The unloaded handgun is delivered by a licensed dealer;

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- iv) The open carrying of an unloaded handgun does not apply to person authorized to carry handguns in the State Capitol or residences of the Governor or other constitutional officers; and,
 - v) The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.
- 8) Makes conforming and nonsubstantive technical changes.

FISCAL EFFECT: According to the Assembly Appropriations Committee, unknown, likely minor, non-state-reimbursable local law enforcement and incarceration costs, offset to a degree by increased fine revenue.

COMMENTS: According to the author, "The absence of a prohibition on 'open carry' has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals causing issues for law enforcement.

"Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of 'open carry' creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

Please see the policy committee for a full discussion of this bill.

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

FN: 0000523

AG0051

Date of Hearing: May 4, 2011

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Fuentes, Chair

AB 144 (Portantino) - As Amended: May 2, 2011

Policy Committee: Public Safety

Vote: 5-2

Urgency: No State Mandated Local Program: Yes

Reimbursable: No

SUMMARY

This bill makes it a misdemeanor to carry an exposed and unloaded handgun in a public place ('open carry'). Specifically, this bill:

- 1) Makes it a misdemeanor punishable by up to six months in county jail and/or a fine of up to \$1,000, to carry an exposed and unloaded handgun while in a public place.
- 2) Creates a lengthy series of exceptions to the prohibition on open carry, including peace officers, range shooting, hunters engaged in lawful hunting, incidental transport, gun shows, entertainment props, etc.
- 3) Makes a series of conforming and nonsubstantive changes.

FISCAL EFFECT

Unknown, likely minor, non-state-reimbursable local law enforcement and incarceration costs, offset to a degree by increased fine revenue.

COMMENTS

- 1) Rationale. The author and proponents contend the absence of a prohibition on open carry has created a surge in problematic instances of guns carried in public, alarming people and causing issues for law enforcement. According to the author:

"Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of 'open carry' creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in 'open carry' calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

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- 2) Current law specifies that carrying a loaded gun or a concealed gun is generally a misdemeanor, punishable by up to one year in a county jail and/or a fine of up to \$1,000. There are circumstances, however, where the penalty may be a wobbler if the offender has a specified prior conviction.
- 3) Supporters, including the Police Chiefs Association, the Peace Officer Research Association of CA (PORAC), the CA chapters of the Brady Campaign to Prevent Gun Violence, and the Legal Community Against Violence, contend that in recent years, members of the so-called 'open carry movement' have held open carry events in public places such as coffee shops, restaurants, and public parks. Open carry intimidates the public, wastes law enforcement resources, and increases the potential for death and injury.

According to the Legal Community Against Violence, "Although California law requires openly carried firearms to remain unloaded, this does little to improve public safety, since state law also permits the carrying of ammunition. The ability to carry firearms and ammunition makes the distinction between loaded and unloaded weapons almost meaningless, as open carry advocates have boasted about their abilities to load their weapons in a matter of seconds."

- 4) Opponents, including various gun owner organizations, contend this bill is part of a continuing effort to disarm the public. According to the Gun Owners of California in their opposition to a similar bill last year, "We believe that a ban on 'open carrying' of unloaded handguns will bring a chilling effect on the constitutional rights of all citizens. Since the Second Amendment includes both the right to keep and bear arms, the government of California is going to have to come to grips as to how bearing will take place. As long as Carry Concealed Weapons Permits (CCWs) are not available to the vast majority of law-abiding citizens in California, the only other option is open carry.

"The argument that citizens legally expressing their rights causes some to be intimidated or uncomfortable is a vapid excuse for curtailing both the First and Second Amendment rights of any citizen. It may make some people feel uncomfortable or intimidated to hear someone espousing communist or nazi or racist beliefs in the public square, but as long as they are not breaking the law by exercising their hate-filled beliefs into actual subversion of the country, their rights of free speech, no matter how detestable, are protected even if it makes some people uncomfortable. That is freedom!"

- 5) Similar legislation, AB 1934 (Saldana), 2010, passed the Assembly 46-30, passed the Senate 21-16, and died on the Assembly floor on concurrence when the 2009-10 session expired.

Analysis Prepared by: Geoff Long / APPR. / (916) 319-2081

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Date of Hearing: April 12, 2011
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Tom Ammiano, Chair

AB 144 (Portantino) -- As Introduced: January 13, 2011

SUMMARY: Makes it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Specifically, this bill:

- 1) Makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.
- 2) Makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.
- 3) States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 4) Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 5) States that notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.
- 6) Provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:
 - a) The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun;
 - b) The open carrying of an unloaded handgun by any person authorized to carry a loaded handgun;
 - c) The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is

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licensed to engaged in that business or an authorized representative of that business;

- d) The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;
- e) The open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
- f) The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;
- g) The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
- h) The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
- i) The open carrying of an unloaded handgun within a gun show;
- j) The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
- k) The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
- l) The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;
- m) The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property;
- n) The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;
- o) The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or

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agent is at that production event;

- p) The open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
 - q) The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer; or,
 - r) The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;
 - s) The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;
 - t) The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;
 - u) The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;
 - v) The open carrying of an unloaded handgun within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property;
 - w) The open carrying of an unloaded handgun when all of the following conditions are satisfied:
 - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities.
 - ii) The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation.
 - iii) The unloaded handgun is delivered by a licensed dealer.
 - iv) The open carrying of an unloaded handgun does not apply to person authorized to carry handguns in the State Capitol or residences of the Governor or other constitutional officers.
 - v) The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.
- 7) The offense of openly carrying an unloaded handgun if all of the following apply:

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- a) The handgun is carried on a public street or in a public place in a prohibited area of an unincorporated area of a county that is less than 200,000 persons, as specified.
 - b) The person carrying the handgun is the registered owner of the handgun.
 - c) The area where that person is carrying that handgun is not a public street or a public place in a prohibited area of an unincorporated territory of a county where that unincorporated area is completely bordered by an incorporated city.
- 8) Makes conforming and nonsubstantive technical changes.

EXISTING LAW:

- 1) Defines "handgun" as any "pistol," "revolver," or "firearm capable of being concealed upon the person." [Penal Code Section 12001(a)(2).]
- 2) Provides, except as otherwise provided, that a person is guilty of carrying a concealed firearm when he or she:
 - a) 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;
 - b) Causes to be concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person; or,
 - c) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person. [Penal Code Section 12025(a).]
- 3) Provides that carrying a concealed firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or by both the fine and imprisonment. However, there are six circumstances where the penalty may be punishable as a felony or alternate felony-misdemeanor:
 - a) A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
 - b) A felony where the firearm is stolen and the person knew, or had reasonable cause to believe, that the firearm was stolen;
 - c) A felony where the person is an active participant in a criminal street gang;
 - d) A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
 - e) An alternate felony-misdemeanor where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation; and,
 - f) An alternate felony-misdemeanor where:

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- i) Both the concealable firearm and the unexpended ammunition for that firearm are either in the immediate possession of the person or readily available to that person or where the firearm is loaded; and,
 - ii) The person is not listed with the DOJ as the registered owner of the firearm. [Penal Code Section 12025(b).]
- 4) Provides a number of exceptions and limitations to the prohibition on carrying a concealed firearm including methods to lawfully carry firearms in a vehicle, a home, or a business, etc. (Penal Code Sections 12025.5, 12026, 12026.1, 12026.2, 12027, and 12050.)
- 5) Defines a "loaded firearm" as "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." [Penal Code Section 12031(g).]
- 6) Prohibits the carrying of 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 a prohibited area of unincorporated territory. The penalty provisions for this prohibition are substantially similar to those provided in Penal Code Section 12025(b) and provide numerous exceptions and limitation to this prohibition. (Penal Code Section 12031.)
- 7) Provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or by both the fine and imprisonment. However, there are six circumstances where the penalty may be punishable as a felony or alternate felony-misdemeanor:
- a) A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
 - b) A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen;
 - c) A felony where the person is an active participant in a criminal street gang;
 - d) A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
 - e) An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
 - f) An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the DOJ as the

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registered owner of the firearm. [Penal Code Section 12031(b).]

- 8) Prohibits a person, without appropriate permission, as specified, from possessing a firearm within an area that the person knew or reasonably should have known was a "school zone", defined as an area in or on the grounds of or within 1,000 feet of the grounds of any public or private K-12 school. (Penal Code Section 629.9.)
- 9) Provides that any person who has ever been convicted of a felony and who owns or has in his or her possession or under his or her custody or control a firearm is guilty of a felony, punishable by 16 months, 2 or 3 years in prison. [Penal Code Section 12021(b).]
- 10) Provides that every person who, except in self-defense, draws or exhibits any firearm in public, loaded or unloaded, in the presence of another person, in a rude, angry or threatening manner is guilty of a misdemeanor and shall be imprisoned for not less than three months nor more than one year in the county jail; fined \$1,000; or both. [Penal Code Section 417(a).]
- 11) Provides that every person who, except in self-defense, draws or exhibits any firearm, loaded or unloaded, in a rude, angry or threatening manner in public, in the presence of a peace officer, who a reasonable person would know was in the performance of his or her duty, is guilty of an alternate misdemeanor/felony and shall be imprisoned for not less than nine months and up to one year in the county jail or in the state prison for 16 months, 2 or 3 years. [Penal Code Section 417(c).]

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) Author' Statement: According to the author, "The absence of a prohibition on 'open carry' has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals causing issues for law enforcement.

"Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of 'open carry' creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in 'open carry' calls has placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

- 2) Argument in Support: According to the Legal Community Against Violence, "Over the past two years, members of the so-called 'open carry movement' have held numerous carrying events in public places like coffee shops, restaurants, and public parks. These events have shocked Californians statewide, because the open carrying of handguns creates serious public

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safety concerns. Open carrying intimidates the public, wastes law enforcement resources, and presents opportunities for injury and death due to the accidental or intentional use of firearms. This conduct needlessly increases the likelihood that everyday interpersonal conflicts will turn into deadly shootouts.

"Open carrying poses particular challenges for law enforcement officers who must respond to 911 calls from concerned citizens about people carrying guns in public. A state issued by the San Mateo County Sheriff's Office described the significant dangers that open carrying creates:

" 'Open carry create a potentially very dangerous situation. When police are called to a 'man with a gun' call they typically are responding to a situation about which they have few details other than that one or more people are present at a location and are armed. ... Consequently, the law enforcement response is one of 'hypervigilant urgency' in order to protect the public from an armed threat. Should the gun carrying person fail to comply with a law enforcement instruction or move in a way that could be construed as threatening, the police are forced to respond in kind for their own protection. ... Simply put, it is not recommended to open carry firearms.'

"Although California law requires openly carried firearms to remain unloaded, this does little to improve public safety, since state law also permits the carrying of ammunition. The ability to carry firearms and ammunition makes the distinction between loaded and unloaded weapons almost meaningless, as open carry advocates have boasted about their abilities to load their weapons in a matter of seconds."

- 3) Argument in Opposition: According to the National Rifle Association, "Should AB 144 pass, it will wreak havoc on CA's California's concealed weapons (CCW) permitting system. In most areas of California, CCW permits are rarely issued, and are a usually reserved for those with political clout and the wealthy elite. Because of this reality, 'open carrying' is the only method available to the overwhelming majority of law-abiding individuals who wish to carry a firearm for self-defense. Accordingly, by banning the open carrying of even unloaded firearms, AB 144 effectively shuts the door on the ability of law-abiding Californians to carry a firearm for self-defense at all.

"In fact, a recent 9th Circuit District Court decision expressly relied on the ability to 'open carry' as the basis for its decision to uphold the government's current policy denying CCW application unless the applicant demonstrates some special need or 'good cause' beyond that of general self-defense.

"In that case, *Peruta v. County of San Diego*, several Plaintiffs challenged the government's CCW permitting scheme. The suit alleged that the permitting scheme violated the Second Amendment because CCW applications are typically denied where the applicant identifies only a generalized self-defense need as the 'good cause' required by Cal. Pen. Code section 12050. And even though the Second Amendment requires the government to afford law abiding citizens the ability to 'bear' or 'carry' firearms for self-defense – without discretion as to who may be qualified to exercise that right – the Court ruled that the County's policy of requiring specific threats of harm, as opposed to general 'self-defense' need, did not violate the Second Amendment because the state *already* authorizes constitutional means of carrying a firearm for self-defense. That means of carry is found in section 12031, which permits the

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carrying of an unloaded firearm that may be loaded by the individual in a self-defense emergency.

" '[A]s a practical matter, should the need for self-defense arise, nothing in section 12031[(j)] restricts the open carry of unloaded firearms and ammunition for instant loading.' ... 'As a consequence, the Court declines to assume that section 12031 places an unlawful burden on the right to carry a firearm for self-defense...'"

" '(Order Denying Plaintiff's Motion for Partial Summary Adjudication and Granting Defendant's Motion for Summary Judgment at 8:8-10, 8:21-22, *Peruta v. County of San Diego*, No. 09-2371 (S.D. Cal. 2010)).'

"If not for the lawful ability to openly carry a firearm that may be loaded for self-defense, the County's entire CCW scheme of requiring 'good cause' beyond that of self-defense would have been ruled unconstitutional in *Peruta*."

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapters of the Brady Campaign to Prevent Gun Violence
California Police Chiefs Association, Inc.
City of West Hollywood
Friends Committee on Legislation of California
Legal Community Against Violence
Peace Officer Research Association of California

Opposition

Bay Area Open Carry Movement
California Rifle and Pistol Association
Californians for Natural Rights
Capitol Resource Family Impact
Contra Costa Open Carry
Gun Owners of California
Intelligent Recycling Solutions
National Rifle Association
Responsible Citizens of California
South Bay Open Carry
131 private individuals

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

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California

LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

SECTION 1. Section 7574.14 of the Business and Professions Code is amended to read:

7574.14. This chapter shall not apply to the following:

- (a) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in a *any* calendar month.
- (b) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.
- (c) A charitable philanthropic society or association incorporated under the laws of this state that is organized and duly maintained for the public good and not for private profit.
- (d) Patrol special police officers appointed by the police commission of a *any* city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) 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.
- (e) An attorney at law in performing his or her duties as an attorney at law.
- (f) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.
- (g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.
- (h) ~~A~~ Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.
- (i) A person engaged solely in the business of securing information about persons or property from public records.
- (j) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.
- (k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may

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not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, ~~may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code,~~ and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Sections 25450 to 25475, inclusive, of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(l) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(m) ~~A~~ Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(n) ~~A~~ Any secured creditor engaged in the repossession of the creditor's collateral and ~~a~~ any lessor engaged in the repossession of leased property in which it claims an interest.

(o) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(p) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses ~~a~~ any deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

SEC. 2. Section 7582.2 of the Business and Professions Code is amended to read:

7582.2. This chapter does not apply to the following:

(a) A person who does not meet the requirements to be a proprietary private security officer, as defined in Section ~~7574.01~~, 7574.1, and is employed exclusively and regularly by ~~an~~ any employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship if that person at no time carries or uses ~~a~~ any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include ~~an~~ any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, ~~a~~ any dirk, dagger, pistol, revolver, or any other firearm, ~~a~~ any knife having a blade longer than five inches, ~~a~~ any razor with an unguarded blade, blade and ~~a~~ any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

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(d) A charitable philanthropic society or association ~~that is~~ ^{#1638} incorporated under the laws of this state that is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of ~~a~~ any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) 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.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) ~~A~~ Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(l) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, ~~may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code,~~ and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) ~~A~~ Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) ~~A~~ Any secured creditor engaged in the repossession of the creditor's collateral and a ~~any~~ lessor engaged in the repossession of leased property in which it claims an interest.

(p) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

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(q) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses ~~a~~ any deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

- (1) The screening and monitoring access of employees of the same employer.
 - (2) The screening and monitoring access of prearranged and preauthorized invited guests.
 - (3) The screening and monitoring of vendors and suppliers.
 - (4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.
- (r) The changes made to this section by the act adding this subdivision during the 2005-06 Regular Session of the Legislature shall apply as follows:

- (1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.
- (2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

SEC. 3. Section 626.92 is added to the Penal Code, to read:

626.92. Section 626.9 does not apply to or affect any of the following:

- (a) A security guard authorized to openly carry an unloaded handgun pursuant to Chapter 6 (commencing with Section 26350) of Division 5 of Title 4 of Part 6.
- (b) An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to Section 26361.

SEC. 4. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means ~~a~~ any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of ~~an~~ any explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.
- (4) Section 16990.
- (5) Section 17070.
- (6) Section 17310.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26600 to 27140, inclusive.
- (9) Sections 27400 to 28000, inclusive.
- (10) Section 28100.
- (11) Sections 28400 to 28415, inclusive.
- (12) Sections 29010 to 29150, inclusive.
- (13) Sections 29610 to 29750, inclusive.
- (14) Sections 29800 to 29905, inclusive.

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(15) Sections 30150 to 30165, inclusive.

(16) Section 31615.

(17) Sections 31705 to 31830, inclusive.

(18) Sections 34355 to 34370, inclusive.

(19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a ~~any~~ rocket, rocket propelled projectile launcher, or similar device containing ~~an any~~ explosive or incendiary ~~material~~, *material* whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

(6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

(1) Subdivisions (a) and (c) of Section 16730.

(2) Section 16550.

(3) Section 16960.

(4) Section 17310.

(5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.

~~(6) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.~~

~~(7) (6) Sections 26500 to 26588, inclusive.~~

~~(8) (7) Sections 26700 to 26915, inclusive.~~

~~(9) (8) Section 27510.~~

~~(10) (9) Section 27530.~~

~~(11) (10) Section 27540.~~

~~(12) (11) Section 27545.~~

~~(13) (12) Sections 27555 to 27570, inclusive.~~

~~(14) (13) Sections 29010 to 29150, inclusive.~~

(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

SEC. 5. Section 16750 of the Penal Code is amended to read:

16750. (a) As used in Section 25400, "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

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 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.

(b) As used in Article 2 (commencing with Section 25850), Article 3 (commencing with Section 25900), and Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4, *and* Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, *and* ~~Chapter 7 (commencing with Section 26400) of Division 5 of Title 4,~~ "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.

SEC. 6. Section 16850 of the Penal Code is amended to read:

16850. As used in Sections 17740, 23925, 25105, 25205, and 25610, in Article 3 (commencing with Section 25505) of Chapter 2 of Division 5 of Title 4, *and* in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, *and* ~~in Chapter 7 (commencing with Section 26400) of Division 5 of Title 4,~~ "locked container" means a secure container that 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.

SEC. 7. Section 16950 is added to the Penal Code, to read:

16950. As used in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed to be carried openly or exposed if the handgun is not carried concealed within the meaning of Section 25400.

SEC. 8. Section 17040 is added to the Penal Code, to read:

17040. As used in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, "public place" has the same meaning as in Section 25850.

SEC. 9. Section 17295 is added to the Penal Code, to read:

17295. For purposes of Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

SEC. 10. Section 17512 is added to the Penal Code, to read:

17512. It is a misdemeanor for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, to knowingly permit any other person to carry into or bring into the vehicle a firearm in violation of Section 26350.

SEC. 11. Section 25590 is added to the Penal Code, to read:

25590. Section 25400 does not apply to, or affect, the transportation of a firearm by a person if done directly between any of the places set forth below:

(a) A place where the person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25400.

(b) A place where that person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25850, or a place where the prohibition set forth in subdivision (a) of Section 25850 does not apply.

(c) A place where that person may carry a firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 26350, or a place where the prohibition set forth in subdivision (a) of Section 26350 does not apply.

SEC. 12. Section 25595 of the Penal Code is amended to read:

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25595. This article does not prohibit or limit the otherwise lawful carrying or transportation of any handgun in accordance with the provisions listed in Section 16580. #1642

SEC. 13. Section 25605 of the Penal Code is amended to read:

25605. (a) Section 25400 and Chapter 6 (commencing with Section 26350) of Division 5 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 Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, 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 handgun.

(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 Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a handgun 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 Sections 25850 to 26055, inclusive.

SEC. 14. Chapter 6 (commencing with Section 26350) is added to Division 5 of Title 4 of Part 6 of the Penal Code, to read:

CHAPTER 6. Openly Carrying an Unloaded Handgun

Article 1. Crime of Openly Carrying an Unloaded Handgun

26350. (a) (1) A person is guilty of openly carrying an unloaded handgun when that person carries upon his or her person an exposed and unloaded handgun outside a vehicle while in or on any of the following:

(A) A public place or public street in an incorporated city or city and county.

(B) A public street in a prohibited area of an unincorporated area of a county or city and county.

(C) A public place in a prohibited area of a county or city and county.

(2) A person is guilty of openly carrying an unloaded handgun when that person carries an exposed and unloaded handgun inside or on a vehicle, whether or not on his or her person, while in or on any of the following:

(A) A public place or public street in an incorporated city or city and county.

(B) A public street in a prohibited area of an unincorporated area of a county or city and county.

(C) A public place in a prohibited area of a county or city and county.

(b) (1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

(2) A violation of subparagraph (A) of paragraph (1) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if both of the following conditions exist:

(A) The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.

(B) The person is not in lawful possession of that handgun.

(c) (1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

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(2) The provisions of this section are cumulative and shall be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

(d) Notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a distinct and separate offense under this section.

Article 2. Exemptions

26361. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any peace officer or any honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

26362. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person to the extent that person may openly carry a loaded handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

26363. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

26364. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

26365. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.

26366. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while engaged in hunting or while transporting that handgun when going to or returning from that hunting expedition.

26367. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

26368. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

26369. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

26370. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a school zone, as defined in Section 626.9, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.

26371. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when in accordance with the provisions of Section 171b.

26372. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest.

26373. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to loaning, selling, or transferring that handgun in accordance with Article 1 (commencing with Section 27500) of Chapter 4 of Division 6, or in accordance with any of the exemptions from Section 27545, so long as that

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~~handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property.~~ #1044

26374. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.

26375. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

26376. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice pursuant to Section 23910.

26377. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun at any established target range, whether public or private, while the person is using the handgun upon the target range.

26378. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

26379. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to any of the following:

- (a) Complying with Section 27560 or 27565, as it pertains to that handgun.
- (b) Section 28000, as it pertains to that handgun.
- (c) Section 27850 or 31725, as it pertains to that handgun.
- (d) Complying with Section 27870 or 27875, as it pertains to that handgun.
- (e) Complying with Section 27915, 27920, or 27925, as it pertains to that handgun.

26380. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

26381. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

26382. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to and at the request of a sheriff or chief or other head of a municipal police department.

26383. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when done within a place of business, a place of residence, or on private property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605, may carry openly an unloaded handgun within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

26384. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun if all of the following conditions are satisfied:

- (a) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation, at which firearms are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

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(b) The unloaded handgun is to be auctioned or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

(c) The unloaded handgun is to be delivered by a person licensed pursuant to, and operating in accordance with, Sections 26700 to 26925, inclusive.

26385. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to paragraph (3) of subdivision (b) of Section 171c.

26386. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to Section 171d.

26387. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to subparagraph (F) of paragraph (1) subdivision (c) of Section 171.7.

26388. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying that handgun is in lawful possession of that handgun.

