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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANA PATRICIA FERNANDEZ, an
individual,

Plaintiff,

v.

LOS ANGELES COUNTY, et al.,

Defendants.

Case No.: 2:20-cv-09876 DMG (PDx)

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Hearing Date: May 10, 2024
Hearing Time: 2:00 p.m.
Courtroom: 8C
Judge: Hon. Dolly M. Gee

REQUEST FOR JUDICIAL NOTICE

Under Federal Rule of Evidence 201, Plaintiff Ana Patricia Fernandez respectfully requests that the Court take judicial notice of the following documents in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment:

1. **Assem. B. 2431, 2003-2004 Reg. Sess. (Cal. 2004).** A true and correct copy of this document is attached as **Exhibit A**. Exhibit A is a public record of the legislature of the State of California that was accessed on or about April 8, 2024, from [leginfo.legislature.ca.gov](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040AB2431), the official website for California legislative information (https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040AB2431).

2. **Bill Analysis, Assem. B. 2431, Senate Committee on Public Safety (June 7, 2004).** A true and correct copy of this document is attached as **Exhibit B**. Exhibit B is a public record of the legislature of the State of California that was accessed on or about April 8, 2024, from [leginfo.legislature.ca.gov](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040AB2431), the official website for California legislative information (https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040AB2431).

3. **Bill Analysis, Assem. B. 2431, Assembly Floor Analysis (Aug. 25, 2004).** A true and correct copy of this document is attached as **Exhibit C**. Exhibit C is a public record of the legislature of the State of California that was accessed on or about April 8, 2024, from [leginfo.legislature.ca.gov](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040AB2431), the official website for California legislative information (https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040AB2431).

At any stage of the proceedings, the Court may take judicial notice of any fact "that is not subject to reasonable dispute because it ... is generally known within the trial court's territorial jurisdiction," or "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. Rules Evid. 201(b), (d). A court shall

1 take judicial notice of such a fact if requested by a party and supplied with the necessary
2 information. Fed. R. Evid. 201(d).

3 Judicial notice is proper because the documents for which this request is made are
4 “capable of accurate and ready determination by resort to sources whose accuracy cannot
5 reasonably be questioned.” Fed. R. Evid. 201(b)(2). Indeed, “[l]egislative history is
6 properly a subject of judicial notice.” *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th
7 Cir. 2012). And “a federal court must take judicial notice of state statutes ‘without plea or
8 proof.’” *Getty Petroleum Mktg., Inc. v. Capital Terminal Co.*, 391 F.3d 312, 323 (1st Cir.
9 2004) (citing *Lamar v. Micou*, 114 U.S. 218, 223 (1885)). The accuracy of all the public
10 records subject to Plaintiff’s request, consisting of enacted state legislation and legislative
11 history, cannot reasonably be questioned. The Court should thus take judicial notice of
12 these records.

13
14 Dated: April 12, 2024

MICHEL & ASSOCIATES, P.C.

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16 s/ Anna M. Barvir

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18 Attorneys for Plaintiff
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EXHIBIT A



AB-2431 Firearms. (2003-2004)

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Assembly Bill No. 2431

CHAPTER 602

An act to amend Sections 12028, 12028.5, 12028.7, 12030, and 12084 of, and to add Section 12021.3 to, the Penal Code, and to repeal Section 8107 of the Welfare and Institutions Code, relating to firearms.

[Filed with Secretary of State September 20, 2004. Approved by Governor September 20, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2431, Steinberg. Firearms.

Existing law generally regulates the possession and transfer of firearms.

This bill would add requirements to the procedure for persons to obtain or dispose of their firearms that are in the custody of a law enforcement agency or court. The bill would require the person to make application to the Department of Justice for a determination that the person is eligible to possess a firearm. The bill would provide that knowingly omitting required information or furnishing fictitious information in connection with the application would be a misdemeanor. The bill would require law enforcement agencies to determine if a firearm to be returned is stolen. The bill would prohibit release of a firearm to an applicant by a law enforcement agency or court entity unless certain criteria are met. The bill would require certain information regarding the applicant and certain firearms be maintained by the Department of Justice in the Automated Firearms System, as specified. The bill would authorize the Department of Justice to charge a fee of \$20 for firearms eligibility processing, and a fee of \$3 for each additional handgun that is processed, as specified. It would authorize a local government to adopt a regulation, ordinance, or resolution setting fees to cover the costs of the seizure, storage, and return of a firearm to a licensed dealer or owner, as specified. The bill would make other conforming changes.

Because this bill would create a new crime, it would impose a state-mandated local program.

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.