26389. Section 26350 does not apply to, or affect, the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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California

LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

Senate: 1st Cmt 2nd 3rd 2nd 3rd Pass Chp
Assembly: 1st Cmt 2nd 3rd Pass Pass

Bill Status	
Measure:	AB-144
Lead Authors:	Portantino (A), Ammiano (A)
Principal Coauthors:	-
Coauthors:	De León (S), Huffman (A), Swanson (A)
Topic:	Firearms.
31st Day in Print:	02/13/11
Title:	An act to amend Sections 7574.14 and 7582.2 of the Business and Professions Code, and to amend Sections 16520, 16750, 16850, 25595, and 25605 of, to add Sections 626.92, 16950, 17040, 17295, 17512, and 25590 to, and to add Chapter 6 (commencing with Section 26350) to Division 5 of Title 4 of Part 6 of, the Penal Code, relating to firearms.
House Location:	Secretary of State
Chaptered Date:	10/09/11
Last Amended Date:	06/01/11

Type of Measure	
Inactive Bill - Chaptered	
Majority Vote Required	
Non-Appropriation	
Fiscal Committee	
State-Mandated Local Program	
Non-Urgency	
Non-Tax levy	

Last 5 History Actions	
Date	Action
10/09/11	Chaptered by Secretary of State - Chapter 725, Statutes of 2011.
10/09/11	Approved by the Governor.
09/21/11	Enrolled and presented to the Governor at 3:30 p.m.
09/09/11	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 48. Noes 30. Page 3208.)
09/09/11	In Assembly. Concurrence in Senate amendments pending.

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California
LEGISLATIVE INFORMATION

AB-1527 Firearms. (2011-2012)

Assembly Bill No. 1527

CHAPTER 700

An act to amend Sections 7574.14 and 7582.2 of the Business and Professions Code, and to amend Sections 626.92, 16520, 16750, 16850, and 17295 of, to add Sections 16505, 26366.5, 26390, and 26391 to, and to add Chapter 7 (commencing with Section 26400) to Division 5 of Title 4 of Part 6 of, the Penal Code, relating to firearms.

[Approved by Governor September 28, 2012. Filed Secretary of State
September 28, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1527, Portantino. Firearms.

Existing law prohibits, with exceptions, a person from possessing a firearm in a place that the person knows or reasonably should know is a school zone, as defined.

This bill would, additionally, exempt a security guard authorized to openly carry an unloaded firearm that is not a handgun and an honorably retired peace officer authorized to openly carry an unloaded firearm that is not a handgun from that prohibition.

Existing law, subject to certain exceptions, makes it an offense for a person to carry an exposed and unloaded handgun on his or her person outside a motor vehicle or inside or on a motor vehicle in public areas and public streets, as specified.

This bill would exempt a person from the crime of openly carrying an unloaded handgun if he or she is in compliance with specified provisions relating to carrying a handgun in an airport or the open carrying of an unloaded handgun by a licensed hunter while actually engaged in training a hunting dog or while transporting the handgun while going to or from that training.

This bill would, subject to exceptions, make it a misdemeanor for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county and would make it a misdemeanor with specified penalties if a person carries an unloaded firearm that is not a handgun outside a motor vehicle in an incorporated city or city and county and the person at the same time possesses ammunition capable of being discharged from the unloaded firearm that is not a handgun, and the person is not in lawful possession of the unloaded firearm that is not a handgun, as specified.

By creating a new offense, and expanding the scope of existing crimes, this bill would impose a state-mandated local program.

The bill would make conforming technical changes.

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This bill would incorporate additional changes to Section 16520 of the Penal Code proposed by SB 1366, that would become operative only if SB 1366 and this bill are both enacted, both bills become effective on or before January 1, 2013, and this bill is enacted last.

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

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

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7574.14 of the Business and Professions Code is amended to read:

7574.14. This chapter shall not apply to the following:

- (a) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in a calendar month.
- (b) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.
- (c) A charitable philanthropic society or association incorporated under the laws of this state that is organized and duly maintained for the public good and not for private profit.
- (d) Patrol special police officers appointed by the police commission of a city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) 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.
- (e) An attorney at law in performing his or her duties as an attorney at law.
- (f) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.
- (g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.
- (h) A bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.
- (i) A person engaged solely in the business of securing information about persons or property from public records.
- (j) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.
- (k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where

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the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Sections 25450 to 25475, inclusive, of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(l) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(m) A savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(n) A secured creditor engaged in the repossession of the creditor's collateral and a lessor engaged in the repossession of leased property in which it claims an interest.

(o) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(p) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

SEC. 2. Section 7582.2 of the Business and Professions Code is amended to read:

7582.2. This chapter does not apply to the following:

(a) A person who does not meet the requirements to be a proprietary private security officer, as defined in Section 7574.01, and is employed exclusively and regularly by an employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include an instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, a dirk, dagger, pistol, revolver, or any other firearm, a knife having a blade longer than five inches, a razor with an unguarded blade, and a metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

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(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of a city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) 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.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) A bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(l) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) A savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) A secured creditor engaged in the repossession of the creditor's collateral and a lessor engaged in the repossession of leased property in which it claims an interest.

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(p) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(q) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

- (1) The screening and monitoring access of employees of the same employer.
 - (2) The screening and monitoring access of prearranged and preauthorized invited guests.
 - (3) The screening and monitoring of vendors and suppliers.
 - (4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.
- (r) The changes made to this section by the act adding this subdivision during the 2005-06 Regular Session of the Legislature shall apply as follows:

- (1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.
- (2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

SEC. 3. Section 626.92 of the Penal Code is amended to read:

626.92. Section 626.9 does not apply to or affect any of the following:

- (a) A security guard authorized to openly carry an unloaded handgun pursuant to Chapter 6 (commencing with Section 26350) of Division 5 of Title 4 of Part 6.
- (b) An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to Section 26361.
- (c) A security guard authorized to openly carry an unloaded firearm that is not a handgun pursuant to Chapter 7 (commencing with Section 26400) of Division 5 of Title 4 of Part 6.
- (d) An honorably retired peace officer authorized to openly carry an unloaded firearm that is not a handgun pursuant to Section 26405.

SEC. 4. Section 16505 is added to the Penal Code, to read:

16505. For purposes of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, a firearm is "encased" when that firearm is enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of that firearm exposed.

SEC. 5. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.
- (4) Section 16990.
- (5) Section 17070.

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(6) Section 17310.

(7) Sections 26500 to 26588, inclusive.

(8) Sections 26600 to 27140, inclusive.

(9) Sections 27400 to 28000, inclusive.

(10) Section 28100.

(11) Sections 28400 to 28415, inclusive.

(12) Sections 29010 to 29150, inclusive.

(13) Sections 29610 to 29750, inclusive.

(14) Sections 29800 to 29905, inclusive.

(15) Sections 30150 to 30165, inclusive.

(16) Section 31615.

(17) Sections 31705 to 31830, inclusive.

(18) Sections 34355 to 34370, inclusive.

(19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

(6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

(1) Subdivisions (a) and (c) of Section 16730.

(2) Section 16550.

(3) Section 16960.

(4) Section 17310.

(5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.

(6) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.

(7) Sections 26500 to 26588, inclusive.

(8) Sections 26700 to 26915, inclusive.

(9) Section 27510.

(10) Section 27530.

(11) Section 27540.

(12) Section 27545.

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(13) Sections 27555 to 27570, inclusive.

(14) Sections 29010 to 29150, inclusive.

(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

SEC. 5.5. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

(1) Section 16550.

(2) Section 16730.

(3) Section 16960.

(4) Section 16990.

(5) Section 17070.

(6) Section 17310.

(7) Sections 25250 to 25256, inclusive.

(8) Sections 26500 to 26588, inclusive.

(9) Sections 26600 to 27140, inclusive.

(10) Sections 27400 to 28000, inclusive.

(11) Section 28100.

(12) Sections 28400 to 28415, inclusive.

(13) Sections 29010 to 29150, inclusive.

(14) Sections 29610 to 29750, inclusive.

(15) Sections 29800 to 29905, inclusive.

(16) Sections 30150 to 30165, inclusive.

(17) Section 31615.

(18) Sections 31705 to 31830, inclusive.

(19) Sections 34355 to 34370, inclusive.

(20) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

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- (4) Sections 25850 to 26025, inclusive.
- (5) Subdivisions (a), (b), and (c) of Section 26030.
- (6) Sections 26035 to 26055, inclusive.
- (d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:
 - (1) Subdivisions (a) and (c) of Section 16730.
 - (2) Section 16550.
 - (3) Section 16960.
 - (4) Section 17310.
 - (5) Sections 25250 to 25256, inclusive.
 - (6) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.
 - (7) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.
 - (8) Sections 26500 to 26588, inclusive.
 - (9) Sections 26700 to 26915, inclusive.
 - (10) Section 27510.
 - (11) Section 27530.
 - (12) Section 27540.
 - (13) Section 27545.
 - (14) Sections 27555 to 27570, inclusive.
 - (15) Sections 29010 to 29150, inclusive.
- (e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.
- (f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.
- (g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

SEC. 6. Section 16750 of the Penal Code is amended to read:

16750. (a) As used in Section 25400, "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.

(b) As used in Article 2 (commencing with Section 25850), Article 3 (commencing with Section 25900), and Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4, Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, and Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, "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.

SEC. 7. Section 16850 of the Penal Code is amended to read:

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16850. As used in Sections 17740, 23925, 25105, 25205, and 25610, in Article 3 (commencing with Section 25505) of Chapter 2 of Division 5 of Title 4, in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, and in Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, "locked container" means a secure container that 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.

SEC. 8. Section 17295 of the Penal Code is amended to read:

17295. (a) For purposes of Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

(b) For purposes of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, a firearm that is not a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

SEC. 9. Section 26366.5 is added to the Penal Code, to read:

26366.5. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

SEC. 10. Section 26390 is added to the Penal Code, to read:

26390. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun in any of the following circumstances:

(a) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(b) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(c) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650, if the carrying is conducted in accordance with the terms and conditions of the permit.

(d) The open carrying of an unloaded handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

SEC. 11. Section 26391 is added to the Penal Code, to read:

26391. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when done in accordance with the provisions of subdivision (d) of Section 171.5.

SEC. 12. Chapter 7 (commencing with Section 26400) is added to Division 5 of Title 4 of Part 6 of the Penal Code, to read:

CHAPTER 7. Carrying an Unloaded Firearm That is not a Handgun in an Incorporated City or City and County
Article 1. Crime of Carrying an Unloaded Firearm that is not a Handgun in an Incorporated City or City and County

26400. (a) A person is guilty of carrying an unloaded firearm that is not a handgun in an incorporated city or city and county when that person carries upon his or her person an unloaded firearm that is not a handgun outside a vehicle while in the incorporated city or city and county.

(b) (1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

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(2) A violation of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if the firearm and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not in lawful possession of that firearm.

(c) (1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

(d) Notwithstanding the fact that the term "an unloaded firearm that is not a handgun" is used in this section, each individual firearm shall constitute a distinct and separate offense under this section.

Article 2. Exemptions

26405. Section 26400 does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun in any of the following circumstances:

(a) By a person when done within a place of business, a place of residence, or on private property, if that person, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

(b) By a person when done within a place of business, a place of residence, or on private property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

(c) When the firearm is either in a locked container or encased and it is being transported directly between places where a person is not prohibited from possessing that firearm and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(d) If 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 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. Upon a trial for violating subdivision (a), the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(e) By a peace officer or an honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

(f) By a person to the extent that person may openly carry a loaded firearm that is not a handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

(g) As merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in **firearms** and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

(h) By a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

(i) By a member of a club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a firearm that is not a handgun at that target range.

(j) By a licensed hunter while engaged in hunting or while transporting that firearm when going to or returning from that hunting expedition.

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(k) Incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

(l) By a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

(m) Within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

(n) Within a school zone, as defined in Section 626.9, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.

(o) When in accordance with the provisions of Section 171b.

(p) By a person while engaged in the act of making or attempting to make a lawful arrest.

(q) By a person engaged in **firearms**-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of **firearms**, or related to **firearms** training.

(r) By an authorized participant in, or an authorized employee or agent of a supplier of **firearms** for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

(s) Incident to obtaining an identification number or mark assigned for that firearm from the Department of Justice pursuant to Section 23910.

(t) At an established public target range while the person is using that firearm upon that target range.

(u) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

(v) Incident to any of the following:

(1) Complying with Section 27560 or 27565, as it pertains to that firearm.

(2) Section 28000, as it pertains to that firearm.

(3) Section 27850 or 31725, as it pertains to that firearm.

(4) Complying with Section 27870 or 27875, as it pertains to that firearm.

(5) Complying with Section 27915, 27920, or 27925, as it pertains to that firearm.

(w) Incident to, and in the course and scope of, training of, or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

(x) Incident to, and in the course and scope of, training of, or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

(y) Incident to and at the request of a sheriff, chief, or other head of a municipal police department.

(z) If all of the following conditions are satisfied:

(1) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation at which **firearms** are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

(2) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

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(3) The unloaded firearm that is not a handgun is ~~not~~ delivered by a person licensed pursuant to, and operating in accordance with, Sections 26700 to 26925, inclusive.

(aa) Pursuant to paragraph (3) of subdivision (b) of Section 171c.

(ab) Pursuant to Section 171d.

(ac) Pursuant to subparagraph (F) of paragraph (1) of subdivision (c) of Section 171.7.

(ad) On publicly owned land, if the possession and use of unloaded firearm that is not a handgun is specifically permitted by the managing agency of the land and the person carrying that firearm is in lawful possession of that firearm.

(ae) By any of the following:

(1) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(2) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(3) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(4) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(af) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

(ag) Pursuant to the provisions of subdivision (d) of Section 171.5.

(ah) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while the firearm is being used in the lawful course and scope of the licensee's activities as a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and regulations issued pursuant thereto.

(ai) On the navigable waters of this state that are held in public trust, if the possession and use of an unloaded firearm that is not a handgun is not prohibited by the managing agency thereof and the person carrying the firearm is in lawful possession of the firearm.

SEC. 13. Section 5.5 of this bill incorporates amendments to Section 16520 of the Penal Code proposed by both this bill and Senate Bill 1366. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 16520 of the Penal Code, and (3) this bill is enacted after Senate Bill 1366, in which case Section 5 of this bill shall not become operative.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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California LEGISLATIVE INFORMATION

AB-1527 Firearms. (2011-2012)

Date	Result	Location	Ayes	Noes	NVR	Motion
08/29/12	(PASS)	Assembly Floor	47	31	2	AB 1527 PORTANTINO Concurrence in Senate Amendments
		Ayes: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfeld, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Davis, Dickinson, Eng, Feuer, Fletcher, Fong, Fuentes, Gatto, Gordon, Hall, Hayashi, Roger Hernández, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, Portantino, Skinner, Solorio, Swanson, Torres, Wleickowski, Williams, Yamada, John A. Pérez				
		Noes: Achadjian, Bill Berryhill, Chesbro, Conway, Cook, Donnelly, Beth Gaines, Garrick, Gorell, Grove, Hagman, Halderman, Harkey, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Perea, V. Manuel Pérez, Silva, Smyth, Valadao, Wagner				
		No Votes Recorded: Furutani, Galgiani				
08/27/12	(PASS)	Senate Floor	23	15	2	Assembly 3rd Reading AB1527 Portantino By De León
		Ayes: Alquist, Calderon, Corbett, De León, DeSaulnier, Evans, Hancock, Hernandez, Kehoe, Leno, Lieu, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Simitian, Steinberg, Vargas, Wolk, Yee				
		Noes: Anderson, Berryhill, Blakeslee, Cannella, Correa, Dutton, Emmerson, Fuller, Gaines, Harman, Huff, La Malfa, Strickland, Walters, Wright				
		No Votes Recorded: Runner, Wyland				
08/06/12	(PASS)	Sen Appropriations	5	2	0	Do pass.
		Ayes: Alquist, Kehoe, Lieu, Price, Steinberg				
		Noes: Dutton, Walters				
		No Votes Recorded:				
06/26/12	(PASS)	Sen Public Safety	5	2	0	Do pass, but re-refer to the Committee on Appropriations.
		Ayes: Calderon, Hancock, Liu, Price, Steinberg				
		Noes: Anderson, Harman				
		No Votes Recorded:				
05/03/12	(PASS)	Assembly Floor	44	29	7	AB 1527 PORTANTINO Assembly Third Reading
		Ayes: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfeld, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Galgiani, Gatto, Gordon, Hayashi, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, Portantino, Skinner, Solorio, Swanson, Torres, Wleickowski, Williams, Yamada, John A. Pérez				
		Noes: Achadjian, Bill Berryhill, Chesbro, Conway, Cook, Donnelly, Beth Gaines, Garrick, Gorell, Grove, Hagman, Halderman, Harkey, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Perea, Silva, Valadao, Wagner				
		No Votes Recorded: Bonilla, Fletcher, Furutani, Hall, Roger Hernández, V. Manuel Pérez, Smyth				
04/18/12	(PASS)	Asm Appropriations	12	5	0	Do pass.
		Ayes: Blumenfeld, Bradford, Charles Calderon, Campos, Davis, Fuentes, Gatto, Hall, Hill, Lara, Mitchell, Solorio				
		Noes: Donnelly, Harkey, Nielsen, Norby, Wagner				
		No Votes Recorded:				
03/27/12	(PASS)	Asm Public Safety	4	2	0	Do pass as amended and be re-referred to the Committee on Appropriations.

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Date	Result	Location	Ayes	Noes	NVR	Motion
		Ayes: Ammiano, Cedillo, Mitchell, Skinner				
		Noes: Hagman, Knight				
		No Votes Recorded:				

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LEGISLATIVE INFORMATION

AB-1527 Firearms. (2011-2012)

Date	Action
09/28/12	Chaptered by Secretary of State - Chapter 700, Statutes of 2012.
09/28/12	Approved by the Governor.
09/13/12	Enrolled and presented to the Governor at 12:15 p.m.
08/29/12	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 47. Noes 31. Page 6503.).
08/29/12	Assembly Rule 77 suspended. (Page 6488.).
08/28/12	In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 30 pursuant to Assembly Rule 77.
08/27/12	Read third time. Passed. Ordered to the Assembly. (Ayes 23. Noes 15. Page 4873.).
08/23/12	Read second time. Ordered to third reading.
08/22/12	Read third time and amended. Ordered to second reading.
08/08/12	Read second time. Ordered to third reading.
08/07/12	From committee: Do pass. (Ayes 5. Noes 2.) (August 6).
06/26/12	From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (June 26). Re-referred to Com. on APPR.
05/17/12	Referred to Com. on PUB. S.
05/03/12	In Senate. Read first time. To Com. on RLS. for assignment.
05/03/12	Read third time. Passed. Ordered to the Senate. (Ayes 44. Noes 29. Page 4661.)
04/19/12	Read second time. Ordered to third reading.
04/18/12	From committee: Do pass. (Ayes 12. Noes 5.) (April 18).
04/11/12	Re-referred to Com. on APPR.
04/10/12	Read second time and amended.
04/09/12	From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 4. Noes 2.) (March 27).
03/08/12	Re-referred to Com. on PUB. S.
03/07/12	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
02/02/12	Referred to Com. on PUB. S.
01/24/12	From printer. May be heard in committee February 23.
01/23/12	Read first time. To print.

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California
LEGISLATIVE INFORMATION

AB-1527 Firearms. (2011-2012)

Bill Analysis
<u>08/28/12- Assembly Floor Analysis</u>
<u>08/23/12- Senate Floor Analyses</u>
<u>08/16/12- Senate Appropriations</u>
<u>08/08/12- Senate Floor Analyses</u>
<u>08/05/12- Senate Appropriations</u>
<u>06/25/12- Senate Public Safety</u>
<u>04/20/12- Assembly Floor Analysis</u>
<u>04/17/12- Assembly Appropriations</u>
<u>03/26/12- Assembly Public Safety</u>

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CONCURRENCE IN SENATE AMENDMENTS

AB 1527 (Portantino and Ammiano)

As Amended August 22, 2012

Majority vote

ASSEMBLY: 44-29 (May 3, 2012)

SENATE: 23-15 (August 27, 2012)

Original Committee Reference: PUB. S.

SUMMARY: Makes it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county.

The Senate amendments add double jointing language to avoid chaptering problems with SB 1366 (De Saulnier).

AS PASSED BY THE ASSEMBLY, this bill made it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county. Specifically, this bill

- 1) Made it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.
- 2) Stated that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 3) Provided that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 4) Provided that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:
 - a) By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property;
 - b) When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances;

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- c) If 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, as specified;
- d) By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified;
- e) By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States;
- f) As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business;
- g) By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization;
- h) By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
- i) By a licensed hunter while engaged in lawful hunting or while transporting that firearm while going to or returning from that hunting expedition;
- j) Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
- k) By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
- l) Within a licensed gun show;
- m) Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
- n) When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
- o) By any person while engaged in the act of making or attempting to make a lawful arrest;
- p) By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or

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related to firearms training;

- q) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;
- r) Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- s) At any established public target range while the person is using that firearm upon the target range;
- t) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- u) Complying with specified provisions of law relating to the regulation of firearms;
- v) Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training;
- w) Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon;
- x) Incident to and at the request of a sheriff or chief or other head of a municipal police department;
- y) If all of the following conditions are satisfied:
 - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
 - ii) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and,
 - iii) The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
- z) By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol;
- aa) By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion;
- bb) By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a

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weapon within a public transit system;

- cc) On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun;
 - dd) The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit;
 - ee) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from the training;
 - ff) By a person in compliance with specified provisions related to carrying a firearm in an airport; or,
 - gg) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.
- 5) Exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.
 - 6) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.
 - 7) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in an airport.
 - 8) Made conforming technical changes.

FISCAL EFFECT: According to the Senate Appropriations Committee

- 1) Ongoing court costs for increased misdemeanor filings potentially in excess of \$100,000 (General Fund) per year, offset to a degree by fine revenue.
- 2) Potential non-reimbursable local enforcement and incarceration costs, offset to a degree by fine revenue.
- 3) While the impact of this bill independently on local jails could be minor, the cumulative effect of increasing the number of misdemeanors filed could create General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources in the context of recently enacted 2011 Public Safety Realignment.

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COMMENTS: According to the author, "AB 1527 is a modified version of AB 144 from last session. AB 1527 bans the open carrying of an unloaded firearm that is not a handgun in an incorporated city or city and county, with specific exceptions." The absence of a prohibition on 'open carry' of long guns has created an increase in problematic instances of these guns carried in public, alarming unsuspecting individuals causing issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in 'open carry' calls has placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

Please see the policy committee for a full discussion of this bill.

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

FN:0005485

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SENATE RULES COMMITTEE

AB 1527

Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1527
Author: Portantino (D)
Amended: 8/22/12 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 6/26/12

AYES: Hancock, Calderon, Liu, Price, Steinberg
NOES: Anderson, Harman

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/6/12

AYES: Kehoe, Alquist, Lieu, Price, Steinberg
NOES: Walters, Dutton

ASSEMBLY FLOOR: 44-29, 5/3/12 - See last page for vote

SUBJECT: Openly carrying long guns

SOURCE: California Police Chiefs Association
Peace Officer Research Association of California

DIGEST: This bill (1) makes it a misdemeanor, punishable by up to six months in a county jail, or a fine of up to \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his/her person outside a vehicle while in an incorporated city or city and county; (2) makes this offense punishable by up to one year in the county jail, or a fine of up to \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm; (3) establishes numerous exemptions from this prohibition; (4) creates an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a licensed hunter while actually

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engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training; and (5) creates an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals, as specified.