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

SECTION 1. Section 12021.3 is added to the Penal Code, to read:

12021.3. (a) (1) Any person who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm returned to him or her shall make application for a

determination by the Department of Justice as to whether he or she is eligible to possess a firearm. The application shall include the following:

- (A) The applicant's name, date and place of birth, gender, telephone number, and complete address.
 - (B) Whether the applicant is a United States citizen. If the applicant is not a United States citizen, he or she shall also provide his or her country of citizenship and his or her alien registration or I-94 number.
 - (C) If the firearm is a handgun, the firearm's make, model, caliber, barrel length, handgun type, country of origin, and serial number.
 - (D) For residents of California, the applicant's valid California driver's license number or valid California identification card number issued by the Department of Motor Vehicles. For nonresidents of California, a copy of the applicant's military identification with orders indicating that the individual is stationed in California, or a copy of the applicant's valid driver's license from the state of residence, or a copy of the applicant's state identification card from the state of residence. Copies of the documents provided by non-California residents shall be notarized.
 - (E) The name of the court or law enforcement agency holding the firearm.
 - (F) The signature of the applicant and the date of signature.
 - (G) Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the application, including any notarized information pursuant to subparagraph (D) of paragraph (1) of subdivision (a) shall be guilty of a misdemeanor.
- (2) A person who owns a firearm that is in the custody of a court or law enforcement agency and who does not wish to obtain possession of the firearm, and the firearm is an otherwise legal firearm, and the person otherwise has right to title of the firearm, shall be entitled to sell or transfer title of the firearm to a licensed dealer as defined in Section 12071.
- (3) Any person furnishing a fictitious name or address, or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the application, including any notarized information pursuant to subparagraph (D) of paragraph (1) of subdivision (a) is punishable as a misdemeanor.
- (b) No law enforcement agency or court that has taken custody of any firearm may return the firearm to any individual unless the following requirements are satisfied:
- (1) That individual presents to the agency or court notification of a determination by the department pursuant to subdivision (e) that the person is eligible to possess firearms.
 - (2) If the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.
 - (3) If the firearm has been reported lost or stolen pursuant to Section 11108, a law enforcement agency shall notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to subdivision (e). Nothing in this subdivision shall prevent the local law enforcement agency from charging the rightful owner or person entitled to possession of the firearm the fees described in subdivision (j). However, individuals who are applying for a background check to retrieve a firearm that comes into the custody or control of the court or law enforcement agency pursuant to subdivision (a) shall be exempt from the fees in subdivision (c) provided that the court or agency determines the firearm was reported stolen to a law enforcement agency prior to the date the firearm came into custody or control of the court or law enforcement agency or within five business days of the firearm being stolen from its owner. The court or agency shall notify the Department of Justice of this fee exemption in a manner prescribed by the department.
- (c) The Department of Justice shall establish a fee of twenty dollars (\$20) per request for return of a firearm, plus a three-dollar (\$3) charge for each additional handgun being processed as part of the request to return a firearm, to cover its costs for processing firearm clearance determinations submitted pursuant to this section. The fees shall be deposited into the Dealers' Record of Sale Special Account. The department may increase the fee by using the California Consumer Price Index as compiled and reported by the California Department of

Industrial Relations to determine an annual rate of increase. Any fee increase shall be rounded to the nearest dollar.

(d) When the Department of Justice receives a completed application pursuant to subdivision (a) accompanied with the fee required pursuant to subdivision (c), it shall conduct an eligibility check of the applicant to determine whether the applicant is eligible to possess firearms.

(e) (1) If the department determines that the applicant is eligible to possess the firearm, the department shall provide the applicant with written notification that includes the following:

(A) The identity of the applicant.

(B) A statement that the applicant is eligible to possess a firearm.

(C) If the firearm is a handgun, a description of the handgun by make, model, and serial number.

(2) If the firearm is a handgun, the department shall enter a record of the handgun into the Automated Firearms System.

(3) The department shall have 30 days from the date of receipt to complete the background check unless delayed by circumstances beyond the control of the department. The applicant may contact the department to inquire about the reason for the delay.

(f) If the department denies the application, and the firearm is an otherwise legal firearm, the department shall notify the applicant of the denial and provide a form for the applicant to use to sell or transfer the firearm to a licensed dealer as defined in Section 12071. The applicant may contact the department to inquire about the reason for the denial.

(g) Notwithstanding any other provision of law, no law enforcement agency or court shall be required to retain a firearm for more than 180 days after the owner of the firearm has been notified by the court or law enforcement agency that the firearm has been made available for return. An unclaimed firearm may be disposed of after the 180-day period has expired.

(h) Notwithstanding Section 11106, the department may retain personal information about an applicant in connection with a claim for a firearm that is not a handgun to allow for law enforcement confirmation of compliance with this section. The information retained may include personal identifying information regarding the individual applying for the clearance, but may not include information that identifies any particular firearm that is not a handgun.

(i) (1) If a local law enforcement agency determines that the applicant is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm and the firearm is an otherwise legal firearm, the applicant shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 12071.