Senate Floor Amendments of 8/22/12 exempt from the bill's prohibition on openly carrying unloaded long guns in incorporated cities the carrying of such guns "on the navigable waters of this state that are held in public trust", and add double-jointing with SB 1366, to prevent chaptering out.

ANALYSIS: Existing law makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or both, for any person to carry an exposed and unloaded handgun outside a vehicle upon his/her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. (Penal Code (PEN) Section 26350(a)(1))

Existing law makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000; or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm. (PEN Section 26350(a)(2))

Existing law prohibits the carrying of a loaded firearm on his/her person or in a vehicle while in any public place or on any public street in an incorporated city or a prohibited area of unincorporated territory. This offense is a misdemeanor, punishable by up to one year in the county jail, a fine of up to \$1,000, or both, unless various aggravating circumstances are present, in which case this offense it is punishable as a felony. (PEN Section 25850)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of PEN Section 12031 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

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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. (PEN Section 16840(b))

Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code Section 2006)

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine. (Id.)

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen;
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the Department of Justice (DOJ) as the registered owner of the firearm. (PEN Section 25858(c))

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This bill makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his/her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.

This bill states that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.

This bill states that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his/her person outside a vehicle in specified areas does not apply under any of the following circumstances:

- By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property.
- When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances.
- If 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/her life or safety, as specified.
- By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified.
- By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States.

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- As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business.
- By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization.
- By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.
- By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- Within a licensed gun show.
- Within a school zone, as defined, with the written permission of the school district superintendent, his/her designee, or equivalent school authority.
- When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- By any person while engaged in the act of making or attempting to make a lawful arrest.
- By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event.

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- Incident to obtaining an identification number or mark assigned for that handgun from the DOJ.
- At any established public target range while the person is using that firearm upon the target range.
- By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.
- Complying with specified provisions of law relating to the regulation of firearms.
- Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.
- Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon.
- Incident to and at the request of a sheriff or chief or other head of a municipal police department.
- If all of the following conditions are satisfied:
 - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
 - The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
 - The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
 - By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol.
 - By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion.
 - By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system.

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- On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.
- The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit.
- By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from the training.
- By a person in compliance with specified provisions related to carrying a firearm in an airport.
- By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.

This bill states that, for purposes of the prohibition on openly carrying an unloaded firearm that is not a handgun, the definition of "firearm" does not include any antique firearm.

This bill exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals.

Existing law also exempts from the provisions of carrying an exposed and unloaded handgun a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while the firearm is being

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used in the lawful course and scope of the licensee's activities as a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and regulations issued pursuant thereto.

This bill adds to that exemption an individual carrying an exposed and unloaded firearm on the navigable waters of this state that are held in public trust, if the possession and use of an unloaded firearm that is not a handgun is not prohibited by the managing agency thereof and the person carrying the firearm is in lawful possession of the firearm.

This bill makes conforming technical changes and is double-jointed with SB 1366 (DeSaulnier).

Prior Legislation

AB 144 (Portantino), Chapter 725, Statutes of 2011, passed the Senate Floor (21-18) on 9/8/11.

AB 1934 (Saldana, 2010) died on Assembly Concurrence.

AB 98 (Cohn, 2005) was held on Suspense in the Assembly Appropriations Committee.

AB 2501 (Horton, 2004) failed passage in the Assembly Public Safety Committee.

AB 2828 (Cohn, 2004) failed passage in the Assembly Public Safety Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Potential ongoing court costs of \$24,000 to \$48,000 (General Fund) for 50 to 100 additional misdemeanor filings per year.
- Potential non-reimbursable local enforcement and incarceration costs, offset to a degree by fine revenue.
- While the impact of this bill independently is likely to be minor, the cumulative effect of all new misdemeanors could create General Fund cost pressure on capital outlay, staffing, programming, the courts, and

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other resources in the context of recently enacted 2011 Public Safety
Realignment.

SUPPORT: (Verified 8/22/12)

California Police Chiefs Association (co-source)
Peace Officer Research Association of California (co-source)
California Chapters of the Brady Campaign Against Gun Violence
California Peace Officers Association
Coalition Against Gun Violence
Law Center to Prevent Gun Violence
Los Angeles Sheriff's Department
Women Against Gun Violence

OPPOSITION: (Verified 8/22/12)

California Rifle and Pistol Association
National Association for Gun Rights
National Rifle Association of America
Save Our State

ARGUMENTS IN SUPPORT: The Peace Officer Research Association
of California states:

The practice by individuals and organizations to "openly carry"
firearms in public places in order to challenge law enforcement and
firearms statutes in California is increasing in frequency. While
PORAC understands that most of these open carry demonstrations are
being done by law abiding citizens, it places law enforcement and the
public in a precarious and possible dangerous situation. Most often,
law enforcement is called to the scene based on a citizen or merchant
complaint. When the officer arrives at the scene, it is their obligation
to question those persons carrying the firearms and to inquire as to
whether the firearm is loaded. Until that officer has physically seen if
the firearm is loaded, that officer must assume that their lives and the
lives of those around them may be in danger.

Again, these situations are potentially dangerous and should not occur
in a public place wherein any number of things could go wrong. We
believe this bill will be very helpful in preventing these potentially
unsafe incidents from happening.

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ARGUMENTS IN OPPOSITION: The National Association for Gun Rights states, "Rifles and shotguns are hardly the weapons of choice for the common criminal. This is yet another attempt to prohibit something because it 'looks scary.' In a recent press release, Assemblyman Anthony Portantino admitted this bill is merely retaliation against law-abiding citizens who chose to peacefully exercise their First Amendment right of free speech in support of their Second Amendment rights after passage of last year's Open Carry Ban. Punishing citizens for engaging in lawful public demonstration is an outrageous abuse of power, further infringing on their constitutionally protected rights. Currently twenty-eight states allow for the Open Carry of firearms in some form without a permit, and an additional thirteen allow Open Carry with a permit. Eight states and the District of Colombia ban open carry; half of which are remnants of the 'Jim Crow' era where the intent was to prevent African-Americans from possessing firearms. Open Carry should be viewed in the same light as [] concealed carry: if a person is legally able to purchase a firearm, it is not the place of the state to deny their right to carry it."

ASSEMBLY FLOOR: 44-29, 5/3/12

AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Galgiani, Gatto, Gordon, Hayashi, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, Portantino, Skinner, Solorio, Swanson, Torres, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Achadjian, Bill Berryhill, Chesbro, Conway, Cook, Donnelly, Beth Gaines, Garrick, Gorell, Grove, Hagman, Halderman, Harkey, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Perea, Silva, Valadao, Wagner

NO VOTE RECORDED: Bonilla, Fletcher, Furutani, Hall, Roger Hernández, V. Manuel Pérez, Smyth

RJG:d 8/23/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

AG0102

**Senate Appropriations Committee Fiscal Summary
Senator Christine Kehoe, Chair**

AB 1950 (Davis) – Prohibited business practices: enforcement.

Amended: August 6, 2012

Policy Vote: Judiciary 4-0

Urgency: No

Mandate: Yes

Hearing Date: August 16, 2012

Consultant: Jolie Onodera

SUSPENSE FILE.

Bill Summary: AB 1950 would remove the January 1, 2013, sunset date on the prohibition from unlawfully performing mortgage loan modification or loan forbearance services. This bill would extend the statute of limitations period for prosecution of certain real estate-related misdemeanors, as specified, and would provide that it is unlawful to act as a mortgage loan originator without being licensed.

Fiscal Impact:

- Ongoing court costs for increased misdemeanor filings potentially in excess of \$100,000 (General Fund) per year, offset to a degree by fine revenue.
- Potential non-reimbursable local enforcement and incarceration costs, offset to a degree by fine revenue.
- While the impact of this bill independently on local jails could be minor, the cumulative effect of increasing the number of misdemeanors filed could create General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources in the context of recently enacted 2011 Public Safety Realignment.

Background: This bill is part of the Attorney General's package of mortgage fraud reform termed the "California Homeowner Bill of Rights." This bill seeks to enable more thorough investigations and prosecutions of mortgage-related crime. In May 2011, the Attorney General announced the creation of the Mortgage Fraud Strike Force whose purpose is to monitor and prosecute violations related to all steps in the mortgage process. The Attorney General has indicated the one-year statute of limitations on various mortgage-related crimes has inhibited a number of prosecutions due to the protracted nature of the foreclosure process and the delayed discovery of illegal activity.

Existing law, until January 1, 2013, prohibits any person, real estate licensee, or attorney who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearances for a fee or other compensation paid by the borrower to do any of the following:

- Claim, demand, charge, collect, or receive any compensation until after the person or licensee has fully performed each and every service he or she contracted to perform or represented that he or she would perform.
- Take any wage assignment, any lien of any type on real or personal property, or any other security to secure the payment of compensation.

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AB 1950 (Davis)
Page 2

- Take any power of attorney from the borrower for any purpose.

A violation of the above provision is a misdemeanor, punishable by a fine not exceeding \$10,000 (\$50,000 if the party violating the law is a corporation), imprisonment in the county jail for up to one year, or by both a fine and imprisonment, and provides that those penalties are cumulative to any other remedies or penalties provided by law.

Existing law generally applies a one year statute of limitations to the prosecution of violations of California laws not punishable by death or imprisonment in the state prison, or pursuant to subdivision (h) of PC section 1170.

Proposed Law: This bill seeks to expand protections related to mortgage fraud. Specifically, this bill:

- Deletes the January 1, 2013, sunset date on the prohibition against charging up-front fees, thereby extending the prohibition indefinitely.
- Deletes the January 1, 2013, sunset date on Business and Professions Code section 10085.6 and Civil Code section 2944.7 which apply to real estate licensees and other persons, thereby extending these provisions indefinitely.
- Extends the statute of limitations from one year to three years after discovery of the offense or completion of the offense, whichever is later, for prosecution of misdemeanor violations of the following:
 - Prohibition against the practice of law by unlicensed or disbarred persons.
 - Prohibition against collecting up-front fees in connection with offers to help borrowers obtain mortgage loan modifications or forbearance.
 - Prohibition against the practice of real estate by unlicensed persons.
 - Requirement for real estate licensees to provide a specified notice to borrowers before entering into a fee agreement in connection with offers to help obtain mortgage loan modifications or forbearance.
 - General requirement to provide a specified notice to borrowers before entering into a fee agreement with them in mortgage loan transactions.
 - General prohibition against collecting up-front fees in connection with offers to help borrowers obtain mortgage loan modifications or forbearance.
- Provides that it is unlawful to act as a mortgage loan originator without being licensed.

Related Legislation: SB 980 (Vargas) 2012 would extend the sunset date on the provisions of SB 94 from January 1, 2013, to January 1, 2017. This bill has been referred to the Assembly Committee on Appropriations.

SB 94 (Calderon) Chapter 630/2009 prohibits, until January 1, 2013, any person who, for a fee, assists a borrower in obtaining a loan modification from charging compensation before a service is completed.

Staff Comments: The provisions of this bill will likely result in an increased number of misdemeanor court filings that otherwise would not have occurred under existing law in the absence of the removal of the sunset date and the extension of the statute of limitations from one to three years for specified offenses. It is unknown how many

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additional filings will result due to the provisions of this bill. The Judicial Council would incur costs for increased misdemeanor filings of approximately \$120,500 (General Fund) statewide for 250 new misdemeanors filed annually, offset to a degree by fine revenue. This estimate equates to less than five misdemeanor filings per county per year. To the extent the actual number of annual filings per county is greater, associated costs to the courts could be significantly higher.

The creation of new, or the extension of existing, misdemeanors has historically been analyzed by this Committee to result in non-reimbursable state mandated costs for local law enforcement and incarceration. Staff notes, however, that the potential for an increased number of misdemeanor convictions taken cumulatively could increase the statewide adult jail population to a degree that could potentially impact the flexibility of counties to manage their jail populations recently increased under the 2011 Public Safety Realignment. While the provisions of this bill could be minor, the cumulative effect of all additional misdemeanors could create unknown General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources.

AG0105

SENATE RULES COMMITTEE

AB 1527

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1527

Author: Portantino (D)

Amended: 4/10/12 in Assembly

Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 6/26/12

AYES: Hancock, Calderon, Liu, Price, Steinberg

NOES: Anderson, Harman

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/6/12

AYES: Kehoe, Alquist, Lieu, Price, Steinberg

NOES: Walters, Dutton

ASSEMBLY FLOOR: 44-29, 5/3/12 - See last page for vote

SUBJECT: Openly carrying long guns

SOURCE: California Police Chiefs Association
Peace Officer Research Association of California

DIGEST: This bill (1) makes it a misdemeanor, punishable by up to six months in a county jail, or a fine of up to \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his/her person outside a vehicle while in an incorporated city or city and county; (2) makes this offense punishable by up to one year in the county jail, or a fine of up to \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm; (3) establishes numerous exemptions from this prohibition; (4) creates an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a licensed hunter while actually

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engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training; and (5) creates an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals, as specified.

ANALYSIS: Existing law makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or both, for any person to carry an exposed and unloaded handgun outside a vehicle upon his/her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. (Penal Code (PEN) Section 26350(a)(1))

Existing law makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm. (PEN Section 26350(a)(2))

Existing law prohibits the carrying of a loaded firearm on his/her person or in a vehicle while in any public place or on any public street in an incorporated city or a prohibited area of unincorporated territory. This offense is a misdemeanor, punishable by up to one year in the county jail, a fine of up to \$1,000, or both, unless various aggravating circumstances are present, in which case this offense it is punishable as a felony. (PEN Section 25850)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of PEN Section 12031 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. (PEN Section 16840(b))

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Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code Section 2006)

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine. (Id.)

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen;
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the Department of Justice (DOJ) as the registered owner of the firearm. (PEN Section 25858(c))

This bill makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his/her person

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outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.

This bill states that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.

This bill states that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his/her person outside a vehicle in specified areas does not apply under any of the following circumstances:

- By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property.
- When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances.
- If 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/her life or safety, as specified.
- By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified.
- By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States.
- As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business.

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- By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization.
- By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.
- By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- Within a licensed gun show.
- Within a school zone, as defined, with the written permission of the school district superintendent, his/her designee, or equivalent school authority.
- When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- By any person while engaged in the act of making or attempting to make a lawful arrest.
- By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event.
- Incident to obtaining an identification number or mark assigned for that handgun from the DOJ.

CONTINUED

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- At any established public target range while the person is using that firearm upon the target range.
- By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.
- Complying with specified provisions of law relating to the regulation of firearms.
- Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.
- Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon.
- Incident to and at the request of a sheriff or chief or other head of a municipal police department.
- If all of the following conditions are satisfied:
 - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
 - The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
 - The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
 - By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol.
 - By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion.
 - By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system.
 - On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.

CONTINUED

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- The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit.
- By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from the training.
- By a person in compliance with specified provisions related to carrying a firearm in an airport.
- By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.

This bill states that, for purposes of the prohibition on openly carrying an unloaded firearm that is not a handgun, the definition of "firearm" does not include any antique firearm.

This bill exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals.

This bill makes conforming technical changes.

Prior Legislation

AB 144 (Portantino), Chapter 725, Statutes of 2011, passed the Senate Floor (21-18) on 9/8/11.

CONTINUED

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AB 1934 (Saldana, 2010) died on Assembly Concurrence.

AB 98 (Cohn, 2005) held on Suspense in the Assembly Appropriations Committee.

AB 2501(Horton, 2004) failed passage in the Assembly Public Safety Committee.

AB 2828 (Cohn, 2004) failed passage in the Assembly Public Safety Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Potential ongoing court costs of \$24,000 to \$48,000 (General Fund) for 50 to 100 additional misdemeanor filings per year.
- Potential non-reimbursable local enforcement and incarceration costs, offset to a degree by fine revenue.
- While the impact of this bill independently is likely to be minor, the cumulative effect of all new misdemeanors could create General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources in the context of recently enacted 2011 Public Safety Realignment.

SUPPORT: (Verified 8/8/12)

California Police Chiefs Association (co-source)
Peace Officer Research Association of California (co-source)
California Chapters of the Brady Campaign Against Gun Violence
California Peace Officers Association
Coalition Against Gun Violence
Law Center to Prevent Gun Violence
Los Angeles Sheriff's Department
Women Against Gun Violence

OPPOSITION: (Verified 8/8/12)

California Rifle and Pistol Association
National Association for Gun Rights
National Rifle Association of America

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Save Our State

ARGUMENTS IN SUPPORT: The Peace Officer Research Association states:

The practice by individuals and organizations to “openly carry” firearms in public places in order to challenge law enforcement and firearms statutes in California is increasing in frequency. While PORAC understands that most of these open carry demonstrations are being done by law abiding citizens, it places law enforcement and the public in a precarious and possible dangerous situation. Most often, law enforcement is called to the scene based on a citizen or merchant complaint. When the officer arrives at the scene, it is their obligation to question those persons carrying the firearms and to inquire as to whether the firearm is loaded. Until that officer has physically seen if the firearm is loaded, that officer must assume that their lives and the lives of those around them may be in danger.

Again, these situations are potentially dangerous and should not occur in a public place wherein any number of things could go wrong. We believe this bill will be very helpful in preventing these potentially unsafe incidents from happening.

ARGUMENTS IN OPPOSITION: The National Association for Gun Rights states, “Rifles and shotguns are hardly the weapons of choice for the common criminal. This is yet another attempt to prohibit something because it ‘looks scary.’ In a recent press release, Assemblyman Anthony Portantino admitted this bill is merely retaliation against law-abiding citizens who chose to peacefully exercise their First Amendment right of free speech in support of their Second Amendment rights after passage of last year’s Open Carry Ban. Punishing citizens for engaging in lawful public demonstration is an outrageous abuse of power, further infringing on their constitutionally protected rights. Currently twenty-eight states allow for the Open Carry of firearms in some form without a permit, and an additional thirteen allow Open Carry with a permit. Eight states and the District of Columbia ban open carry; half of which are remnants of the ‘Jim Crow’ era where the intent was to prevent African-Americans from possessing firearms. Open Carry should be viewed in the same light as [] concealed carry: if a person is legally able to purchase a firearm, it is not the place of the state to deny their right to carry it.”

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ASSEMBLY FLOOR: 44-29, 5/3/12

AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield,
Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos,
Carter, Cedillo, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Galgiani,
Gatto, Gordon, Hayashi, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal,
Ma, Mendoza, Mitchell, Monning, Pan, Portantino, Skinner, Solorio,
Swanson, Torres, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Achadjian, Bill Berryhill, Chesbro, Conway, Cook, Donnelly, Beth
Gaines, Garrick, Gorell, Grove, Hagman, Halderman, Harkey, Huber,
Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande,
Nielsen, Norby, Olsen, Perea, Silva, Valadao, Wagner

NO VOTE RECORDED: Bonilla, Fletcher, Furutani, Hall, Roger
Hernández, V. Manuel Pérez, Smyth

RJG:d 8/8/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

AG0115

**Senate Appropriations Committee Fiscal Summary
Senator Christine Kehoe, Chair**

AB 1527 (Portantino) – Firearms: openly carrying long guns.

Amended: April 10, 2012

Policy Vote: Public Safety 5-2

Urgency: No

Mandate: Yes

Hearing Date: August 6, 2012

Consultant: Jolie Onodera

This bill does not meet the criteria for referral to the Suspense File.

Bill Summary: AB 1527 would make it a misdemeanor, subject to numerous exemptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county. This bill creates additional exemptions from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public space, as specified.

Fiscal Impact:

- Potential ongoing court costs of \$24,000 to \$48,000 (General Fund) for 50 to 100 additional misdemeanor filings per year.
- Potential non-reimbursable local enforcement and incarceration costs, offset to a degree by fine revenue.
- While the impact of this bill independently is likely to be minor, the cumulative effect of all new misdemeanors could create General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources in the context of recently enacted 2011 Public Safety Realignment.

Background: Existing law makes it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Openly carrying an unloaded handgun is also prohibited if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.

Proposed Law: This bill would make it a misdemeanor to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, to be punishable as follows:

- By up to six months in a county jail, or a fine of up to \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county.
- By up to one year in the county jail, or a fine of up to \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.

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AB 1527 (Portantino)
Page 2

This bill provides numerous exemptions to the prohibition on the carrying of an unloaded firearm that is not a handgun outside a vehicle in specified areas, including but not limited to the following:

- By a person when done within a place of business, a place of residence, or on private property, if that person may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.
- When the firearm is either in a locked container or encased and it is being transported directly between places where a person is not prohibited from possessing that firearm and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.
- If 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 paragraph may not apply when the circumstances involve a mutual restraining order absent a factual finding of a specific threat to the person's life or safety.
- By a peace officer or an honorably retired peace officer if that officer may carry a concealed firearm or a loaded firearm pursuant to existing law.
- As merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.
- By a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.
- By a member of a club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a firearm that is not a handgun at that target range.
- By a licensed hunter while engaged in hunting or while transporting that firearm when going to or returning from that hunting expedition.
- Incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.
- By a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.
- Within a gun show.
- Within a school zone, as defined, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.
- By a person while engaged in the act of making or attempting to make a lawful arrest.

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- By a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.
- At an established public target range while the person is using that firearm upon that target range.

This bill creates the following exemptions from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public space:

- A licensed hunter while engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.
- A person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals.

Related Legislation: AB 144 (Portantino) Chapter 725/2011 made it a misdemeanor punishable by up to six months in jail and a \$1,000 fine to openly carry an unloaded handgun on one's person, as specified, and established specified exceptions to this prohibition.

Staff Comments: The provisions of this bill will result in non-reimbursable local law enforcement costs offset to a degree by fine revenue. The Judicial Council has indicated costs for increased misdemeanor filings could result in increased costs of approximately \$24,000 to \$48,000 (General Fund) statewide if 50 to 100 new misdemeanors are filed annually.

The creation of new misdemeanors has historically been analyzed by this Committee to result in non-reimbursable state mandated costs for local law enforcement and incarceration. Staff notes, however, that the creation of new misdemeanors taken cumulatively could increase the statewide adult jail population to a degree that could potentially impact the flexibility of counties to manage their jail populations recently increased under the 2011 Public Safety Realignment. While the provisions of this bill are likely to be minor, the cumulative effect of all new misdemeanors could create unknown General Fund cost pressure on capital outlay, staffing, programming, the courts, and other resources.