(2) If the firearm has been lost or stolen, the firearm shall be restored to the lawful owner pursuant to Section 11108.5 upon his or her identification of the firearm and proof of ownership, and proof of eligibility to possess a firearm pursuant to subdivision (e). Nothing in this subdivision shall prevent the local law enforcement agency from charging the rightful owner of the firearm the fees described in subdivision (j).

(3) Subdivision (a) of Section 12070 shall not apply to deliveries, transfers, or returns of firearms made by a court or a local law enforcement agency pursuant to this section.

(4) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to this section.

(j) (1) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of firearms. The fees shall not exceed the actual costs incurred for the expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed firearms dealer or to the owner. Those administrative costs may be waived by the local or state agency upon verifiable proof that the firearm was reported stolen at the time the firearm came into the custody or control of the law enforcement agency.

(2) The following apply to any charges imposed for administrative costs pursuant to this subdivision:

(A) The charges shall only be imposed on the person claiming title to the firearms.

(B) Any charges shall be collected by the local or state authority only from the person claiming title to the firearm.

(C) The charges shall be in addition to any other charges authorized or imposed pursuant to this code.

(D) No charge may be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a firearm unless that hearing or appeal was requested in writing by the legal owner of the firearm. In addition, the charge may be imposed only upon the person requesting that hearing or appeal.

(3) No costs for any hearing or appeal related to the release of a firearm shall be charged to the legal owner who redeems the firearm unless the legal owner voluntarily requests the post storage hearing or appeal. No city, county, city and county, or state agency shall require a legal owner to request a post storage hearing as a requirement for release of the firearm to the legal owner.

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

12028. (a) The unlawful concealed carrying upon the person of any explosive substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the unlawful carrying of any handguns in violation of Section 12025, and the unlawful possession or carrying of any item in violation of Section 653k is a nuisance.

(b) (1) Except as provided in paragraph (2), a firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 of this code, or Chapter 3 (commencing with Section 8100) of Division 5 of the Welfare and Institutions Code, or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(2) A firearm is not a nuisance pursuant to this subdivision if the firearm owner disposes of his or her firearm pursuant to paragraph (2) of subdivision (d) of Section 12021.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol. For purposes of this subdivision, the Commissioner of the California Highway Patrol shall receive only weapons that were confiscated by a member of the California Highway Patrol. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to Section 12071 to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Section 12021.3.

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

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

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

SEC. 3. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than five business days after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within five business days following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

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Bill Text - AB-2431 Firearms.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

(d) Any firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership, and after the law enforcement agency has complied with Section 12021.3.

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 4. Section 12028.7 of the Penal Code is amended to read:

12028.7. (a) When a firearm is taken into custody by a law enforcement officer, the officer shall issue the person who possessed the firearm a receipt describing the firearm, and listing any serial number or other identification on the firearm.

(b) The receipt shall indicate where the firearm may be recovered, any applicable time limit for recovery, and the date after which the owner or possessor may recover the firearm pursuant to Section 12021.3.

(c) Nothing in this section is intended to displace any existing law regarding the seizure or return of firearms.

SEC. 5. Section 12030 of the Penal Code is amended to read:

12030. (a) The officer having custody of any firearms which may be useful to the California National Guard, the Coast Guard Auxiliary, or to any military or naval agency of the federal or state government, including, but not limited to, the California National Guard military museum and resource center, may, upon the authority of the legislative body of the city, city and county, or county by which he or she is employed and the approval of the Adjutant General, deliver the firearms to the commanding officer of a unit of the California National Guard, the Coast Guard Auxiliary, or any other military agency of the state or federal government in lieu of destruction as required by this chapter. The officer delivering the firearms shall take a receipt for them containing a complete description thereof and shall keep the receipt on file in his or her office as a public record.

(b) Any law enforcement agency which has custody of any firearms, or any parts of any firearms, which are subject to destruction as required by this chapter may, in lieu of destroying the weapons, retain and use any of them as may be useful in carrying out the official duties of the agency, or upon approval of a court, may release them to any other law enforcement agency for use in carrying out the official duties of that agency, or may turn over to the criminalistics laboratory of the Department of Justice or the criminalistics laboratory of a police department, sheriff's office, or district attorney's office any weapons which may be useful in carrying out the official duties of their respective agencies.

(c) Any firearm, or part of any firearm, which, rather than being destroyed, is used for official purposes pursuant to this section shall be destroyed by the agency using the weapon when it is no longer needed by the agency for use in carrying out its official duties. In the case of firearms or weaponry donated to the California National Guard military museum and resource center, they may be disposed of pursuant to Section 179 of the Military and Veterans Code.