AG0118

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2011-2012 Regular Session

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B

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7

AB 1527 (Portantino)
As April 10, 2012
Hearing date: June 26, 2012
Business and Professions Code; Penal Code
SM:dl

OPENLY CARRYING LONG GUNS

HISTORY

Source: California Police Chiefs Association; Peace Officer Research Association of
California

Prior Legislation: AB 144 (Portantino) - Chapter 725, Statutes of 2011
AB 1934 (Saldana) - 2010, died on Assembly Concurrence
AB 98 (Cohn) - 2005, held on Suspense in Assembly Appropriations
AB 2501 (Horton) - 2004, failed passage in Assembly Public Safety
AB 2828 (Cohn) - 2004, failed passage in Assembly Public Safety

Support: California Chapters of the Brady Campaign Against Gun Violence; California Peace
Officers Association; Coalition Against Gun Violence; Los Angeles Sheriff's
Department; Women Against Gun Violence; Law Center to Prevent Gun Violence

Opposition: California Rifle and Pistol Association; National Association for Gun Rights; Save
Our State; National Rifle Association of America

Assembly Floor Vote: Ayes 44 - Noes 29

KEY ISSUES

SHOULD IT BE A MISDEMEANOR, PUNISHABLE BY UP TO SIX MONTHS IN A
COUNTY JAIL, OR A FINE OF UP TO \$1,000, OR BOTH, FOR A PERSON TO CARRY AN
UNLOADED FIREARM THAT IS NOT A HANDGUN ON HIS OR HER PERSON OUTSIDE
A VEHICLE WHILE IN AN INCORPORATED CITY OR CITY AND COUNTY, EXCEPT
AS SPECIFIED?

(CONTINUED)

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SHOULD THIS OFFENSE BE PUNISHABLE BY UP TO ONE YEAR IN THE COUNTY JAIL, OR A FINE OF UP TO \$1,000, OR BOTH, IF THE FIREARM AND UNEXPENDED AMMUNITION CAPABLE OF BEING FIRED FROM THAT FIREARM ARE IN THE IMMEDIATE POSSESSION OF THAT PERSON AND THE PERSON IS NOT IN LAWFUL POSSESSION OF THAT FIREARM?

PURPOSE

The purpose of this bill is to (1) make it a misdemeanor, punishable by up to six months in a county jail, or a fine of up to \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county; (2) make this offense punishable by up to one year in the county jail, or a fine of up to \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm; (3) establish numerous exemptions from this prohibition; (4) create an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training; and (5) create an exemption from the existing prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place for a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals, as specified.

Existing law makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or both, for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. (Penal Code § 26350(a)(1).)

Existing law makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm. (Penal Code § 26350(a)(2).)

Existing law prohibits the carrying of 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 a prohibited area of unincorporated territory. This offense is a misdemeanor, punishable by up to one year in the

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county jail, a fine of up to \$1,000, or both, unless various aggravating circumstances are present, in which case this offense it is punishable as a felony. (Penal Code § 25850.)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of Penal Code Section 12031 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. (Penal Code § 16840(b).)

Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code § 2006.)

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine. (*Id.*)

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen ;
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the DOJ as the registered owner of the firearm.

(Penal Code § 25858(c).)

This bill makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and

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county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.

This bill states that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.

This bill states that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:

- By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property.
- When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances.
- If 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, as specified.
- By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified.
- By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States.
- As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engage in that business or an authorized representative or agent of that business.
- By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization.
- By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.

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- By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- Within a licensed gun show.
- Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority.
- When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- By any person while engaged in the act of making or attempting to make a lawful arrest.
- By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event.
- Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ).
- At any established public target range while the person is using that firearm upon the target range.
- By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.
- Complying with specified provisions of law relating to the regulation of firearms.
- Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.
- Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon.
- Incident to and at the request of a sheriff or chief or other head of a municipal police department.
- If all of the following conditions are satisfied:
 - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
 - The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
 - The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.

(More)

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Page 6

- By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol.
- By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion.
- By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system.
- On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.
- The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit.
- By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from the training.
- By a person in compliance with specified provisions related to carrying a firearm in an airport.
- By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.

This bill states that, for purposes of the prohibition on openly carrying an unloaded firearm that is not a handgun, the definition of "firearm" does not include any antique firearm.

This bill exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

This bill exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in airports and commuter passenger terminals.

This bill makes conforming technical changes.

(More)

AG0124

***RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION
("ROCA")***

In response to the unresolved prison capacity crisis, since early 2007 it has been the policy of the chair of the Senate Committee on Public Safety and the Senate President pro Tem to hold legislative proposals which could further aggravate prison overcrowding through new or expanded felony prosecutions. Under the resulting policy known as "ROCA" (which stands for "Receivership/Overcrowding Crisis Aggravation"), the Committee has held measures which create a new felony, expand the scope or penalty of an existing felony, or otherwise increase the application of a felony in a manner which could exacerbate the prison overcrowding crisis by expanding the availability or length of prison terms (such as extending the statute of limitations for felonies or constricting statutory parole standards). In addition, proposed expansions to the classification of felonies enacted last year by AB 109 (the 2011 Public Safety Realignment) which may be punishable in jail and not prison (Penal Code section 1170(h)) would be subject to ROCA because an offender's criminal record could make the offender ineligible for jail and therefore subject to state prison. Under these principles, ROCA has been applied as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress towards reducing prison overcrowding by passing legislation which could increase the prison population. ROCA will continue until prison overcrowding is resolved.

For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation. On June 30, 2005, in a class action lawsuit filed four years earlier, the United States District Court for the Northern District of California established a Receivership to take control of the delivery of medical services to all California state prisoners confined by the California Department of Corrections and Rehabilitation ("CDCR"). In December of 2006, plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a three-judge federal panel issued an order requiring California to reduce its inmate population to 137.5 percent of design capacity -- a reduction at that time of roughly 40,000 inmates -- within two years. The court stayed implementation of its ruling pending the state's appeal to the U.S. Supreme Court.

On May 23, 2011, the United States Supreme Court upheld the decision of the three-judge panel in its entirety, giving California two years from the date of its ruling to reduce its prison population to 137.5 percent of design capacity, subject to the right of the state to seek modifications in appropriate circumstances. Design capacity is the number of inmates a prison can house based on one inmate per cell, single-level bunks in dormitories, and no beds in places not designed for housing. Current design capacity in CDCR's 33 institutions is 79,650.

On January 6, 2012, CDCR announced that California had cut prison overcrowding by more than 11,000 inmates over the last six months, a reduction largely accomplished by the passage of Assembly Bill 109. Under the prisoner-reduction order, the inmate population in California's 33 prisons must be no more than the following:

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- 167 percent of design capacity by December 27, 2011 (133,016 inmates);
- 155 percent by June 27, 2012;
- 147 percent by December 27, 2012; and
- 137.5 percent by June 27, 2013.

This bill does not aggravate the prison overcrowding crisis described above under ROCA.

COMMENTS

1. Need for This Bill

According to the author:

AB 1527 makes it a misdemeanor for carrying an unloaded long gun in public, vehicle or street in incorporated communities in California and in unincorporated communities that meet certain criteria. The bill contains specific exemptions for law enforcement personnel as well as licensed hunters. It is a follow-up to AB 144 of last year that banned the open carry of handguns.

Open carry creates a potentially dangerous situation when police officers respond to calls from the public when confronted with someone carrying a rifle or shotgun. It's a bad situation for everyone – the police, the gun owner and innocent bystanders who could be injured by this risky behavior. In addition, it wastes time, money and attention when police have to roll-out and respond to these unnecessary calls.

If AB 1527 becomes law, violations are punishable by six months in county jail and a fine up to \$1,000. The measure is backed by the California Brady Campaign Against Gun Violence, PORAC- Peace Officers Research Association of California and the California Police Chiefs Association which refers to AB 1527 as "one of our most important bills in this session".

"This bill just makes sense. Sooner or later, somebody's going to get hurt. If you see somebody walking around a mall or main street with a shotgun, it's pretty intimidating. It's unnecessary and it is just going to lead to trouble. I had hoped that the earlier measure banning open carry of handguns would solve this problem but when long gun advocates attended a police fundraiser it became clear that there was more work to do. When law enforcement asks the legislature for help because of a public safety risk, we should help them.

Open carry advocates are now taking the opportunity to openly carry rifles and shotguns in urban areas of the state. Invariably, these demonstrations result in a call to the police or sheriff's departments to respond. This causes the waste of police time and assets besides causing an unnecessary risk to public safety. Attached are several articles that detail such incidences. In one case open carry advocated carried long guns to a city police department fund raiser.

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In a Redondo Beach protest in May, an open carry advocate was reported carrying a 12 gauge shotgun through the Redondo Beach pier and adjoining Veterans Park. In the attached photographs you can clearly see that at least 4, maybe 5 or more Redondo Police officers responded to this open carry. In a time when many city and county police and sheriff departments are facing severe budget cuts, our law enforcement agencies shouldn't be squandering scarce resources following open carry advocates around incorporated areas of the state.

2. The Open-Carrying of Rifles and Shotguns in Public

In response to the enactment of AB 144 (Portantino) -1 Chapter 725, Statutes of 2011, some gun rights advocates have shifted their focus to openly carrying rifles and shotguns in public places. This bill is intended to outlaw that practice. Last October the San Francisco Chronicle reported:

SAN LEANDRO -- Now that a new California law banning the open carrying of pistols is loaded for action, the big guns are coming out.

Rifles, that is. And shotguns.

Gun owners who are upset that the anti-carry state law will go into effect Jan. 1 intend to start packing their biggest heat in open as often and as visibly as they can, beginning with a gathering in San Leandro today.

They expect at least 50 gun-toting Second Amendment enthusiasts to show up on Hesperian Boulevard at Bayfair mall from noon to 1 p.m. From target-plinking .22-caliber rifles and .270-caliber deer-hunting weapons to 12-gauge shotguns that can blow a gaping hole in a wall - expect any or all long guns that are legal to own in California, organizers say.

The point is to be provocative enough to spur action by the courts or legislators to repeal the new law and restore the right to pack unloaded pistols in the open.

"People are really upset about this law, and if they won't let us carry handguns, we just have to defend ourselves with the next thing available," said co-organizer Yih Chau Chang of Dublin, who intends to bring his unloaded pump-action shotgun to today's rifle meet-up. "This just shows that here in California, our gun-control laws have gotten out of control."

Gun opponents say this new tactic, which follows last year's open-carry displays of handguns by many of those now promoting rifles, is reprehensible.

There will be change, all right, they say - but not the kind the gun advocates want.

'Alarms the public'

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"Actually, this kind of event is an invitation to ban long rifles in public now," said Juliet Leftwich, legal director of Legal Community Against Violence, a gun-control group founded in San Francisco in response to the 101 California St. massacre of 1993 in which nine people died.

"Open carrying of any guns, pistols or rifles alarms the public and it wastes law enforcement resources while they have to monitor the people carrying them," Leftwich said. "It would be best if it were totally banned."

Motivation for tactic

The law spurring this new tactic is AB144, which Gov. Jerry Brown signed Oct. 10. Introduced in January right after the shooting in Tucson that left six dead and 13 wounded including Rep. Gabrielle Giffords, D-Ariz., the law forbids anyone from openly carrying handguns in public.

Previously, Californians could tote handguns any way they wished, in holsters or in their hands, as long as they were unloaded. Violation of the new law is a misdemeanor punishable by up to a year in prison.

California is the fifth state, including Florida and Texas, to outlaw openly carrying pistols. The District of Columbia also forbids it. Thirty-three states allow unrestricted open carry, and 12 require permits.

Gun advocates say the California law is doomed whenever a lawsuit gets filed - and they say one will be - because two federal court rulings in the past year asserted the legality of open-carry rights. The rulings upheld rejections of several individual concealed-weapons-permit applications in San Diego and Yolo counties, saying the old open-carry law negated the need to pack a hidden gun.

Gun-control advocates say the gun-rights crowd shouldn't pin any hopes on those rulings.

They say the danger is too acute to play politics with, citing figures from the Brady Center to Prevent Gun Violence showing that America's annual toll of 30,000 gun-related deaths far outstrips those of any other Western country. Britain, for example, experiences about 50 gun-related deaths a year.

Seal Beach rampage cited

Gun advocates say those same statistics just prove their point.

"What you will see if you restrict people's gun rights is more of what happened in Seal Beach last week, where people don't have the right to defend themselves," said Jeff Dunhill, an open-carry organizer who spent this week hunting elk in Colorado. He was referring to a rampage in which eight people were shot to death

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at an Orange County beauty salon, allegedly by a man involved in a child-custody battle with one of the victims.

"They are arguing that patrons at the nail salon in Seal Beach should have had firearms with them?" said Leftwich. "That's crazy."

(*Handgun Law Riles Activists - They'll Carry Rifles*, San Francisco Chronicle, Saturday, October 22, 2011, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/10/21/BAVU1LKGRM.DTL>)

3. Is Banning Open Carrying of Rifles and Shotguns Unconstitutional?

The Second Amendment to the United States Constitution states, "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". (U.S. Const., Second Amend.) For many years, courts have wrestled with the question of whether the Second Amendment protects the individual's right to own a weapon. In *United States vs. Cruikshank* (1875) 92 U.S. 542, the Supreme Court held that the Second Amendment guaranteed states the right to maintain militias but did not guarantee to individuals the right to possess guns. Subsequently, in *United States vs. Miller* (1939), the Court upheld a federal law banning the interstate transportation of certain firearms. Miller, who had been arrested for transporting a double-barreled sawed-off shotgun from Oklahoma to Arkansas, claimed the law was a violation of the Second Amendment.

The Court rejected Miller's argument, stating:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. (*United States v. Miller*, 307 U.S. 174, 178 (1939).)

For many years following the Supreme Court's decision in *United States vs. Miller*, the orthodox opinion among academics and federal appeals courts alike was that the Second Amendment to the United States Constitution did not protect possession of firearms unrelated to service in the lawfully established militia. (Merkel, *Parker v. District of Columbia and the Hollowness of the Originalist Claims to Principled Neutrality*, 18 Geo. Mason U. Civil Right L. Journal, 251, 251.)

That changed in June 2008, when the United States Supreme Court ruled in *District of Columbia vs. Heller* that a District of Columbia complete ban on possession of a handgun in the home was an unconstitutional violation of the Second Amendment. (*District of Columbia v. Heller* (2008) 128 S. Ct. 2783, 2797.) After a lengthy discussion of the historical context and meaning of the Second Amendment, the Court stated:

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Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.' As we said in *United States v. Cruikshank* [citation omitted] '[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed ...' " (*Heller* at 2797.)

However, in the *Heller* decision, the Supreme Court also stated:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.
n26

FOOTNOTES

n26 We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive. (*District of Columbia v. Heller*, 128 S. Ct. 2783, 2816-2817 (2008), citations omitted.)

Therefore, while the *Heller* decision established that the right to own a firearm is a personal right, not one limited to ownership while serving in a "well-regulated militia," it also held that the government may place reasonable restrictions on that right such as restricting "carrying firearms in sensitive places." It is not clear whether the Supreme Court would include in its list of lawful regulatory measures prohibiting the open carrying of unloaded rifles and shotguns in public.

IS A BAN ON OPEN CARRYING OF RIFLES AND SHOTGUNS IN PUBLIC CONSTITUTIONAL?

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4. Argument in Support

The Peace Officer Research Association states:

The practice by individuals and organizations to "openly carry" firearms in public places in order to challenge law enforcement and firearms statutes in California is increasing in frequency. While PORAC understands that most of these open carry demonstrations are being done by law abiding citizens, it places law enforcement and the public in a precarious and possible dangerous situation. Most often, law enforcement is called to the scene based on a citizen or merchant complaint. When the officer arrives at the scene, it is their obligation to question those persons carrying the firearms and to inquire as to whether the firearm is loaded. Until that officer has physically seen if the firearm is loaded, that officer must assume that their lives and the lives of those around them may be in danger.

Again, these situations are potentially dangerous and should not occur in a public place wherein any number of things could go wrong. We believe this bill will be very helpful in preventing these potentially unsafe incidents from happening.

5. Argument in Opposition

The National Association for Gun Rights states:

Rifles and shotguns are hardly the weapons of choice for the common criminal. This is yet another attempt to prohibit something because it "looks scary."

In a recent press release, Assemblyman Anthony Portantino admitted this bill is merely retaliation against law-abiding citizens who chose to peacefully exercise their First Amendment right of free speech in support of their Second Amendment rights after passage of last year's Open Carry Ban.

Punishing citizens for engaging in lawful public demonstration is an outrageous abuse of power, further infringing on their constitutionally protected rights.

Currently twenty-eight states allow for the Open Carry of firearms in some form without a permit, and an additional thirteen allow Open Carry with a permit. Eight states and the District of Colombia ban open carry, half of which are remnants of the "Jim Crow" era where the intent was to prevent African-Americans from possessing firearms.

Open Carry should be viewed in the same light as [] concealed carry: if a person is legally able to purchase a firearm, it is not the place of the state to deny their right to carry it.

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ASSEMBLY THIRD READING
AB 1527 (Portantino and Ammiano)
As Amended April 10, 2012
Majority vote

PUBLIC SAFETY	4-2	APPROPRIATIONS	12-5
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Ayes: Ammiano, Cedillo, Mitchell, Skinner Ayes: Fuentes, Blumenfield, Bradford,
Charles Calderon, Campos, Davis,
Gatto, Hall, Hill, Lara, Mitchell,
Solorio

Nays: Knight, Hagman Nays: Harkey, Donnelly, Nielsen, Norby,
Wagner

SUMMARY: Makes it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county. Specifically, this bill:

- 1) Makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.
- 2) States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 3) Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 4) Provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:
 - a) By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property;
 - b) When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances;
 - c) If 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

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court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified;

- d) By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified;
- e) By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States;
- f) As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business;
- g) By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization;
- h) By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
- i) By a licensed hunter while engaged in lawful hunting or while transporting that firearm while going to or returning from that hunting expedition;
- j) Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
- k) By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
- l) Within a licensed gun show;
- m) Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
- n) When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
- o) By any person while engaged in the act of making or attempting to make a lawful arrest;
- p) By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;

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- q) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;
- r) Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- s) At any established public target range while the person is using that firearm upon the target range;
- t) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- u) Complying with specified provisions of law relating to the regulation of firearms;
- v) Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training;
- w) Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon;
- x) Incident to and at the request of a sheriff or chief or other head of a municipal police department;
- y) If all of the following conditions are satisfied:
 - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
 - ii) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and,
 - iii) The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
- z) By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol;
- aa) By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion;
- bb) By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system;

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- cc) On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun;
 - dd) The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit;
 - ee) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from the training;
 - ff) By a person in compliance with specified provisions related to carrying a firearm in an airport; or,
 - gg) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.
- 5) Exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.
- 6) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.
- 7) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in an airport.
- 8) Makes conforming technical changes.

FISCAL EFFECT: According to the Assembly Appropriations Committee, unknown, likely minor, non-state-reimbursable local law enforcement and incarceration costs, offset to a degree by increased fine revenue.

COMMENTS: According to the author, "AB 1527 is a modified version of AB 144 from last session. AB 1527 bans the open carrying of an unloaded firearm that is not a handgun in an incorporated city or city and county, with specific exceptions." The absence of a prohibition on 'open carry' of long guns has created an increase in problematic instances of these guns carried in public, alarming unsuspecting individuals causing issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could

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be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in 'open carry' calls has placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

Please see the policy committee for a full discussion of this bill.

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

FN: 0003321

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Date of Hearing: April 18, 2012

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Fuentes, Chair

AB 1527 (Portantino) - As Amended: April 10, 2012

Policy Committee: Public Safety

Vote: 4-2

Urgency: No State Mandated Local Program: Yes

Reimbursable: No

SUMMARY

This bill makes it a misdemeanor, with a long list of exceptions, for a person to carry an unloaded gun that is not a handgun on his or her person (long-gun open-carry) outside a motor vehicle in an incorporated city or city and county. Specifically, this bill:

- 1) Makes the misdemeanor punishable by up to six months and/or a fine of up to \$1,000, or by up to one year in county jail and/or a fine up to \$1,000 if the gun and unexpended ammunition capable of being fired from that gun are in the immediate possession of that person and the person is not in lawful possession of that gun.
- 2) Creates a lengthy series of exceptions to the long-gun open carry prohibition.
- 3) Makes a series of conforming changes.

FISCAL EFFECT

Unknown, likely minor, non-state-reimbursable local law enforcement and incarceration costs, offset to a degree by increased fine revenue.

COMMENTS

- 1) Rationale. The principle purpose of the bill is to follow up on the author's AB 144 (Statutes of 2011), which made public open-carry of handguns a misdemeanor, as specified, by expanding the prohibition to long-guns in incorporated cities.

According to the author, "The absence of a prohibition on 'open carry' of long guns has created an increase in problematic instances of these guns carried in public, alarming unsuspecting individuals causing issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as well.

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"Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

2) Current law.

- a) Makes it a misdemeanor punishable by up to six months in county jail and/or a fine of up to \$1,000 to carry an exposed and unloaded handgun upon his or her person, or inside a vehicle, while in any public place or on any public street in an incorporated city, on any public street in a prohibited area of an unincorporated county, in any public place in a prohibited area of a city or county. The penalty is up to one year in county jail and/or a fine of up to \$1,000 if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the gun.
 - b) Makes it a felony or a misdemeanor, depending on the circumstances, to carry a loaded gun upon the person or in a vehicle while at any public or on any public street in an incorporated city or in any public place or in a prohibited area of an unincorporated territory.
- 3) Support. According to the Peace Officers Research Association of California (PORAC), "The practice by individuals and organizations to "openly carry" firearms in public places in order to challenge law enforcement and firearm statutes in California is increasing in frequency. While PORAC understands that most of these open carry demonstrations are being done by law abiding citizens, it places law enforcement and the public in a precarious and possibly dangerous situation."

According to the California Chapter of the Brady Campaign to Prevent Gun Violence, "The California Brady Campaign Chapters oppose the open carry of long guns for the same reasons that we opposed the open carrying of handguns. We continue to believe that carrying exposed firearms in crowded public places with ammunition readily available is inappropriate and risky behavior that threatens public safety and strains law enforcement resources. The carrying of exposed rifles and shotguns in urban settings, such as shopping malls and restaurants, is particularly inappropriate and threatening."

- 4) Opposition. According to the National Rifle Association of America, "The defensive carrying of firearms in public is protected by the Second Amendment of the United States Constitution, which the U.S. Supreme Court has already stated protects the individual right to possess and carry weapons in case of confrontation."

"The extreme nature of this prohibition is illustrated in the bill itself, which follows the prohibition with dozens of exceptions, all of which merely reflect the fact that firearms are a normal and integral part of American culture and are handled or carried in a variety of perfectly innocent and legitimate context."

Analysis Prepared by: Geoff Long/ APPR. / (916) 319-2081

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Date of Hearing: March 27, 2011
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Tom Ammiano, Chair

AB 1527 (Portantino) – As Amended: March 7, 2012

SUMMARY: Makes it a misdemeanor, with certain exceptions, for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county. Specifically, this bill:

- 1) Makes it a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or both, for person to carry an unloaded firearm that is not a handgun on his or her person outside a vehicle while in an incorporated city or city and county, and makes this offense punishable by imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, or both, if the firearm and unexpended ammunition capable of being fired from that firearm are in the immediate possession of that person and the person is not in lawful possession of that firearm.
- 2) States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 3) Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 4) Provides that the provisions relating to the carrying of an unloaded firearm that is not a handgun on his or her person outside a vehicle in specified areas does not apply under any of the following circumstances:
 - a) By a person when done within a place of business, a place of residence, or on private property, or if done with the permission of the owner or lawful possessor of the property.
 - b) When the firearm is either in a locked container or encased and it is being transported directly from any place where a person is not prohibited from possessing that firearm and the course of travel includes only those deviations that are reasonably necessary under the circumstances.
 - c) If 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, as specified.

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- d) By any peace officer or by an honorably retired peace officer if that officer may carry a concealed firearm, as specified.
- e) By any person to the extent that person is authorized to openly carry a loaded firearm as a member of the military of the United States.
- f) As merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative or agent of that business.
- g) By a duly authorized military or civil organization, or the members thereof, while parading or rehearsing or practicing parading, when at the meeting place of the organization.
- h) By a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- i) By a licensed hunter while engaged in lawful hunting or while transporting that firearm while going to or returning from that hunting expedition.
- j) Incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.
- k) By a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- l) Within a licensed gun show.
- m) Within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority.
- n) When in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- o) By any person while engaged in the act of making or attempting to make a lawful arrest.
- p) By a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- q) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or

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while the participant or authorized employee or agent is at that production event.

- r) Incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ).
- s) At any established public target range while the person is using that firearm upon the target range.
- t) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer.
- u) Complying with specified provisions of law relating to the regulation of firearms.
- v) Incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.
- w) Incident to, and in the course and scope of, training of or by an individual to become licensed to carry a concealed weapon.
- x) Incident to and at the request of a sheriff or chief or other head of a municipal police department.
- y) If all of the following conditions are satisfied:
 - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
 - ii) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation; and
 - iii) The unloaded firearm that is not a handgun is to be delivered by a licensed firearms dealer.
- z) By a person who has permission granted by Chief Sergeants at Arms of the State Assembly and the State Senate to possess a concealed firearm within the State Capitol.
- aa) By a person exempted from the prohibition against carrying a loaded firearm within the Governor's Mansion.
- bb) By a person who is responsible for the security of a public transit system who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon within a public transit system.
- cc) On publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.

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- dd) The carrying of an unloaded firearm that is not a handgun by a person who holds a specified permit.
 - ee) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from the training.
 - ff) By a person in compliance with specified provisions related to carrying a firearm in an airport.
 - gg) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or an authorized representative or authorized agent of the person while the firearm is being used in the lawful course and scope of the licensee's activities, as specified.
- 5) Exempts security guards and retired peace officers who are authorized to carry an unloaded firearm that is not a handgun from the prohibition against possessing a firearm in a school zone.
 - 6) Recasts existing provisions of law that make it an offense for a person to carry a loaded firearm on his or her person or in a vehicle in a public place or a public street, public road, or public highway in an incorporated city, or on his or her person in a public place or on a public street in a prohibited area of an unincorporated territory, or in a vehicle while in a public place or on a public street, public road, or public highway in any part of an unincorporated area.
 - 7) Expands the prohibition against carrying an exposed and unloaded handgun on his or her person outside a motor vehicle in public areas and public streets to include public roads and public highways in the areas a person is prohibited from carrying an exposed and unloaded handgun, as specified.
 - 8) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a licensed hunter while actually engaged in the training of a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.
 - 9) Exempts from the prohibition against carrying an exposed and unloaded handgun outside a vehicle in a public place a person in compliance with specified provisions related to carrying a firearm in an airport.
 - 10) Authorizes a county board of supervisors to enact an ordinance that regulates the carrying of unloaded firearms that are not handguns outside of a vehicle in the unincorporated area of a county where the county has prohibited the discharge of firearms if the ordinance contains specified exemptions.
 - 11) Makes conforming technical changes.

EXISTING LAW:

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- 1) Makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. [Penal Code Section 26350(a)(1).]
- 2) Makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm. [Penal Code Section 26350(a)(2).]
- 3) Provides that a person is guilty of carrying a loaded firearm when the person carries a loaded firearm upon the person or in a vehicle while at 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 an unincorporated territory. [Penal Code Section 25850(a).]

FISCAL EFFECT: UnknownCOMMENTS:

- 1) Author's Statement: According to the author, "AB 1577 is a modified version of AB 144 from last session. AB 1577 bans the open carrying of an unloaded firearm that is not a handgun in an incorporated city or city and county, with specific exceptions. The absence of a prohibition on 'open carry' of long guns has created an increase in problematic instances of these guns carried in public, alarming unsuspecting individuals causing issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in 'open carry' calls has placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

- 2) Comments: This bill makes it a misdemeanor punishable by up to six months in the county jail to carry an unloaded rifle or shotgun in an incorporated city or city and county. Additionally, this bill contains 33 exemptions or exceptions that acknowledge the need to openly carry an unloaded rifle or shotgun in order to engage in otherwise legal activity, such as hunting and target shooting. What is the point of a prohibition that requires 33 exceptions?
- 3) Argument in Support: According to the California Chapter of the Brady Campaign to Prevent Gun Violence, "Last year, AB 144, which prohibits the open carry of unloaded

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handguns was enacted and became operative on January 1, 2012. In response to this new law, the open carry proponents announced that they would openly carry long guns, which is still permitted under existing state law. The original open carry problem has now been escalated with the carrying of exposed long guns in crowded public places and in response, AB 1527 was introduced.

"The California Brady Campaign Chapters oppose the open carry of long guns for the same reasons that we opposed the open carrying of handguns. We continue to believe that carrying exposed firearms in crowded public places with ammunition readily available is inappropriate and risky behavior that threatens public safety and strains law enforcement resources. The carrying of exposed rifles and shotguns in urban settings, such as shopping malls and restaurants, is particularly inappropriate and threatening.

"Those who carry exposed long guns in public are not required to undergo any special screening or clearance. In fact, there is no verification process to ensure that the person is not prohibited from possessing firearms. People who carry long guns in crowded public places may lack the skill, experience, judgment or moral character for safely carrying an exposed weapon, particularly when faced with a confrontational situation.

"The public display and flaunting of long guns in shopping malls and restaurants puts employees and customers at risk of an accidental or vigilante-type incident where innocent bystanders could get shot. A member of the public, when confronted by a person openly carrying a long gun, has no way of knowing the intentions of that person. Caution would dictate that the incident be reported to police. Police, in turn, must respond and assume that the firearm is loaded until determined otherwise. In this potentially life threatening situation, law enforcement may understandably take lethal action to protect the public and themselves from a perceived armed threat."

- 4) Argument in Opposition: According to the National Rifle Association of America, "In AB 1527, the proponents seek to ban the open carry of unloaded guns. The provisions are written without the basic comprehension of what an integral part of the open carrying and possession of long guns are in the numerous outdoor activities Californians enjoy.

"The defensive carrying of firearms in public is protected by the Second Amendment of the United States Constitution, which the U.S. Supreme Court has already stated protects 'the individual right to possess and carry weapons in case of confrontation'.

"The extreme nature of this prohibition is illustrated in the bill itself, which follows the prohibition with dozens of exceptions, all of which merely reflect the fact that firearms are a normal and integral part of American culture and are handled or carried in a variety of perfectly innocent and legitimate context."

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California
California Chapter of the Brady Campaign to Prevent Gun Violence

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Opposition

California Rifle and Pistol Association
National Rifle Association of America
National Association for Gun Rights
California Right to Carry

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

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California

LEGISLATIVE INFORMATION

AB-1527 Firearms. (2011-2012)

SECTION 1. Section 7574.14 of the Business and Professions Code is amended to read:

7574.14. This chapter shall not apply to the following:

- (a) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in a calendar month.
- (b) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.
- (c) A charitable philanthropic society or association incorporated under the laws of this state that is organized and duly maintained for the public good and not for private profit.
- (d) Patrol special police officers appointed by the police commission of a city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) 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.
- (e) An attorney at law in performing his or her duties as an attorney at law.
- (f) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.
- (g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.
- (h) A bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States..
- (i) A person engaged solely in the business of securing information about persons or property from public records.
- (j) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.
- (k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may

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not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Sections 25450 to 25475, inclusive, of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(l) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(m) A savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(n) A secured creditor engaged in the repossession of the creditor's collateral and a lessor engaged in the repossession of leased property in which it claims an interest.

(o) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(p) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

SEC. 2. Section 7582.2 of the Business and Professions Code is amended to read:

7582.2. This chapter does not apply to the following:

(a) A person who does not meet the requirements to be a proprietary private security officer, as defined in Section 7574.01, and is employed exclusively and regularly by an employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include an instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, a dirk, dagger, pistol, revolver, or any other firearm, a knife having a blade longer than five inches, a razor with an unguarded blade, and a metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

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(d) A charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of a city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) 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.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) A bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(l) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) A savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) A secured creditor engaged in the repossession of the creditor's collateral and a lessor engaged in the repossession of leased property in which it claims an interest.

(p) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

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(q) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

- (1) The screening and monitoring access of employees of the same employer.
- (2) The screening and monitoring access of prearranged and preauthorized invited guests.
- (3) The screening and monitoring of vendors and suppliers.
- (4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(r) The changes made to this section by the act adding this subdivision during the 2005-06 Regular Session of the Legislature shall apply as follows:

- (1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.
- (2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

SEC. 3. Section 626.92 of the Penal Code is amended to read:

626.92. Section 626.9 does not apply to or affect any of the following:

- (a) A security guard authorized to openly carry an unloaded handgun pursuant to Chapter 6 (commencing with Section 26350) of Division 5 of Title 4 of Part 6.
- (b) An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to Section 26361.
- (c) A security guard authorized to openly carry an unloaded firearm that is not a handgun pursuant to Chapter 7 (commencing with Section 26400) of Division 5 of Title 4 of Part 6.
- (d) An honorably retired peace officer authorized to openly carry an unloaded firearm that is not a handgun pursuant to Section 26405.

SEC. 4. Section 16505 is added to the Penal Code, to read:

16505. For purposes of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, a firearm is "encased" when that firearm is enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of that firearm exposed.

SEC. 5. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.
- (4) Section 16990.
- (5) Section 17070.
- (6) Section 17310.
- (7) Sections 26500 to 26588, inclusive.

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(8) Sections 26600 to 27140, inclusive.

(9) Sections 27400 to 28000, inclusive.

(10) Section 28100.

(11) Sections 28400 to 28415, inclusive.

(12) Sections 29010 to 29150, inclusive.

(13) Sections 29610 to 29750, inclusive.

(14) Sections 29800 to 29905, inclusive.

(15) Sections 30150 to 30165, inclusive.

(16) Section 31615.

(17) Sections 31705 to 31830, inclusive.

(18) Sections 34355 to 34370, inclusive.

(19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

(6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

(1) Subdivisions (a) and (c) of Section 16730.

(2) Section 16550.

(3) Section 16960.

(4) Section 17310.

(5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.

(6) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.

(7) Sections 26500 to 26588, inclusive.

(8) Sections 26700 to 26915, inclusive.

(9) Section 27510.

(10) Section 27530.

(11) Section 27540.

(12) Section 27545.

(13) Sections 27555 to 27570, inclusive.

(14) Sections 29010 to 29150, inclusive.

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(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

SEC. 5.5. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

(1) Section 16550.

(2) Section 16730.

(3) Section 16960.

(4) Section 16990.

(5) Section 17070.

(6) Section 17310.

(7) Sections 25250 to 25256, inclusive.

~~(7)~~ (8) Sections 26500 to 26588, inclusive.

~~(8)~~ (9) Sections 26600 to 27140, inclusive.

~~(9)~~ (10) Sections 27400 to 28000, inclusive.

~~(10)~~ (11) Section 28100.

~~(11)~~ (12) Sections 28400 to 28415, inclusive.

~~(12)~~ (13) Sections 29010 to 29150, inclusive.

~~(13)~~ (14) Sections 29610 to 29750, inclusive.

~~(14)~~ (15) Sections 29800 to 29905, inclusive.

~~(15)~~ (16) Sections 30150 to 30165, inclusive.

~~(16)~~ (17) Section 31615.

~~(17)~~ (18) Sections 31705 to 31830, inclusive.

~~(18)~~ (19) Sections 34355 to 34370, inclusive.

~~(19)~~ (20) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

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secure container that 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.

SEC. 8. Section 17295 of the Penal Code is amended to read:

17295. (a) For purposes of Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

(b) For purposes of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, a firearm that is not a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

SEC. 9. Section 26366.5 is added to the Penal Code, to read:

26366.5. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

SEC. 10. Section 26390 is added to the Penal Code, to read:

26390. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun in any of the following circumstances:

(a) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(b) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(c) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650, if the carrying is conducted in accordance with the terms and conditions of the permit.

(d) The open carrying of an unloaded handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

SEC. 11. Section 26391 is added to the Penal Code, to read:

26391. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when done in accordance with the provisions of subdivision (d) of Section 171.5.

SEC. 12. Chapter 7 (commencing with Section 26400) is added to Division 5 of Title 4 of Part 6 of the Penal Code, to read:

CHAPTER 7. Carrying an Unloaded Firearm That is not a Handgun in an Incorporated City or City and County

Article 1. Crime of Carrying an Unloaded Firearm that is not a Handgun in an Incorporated City or City and County

26400. (a) A person is guilty of carrying an unloaded firearm that is not a handgun in an incorporated city or city and county when that person carries upon his or her person an unloaded firearm that is not a handgun outside a vehicle while in the incorporated city or city and county.

(b) (1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

(2) A violation of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if the firearm and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not in lawful possession of that firearm.

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#1729

(c) (1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

(d) Notwithstanding the fact that the term "an unloaded firearm that is not a handgun" is used in this section, each individual firearm shall constitute a distinct and separate offense under this section.

Article 2. Exemptions

26405. Section 26400 does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun in any of the following circumstances:

(a) By a person when done within a place of business, a place of residence, or on private property, if that person, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

(b) By a person when done within a place of business, a place of residence, or on private property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

(c) When the firearm is either in a locked container or encased and it is being transported directly between places where a person is not prohibited from possessing that firearm and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(d) If 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 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. Upon a trial for violating subdivision (a), the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(e) By a peace officer or an honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

(f) By a person to the extent that person may openly carry a loaded firearm that is not a handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

(g) As merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

(h) By a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

(i) By a member of a club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a firearm that is not a handgun at that target range.

(j) By a licensed hunter while engaged in hunting or while transporting that firearm when going to or returning from that hunting expedition.

(k) Incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

(l) By a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

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(m) Within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

(n) Within a school zone, as defined in Section 626.9, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.

(o) When in accordance with the provisions of Section 171b.

(p) By a person while engaged in the act of making or attempting to make a lawful arrest.

(q) By a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.

(r) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

(s) Incident to obtaining an identification number or mark assigned for that firearm from the Department of Justice pursuant to Section 23910.

(t) At an established public target range while the person is using that firearm upon that target range.

(u) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

(v) Incident to any of the following:

(1) Complying with Section 27560 or 27565, as it pertains to that firearm.

(2) Section 28000, as it pertains to that firearm.

(3) Section 27850 or 31725, as it pertains to that firearm.

(4) Complying with Section 27870 or 27875, as it pertains to that firearm.

(5) Complying with Section 27915, 27920, or 27925, as it pertains to that firearm.

(w) Incident to, and in the course and scope of, training of, or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

(x) Incident to, and in the course and scope of, training of, or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

(y) Incident to and at the request of a sheriff, chief, or other head of a municipal police department.

(z) If all of the following conditions are satisfied:

(1) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation at which firearms are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

(2) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

(3) The unloaded firearm that is not a handgun is to be delivered by a person licensed pursuant to, and operating in accordance with, Sections 26700 to 26925, inclusive.

(aa) Pursuant to paragraph (3) of subdivision (b) of Section 171c.

(ab) Pursuant to Section 171d.

(ac) Pursuant to subparagraph (F) of paragraph (1) of subdivision (c) of Section 171.7.

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(ad) On publicly owned land, if the possession and use of unloaded firearm that is not a handgun is specifically permitted by the managing agency of the land and the person carrying that firearm is in lawful possession of that firearm.

(ae) By any of the following:

(1) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(2) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(3) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(4) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(af) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

(ag) Pursuant to the provisions of subdivision (d) of Section 171.5.

(ah) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while the firearm is being used in the lawful course and scope of the licensee's activities as a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and regulations issued pursuant thereto.

(ai) On the navigable waters of this state that are held in public trust, if the possession and use of an unloaded firearm that is not a handgun is not prohibited by the managing agency thereof and the person carrying the firearm is in lawful possession of the firearm.

SEC. 13. Section 5.5 of this bill incorporates amendments to Section 16520 of the Penal Code proposed by both this bill and Senate Bill 1366. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 16520 of the Penal Code, and (3) this bill is enacted after Senate Bill 1366, in which case Section 5 of this bill shall not become operative.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

AG0157



California

LEGISLATIVE INFORMATION

AB-1527 Firearms. (2011-2012)

Senate: 1st Cmt 2nd 3rd 2nd 3rd Pass Chp
Assembly: 1st Cmt 2nd Cmt 2nd 3rd Pass Pass

Bill Status	
Measure:	AB-1527
Lead Authors:	Portantino (A) , Ammiano (A)
Principal Coauthors:	-
Coauthors:	-
Topic:	Firearms.
31st Day in Print:	02/23/12
Title:	An act to amend Sections 7574.14 and 7582.2 of the Business and Professions Code, and to amend Sections 626.92, 16520, 16750, 16850, and 17295 of, to add Sections 16505, 26366.5, 26390, and 26391 to, and to add Chapter 7 (commencing with Section 26400) to Division 5 of Title 4 of Part 6 of, the Penal Code, relating to firearms.
House Location:	Secretary of State
Chaptered Date:	09/28/12
Last Amended Date:	08/22/12

Type of Measure	
Inactive Bill - Chaptered	
Majority Vote Required	
Non-Appropriation	
Fiscal Committee	
State-Mandated Local Program	
Non-Urgency	
Non-Tax levy	

Last 5 History Actions	
Date	Action
09/28/12	Chaptered by Secretary of State - Chapter 700, Statutes of 2012.
09/28/12	Approved by the Governor.
09/13/12	Enrolled and presented to the Governor at 12:15 p.m.
08/29/12	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 47. Noes 31. Page 6503.)
08/29/12	Assembly Rule 77 suspended. (Page 6488.)

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5 Telephone: 213.626.8484
Facsimile: 213.626.0078

6 Attorneys for Defendant.
7 City of Redondo Beach

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 CHARLES NICHOLS,

12 Plaintiff,
13 vs.

14 KAMALA D. HARRIS, Attorney
General, in her official capacity as
Attorney General of California, CITY
15 OF REDONDO BEACH and DOES 1 to
10,

16 Defendants.
17

Case No. CV-11-9916 SJO (SS)

**OPPOSITION OF DEFENDANT
CITY OF REDONDO BEACH TO
PLAINTIFF'S EX PARTE
APPLICATION FOR STAY
PENDING APPEAL; DECLARATION
OF T. PETER PIERCE IN SUPPORT**

Judge: Hon. S. James Otero

18 Defendant City of Redondo Beach submits the following memorandum of
19 points and authorities in opposition to the ex parte application for stay pending
20 appeal filed by Plaintiff Charles Nichols:

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

OPPOSITION OF DEFENDANT CITY OF REDONDO BEACH TO PLAINTIFF'S EX PARTE APPLICATION
FOR STAY PENDING APPEAL

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **I. Preliminary Statement**

4 Defendant City of Redondo Beach (the “City”) opposes on the following
5 grounds the ex parte application for a stay pending appeal filed by Plaintiff Charles
6 Nichols (“plaintiff”):

7 First, plaintiff has not provided an adequate explanation as to why he cannot
8 seek a stay through a noticed motion.

9 Second, plaintiff cannot show that he would be prejudiced by the noticed
10 motion procedure; his request for a stay has no merit in the first place. Plaintiff
11 appeals from an order denying a preliminary injunction with respect to enforcement
12 of three California statutes. Plaintiff did not seek a preliminary injunction with
13 respect to enforcement of the City’s prohibition on firearms in public parks. The
14 constitutional validity of California’s statutes is an issue entirely separate from the
15 validity of the City’s regulation. This Court may continue to exercise jurisdiction
16 over plaintiff’s claims against the City without concern for running afoul of any
17 decision of the Ninth Circuit with respect to enforcement of California law.

18 Third, still pending before the Court is the City’s Motion to Dismiss all of the
19 claims asserted against it in the operative Second Amended Complaint. A stay of the
20 proceedings would prejudice the City by depriving it of the opportunity to have its
21 legal defenses adjudicated now, and would leave the City in legal limbo for the
22 duration of the stay.

23 Fourth, well after the City filed its Motion to Dismiss, plaintiff pled no contest
24 to a misdemeanor criminal complaint filed against him in California state court
25 arising from the same course of conduct underlying his claims against the City here.
26 After researching the potential impact of that plea on plaintiff’s claims here, the City
27 has concluded that it has additional grounds to move for judgment against plaintiff.
28 The City is drafting a detailed Rule 7-3 pre-meeting letter to plaintiff in an effort to

1 convince him to dismiss his claims against the City in the wake of his plea in state
2 court. A stay by this Court would further prejudice the City by depriving it of an
3 opportunity to obtain a resolution on the merits now.

4 In summary, the City's continued efforts to obtain a favorable judgment
5 should not be derailed by an appeal that has nothing to do with plaintiff's claims
6 against the City.

7
8 **II. The Ex Parte Application Should Be Denied Because Plaintiff Has Not**
9 **Adequately Explained Why A Noticed Motion Would Be Ineffective.**

10 The Court's Initial Standing Order advises: "Ex parte applications are
11 discouraged. *Mission Power Eng'g Co. v. Cont'l Casualty Co.*, 883 F.Supp. 488
12 (C.D.Cal. 1995) [*Mission Power*]." (Standing Order, p. 12, lines 1-2). "Many ex
13 parte motions are denied, not because the underlying request is unwarranted, but
14 because the papers do not show that bypassing the regular noticed motion procedure
15 is necessary." *Mission Power*, 883 F.Supp. at 492. Plaintiff has not explained why
16 his request for a stay cannot be accommodated through a regularly noticed motion.
17 There is no reason why plaintiff cannot file a noticed motion and set it for hearing in
18 advance of the September 4 deadline for the filing of the answering brief in the Ninth
19 Circuit, which will be months in advance of the Ninth Circuit deciding the appeal.
20 The ex parte application should be denied for this reason alone.

21
22 **III. The Ex Parte Application Should Be Denied Because Plaintiff Has Not**
23 **Shown Irreparable Prejudice.**

24 Plaintiff must show (1) he "will be irreparably prejudiced if the underlying
25 motion is heard according to regular noticed motion procedures"; and (2) he "is
26 without fault in creating the crisis that requires ex parte relief." *Mission Power*, 883
27 F.Supp. at 492. Plaintiff fails to satisfy the first factor, rendering superfluous any
28 discussion of the second.