(d) Any law enforcement agency which has custody of any firearms, or any parts of any firearms, which are subject to destruction as required by this chapter may, in lieu of destroying the firearms, obtain an order from the superior court directing the release of the firearms to the sheriff. The sheriff shall enter those weapons into the Automated Firearms System (AFS), via the California Law Enforcement Telecommunications System, with a complete description of each weapon, including the make, type, category, caliber, and serial number of the firearms, and the name of the academy receiving the weapon entered into the AFS miscellaneous field. The sheriff shall then release the firearms to the basic training academy certified by the Commission on Peace Officer Standards and Training, so that the firearms may be used for instructional purposes in the certified courses. As used in this section, the term "firearms" shall not include destructive devices, as defined in Section 12301. All firearms released to an academy shall be under the care, custody, and control of the particular academy.

Any firearm, or part of any firearm, which is not destroyed, and is used for the purposes authorized by this section, shall be returned to the law enforcement agency which had original custody of the firearm when it is no longer needed by the basic training academy, or when the basic training academy is no longer certified by the commission. When those firearms are returned, the law enforcement agency to whom the firearms are returned, shall on the date of the return, enter into the Automated Firearms System (AFS), via the California Law Enforcement Telecommunications System, a complete description of each weapon, including the make, type, category, caliber, and serial number of the firearms, and the name of the entity returning the firearm.

(e) Any law enforcement agency that retains custody of any firearm pursuant to this section or that destroys a firearm pursuant to Section 12028 shall notify the Department of Justice of the retention or destruction. This notification shall consist of a complete description of each firearm, including the name of the manufacturer or brand name, model, caliber, and serial number.

SEC. 6. Section 12084 of the Penal Code is amended to read:

12084. (a) As used in this section, the following definitions apply:

- (1) "Agency" means a sheriff's department in a county of less than 200,000 persons, according to the most recent federal decennial census, that elects to process purchases, sales, loans, or transfers of firearms.
 - (2) "Seller" means the seller or transferor of a firearm or the person loaning the firearm.
 - (3) "Purchaser" means the purchaser or transferee of a firearm or the person being loaned a firearm.
 - (4) "Purchase" means the purchase, loan, sale, or transfer of a firearm.
 - (5) "Department" means the Department of Justice.
 - (6) "LEFT" means the Law Enforcement Firearms Transfer Form consisting of the transfer form utilized to purchase a firearm in accordance with this section.
- (b) As an alternative to completing the sale, transfer, or loan of a firearm through a licensed dealer pursuant to Section 12082, the parties to the purchase of a firearm may complete the transaction through an agency in accordance with this section in order to comply with subdivision (d) of Section 12072.
- (c) (1) LEFTs shall be prepared by the State Printer and shall be furnished to agencies on application at a cost to be determined by the Department of General Services for each 100 leaves in quintuplicate, one original and four duplicates for the making of carbon copies. The original and duplicate copies shall differ in color, and shall be in the form provided by this section. The State Printer, upon issuing the LEFT, shall forward to the department the name and address of the agency together with the series and sheet numbers on the LEFT. The LEFT shall not be transferable.
- (2) The department shall prescribe the form of the LEFT. It shall be in the same exact format set forth in Sections 12077 and 12082, with the same distinct formats for firearms that are handguns and for firearms that are not handguns, except that, instead of the listing of information concerning a dealer, the LEFT shall contain the name, telephone number, and address of the law enforcement agency.
 - (3) The original of each LEFT shall be retained in consecutive order. Each book of 50 originals shall become the permanent record of transactions that shall be retained not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, department employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco and Firearms upon the presentation of proper identification.
 - (4) Ink shall be used to complete each LEFT. The agency shall ensure that all information is provided legibly. The purchaser and seller shall be informed that incomplete or illegible information delays purchases.
 - (5) Each original LEFT shall contain instructions regarding the procedure for completion of the form and the routing of the form. The agency shall comply with these instructions which shall include the information set forth in this subdivision.
 - (6) One firearm transaction shall be reported on each LEFT. For purposes of this paragraph, a "transaction" means a single sale, loan, or transfer of any number of firearms that are not handguns between the same two persons.
- (d) The following procedures shall be followed in processing the purchase:
- (1) Without waiting for the conclusion of any waiting period to elapse, the seller shall immediately deliver the firearm to the agency solely to complete the LEFT. Upon completion of the LEFT, the firearm shall be immediately returned by the agency to the seller without waiting for the waiting period to elapse.
 - (2) The purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the agency. The agency shall require the purchaser to complete the original and one copy of the LEFT. An employee of the agency shall then affix his or her signature as a witness to the signature and identification of the purchaser.
 - (3) Two copies of the LEFT shall, on that date of purchase, be placed in the mail, postage prepaid to the department at Sacramento. The third copy shall be provided to the purchaser and the fourth copy to the seller.
 - (4) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) If the department determines that the copies of the LEFT submitted to it pursuant to paragraph (3) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the firearm to be purchased, or if any fee required pursuant to paragraph (6) is not submitted by the agency in conjunction with submission of the copies of the LEFT, or if the department determines that the person is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the agency of that fact. Upon notification by the department, the purchaser shall submit any fee required pursuant to paragraph (6), as appropriate, and, if notification by the department is received by the agency at any time prior to delivery of the firearm, the delivery of the firearm shall be withheld until the conclusion of the waiting period described in paragraph (7).

(6) (A) The agency may charge a fee, not to exceed actual cost, sufficient to reimburse the agency for processing the transfer.

(B) The department may charge a fee, not to exceed actual cost, sufficient to reimburse the department for providing the information. The department shall charge the same fee that it would charge a dealer pursuant to Section 12082.

(7) The firearm shall not be delivered to the purchaser as follows:

(A) Within 10 days of the submission to the department of any fees required pursuant to this subdivision, or within 10 days of the submission to the department of any correction to the LEFT, whichever is later. On and after April 1, 1997, within 10 days of the application to purchase, or after notice by the department pursuant to paragraph (5), within 10 days of the submission to the department of any fees required pursuant to this subdivision, or within 10 days of the submission to the department of any correction to the LEFT, whichever is later.

(B) Unless unloaded.

(C) In the case of a handgun, unless securely wrapped or in a locked container.

(D) Unless the purchaser presents clear evidence of his or her identity and age to the agency.

(E) Whenever the agency is notified by the department that the person is in a prohibited class described in Section 12021 or 12021.1, or Section 8100 or 8103 of the Welfare and Institutions Code.

(F) Unless done at the agency's premises.

(G) In the case of a handgun, unless the purchaser presents to the seller a handgun safety certificate.

(H) Unless the purchaser is at least 18 years of age.

(e) The action of a law enforcement agency acting pursuant to Section 12084 shall be deemed to be a discretionary act within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(f) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than handguns, its acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(g) Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the LEFT is guilty of a misdemeanor.

(h) All sums received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund.

SEC. 7. Section 8107 of the Welfare and Institutions Code is repealed.

SEC. 8. 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.

EXHIBIT B

SENATE COMMITTEE ON Public Safety
Senator Bruce McPherson, Chair
2003-2004 Regular Session

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AB 2431 (Steinberg)
As Amended June 3, 2004
Hearing date: June 8, 2004
Penal Code and Welfare and Institutions Code
SH:br

PROCEDURE FOR THE RETURN OF FIREARMS SEIZED OR IN EVIDENCE

HISTORY

Source: Office of the Attorney General

Prior Legislation: None

Support: California District Attorneys Association; California Probation, Parole and Correctional Association; California State Sheriffs' Association; California Law Enforcement Association of Records Supervisors; California Peace Officers' Association; California Police Chiefs' Association; Legal Community Against Violence; Women Against Gun Violence; Brady Campaign to Prevent Gun Violence; Citizens Committee for the Right to Keep and Bear Arms (support if amended; see Comment #10)

Opposition:None known

Assembly Floor Vote: Ayes 64 - Noes 10

KEY ISSUE

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SHOULD A PROCEDURE BE ENACTED INTO LAW TO SPECIFY HOW FIREARMS SEIZED OR HELD AS EVIDENCE SHALL BE RETURNED TO LAWFUL OWNERS, INCLUDING THE REQUIREMENT FOR A BACKGROUND CHECK BY THE DEPARTMENT OF JUSTICE TO ENSURE THAT THE PERSON WHO CLAIMS TITLE IS NOT OTHERWISE PROHIBITED FROM POSSESSING A FIREARM?

PURPOSE

The purpose of this bill is to enact a procedure into law to specify how firearms seized or held as evidence shall be returned to lawful owners, including the requirement for a background check by the Department of Justice to ensure that the person who claims title is not otherwise prohibited from possessing a firearm.

Existing law does the following:

Prohibits a person subject to a domestic violence protective order from owning, possessing, purchasing, or receiving a firearm while that protective order is in effect, and establishes a procedure for persons restrained to relinquish prohibited firearms. (Family Code 6389.)

Provides that any person who owns or possesses a firearm knowing he or she is prohibited from doing so by the terms of a domestic violence protective order shall be punished by imprisonment in the state prison; by imprisonment in the county jail not to exceed one year; by a fine not exceeding \$1,000; or both. (Penal Code 12021(g)(1).)

Defines "handgun" as any "pistol," "revolver," or "firearm capable of being concealed upon the person." (Penal Code

12001(a)(2).)

Requires that the transfer of all handguns and long guns (rifles and shotguns) be conducted through a state-licensed firearms dealer or through a local sheriff's department in counties of less than 200,000 population. A 10-day waiting

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period, background check (through DOJ), and handgun safety certificate for handgun transfers are required prior to delivery of the firearm. A license to sell firearms is subject to forfeiture for a breach of any of specified prohibitions and requirements. (Penal Code 12070 et seq.)