1 “To show irreparable prejudice, it will usually be necessary to refer to the
 2 merits of the accompanying proposed motion, because if it is meritless, failure to
 3 hear it cannot be prejudicial.” *Mission Power*, 883 F.Supp. at p. 492. Plaintiff
 4 contends that this Court, by continuing to assert jurisdiction over plaintiff’s claims
 5 against the City, could interfere with the Ninth Circuit’s jurisdiction over plaintiff’s
 6 pending appeal. Plaintiff is mistaken. This Court refused to enjoin enforcement of
 7 California statutes on the ground that plaintiff was not likely to succeed on his *facial*
 8 challenges to those statutes under the Second, Fourth and Fourteenth Amendments.
 9 (See Order, Document 109, at pp. 4-10). The statutes, collectively, prohibit the
 10 carrying of loaded and unloaded firearms, including handguns, in public places. The
 11 *facial* validity of those statutes has nothing to do with plaintiff’s *as-applied*
 12 challenges to the City’s regulation under the Second, Fourth and Fourteenth
 13 Amendments. (See Second Amended Complaint, Document 83, at ¶¶ 45, 70-82).
 14 The City criminally prosecuted plaintiff for violating the City’s prohibition on
 15 firearms in public parks. (See Exhibit “A” attached, Declaration of T. Peter Pierce at
 16 ¶ 2; See also Second Amended Complaint, Document 83, at ¶ 45). Plaintiff has not
 17 shown that the validity of the City’s enforcement will be affected by the Ninth
 18 Circuit’s decision on the facial validity of California law.

19 To the extent plaintiff tries to state a facial Second Amendment claim against
 20 the City, he does not show that this Court, by retaining jurisdiction over that claim,
 21 would interfere with the Ninth Circuit’s jurisdiction. Nor could he show that. A
 22 ruling by this Court upholding the City’s regulation under the Second Amendment
 23 would not interfere with a Ninth Circuit ruling striking down one of the challenged
 24 California statutes on that ground. More importantly, for the reasons stated in this
 25 Court’s order denying a preliminary injunction, it is highly unlikely that the Ninth
 26 Circuit would invalidate any of the state statutes.

27 Separately and independently, plaintiff recently pled no contest in California
 28 state court to violating the City’s prohibition on firearms in public parks. (See

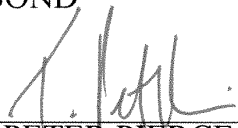
1 Exhibit "B" attached at p. 7; Pierce decl. at ¶ 3). Accordingly, he was found guilty of
 2 the misdemeanor charge, and convicted. (See Exhibit "B" attached at pp. 7-8; Pierce
 3 decl. at ¶ 3). The City is preparing a letter to plaintiff, under Local Rule 7-3,
 4 explaining that plaintiff's conviction forecloses his claims against the City under
 5 *Heck v. Humphrey*, 512 U.S. 477, 486-87, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994),
 6 and its progeny. Plaintiff's claims against the City are now foreclosed *regardless of*
 7 *the Ninth Circuit's decision in the pending appeal* involving California law. Unless
 8 plaintiff agrees to dismiss his claims against the City in the Rule 7-3 process, the
 9 City soon will be filing a motion for judgment on the pleadings or for summary
 10 judgment. The pending appeal should not derail that motion.

11 IV. Conclusion

12 For all of the foregoing reasons, the Court should deny plaintiff's ex parte
 13 application.
 14

15 Dated: July 16, 2013

RICHARDS, WATSON & GERSHON
 A Professional Corporation
 T. PETER PIERCE
 LISA BOND

16 By: 
 17 T. PETER PIERCE
 18 Attorneys for Defendant
 19 City of Redondo Beach
 20
 21
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 28

DECLARATION OF T. PETER PIERCE

I, T. Peter Pierce, declare:

1. I am an attorney admitted to practice before this Court and licensed to practice in all courts of the State of California. I am one of the attorneys responsible for representing defendant City of Redondo Beach in this case. I have personal knowledge of the matters in this declaration.

2. Attached here as Exhibit "A" is a true and correct certified copy of the operative charging complaint filed in *People v. Charles Nichols*, which I obtained from the California Superior Court.

3. Attached here as Exhibit "B" is a true and correct certified copy of the complete docket sheet in *People v. Charles Nichols*, which I obtained from the California Superior Court. I have drawn a box around the parts of the docket sheet on pages 7 and 8 recounting Mr. Nichols' plea of no contest, the California Superior Court's finding of guilt, and its conviction of Mr. Nichols.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 16, 2013 at Los Angeles, California.

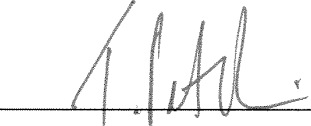

 T. Peter Pierce

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, SOUTHWEST JUDICIAL DISTRICT**

PEOPLE OF THE STATE OF CALIFORNIA

COURT CASE # 2SY05163

FILED

PLAINTIFF

COMPLAINT -

MISDEMEANOR/ U.S. ATTORNEY SUPERIOR CO

V.

INFRACTION

DEFENDANT

1st.

MAY 10 2013

**CHARLES ERWIN NICHOLS
16810 HAWTHORNE BLVD.
LAWNDALE, CA 90260**

"AMENDED COMPLAINT"

"MODIFY WORDING IN CTI"

WILLIAM CLARKE, CLERK
William Clarke
BY M. MULLIGAN, DEPUTY

DOB 03-12-60 SEX M HAIR BRO EYES BLU HGT 5'2" WGT 250 RACE W

OPR LIC # N6978836 ST CA

LPD/DR 12-3245

MAIN NUMBER

SOC SEC

VEH LIC ST

CII M91667305

ARRESTED CHGS 4-35.20(a) RBMC

FBI

BKG NUMBER

CITE # FOR LETTER

OCA # CA0195600

DATE OF ARREST MAY 21, 2012

VIO CITY REDONDO BEACH

AKA

FIRST

MID

LAST

SFX

The undersigned declarant and complainant states that he is informed and believes and upon such information and belief declares that on or about **MAY 21, 2012** the above named Defendant, at and in the Southwest Judicial District in the County of Los Angeles, State of California, committed the crime(s) of:

COUNT 1

A misdemeanor violation of the **Redondo Beach Municipal Code Section 4-35.20(a)**, in that the above named Defendant did carry a weapon across, in, or into a park.

I declare under penalty of perjury that the foregoing is true and correct. Executed on **MAY 09, 2013** in the County of Los Angeles, State of California

[Signature]
Declarant and Complainant

Investigating Agency: Redondo Beach Police Department

THIS VERIFIED COMPLAINT INCORPORATES BY REFERENCE THE POLICE
REPORT DR # 12-3245

B# FOR LETTER

DK/ DA/BM

PURSUANT TO PENAL CODE SECTION 1054.3 THE PEOPLE HEREBY MAKE AN INFORMAL REQUEST FOR DISCOVERY TO BE DISCLOSED BY THE DEFENDANT AND HIS/HER ATTORNEY TO THE PEOPLE WITHIN 15 DAYS OF THE RECEIPT OF THIS COMPLAINT.



EXHIBIT B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NO. 2SY05163

PAGE NO. 1

THE PEOPLE OF THE STATE OF CALIFORNIA VS.

CURRENT DATE 07/15/13

DEFENDANT 01: CHARLES ERWIN NICHOLS

LAW ENFORCEMENT AGENCY EFFECTING ARREST: REDONDO BEACH POLICE DEPT.

BAIL: APPEARANCE DATE	AMOUNT OF BAIL	DATE POSTED	RECEIPT OR BOND NO.	SURETY COMPANY	REGISTER NUMBER

CASE FILED ON 07/13/12.

COMPLAINT FILED, DECLARED OR SWORN TO CHARGING DEFENDANT WITH HAVING
COMMITTED, ON OR ABOUT 05/21/12 IN THE COUNTY OF LOS ANGELES, THE FOLLOWING
OFFENSE(S) OF:

COUNT 01: 4-35.20(A) RBM MISD

NEXT SCHEDULED EVENT:

07/25/12 830 AM ARRAIGNMENT DIST TORRANCE COURTHOUSE DEPT 005

ON 07/25/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR ARRAIGNMENT

PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK)

THE Celia BERNAL (REP) SYDNE S. MICHEL (CP)

DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY MICHAEL F SISSON PRIVATE
COUNSEL

DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY

MICHAEL F SISSON PRIVATE COUNSEL

DEMURRER TO COMPLAINT FILED BY THE CITY OF REDONDO BEACH FILED.

WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:

08/22/12 830 AM ARRAIGNMENT AND PLEA DIST TORRANCE COURTHOUSE DEPT 005

CUSTODY STATUS: RELEASED ON OWN RECOGNIZANCE

ON 08/17/12 AT 830 AM :

DEFENDANT CHARLES NICOLS DEMURRER TO COMPLAINT.

COURT ORDERS AND FINDINGS:

THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

NEXT SCHEDULED EVENT:

08/22/12 900 AM MOTION DIST TORRANCE COURTHOUSE DEPT 005

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE.

ON 08/22/12 AT 900 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR MOTION

PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK)

THE Celia BERNAL (REP) SYDNE S. MICHEL (CP)

DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY MICHAEL F SISSON PRIVATE
COUNSEL

DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY

MICHAEL F SISSON PRIVATE COUNSEL

MOTION CONTINUED UNTIL 09/13/2012.

WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:

09/13/12 830 AM ARRAIGNMENT AND PLEA DIST TORRANCE COURTHOUSE DEPT 005

Case 2:11-cv-09916-SJO-SS Document 119 Filed 07/16/13 Page 11 of 18 Page ID #:1823

CASE NO. 2SY05163
DEF NO. 01

PAGE NO. 2
DATE PRINTED 07/15/13

CUSTODY STATUS: RELEASED ON OWN RECOGNIZANCE

ON 09/13/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR ARRAIGNMENT AND PLEA

PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK)

CELIA BERNAL (REP) SYDNE S. MICHEL (CP)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY MICHAEL F SISSON PRIVATE COUNSEL

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:

09/27/12 830 AM ARRAIGNMENT AND PLEA DIST TORRANCE COURTHOUSE DEPT 005

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 09/27/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR ARRAIGNMENT AND PLEA

PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK)

CELIA BERNAL (REP) SYDNE S. MICHEL (CP)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY MICHAEL F SISSON PRIVATE COUNSEL

CASE IS TAKEN UNDER SUBMISSION. RULING ON MOTION IS CONTINUED.

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:

10/24/12 830 AM MOTION DIST TORRANCE COURTHOUSE DEPT 005

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 10/24/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR MOTION

PARTIES: DAVID SOTELO (JUDGE) PATRICIA SOTO (CLERK)

CELIA BERNAL (REP) SYDNE S. MICHEL (CP)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY MICHAEL F SISSON PRIVATE COUNSEL

DEFENDANT PLEADS NOT GUILTY TO COUNT 01, 4-35.20(A) RBM.

COURT ORDERS AND FINDINGS:

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.

DEMURRER IS DENIED.

WAIVES STATUTORY TIME.

NEXT SCHEDULED EVENT:

12/11/12 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 11/07/12 AT 800 AM :

PAYMENT OF \$1.50 RECEIVED FOR PHOTOCOPIES.

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DEF NO. 01

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RECEIPT # SBA468645008
MATTER REMAINS ON CALENDAR FOR PRETRIAL HEARING DUE ON
12/11/12 DEPT. 5.
PRETRIAL HEARING

ON 12/11/12 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR PRETRIAL HEARING
PARTIES: CHET L. TAYLOR (JUDGE) SHIRLEY LINARES (CLERK)
WILLIAM BARNES (REP) SYDNE S. MICHEL (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY MICHAEL F SISSON PRIVATE
COUNSEL
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
01/14/13 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005
DAY 00 OF 30

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 01/14/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR PRETRIAL HEARING
PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK)
WILLIAM BARNES (REP) SYDNE S. MICHEL (CP)
PUBLIC DEFENDER APPOINTED. JOHN MATTINGLY - P.D.
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC
DEFENDER
ATTORNEY MICHAEL SISSON IS RELIEVED.

NOTICE OF ASSESSMENT OF APPOINTED COUNSEL REGISTRATION FEE PER
\$1987.5 SIGNED AND FILED
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
02/25/13 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005
DAY 00 OF 30

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 01/30/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR FURTHER PROCEEDINGS
PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK)
WILLIAM BARNES (REP) SYDNE S. MICHEL (CP)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY JOHN MATTINGLY DEPUTY
PUBLIC DEFENDER
DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY
JOHN MATTINGLY DEPUTY PUBLIC DEFENDER
ORDER TO PREPARE TRANSCRIPT SIGNED.
NEXT SCHEDULED EVENT:
02/25/13 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005

ON 02/25/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR PRETRIAL HEARING

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PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK)
WILLIAM BARNES (REP) SYDNE S. MICHEL (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC
DEFENDER
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
03/18/13 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005
DAY 00 OF 30

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 03/18/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR PRETRIAL HEARING
PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK)
WILLIAM BARNES (REP) MELANIE CHAVIRA (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC
DEFENDER
OPPOSITION TO DEFENSE MOTION TO CONTINUE FILED.

DEFENSE MOTION FOR CONTINUANCE DENIED WITHOUT PREJUDICE.
NEXT SCHEDULED EVENT:
04/03/13 830 AM PRETRIAL HEARING DIST TORRANCE COURTHOUSE DEPT 005
DAY 15 OF 30

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 04/03/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR PRETRIAL HEARING
PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK)
CARMEN J. GARROD (REP) MELANIE CHAVIRA (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC
DEFENDER
NEXT SCHEDULED EVENT:
04/16/13 830 AM TRIAL/OR MOTION DIST TORRANCE COURTHOUSE DEPT 005
DAY 28 OF 30

NEXT SCHEDULED EVENT:
BY STIPULATION CAUSE CONTINUED TO
04/18/13 830 AM JURY TRIAL DIST TORRANCE COURTHOUSE DEPT 005
DAY 30 OF 30

ON 04/05/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR TRIAL/OR MOTION
PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK)
WILLIAM BARNES (REP) SYDNE S. MICHEL (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC
DEFENDER
4/16/13 AND 4/18/13 DATES ARE VACATED.
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:

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DEF NO. 01

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UPON MOTION OF DEFENDANT
04/30/13 830 AM JURY TRIAL DIST TORRANCE COURTHOUSE DEPT 005
DAY 00 OF 10

ON 04/11/13 AT 1000 AM IN TORRANCE COURTHOUSE DEPT REU

CASE CALLED FOR 987.8 - ATTORNEY FEES PAYMENT
PARTIES: NONE (JUDGE) NONE (CLERK)
NONE (REP) MELANIE CHAVIRA ()
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
PAYMENT RECEIVED FROM GC SERVICES FOR THE OUTSTANDING APPOINTED
COUNSEL REGISTRATION FEE IN THE AMOUNT OF \$50.00 ON INVOICE
#04132161.
NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

ON 04/30/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

NUNC PRO TUNC ORDER PREPARED. IT APPEARING TO THE COURT THAT THE MINUTE ORDER
IN THE ABOVE ENTITLED ACTION DOES NOT PROPERLY REFLECT THE COURT'S ORDER. SAID
MINUTE ORDER IS AMENDED NUNC PRO TUNC AS OF THAT DATE. ALL OTHER ORDERS ARE
TO REMAIN IN FULL FORCE AND EFFECT. DETAILS LISTED AT END OF THIS MINUTE ORDER.
CASE CALLED FOR JURY TRIAL
PARTIES: CHET L. TAYLOR (JUDGE) VIKKI JOHNSON (CLERK)
WILLIAM BARNES (REP) MELANIE CHAVIRA (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC
DEFENDER
PEOPLE'S OPPOSITION TO MOTION TO DISMISS FILED AND SET FOR
04-30-13 IN DEPT. 5.

MOTION TO DISMISS AND MARSDEN CONTINUED TO 05-03-13 IN DEPT. 5.

*****NO NUNC PRO TUNC ORDER REQUIRED*****

NEXT SCHEDULED EVENT:
05/03/13 830 AM MOTION DIST TORRANCE COURTHOUSE DEPT 005

DAY 03 OF 10

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 05/03/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR MOTION
PARTIES: CHET L. TAYLOR (JUDGE) VIKKI JOHNSON (CLERK)
WILLIAM BARNES (REP) MELANIE CHAVIRA (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC
DEFENDER
OUT OF THE PRESENCE OF THE PEOPLE, WITH THE COURT STAFF ONLY,
THE DEFENDANT'S MARSDEN MOTION IS HEARD AND DENIED.
THE COURT ORDERS THE NOTES OF THE REPORTER SEALED AND NOT TO
BE TRANSCRIBED UNLESS ORDERED BY THE COURT.
DEFENDANT'S MOTION TO DISMISS IS ARGUED AND DENIED.

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THIS MATTER IS CONTINUED FOR JURY TRIAL TO 05/08/2013.
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
NEXT SCHEDULED EVENT:
05/08/13 830 AM JURY TRIAL DIST TORRANCE COURTHOUSE DEPT 005
DAY 08 OF 10

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 05/06/13 AT 800 AM :

PAYMENT OF \$25.00 RECEIVED FOR CERTIFICATION.
RECEIPT # SBA468645008.
MATTER REMAINS ON CALENDAR FOR JURY TRIAL DUE ON 5/8/13 DEPT. 5.
JURY TRIAL

ON 05/08/13 AT 800 AM :

\$25.00 PAID FOR CERTIFICATION. RECEIPT#SBA500815010.
JURY TRIAL

ON 05/08/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR JURY TRIAL
PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK)
WILLIAM BARNES (REP) MELANIE CHAVIRA (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC
DEFENDER

COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
NEXT SCHEDULED EVENT:
05/10/13 830 AM JURY TRIAL DIST TORRANCE COURTHOUSE DEPT 005
DAY 08 OF 10

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 05/10/13 AT 830 AM IN TORRANCE COURTHOUSE DEPT 005

NUNC PRO TUNC ORDER PREPARED. IT APPEARING TO THE COURT THAT THE MINUTE ORDER
IN THE ABOVE ENTITLED ACTION DOES NOT PROPERLY REFLECT THE COURT'S ORDER. SAID
MINUTE ORDER IS AMENDED NUNC PRO TUNC AS OF THAT DATE. ALL OTHER ORDERS ARE
TO REMAIN IN FULL FORCE AND EFFECT. DETAILS LISTED AT END OF THIS MINUTE ORDER.
CASE CALLED FOR JURY TRIAL
PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK)
CHRISTINE CHEATHAM (REP) MELANIE CHAVIRA (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC
DEFENDER
MATTER IS CALLED FOR JURY TRIAL.

DEFENDANT'S MOTION TO DISMISS BECAUSE PROSECUTION VIOLATES
RIGHT GUARANTEED BY THE BILL OF RIGHTS IS HEARD, ARGUED AND

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DENIED.

DEFENDANT'S MOTION TO CONTINUE IS DENIED.

A PANEL OF 30 PROSPECTIVE JURORS IS BROUGHT INTO THE COURTROOM AND IS GIVEN THE PERJURY ADMONISHMENT REGARDING QUALIFICATIONS.

VOIR DIRE COMMENCES.

THE JURORS ARE ADMONISHED, EXCUSED, AND ORDERED TO RETURN ON MAY 13, 2013 AT 11:00 A.M.

TRIAL IS RECESSED TO THE DATE AND TIME SHOWN BELOW.
COURT ORDERS AND FINDINGS:

-THE INITIAL JURY PANEL IS ADMONISHED.

-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
NEXT SCHEDULED EVENT:

05/13/13 1100 AM JURY TRIAL DIST TORRANCE COURTHOUSE DEPT 005

CUSTODY STATUS: DEFENDANT REMAINS ON OWN RECOGNIZANCE

ON 05/13/13 AT 1100 AM IN TORRANCE COURTHOUSE DEPT 005

CASE CALLED FOR JURY TRIAL

PARTIES: CHET L. TAYLOR (JUDGE) MICHELLE MILLIGAN (CLERK)
CARMEN J. GARROD (REP) MELANIE CHAVIRA (CP)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOHN MATTINGLY DEPUTY PUBLIC DEFENDER

DEFENDANT ADVISED OF AND PERSONALLY AND EXPLICITLY WAIVES THE FOLLOWING RIGHTS:
WRITTEN ADVISEMENT OF RIGHTS AND WAIVERS FILED, INCORPORATED BY REFERENCE
HEREIN

TRIAL BY COURT AND TRIAL BY JURY

CONFRONTATION AND CROSS-EXAMINATION OF WITNESSES;
SUBPOENA OF WITNESSES INTO COURT TO TESTIFY IN YOUR DEFENSE;
AGAINST SELF-INCRIMINATION;

DEFENDANT ADVISED OF THE FOLLOWING:

THE NATURE OF THE CHARGES AGAINST HIM, THE ELEMENTS OF THE OFFENSE IN THE

COMPLAINT, AND POSSIBLE DEFENSES TO SUCH CHARGES;
THE POSSIBLE CONSEQUENCES OF A PLEA OF GUILTY OR NOLO CONTENDERE, INCLUDING
THE MAXIMUM PENALTY AND ADMINISTRATIVE SANCTIONS AND THE POSSIBLE LEGAL
EFFECTS AND MAXIMUM PENALTIES INCIDENT TO SUBSEQUENT CONVICTIONS FOR THE
SAME OR SIMILAR OFFENSES;

THE EFFECTS OF PROBATION;

IF YOU ARE NOT A CITIZEN, YOU ARE HEREBY ADVISED THAT A CONVICTION OF THE
OFFENSE FOR WHICH YOU HAVE BEEN CHARGED WILL HAVE THE CONSEQUENCES OF
DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF
NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES.

THE COURT FINDS THAT EACH SUCH WAIVER IS KNOWINGLY, UNDERSTANDINGLY, AND
EXPLICITLY MADE; COUNSEL JOINS IN THE WAIVERS

THE DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT 01 AND PLEADS
NOLO CONTENDERE WITH THE APPROVAL OF THE COURT TO A VIOLATION OF SECTION
4-35.20(A) RBM IN COUNT 01. THE COURT FINDS THE DEFENDANT GUILTY.

*

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COUNT (01) : DISPOSITION: CONVICTED

*

COURT ACCEPTS PLEA

PEOPLE VS. WEST.

NEXT SCHEDULED EVENT:

SENTENCING

DEFENDANT WAIVES ARRAIGNMENT FOR JUDGMENT AND STATES THERE IS NO LEGAL CAUSE
WHY SENTENCE SHOULD NOT BE PRONOUNCED. THE COURT ORDERED THE FOLLOWING
JUDGMENT:

AS TO COUNT (01):

IMPOSITION OF SENTENCE SUSPENDED

DEFENDANT PLACED ON SUMMARY PROBATION

FOR A PERIOD OF 003 YEARS UNDER THE FOLLOWING TERMS AND CONDITIONS:

PAY A FINE OF \$150.00

PLUS A STATE PENALTY FUND ASSESSMENT OF \$420.00

PLUS \$30.00 CRIMINAL FINE SURCHARGE (PURSUANT TO 1465.7 P.C.)

\$40.00 COURT OPERATIONS ASSESSMENT (PURSUANT TO 1465.8(A)(1) P.C.)

\$30.00 INSTALLMENT & ACCOUNTS RECEIVABLE FEE (PURSUANT TO 1205(D) PC)

\$30.00 CRIMINAL CONVICTION ASSESSMENT (PURSUANT TO 70373 G.C.)

DEFENDANT TO PAY FINE TO THE COURT CLERK

DEFENDANT SHALL PAY A RESTITUTION FINE IN THE AMOUNT OF \$120.00 TO THE COURT

TOTAL DUE: \$820.00

IN ADDITION:

-OBEY ALL LAWS AND ORDERS OF THE COURT.

-DEFENDANT ACKNOWLEDGES TO THE COURT THAT THE DEFENDANT

UNDERSTANDS AND ACCEPTS ALL THE PROBATION CONDITIONS, AND
DEFENDANT AGREES TO ABIDE BY SAME.

SENTENCE AND ORDER GRANTING SUMMARY PROBATION SIGNED AND FILED.

DEFENDANT REFUSES COMMUNITY SERVICE.

DO NOT COMMIT THE SAME OR ANY SIMILAR OFFENSE.

COUNT (01): DISPOSITION: CONVICTED

DMV ABSTRACT NOT REQUIRED

NEXT SCHEDULED EVENT:

09/13/13 830 AM FINES/FEES DIST TORRANCE COURTHOUSE DEPT 005

CUSTODY STATUS: ON PROBATION

ON 05/13/13 AT 1130 AM IN TORRANCE COURTHOUSE DEPT CLK

CASE CALLED FOR FINES/FEES

PARTIES: NONE (JUDGE) NONE (CLERK)

NONE (REP) NONE (DDA)

DEFENDANT IS PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

DEFENDANT APPEARS IN PRO PER

PAYMENT IN THE AMOUNT OF \$820.00 PAID ON 05/13/13 RECEIPT # SBA468645011

NEXT SCHEDULED EVENT:

PROBATION IN EFFECT

NEXT SCHEDULED EVENT:

PROCEEDINGS TERMINATED

CUSTODY STATUS: ON PROBATION.

05/17/13 ARREST DISPOSITION REPORT SENT VIA FILE TRANSFER TO DEPARTMENT OF
JUSTICE



PROOF OF SERVICE

I, Clotilde Bigornia, declare:

I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On July 16, 2013, I served the within document(s) described as:

**OPPOSITION OF DEFENDANT CITY OF REDONDO BEACH
TO PLAINTIFF'S EX PARTE APPLICATION FOR STAY
PENDING APPEAL; DECLARATION OF T. PETER PIERCE IN
SUPPORT**

on the interested parties in this action as stated below:

Charles Nichols
P.O. Box 1302
Redondo Beach, CA 90278
Tel: (424) 634-7381

[X] (BY OVERNIGHT EXPRESS MAIL DELIVERY) By placing the document(s) listed above in a sealed envelope with Express Mail postage thereon fully prepaid, addressed as set forth above, and causing the envelope to be deposited with the United States Postal Service.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 16, 2013, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.


Clotilde Bigornia



1 KAMALA D. HARRIS
 Attorney General of California
 2 MARK R. BECKINGTON
 Supervising Deputy Attorney General
 3 JONATHAN M. EISENBERG
 Deputy Attorney General
 4 State Bar No. 184162
 300 South Spring St., Ste. 1702
 5 Los Angeles, CA 90013
 Telephone: (213) 897-6505
 6 Fax: (213) 897-1071
 E-mail: jonathan.eisenberg@doj.ca.gov
 7 *Attorneys for Defendant California Attorney*
General Kamala D. Harris
 8

9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

13 **CHARLES NICHOLS,**

14 Plaintiff,

15 v.

16 **EDMUND G. BROWN JR., in his**
official capacity as Governor of
 17 **California, KAMALA D. HARRIS, in**
her official capacity as Attorney
 18 **General of California, CITY OF**
REDONDO BEACH, CITY OF
 19 **REDONDO BEACH POLICE**
DEPARTMENT, CITY OF
 20 **REDONDO BEACH POLICE**
 21 **CHIEF JOSEPH LEONARDI and**
DOES 1 to 10,

22 Defendants.
 23

2:11-cv-09916-SJO-(SS)

**STATEMENT OF GENUINE
 DISPUTES**

Date:	N/A
Time:	N/A
Ctrtm.:	23—3 rd Flr.
Judge:	Hon. Suzanne H. Segal
Trial Date:	Not Yet Set
Action Filed:	Nov. 30, 2011

24 Defendant Kamala D. Harris, Attorney General of California (the “Attorney
 25 General”), submits the following statement of genuine disputes in opposition to the
 26 motion of Plaintiff Charles Nichols (“Nichols”) for partial summary judgment.

27 L.R. 56-2.
 28



<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
<p>1. California law bans the Open Carry of loaded firearms 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. 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 the 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. There is no enumerated exemption within this statute.</p>	<p>1. Cal. Penal Code§ 25850. Exhibit A - Brief Of Respondent California Attorney General Kamala D. Harris- Nichols v. Brown 9th Circuit Court of Appeals No. 13-56203- Appellate Dkt #13. pg 3. Dkt., #96 pg 1, lines 22-23.</p>	<p>-- Item #1 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself. -- Disputed that there are no exemptions to California Penal Code section 25850.¹ As this Court in the instant case already found, all the challenged statutes in this case contain numerous exemptions. <i>Nichols v. Brown</i>, No. CV 11-09916 SJO (SS), 2013 WL 3368922 at *6 (C.D. Cal. Jul. 3, 2013).</p>
<p>2. California law bans the Open Carry of unloaded handguns 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. There is no enumerated exemption within this statute. A violation of subparagraph (A) of paragraph (1) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if both of the following conditions exist:</p>	<p>2. Cal. Penal Code§ 26350. Exhibit B - Brief Of Respondent California Attorney General Kamala D. Harris- Nichols v. Brown 9th Circuit Court of Appeals No. 13-56203 Appellate Dkt #13. pg 5. Dkt., #96 pg 1, lines 22-23.</p>	<p>-- Item #2 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself. -- Disputed that there are no exemptions to Section 26350. As this Court in the instant case already found, all the challenged statutes in this case contain numerous exemptions. <i>Nichols, supra</i>, 2013 WL 3368922 at *6.</p>

¹ Hereinafter, "Section" means California Penal Code section.



Nichols's Purported Undisputed Fact	Nichols's Support for Undisputed Fact	Attorney General's Response
<p>(A) The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.</p> <p>(B) The person is not in lawful possession of that handgun. Otherwise, a violation of this section is a misdemeanor.</p>		
<p>3. California law bans the Open Carry of unloaded firearms, other than handguns, in any public place or on any public street in an incorporated city outside a vehicle while in the incorporated city or city and county. A violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if the firearm and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not in lawful possession of that firearm. Otherwise, a violation of this section is a misdemeanor. There is no enumerated exemption within this statute.</p>	<p>3. Cal. Penal Code § 26400. Exhibit B - Brief of Respondent California Attorney General Kamala D. Harris - Nichols v. Brown 9th Circuit Court of Appeals No. 13-56203- Appellate Dkt # 13. pg 5.</p>	<p>-- Item #3 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself.</p> <p>-- Disputed that there are no exemptions to Section 26400. As this Court in the instant case already found, all the challenged statutes in this case contain numerous exemptions. <i>Nichols, supra</i>, 2013 WL 3368922 at *6.</p>
<p>4. California law bans the carrying of concealed firearms. There is no enumerated exemption within this statute.</p>	<p>4. Cal. Penal Code § 25400.</p>	<p>-- Item #4 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself.</p> <p>-- Disputed that there are no exemptions to Section 25400. Section 26150 et seq. sets forth the statutory scheme by which a person may apply for and obtain a license to carry a</p>



Nichols's Purported Undisputed Fact	Nichols's Support for Undisputed Fact	Attorney General's Response
<p>5. California law theoretically provides for the entirely discretionary issuance of a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person where the population of the county is less than 200,000 persons according to the most recent federal decennial census.</p>	<p>5. Cal. Penal Code § 26150 through 26225, inclusive.</p>	<p>concealed firearm.</p> <p>-- Item #5 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself.</p> <p>-- Disputed that California law "provides for the entirely discretionary issuance of a license to carry..." Sections 26150, 26155, 26195, and 26200 set forth the rules for the granting or denial of such licenses.</p>
<p>6. California law theoretically provides for the entirely discretionary issuance of a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, loaded or unloaded. A person must be a resident of the city, city and county, or county unless the applicant's principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business.</p>	<p>6. Cal. Penal Code § 26150 through 26225, inclusive.</p>	<p>-- Item #6 is not an asserted fact, but rather a statement of what a law supposedly means. The cited law speaks for itself.</p> <p>-- Disputed that California law "provides for the entirely discretionary issuance of a license to carry..." Sections 26150, 26155, 26195, and 26200 set forth the rules for the granting or denial of such licenses.</p>
<p>55. Comparing 2000 to 2003:</p> <ul style="list-style-type: none"> • The proportion of males charged with PC section 12031 resulting in felony-level filings increased 6.7 percentage points (from 55.6 percent to 62.3 percent); misdemeanor-level filings for males decreased identically. • The proportion of females charged with PC section 12031 resulting in felony-level filings decreased 2.5 percentage points (from 45.7 percent to 43.2 percent); misdemeanor-level filings for females increased 	<p>55. Exhibit E- Concealable Firearms Charges in California 2003 – Attorney General - Department of Justice Publication - pg 15.</p>	<p>-- Disputed that the ratio of male persons who violated Section 12031 to male persons charged with violating Section 12031 at the felony level was higher than the ratio of female persons who violated Section 12031 to female persons charged with violating Section 12031 at the felony level. There is no pertinent evidence presented of the underlying point that Nichols appears to be</p>



<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
identically.		trying to make.
56. From 2000 through 2003, the vast majority of persons charged with PC section 12031 were male, and males were proportionately more likely to be filed on at the felony level than females.	56. Exhibit E - Concealable Firearms Charges in California 2003 – Attorney General - Department of Justice Publication- pg 15.	-- Disputed that the ratio of male persons who violated Section 12031 to male persons charged with violating Section 12031 at the felony level was higher than the ratio of female persons who violated Section 12031 to female persons charged with violating Section 12031 at the felony level. There is no pertinent evidence presented of the underlying point that Nichols appears to be trying to make.
57. When charged with PC section 12031, blacks were proportionately most likely to be filed on at the felony level, followed by Hispanics, other race/ethnic groups, and whites. This pattern exists throughout the period shown.	57. Exhibit E- Concealable Firearms Charges in California 2003 - Attorney General -Department of Justice Publication- pg 16.	-- Disputed that the ratio of African-American persons who violated Section 12031 to African-American persons charged with violating Section 12031 at the felony level was higher than the ratio of people from other racial-ethnic groups who violated Section 12031 to people from other racial-ethnic groups charged with violating Section 12031 at the felony level. There is no pertinent evidence presented of the underlying point that Nichols appears to be trying to make.
66. The vast majority of persons charged with either former PC section 12025 or former PC section 12031 were male.	66. Exhibit E - Concealable Firearms Charges in California 2003 – Attorney General- Department of Justice Publication- pg 2.	-- Disputed that the ratio of male persons who violated Sections 12025 or 12031 to male persons charged with violating Sections 12025 or 12031 was higher than the ratio of female persons who violated Sections 12025 or 12031 to female



Nichols's Purported Undisputed Fact	Nichols's Support for Undisputed Fact	Attorney General's Response
		persons charged with violating Sections 12025 or 12031. There is no pertinent evidence presented of the underlying point that Nichols appears to be trying to make.
67. When charged with either PC section 12025 or PC section 12031, blacks were proportionately the most likely race/ethnic group to be filed on at the felony level; whites were proportionately the least likely race/ethnic group to be filed on at the felony level.	67. Exhibit E - Concealable Firearms Charges in California 2003 – Attorney General- Department of Justice Publication- pg 2.	-- Disputed that the ratio of African-American persons who violated Sections 12025 or 12031 to African-American persons charged with violating Sections 12025 or 12031 at the felony level was higher than the ratio of people from other racial-ethnic groups who violated Sections 12025 or 12031 to people from other racial-ethnic groups charged with violating Sections 12025 or 12031 at the felony level.
68. When charged with PC section 12025, blacks were proportionately most likely to be filed on at the felony level, followed by Hispanics, other race/ethnic groups, and whites. This pattern exists throughout the period shown.	68. . Exhibit E – Concealable Firearms Charges in California 2003- Attorney General- Department of Justice Publication- pg 6.	-- Disputed that the ratio of African-American persons who violated Section 12025 to African-American persons charged with violating Section 12025 at the felony level was higher than the ratio of people from other racial-ethnic groups who violated Section 12025 to people from other racial-ethnic groups charged with violating Section 12025 at the felony level.
78. The Attorney General admits to instructing all issuing authorities in California not to issue a license to openly carry a handgun to PLAINTIFF and similarly situated individuals	78. Answer to Sec. Am. Complaint 12.	-- Disputed that the Attorney General instructed anyone not to issue a firearms license to Nichols. The Attorney General's answer to the operative



<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
<p>on page 1 of her "STANDARD APPLICATION FOR LICENSE TO CARRY A CONCEALED WEAPON (CCW)" prepared by the Attorney General pursuant to California Penal Code section 2617.5 which also provides for her to revise the application form. DEFENDANT HARRIS has refused to either create or revise the application form to accommodate PLAINTIFF'S and similarly situated individuals Second Amendment right to openly carry a loaded firearm in public for the purpose of self-defense and other lawful purposes.</p>		<p>complaint, which answer Nichols cites, speaks for itself. -- Further disputed that the Attorney General makes any discretionary decisions about the substance of California firearms law by merely fulfilling her obligations with respect to preparing firearms license forms.</p>
<p>89. The "good cause" requirement of the Los Angeles Sheriffs Department is intended to dramatically restrict the number of persons who are secretly armed within the county. In 2011, there was an average of approximately 400 existing concealed permits that were issued by the LASD in a county of some 10 million people.</p>	<p>89. Exhibit H. Decl., of Los Angeles County Under Sheriff Paul Tanaka- Thomson v. Torrance Police Department and the Los Angeles County Sheriffs Department- Dkt #37-1, Case# CV 11-06154 (SJO) weapons (JCx), Judge Otero Presiding- 10-11</p>	<p>-- Disputed. The Los Angeles County Sheriff's Department's ("LACSD") policy regarding concealed weapons licenses is publicly available and does not state or indicate an intent "to dramatically restrict the number of persons who are secretly armed within the county." See Exh. B to Eisenberg Decl. Also, Paul Tanaka is not an employee of LACSD; there is no reason to believe that Mr. Tanaka is presently authorized to state LACSD policy on any matter. See Exh. C to Eisenberg Decl.</p>
<p>99. Plaintiff Nichols seeks to exercise his Second Amendment right to openly carry handguns for the purpose of self-defense and for other lawful purposes, such handguns to be openly</p>	<p>99. Nichols Decl., 9</p>	<p>-- Disputed. Nichols plans to mount a legal challenge to enforcement of California's law prohibiting open carrying of firearms in</p>



<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
carried, not encased, both loaded and unloaded, in non-sensitive public places within incorporated cities and in non-sensitive places of unincorporated county territory where the Open Carry of handguns, both loaded and unloaded, is prohibited.		at least one category of sensitive public places, public schools. See Exh. D to Eisenberg Decl.
100. Plaintiff Nichols seeks to exercise his Second Amendment right to openly carry long guns for the purpose of self-defense and for other lawful purposes, such long guns to be openly carried, not encased, both loaded and unloaded, in non-sensitive public places within incorporated cities and in non-sensitive places of unincorporated county territory where the Open Carry of handguns, both loaded and unloaded, is prohibited.	100. Nichols Decl., 10	-- Disputed. Nichols plans to mount a legal challenge to enforcement of California's law prohibiting open carrying of firearms in at least one category of sensitive public places, public schools. See Exh. D to Eisenberg Decl.
101. Plaintiff Nichols seek to exercise his Second Amendment right to openly carry firearms for the purpose of self-defense and for other lawful purposes, such firearms to be openly carried, not encased, both loaded and unloaded, in, within and on his motor vehicles, attached camper or trailer in non-sensitive public places within incorporated cities and in non-sensitive places of unincorporated county territory where the Open Carry of firearms, both loaded and unloaded, is prohibited in, within and on his motor vehicles, in non-sensitive public places within incorporated cities and in non-sensitive places of unincorporated counties.	101. Nichols Decl., 11	-- Disputed. Nichols plans to mount a legal challenge to enforcement of California's law prohibiting open carrying of firearms in at least one category of sensitive public places, public schools. See Exh. D to Eisenberg Decl.
111. An unloaded long gun,	111. Nichols Decl., 21	-- Disputed. It is



<u>Nichols's Purported Undisputed Fact</u>	<u>Nichols's Support for Undisputed Fact</u>	<u>Attorney General's Response</u>
inside of a motor vehicle, substantially burdens Plaintiff Nichols' right to self-defense.		unclear what if any effect an unloaded long gun, by itself, has on Nichols's ability to defend himself.
113. An unloaded firearm, fully encased, in a locked or unlocked container, substantially burdens Plaintiff Nichols' right to self-defense.	113. Nichols Decl., 23	-- Disputed. It is unclear what if any effect an unloaded firearm, by itself, has on Nichols's ability to defend himself.
118. Plaintiff Nichols received a death threat via email which was reported to both the Attorney General and the Los Angeles Sheriffs department.	118. Nichols Decl., 28	-- Disputed. As Nichols has admitted, LACSD determined that what Nichols claims was a death threat did not meet the definition of a death threat. See item #123, below.
123. The conclusion of the Los Angeles Sheriffs Department Sergeant Inge was that someone who threatened to shoot Plaintiff Nichols and called upon others to track him down and do the same was not committing a criminal offense because the email did not use the word "kill."	123. Nichols Decl., 133	(No response. This item is reprinted in reference to the above-given discussion of item #118.)

Dated: December 2, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/
JONATHAN M. EISENBERG
Deputy Attorney General
*Attorneys for Defendant California
Attorney General Kamala D. Harris*



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 General Kamala D. Harris

8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

12
 13 **CHARLES NICHOLS,**

14 Plaintiff,

15 v.

16 **EDMUND G. BROWN JR., in his**
official capacity as Governor of
 17 **California, KAMALA D. HARRIS, in**
her official capacity as Attorney
 18 **General of California, CITY OF**
REDONDO BEACH, CITY OF
 19 **REDONDO BEACH POLICE**
DEPARTMENT, CITY OF
 20 **REDONDO BEACH POLICE**
 21 **CHIEF JOSEPH LEONARDI and**
DOES 1 to 10,

22 Defendants.
 23

2:11-cv-09916-SJO-(SS)

**DECLARATION OF JONATHAN
 M. EISENBERG REGARDING
 STATEMENT OF GENUINE
 DISPUTES**

Date:	N/A
Time:	N/A
Ctrtm.:	23—3 rd Flr.
Judge:	Hon. Suzanne H. Segal
Trial Date:	Not Yet Set
Action Filed:	Nov. 30, 2011

24 I, Jonathan M. Eisenberg, declare as follows:

25 1. I have personal knowledge of the following facts, except where, as
 26 indicated, my knowledge is based on information and belief. If called as a witness
 27
 28



1 in any relevant proceeding, I could and would testify competently to the following
2 facts.

3 2. I am an attorney admitted to practice law in California and before the
4 present Court. I am a deputy attorney general in the Office of the California
5 Attorney General (“OCAG”). I am one of the attorneys of record for Defendant
6 Kamala D. Harris, Attorney General of California (the “Attorney General”), in the
7 above-entitled litigation adverse to Plaintiff Charles Nichols (“Nichols”).

8 3. In working on the present matter, I have performed online research from
9 my OCAG computer and made paper print-outs of the results.

10 4. On December 2, 2013, I did online research at the Internet site called
11 lasd.org, purportedly maintained by the Los Angeles County Sheriff’s Department.
12 I located there a PDF copy of a document available for download, downloaded the
13 document, and made a print-out of the document. Attached hereto as Exhibit A is a
14 true and correct copy of that print-out.

15 7. On December 2, 2013, I did online research at the Internet site called
16 Paultanaka.com, purportedly maintained by Paul Tanaka. I located an internal
17 webpage and made a print-out of the page. Attached hereto as Exhibit B is a true
18 and correct copy of that print-out. It states that Tanaka is retired from the Los
19 Angeles County Sheriff’s Department.

20 8. On December 2, 2013, I did online research at the Internet site called
21 Lagunaniguel-danapoint.patch.com. I located an internal webpage and made a
22 print-out of the page. Attached hereto as Exhibit C is a true and correct copy of that
23 print-out. On page three of the 11-page print-out is a lengthy quote from Nichols,
24 who says several things including, “If successful in obtaining an injunction against
25 California’s ban on Loaded Open Carry, I will then seek to overturn California’s
26 Gun Free School Zone Law. <http://CaliforniaRightToCarry.org>.”

27
28



1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct, and that I signed this declaration on
3 December 2, 2013, at Los Angeles, California.

4
5
6 /s/ _____
7 Jonathan M. Eisenberg
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Exhibit A

Los Angeles County Sheriff's Department

Concealed Weapon Licensing Policy

The issuance of licenses enabling a private citizen to carry a concealed weapon (CCW) is of great concern to the Los Angeles County Sheriff's Department. The Department's overriding policy is that no concealed weapon license should be granted merely for the personal convenience of the applicant. No position or job classification in itself shall constitute good cause for the issuance, or for the denial, of a CCW license. Each application shall be individually reviewed for cause, and the applicant will be notified by writing within 90 days of the application, or within 30 days after receipt of the applicant's criminal background check from the Department of Justice, that the CCW license was either approved or denied.

In accordance with California Penal Code § 26150 *et. seq.*, and subject to Department policy and procedures, any Los Angeles County resident may obtain a CCW application for authorization to carry a concealed weapon. Applications may be obtained from any sheriff's patrol station or directly from the Office of the Undersheriff. Completed applications may be submitted to any of these units for processing.

Types of Licensing and Expiration Periods for CCWs

There are four distinct categories of CCW licenses: Employment, Standard, Judges, and Reserve Police Officers. The Employment CCW license is issued only by the sheriff of a county to a person who spends a substantial period of time in his or her principal place of employment or business in the county of issuance. The license is valid only in the county issued and for any period not to exceed 90 days. The Standard CCW license is issued to residents of the county or a particular city within the county. The license is valid for any period not to exceed 2 years. The Judge CCW license may be issued to California judges, full-time commissioners, and to federal judges and magistrates of the federal courts. The license is valid for any period not to exceed 3 years. The Reserve Police Officer CCW license may be issued to reserve police officers appointed pursuant to California Penal Code § 830.6. The license is valid for any period not to exceed 4 years, except that it becomes invalid upon the conclusion of the person's appointment as a reserve police officer.