Exempts from the requirement that sales, loans and transfers of firearms be conducted through a dealer or local law enforcement agency transactions with authorized peace officers, certain operation of law transactions, intra-familial firearms transactions, and other specified transactions. However, all these exempt transactions are subject to handgun registration as a condition of the exemption. (Penal Code 12078.)

Requires that any law enforcement agency that retains custody of any firearm pursuant to Penal Code Section 12030 - for use by a law enforcement agency or the military - or that destroys a firearm pursuant to Penal Code Section 12028 - disposal of "nuisance" firearms - shall notify DOJ of the retention or destruction, with the notification consisting of a complete description of each firearm, including the name of the manufacturer or brand name, model, caliber, and serial number. (Penal Code 12030(e).)

Existing law prohibits the following persons from possessing or owning firearms (and ammunition), punishable as a felony: those convicted of felonies or other specified crimes; those convicted of misdemeanor violations of specified offenses; those prohibited as a condition of probation; persons subject to a protective order or a temporary restraining order; specified persons subject to juvenile court law; and specified mental patients. (Penal Code 120921(a); 12316(b); 12021(f); 12001.6 and 12021.1; 12021(c)(1); 12021(d); 12021(g); 12021(e); Welfare and Institutions Code 8100 and 8103.)

Requires that a "personal handgun importer" - a person in lawful possession of a handgun who moves to California after January 1, 1998 - shall either report that ownership to the

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Department of Justice within 60 days or shall otherwise dispose of the handgun, as specified. (Penal Code 12001(n) and 12072(f).)

Generally requires that the Department of Justice only maintain records of handgun sales and transfers. (Penal Code 12076(c)(3) and 11106(b)(1).)

Provides that any weapon unlawfully possessed pursuant to the mental health restrictions in law shall be subject to disposition pursuant to Sections 12028 and 12032 of the Penal Code. (Welfare and Institutions Code 8107.)

Provides a process for disposal of court possessed evidence, as specified. (Penal Code 1417.5 and 1417.6.)

This bill does the following:

Enacts a procedure in the Dangerous Weapons Control Law which specifies a process for returning - or allowing the disposal - a firearm which is in the custody of the courts or law

EXHIBIT B
000013
2/10

enforcement agency to a person who claims title to the firearm. [See Comment #2, below.]

Makes related changes in law.

COMMENTS

1. Need for This Bill

According to the author:

AB 2431 codifies DOJ recommended practices requiring law enforcement agencies to take specified steps to stop prohibited people from possessing guns. Under current law, a gun seized during an investigation may be returned without checking to see if the person receiving the gun is on the prohibited list. DOJ has been training and encouraging peace officers to (a)

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conduct a background check before returning a gun to its owner; (b) enter guns into the AFS when they are returned to owners; and (c) establish procedures for disposing of guns when the person from whom the gun was taken is prohibited from possessing a gun. According to DOJ, about 300 law enforcement agencies consistently contact DOJ for background checks before returning a firearm to its owner. On the basis of these checks, about 14% of the time the person is prohibited from owning a gun, compared with about 1% of the time for guns purchased at gun dealers.

2. Process Enacted in This Bill

The process enacted by this bill in a new Penal Code Section 12021.3 includes the following:

(a) (1) Any person who claims title to any firearm that is in the custody or control of a court or law enforcement agency who wishes to have the firearm returned to him or her shall make application for a determination by the Department of Justice as to whether he or she is eligible to possess a firearm. The application shall include the following:

- (A) The applicant's name, date of birth, and complete address.
- (B) Whether the applicant is a United States citizen. If the applicant is not a United States citizen, he or she shall also provide his or her country of citizenship and his or her alien registration or I-94 number.
- (C) If the firearm is a handgun, the firearm's make, model, and serial number.
- (D) The applicant's valid California driver's license number or valid California Identification card number issued by the Department of Motor Vehicles.
- (E) The name of the court or law enforcement agency holding the firearm.
- (F) The signature of the applicant, date of signature,

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and declaration under penalty of perjury that all statements made on the application are true and complete.

(2) A person who owns a firearm that is in the custody of a court or law enforcement agency and who does not wish to obtain possession of the firearm, and the firearm is an otherwise legal firearm and the person otherwise has right to title of the firearm, shall be entitled to sell or transfer title of the firearm to a

licensed dealer as defined in Section 12071.

(b) No law enforcement agency or court that has taken custody of any firearm may return the firearm to any individual unless the following requirements are satisfied:

(1) That individual presents to the agency or court notification of a determination by the department pursuant to subdivision (e) that the person is eligible to possess firearms.

(2) If the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not stolen and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.

(c) The Department of Justice shall establish a fee of up to twenty dollars (\$20) sufficient to cover its costs for processing firearm clearance determinations submitted pursuant to this section. The fees shall be deposited into the Dealers' Record of Sale Special Account. After the department establishes a fee sufficient to reimburse the department for processing costs, the fee charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department.

(d) When the Department of Justice receives a

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completed application accompanied with the fee required, it shall conduct an eligibility check of the applicant to determine whether the applicant is eligible to possess firearms.

(e) If the department determines that the applicant is eligible to possess the firearm, the department shall enter a record of the firearm and the applicant into the Automated Firearm System. The department shall also provide the applicant with written notification that includes the following:

(1) The identity of the applicant.

(2) A statement that the applicant is eligible to possess a firearm.

(3) If the firearm is a handgun, a description of the handgun by make, model, and serial number.

(f) If the department denies the application, the applicant may contact the department to inquire about the reason. The department shall notify the applicant of the denial and provide a form for the applicant to use to sell or transfer the firearm to a licensed dealer as defined in Section 12071.

(g) Notwithstanding any other provision of law, no law enforcement agency or court shall be required to retain a firearm for more than 180 days after the owner of the firearm has been notified that the firearm has been made available for return. An unclaimed firearm may be disposed of pursuant to Section 12028 after the 180-day period has expired.

(h) Notwithstanding Section 11106 (pertaining to retention of handgun transfer information only), the department may retain personal information about an applicant in connection with a claim for a long gun for 180 days to allow for law enforcement confirmation of compliance with this section. The information retained may include personal identifying information regarding

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the individual applying for the clearance, but may not include information that identifies any particular long gun.

(i) If a local law enforcement agency determines that the applicant is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm and the firearm is an otherwise legal firearm, the applicant shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 12071. If the firearm has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

(j) A law enforcement agency or court that has taken custody of a firearm may charge the owner or person claiming title a reasonable storage fee not to exceed the actual cost incurred by the local law enforcement agency or court for taking possession, storing and transferring of firearms. For purposes of this subdivision, "actual cost" means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Section 12071 of the Penal Code or to the respondent.

3. Application of This Bill to Persons with a Firearms Dealers License and Other "Unique" Situations

Existing law allows law enforcement to issue permits to carry concealed weapons in public, licenses to manufacture firearms, licenses to firearms dealers, allows peace officers to carry firearms in public, as specified, and other such situations. Persons granted those specific privileges often obtain a Certificate of Eligibility for the Department of Justice which certifies that those persons are not prohibited from possessing firearms. Both COE holders and others such as peace officers and security officers are in the DOJ's system with a "rap-back" capability so that if those persons are subsequently placed in a

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"prohibited from possessing firearms" category the system notes that for the DOJ so that the firearms privileges may be revoked.

It is unclear to Committee staff whether or not those persons might otherwise be persons seeking the return of firearms pursuant to the new Penal Code Section 12021.3 added by this bill. If so, for example, a licensed firearms dealer seeking return of evidence (i.e., firearms stolen from the dealer and known to be stolen from the dealer from the beginning) should those persons in the "rap-back" categories be required to comply with any or all of the provisions of this bill?

4. Legal Title but Owned by a "Prohibited Person"

This bill requires that any person seeking the return of a firearm shall submit the required application to the DOJ under penalty of perjury. Perjury is a felony crime. In addition, if the person who submits the application is in fact prohibited from owning or possessing a firearm, that person may be, depending on the circumstances, charged with a felony for illegally possessing a firearm. On the other hand, the person may have legally owned or possessed the firearm(s) prior to becoming a prohibited person but after the firearm was taken into custody by a law enforcement agency or a court.

In proposed new Section 12021.3(i), this bill provides that:

If a local law enforcement agency determines that the applicant is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm and the firearm is an otherwise legal firearm, the applicant shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 12071.

If the person in the prohibited category is charged with illegally possessing the firearm, the firearm could be disposed of as a nuisance. However, if no charges are brought, then it would be possible for that person to transfer the firearm to a dealer. Of course, depending on year of manufacture of a handgun and required testing, that handgun may not be on the

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roster of "not unsafe" handguns and the dealer may generally be prohibited from selling that handgun "used" within California.

NOTE: Generally the issue of the application of three-strikes is largely moot regarding firearm possession for a person who has any felony because it is already a felony for them to possess a firearm. This bill does make submission of false information a felony [perjury] where the felony prohibition on possessing firearms may not otherwise apply. The current penalty for submitting false information involving the purchase of a firearm is a misdemeanor (see Penal Code Section 12076(b)(1).) By applying the penalty of perjury in this bill, a similar situation is penalized as a felony.