Training Requirements for a CCW License

Regardless of the category, all new license applicants for CCW's must now pass a specified course of training which is acceptable to the licensing authority, the Los Angeles County Sheriff's Department (See attached sheet, "Suggested Training Vendors"). New CCW license applicants must pass a specified course of training acceptable to the licensing authority. The course shall not exceed 16 hours, and the course shall include instruction on firearm safety, the law regarding the permissible use

of a firearm and weapon proficiency. The licensing authority may also require the applicant to attend a community college course certified by the Commission on Peace Officer Standards and Training (POST), up to a maximum of 24 hours, but only if required uniformly of all applicants without exception. For CCW license renewal applicants, the course of training may be any course acceptable to the licensing authority, shall be no less than 4 hours, and shall include instruction on firearms safety, the law regarding the permissible use of a firearm and weapon proficiency.

Qualifications for a CCW License

To qualify for a CCW, each applicant must demonstrate (1) proof of good moral character, (2) that good cause exists, and (3) that the applicant is a resident of the county or a city within the county, or, that the applicant spends a substantial period of time in the applicant's place of employment or business in the county or a city within the county. In addition, the applicant must complete the training requirements as listed above.

According to Los Angeles County Sheriff's Department policy (5-09/380.10) and the California Supreme Court (CBS, Inc. v. Block, (1986) 42 Cal.3d 646), good cause shall exist only if there is convincing evidence of a clear and present danger to life, or of great bodily harm to the applicant, his spouse, or dependent child, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures, and which danger would be significantly mitigated by the applicant's carrying of a concealed firearm.

The character requirement will be fulfilled by, but not limited to, a criminal history check through the Bureau of Criminal Identification and Investigation. The good cause requirement will only be fulfilled by thoroughly justifying the applicant's need to the Sheriff or his designee on the application form. The residency requirement will be fulfilled upon presentation of an approved, recognized identification card and at least one recently canceled item of United States mail.

If the applicant resides in an incorporated city, which is not policed by our Department, he or she must first apply to the Chief of Police of their city of residence for a CCW license and have the application acted upon. Within 60 days after a denial of the application, the city resident may file a separate application with the Los Angeles County Sheriff's Department, attaching a copy of the denial letter from the Chief of Police. The Sheriff will exercise independent discretion in granting or denying licenses to these applicants. Further, the Sheriff may review, consider, and give weight to the grounds upon which the previous denial was made.

CCW License Subject to Restrictions

When a license is issued it will be subject to the following general restrictions.

While exercising the privilege granted under the terms of this license, licensees shall not:

1. Consume any alcoholic beverage.
2. Represent to any person that they are peace officers, unless they are in fact peace officers as defined by law.
3. Abuse this privilege by an unjustified display of a deadly weapon.
4. Violate any law of this State or Country.
5. Be under the influence of any medication or narcotic drug.
6. Impede law enforcement officers in the conduct or performance of their duty or activities.
7. Refuse to display their permits or to surrender their concealable firearm to any peace officer for inspection upon demand.

In addition, the Los Angeles County Sheriff's Department may place special limitations further limiting the time, the place, and the circumstances under which the license is valid. When each license is issued, general restrictions and any special limitations will be noted on the reverse side of the card.

Remember, it is a Privilege, not a right to carry a concealed weapon.

Application for CCW License

Upon reviewing the attached policy and meeting all requirements, please **complete the Standard Application form in its Entirety.** Send completed application to Sheriff's Headquarters, 4700 Ramona Boulevard, Monterey Park, California, 91754-2169, Attention: CCW Coordinator. **A non-refundable fee of \$10.00 (payable to Los Angeles County Sheriff's Department) must accompany your application.** Incomplete applications will not be processed. Those who successfully pass the initial screening will be charged a required follow-up processing fee.

Revised 3/2013

Suggested Training Vendors

Andrews International Trng. Ctr
455 North Moss Street, Burbank
(818) 487-4060
Instructor: Tim Kelly

Firing Line
18348 Eddy Street, Northridge
(562) 500-3633
Instructor: Jim Bowen

L.A.X. Shooting Range
927 West Manchester, Inglewood
(310) 568-1515
Instructor: Tom Golden

Professional Sec. Trng. School
44633 Sierra Highway, Lancaster
(661) 945-0600
5040 Cornell Road, Agoura Hills
(818) 707-9100 (Fax)
Instructor: Cecil Williams

Sentinel Services
15040 Bailey Road, Sylmar
(805) 551-4001
Instructor: John Rives

The content and length of the courses offered by the trainers listed above are acceptable to the Los Angeles County Sheriff's Department ("LASD") in accordance with Penal Code Section 26150(a).

DISCLAIMER

The County of Los Angeles and the LASD make no other representations or warranties about the trainers listed above or the facilities or equipment they use to conduct training.

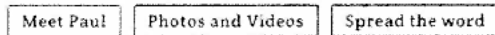
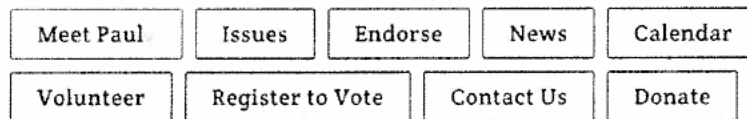
- ◆ None of these trainers are employees or agents of the County of Los Angeles or LASD.
- ◆ None of these trainers was trained in the use of firearms by the County of Los Angeles or LASD.
- ◆ None of the facilities and equipment used by these trainers are owned, controlled, or inspected by the County of Los Angeles or the LASD.

Neither the County of Los Angeles nor LASD certify or control the safety of the training conducted by any of these trainers.

You assume fully the risk of any loss, injury or damage attributable to (1) any act or omission of any of these trainers or any of their agents or employees or (2) the condition and premises or equipment used by any of these trainers. The County of Los Angeles and LASD disclaim any responsibility for any such loss, injury or damage.

LASD recommends that before you begin training, you fully investigate the trainers qualifications, training, safety record and condition of premises and equipment.

Exhibit B



Meet Paul



Paul Tanaka joined the Los Angeles County Sheriff's department in 1982 and was appointed Undersheriff, the department's second ranking position in 2011. Paul retired after more than 30 years of distinguished service in the summer of 2013.

Paul began his law enforcement career with the El Segundo Police Department in June 1980. Two years later, he transferred to the LA County Sheriff's Department, where he held various assignments in patrol, custody and recruitment.

During his more than 30 years of service, Paul served at the Department's Lynwood Station, Mira Loma Facility, the county's Inmate Reception Center, Lennox Station, West Hollywood Station and in the Administrative Services Division.

In 2007, as Assistant Sheriff, Paul directly commanded the activities of the Department's three Field Operations Patrol Regions, Detective Division and the Homeland Security Division. In addition, with a budget of approximately \$2.5 billion and more than 18,000 employees, Paul oversaw the Administrative Services Division, which included the Department's financial matters, human resources, facilities construction and maintenance.

In addition to his service with the LA County Sheriff, Paul is also Mayor of the City of Gardena. Having first been elected to the City Council in 1999, Paul was first elected mayor in 2005 and reelected in 2009 and 2013. As mayor, Paul came to understand the importance of hands-on management and understanding what is happening in individual communities and neighborhoods to create a brighter future for citizens with more opportunities for everyone.

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Paul with his brother and sister.

Paul holds an accounting degree from Loyola Marymount University, is a Certified Public Accountant in the State of California and had 20 years of experience working with a Gardena accounting firm.

In addition to his role as Mayor of Gardena, he also serves on the city's Finance Committee and on the Boards of the County of Los Angeles Sanitation District #5, the South Bay Regional Public Communications Authority and the Selection Committee for LAFCO and the Coastal and Transportation Commission.

Paul lives in the city of Gardena with his wife Valerie, and their two children.

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CREATED WITH NATIONBUILDER. PAID FOR BY PAUL TANAKA FOR SHERIFF 2014.

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9

Exhibit C

LagunaNiguel-DanaPoint

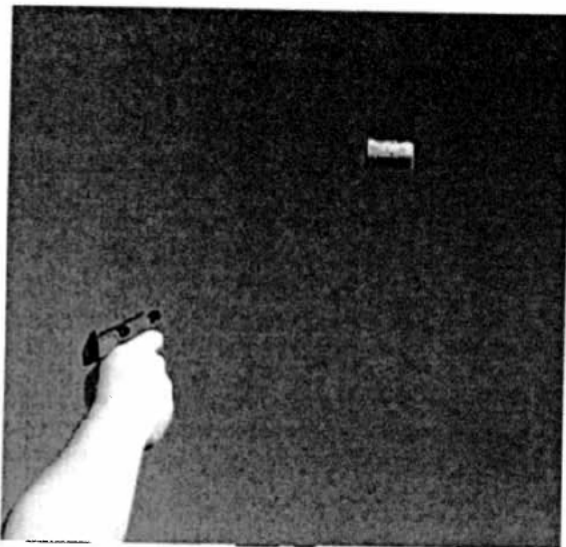
69°

News | Government

California and The 2nd Amendment

California's ban on open carry of firearms has been in place since 1967. Will Charles Nichols, president of CaliforniaRightToCarry.Org, overturn it?

Posted by William Rhee, June 25, 2012 at 06:29 PM



The Second Amendment [of the U.S. Constitution] states: "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."

0 0 1

We assess this, in the 21st century, as the basis for providing an individual the right to possess and use a firearm.

However, much contention has arisen from this statement, particularly over the phrase: "the right of the people to keep and bear arms." The definition of "bear arms" (as an idiom) means, "to carry weapons," and the above statement can be read as thus: "The right of the people to keep and carry weapons." Yet, even with the translation, an ambiguity still exists. There are numerous ways in which a firearm can be "carried," and the controversy is whether it should be publicly bared or concealed.

Proponents of either argument have taken sides, under the names "open carry" and "concealed carry." Open carriers argue that open carry is a crime deterrent, and allows for more accessibility in the case of an incident.

10

Concealed carriers argue that concealed carry offers the element of surprise, and is more appropriate for certain environments (church, shopping malls, etc).

Logistics show that the majority of states are leaning toward open carry, evidenced by the fact that only seven states (and the District of Columbia) disallow it. Fourteen of the remaining states permit open carry with a license and 29 states allow unlicensed open carry.

The issue has become prevalent, thanks to a recent lawsuit by Charles Nichols, the president of CaliforniaRightToCarry.Org. Nichols, a resident of Los Angeles County, openly carried a shotgun through the Redondo Beach Pier Shopping Center and adjacent city park, before he was detained and his firearm was seized. Nichols was apparently under the impression that his public demonstration would be ignored. His previous petition for a license to open carry was denied, because California only grants licenses to open carry to residents of counties with less than 200,000 people - L.A. County outnumbers the quota by 9.8 million people.

In filing a lawsuit, Nichols became the first individual to challenge California's open carry gun ban. The ban was brought forth in 1967, banning the open carry of a loaded firearm. Nichols is jointly challenging the state statute that denies open carry licenses to residents of counties of more than 200,000 people.

Regardless of the official ruling, the age-old question of what the 2nd Amendment entails will have to be answered. In Charles Nichols' case, he hopes it will include the open carry of firearms, reducing the number of states that disallow open carry to six.

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AOL On

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Comments

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Jim Johancen June 20, 2012 at 08:47 PM

Question- Why is it that every elected official takes an oath to protect the constitution and then does every thing in his or her power to subvert it? case in point- Presidents and a batch of senators. almost every Democrat that breaths.

Recommend

Flag as Inappropriate



Charles E. Nichols June 20, 2012 at 09:09 PM

In 2010 the State of California changed the law. Licenses to openly carry a loaded handgun are now restricted to residents of a county with a population of fewer than 200,000 persons and are valid only in that county. The NRA did not oppose that change in the law nor did they oppose Senator Ted Lieu's expansion of California's so-called Gun Free School Zones from 1,000 to 1,500 feet. I pointed out to Senator Lieu that because he was elected in a special election with a very low voter turnout it would take very few signatures to force him into a recall election. Senator Lieu dropped the Gun Free School Zone expansion bill. The NRA has a Federal lawsuit in San Diego, which is now on appeal, where the NRA attorney (Chuck Michel) "warns" the court that if they don't make CCWs shall-issue, it would result in California's ban on Loaded Open Carry as well as California's Gun Free School Zone Act being overturned. The NRA says that would be "drastic." Obviously, I do not share the opinion of the NRA. If successful in obtaining an injunction against California's ban on Loaded Open Carry I will then seek to overturn California's Gun Free School Zone law. <http://CaliforniaRightToCarry.org>

Recommend

Flag as Inappropriate



Paul E. Mason June 21, 2012 at 12:18 AM

Jim Johancen, very good point, and to the point ! But, it is not the question that you ought to have asked. That question being this; Why do we not imprison the very people who take the oath of office, only to go against it with their actions while in office ? And the answer to that is very simply, we are not deserving the type of gov't. for which we inherited by our Grand Fore Fathers. Why ? Because we lack the courage and guts to carry out that most important deed in our U.S. Constitution. Which is, to follow it as a guide, and enforce it. Paul E. Mason

1 Recommend

Flag as Inappropriate



Frieda Wales June 21, 2012 at 12:18 AM

12

Mr. Nichols, what is a "CCWs shall-issue"? Is that a typo or gun owner relevant lingo? Also, why is a ban on open carry bad? In addition, why would someone oppose a Gun Free School Zone, if that is in fact how I am reading your statement? Mr. Rhee, what are the 29 states that allow unlicensed open carry?

Recommend

Flag as Inappropriate



Frieda Wales June 21, 2012 at 12:20 AM

I think you made a typo, Patch frowns on deliberate attempts a profanity, so I'm sure it's a typo, you didn't mean it.

Recommend

Flag as Inappropriate



Debbie L. Sklar (Editor) June 21, 2012 at 01:58 AM

Charles: I would like to personally invite you to blog on Laguna Niguel Patch ... interested?

Recommend

Flag as Inappropriate



David June 21, 2012 at 03:34 PM

The original ban that was created in 1967 was for loaded guns. not guns in general. That part of the article seems a bit misleading. Cause if it was an outright ban, then this law that was recently passed would not have even been created. If the state passes the law regarding the ban on carrying of all fire arms, then I can see this going up to SCOTUS. As the procedure for obtaining a CCW in CA are geared to make it impossible to achieve unless you are part of the Sheriffs "in" crowd. I know this because I tried to obtain one in Alameda county. As side from the parts that are commonsense, such as knowing the rules of force laws and range time. You needed to write a 2 page essay on why you needed one, pass a psychological exam, have one million dollars liability insurance in case the person you shot lived and on the last page it stated how much do you want to donate to the sheriffs re-election campaign. I still have that application. Up until the recent ban I carried unloaded open carry as a CCW was impossible to obtain. Now i carry concealed against the law. Because my life is more important to me than any law on the books. Since this ban effectively bans an entire class of individuals from obtaining a ccw permit. I can say that SCOTUS should strike that law down and force CA to make it easier for people that want to carry to obtain a CCW.

1 Recommend

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David June 21, 2012 at 03:38 PM

As for my views on CCW, I find it odd that I need to ask the government to practice a Right that was already granted by the Constitution, A Right that the SCOTUS refrained from making a decision on a couple years ago. I wonder why that was....Just remember this. A Right can not be taken away without due process of law. A privilege can. Every time you ask for permission to practice a Right, you are slowly eroding your Rights away and making them in to privileges. Do that enough times and you wont have any Rights.

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**David** June 21, 2012 at 03:43 PM

one more thing regarding that 2 page essay I mentioned in my earlier post. It had to be detailed describing everything and self preservation was NOT considered to be a valid excuse to obtain a permit.

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**tim grizzle** June 21, 2012 at 07:25 PM

As mentioned before, Unloaded Open Carry (for any weapons) was NOT banned until just this year. Loaded Open Carry (operative word being LOADED) was indeed banned as the author mentioned in 1967, and that was in response to the Black Panthers demonstrations during election time. It should be a lesson for the author (or any reporter or citizen) to do their research and get the facts straight, otherwise their misleading statements can be more harmful than an unloaded, legally carried weapon. For PC Mama - reference these sites about open carry, concealed carry and the impact they've had on crime in states smart enough to respect citizen's rights and the rule of law: http://en.wikipedia.org/wiki/Open_carry_in_the_United_States and my personal favorite where you can see the progression / affirmation that legal people (people like mom's, abused wives, old people, minorities or anyone who is threatened with violence) can and should legally be able to defend themselves: <http://www.gun-nuttery.com/rtc.php> Google Mr (Dr.) John Lott for an expert's appraisal. He's a researcher, not a paid NRA employee. Personally, I fully support Mr. Nichols efforts in this matter.... Tim Grizzle

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**Todd** June 21, 2012 at 09:29 PM

The only ambiguity being caused here would be authors like this who like to make it seem that way. The last part of the amendment states, the right to bear arms shall not be infringed. This is very clear, because you cant infringe on something that already exists. Rights are NOT granted by government, they exist as soon as a person exists. The right to bear arms is already a right held by each individual and is unalienable, no law can exist to take the right away. There is nothing complicated here or ambiguous. I have the right to bear an arm and YOU, the government, the author nor anyone else has any authority to infringe on my unalienable right to bear arms. In fact, every single right is defined by the individual and is unalienable because every right you can define for yourself fits within the definitions of the unalienable rights to life, liberty and the pursuit of happiness. Please spare me the childish logic that you can give your self the right to kill someone or steal. You cant grant yourself the right to alienate someone else's rights. I have the right to bear arms, to drive, to walk, to call the sky purple, to work for whom I will, to NOT be part of a union, to keep the fruits of my efforts and to NOT have everything I earn and own taken by a government in the name of the benevolence of others. I in fact have the right to use those arms to defend my other rights and nothing can take my rights, I cant even voluntarily give them up and that includes owning weapons

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Greg Zen June 21, 2012 at 10:50 PM

PATRIOT ACT. read it. the right to HAVE arms in any way is an illusion.

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Charles E. Nichols June 22, 2012 at 01:54 AM

Debbie, I just submitted a blog. It's just waiting for someone at your end to make it go live.

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Linda Cauble June 22, 2012 at 06:25 PM

Congratulations Paul. You win the kewpie doll.

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esmael gonzales June 24, 2012 at 02:19 AM

And, I have the right TO bare OR NOT BARE ARMS AND TO BE PART OF A UNION! By the way, the unions have a historical significance that most Americans (especially republicans) have forgotten. They built this country into the leading power that it used to be! Now, the worker and the unions are stand in the way of GREED AND THE BOTTOM LINE... how much profit do these companies need?

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Mike K June 24, 2012 at 07:07 AM

For a ccw in California there is a "good cause" provision that is unlike most other states. Basicly this provision gives law inforcement the ability to decline a ccw applicant if they dont think "good cause" exists for the applicant to be given a ccw. This has proven to be an absolute joke as there is no legal definition of "good cause" and the arbitrary decisions of law enforcement usually decline most all ccw applicants based on this requirement. The validity and relevance of requiring "good cause" flies in the face of the "right to bear arms". Citizens are safer when criminals dont know who is armed!

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Juan A. Pacheco June 24, 2012 at 02:59 PM

dorgnnr Well said Todd T. I only wish I could express myself as easily as you do. Kudos for Charles Nichols, TYRANNY is a cancer to a nation and a government that ignores its citizens is downright Dangerous. We need to work to bring this great nation to gether, instill pride, unity, patriotism to freedom loving Americans.

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Diane June 24, 2012 at 03:27 PM

Most of the ccw is for retired police. We can't get one. And someones full of it. If the people could carry. We could protect ourselves and they know it.

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Michael June 24, 2012 at 10:16 PM

After 30 years as a cop, I can say that none of the officers of my department ever arrested a ccw holder for misdeeds involving their firearm. However, we arrested an awful lot of a-holes who weren't supposed to be anywhere near a gun. It's not the law-abiding citizen who is the problem, it's the thugs

Recommend

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Michael June 24, 2012 at 10:19 PM

That said, most Cops I worked with supported a right to a ccw for law abiding citizens.

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Last Paratrooper June 25, 2012 at 12:49 AM

What do Californians not understand about "SHALL NOT BE INFRINGED"? plain and simple it is a message to the government at any level, "don't you dare try to deny these rights"! I have been a gun owner for forty two of my 62 years of life. I have gone through police academy firearms training, military firearms training, and FBI firearms training. Two and a half years in Vietnam refined my aim and I hit what I am at within 1/8 of an inch at 100 yards! I never felt a need to carry a gun everyday, until I moved to LA County in California. After being assaulted 13 times I have carried a gun every time I leave the house! I don't give a damn what California Legislators and especially Sheriff Lee Baca have to say! I have the Constitution as my permit to carry concealed or openly! And I will continue to do so irregardless of the unlawful laws that prevail in California! IT'S A RIGHT not a privilege!!!

Recommend

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Jennifer Parker June 25, 2012 at 04:22 PM

I have read halfway through this page and I am so concerned for our Country. The Constitution was argued over for 10 years and many men struggled to choose the MOST important freedoms and to build a checks and balance system. I read something about the PATRIOT ACT which is an extreme violation of the constitution and I thought about the NATURALIZATION ACT this states that in the name of anti-terrorism anyone can be detained without being charged and/or shot dead! AND is not

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limited to foreign terrorists, yes this statement includes US citizens! Please help make people aware!
MAKE THIS INFO VIRAL! PS. This is precisely why I am on my way to law school! ;)
Recommend

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tim grizzle June 25, 2012 at 05:41 PM

Sorry - but that is just what we don't need - more lawyers...
Recommend

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Ebuzzness June 26, 2012 at 03:23 AM

Good people of America, you must fight back today's liberal progression.
Recommend

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Jennifer Parker June 26, 2012 at 05:33 AM

I said law school! Not necessarily a lawyer...I actually think tort reform is one of the reasons I am so interested! I am a little upset at that comment! I believe in making a difference and everyone should learn how to defend oneself in this tyrannical government that is taking over. I am going to law school to arm myself with legal ammunition to fight the very people that are TAKING our Constitutional rights and liberties! <3
Recommend

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Jennifer Parker June 26, 2012 at 05:36 AM

I will be there to defend the rights of anyone that wants to carry a gun in any county! It might be you someday....
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Mojavegreen Nln July 09, 2012 at 10:01 PM

<http://www.examiner.com/article/senate-set-to-approve-controversial-un-gun-treaty>
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Mojavegreen Nln July 09, 2012 at 10:02 PM

has anyone seen the latest on this garbage? <http://www.examiner.com/article/senate-set-to-approve-controversial-un-gun-treaty>
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Leonard Kinkade July 12, 2012 at 06:09 PM

I guess what we need to remember is how the government of Germany took all firearms from their citizens prior to World War Two. See: <http://www.stephenhalbrook.com/article-nazilaw.pdf>

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Joe Armstrong January 22, 2013 at 07:43 AM

The Constitution does not give you the right to bear arms. It recognizes that you have always had that right and as a condition of support for the Constitution by the states that, that right; that you always had; will not be infringed. Some people like to refer to the right as a God given right. The courts refer to it as a fundamental right. We need to buck the Democrats by always referring to the second amendment as an amendment that protects an individual right that pre-dates the Constitution. Local, State and Federal governments are restricted from, and have no authority, under the constitution to infringe on this pre-existing right as well as the any pre-existing right protected by the first through the 10th amendment. It is the Democrat controlled education system that has led you to believe otherwise.

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Redondo Beach, CA 90278

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 2, 2013, at Los Angeles, California.

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