5. Stolen Firearms

In proposed new Section 12021.3(i), this bill provides that:

If the firearm has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

That sentence follows the sentence noted in Comment #4, above, regarding lawful title but claimed by a person in a prohibited class. It is not clear to Committee staff whether or not the "stolen" sentence is applicable only where there person is found to be in a prohibited class or whether or not it is generally applicable to all firearms found to be stolen. Nor is it clear to staff that the law enforcement agency or court is to notify the person who owns the firearm, however that is determined, nor whether or not a stolen firearm is subject to the other provisions of the new Section 12021.3 which require the person seeking the return shall follow the specified procedures.

6. Timeframe for DOJ Response

In proposed new Section 12021.3(d) and (3), this bill provides that:

(d) When the Department of Justice receives a

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completed application . . . [as specified] . . . accompanied with the fee . . . it shall conduct an eligibility check of the applicant to determine whether the applicant is eligible to possess firearms.
(e) If the department determines that the applicant is eligible to possess the firearm, the department shall enter a record of the firearm and the applicant into the Automated Firearm System. The department shall also provide the applicant with written notification that includes [specified information].

There is no "timeframe" within which the DOJ must respond. It may be appropriate to insert "within x number of days" in that section, especially given that the person seeking that determination is subject to a 180-day time limit to obtain the firearms return. The provisions of subdivision (g) which provide that no law enforcement officer or court is required to retain the firearm beyond that 180 days do not include any provision which indicates that the 180 days shall be tolled after receipt of a person's claim to the firearm. That may not be necessary but the bill itself does not indicate that a person might, for example, be allowed to tell the court or agency that a DOJ application has been submitted.

7. A Claim for Multiple Firearms

It is unclear to committee staff whether or not a single application and fee may be submitted to the DOJ for the return of more than one firearm held by a law enforcement agency or court.

EXHIBIT B
000017
6/10

That may be implicit but might be clearer if lines 3 and 4 on page 2 were amended to read:

Any person who claims title to any firearm or firearms that ~~is~~ are in the custody or control of a court or law enforcement . . .

8. Chargeable Costs

This bill includes in proposed new Section 12021.3(j) that:

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A law enforcement agency or court that has taken custody of a firearm may charge the owner or person claiming title a reasonable storage fee not to exceed the actual cost incurred by the local law enforcement agency or court for taking possession, storing and transferring of firearms. For purposes of this subdivision, "actual cost" means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Section 12071 of the Penal Code or to the respondent.

That language is essentially the same as currently in Family Code Section 6389 regarding firearms owned by persons subject to a protective order, but is not identical:

A local law enforcement agency may charge the respondent a fee for the storage of any firearm pursuant to this section. This fee shall not exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, "actual cost" means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Section 12071 of the Penal Code or to the respondent.

It might be clearer to amend this bill to change the language in subdivision (j) to instead read exactly the same as in the Family Code (with the inclusion of "or court"), since that paragraph does explicitly state that the fee shall not exceed the cost of storage in the second sentence, thus arguably making clearer that the fee is for storage and not for the overall costs of law enforcement or the court for taking possession or custody of the firearm(s) outside of the usual "storage" environment while still including the transfer of the firearm to a licensed dealer if appropriate. Although even then if the licensed dealer does not come to the storage area the costs of law enforcement delivery may exceed the value of some firearms, depending on circumstances.

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9. Existing Law - Handgun Registration

Since about 1930, any purchase of a handgun from a dealer was reported to the Department of Justice (or its predecessor agency) for purposes of background checks on the purchaser through the Dealer Report of Sale (DROS) form. This may be commonly described as registration.

Since 1991, but not before that time, transactions between private parties have been subject to DROS registration through a licensed dealer. Registration of such a transfer may also be done at a law enforcement agency through a Law Enforcement Firearms Transfer (LEFT) form. (LEFT is seldom used in practice.) (Pen. Code 12071, 12072, 12078 12082, 12084.) Certain exceptions, such as infrequent loans of firearms between persons known to each other, apply. (Penal Code 12078, subd.

(d).)

Existing law requires that the Department of Justice maintain records of handgun sales and transfers. (Penal Code 12076(c)(3).)

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Persons who seek the return of a handgun - especially if manufactured after around 1990 or if the person seeking the return of the handgun was not 21 years of age or older as of that time - may not be able to show proof of lawful title depending on several circumstances in addition to the "personal handgun importer" requirements in law.

10. Support if Amended from the Citizens Committee for the Right to Keep and Bear Arms

The Citizens Committee for the Right to Keep and Bear Arms has requested the following amendment to this bill:

In all cases "proof of ownership" will [shall] be handled in the same fashion law enforcement currently handles this issue for any other property, so long as no obvious illegality is identifiable, unless ownership can be confirmed by the DOJ handgun database, CCW permit data, "registered assault weapon" lists and/or other state-run registries of arms.

The sponsor had been provided this request for evaluation of whether this or similar language is acceptable.

11. Drafting Issues in This Bill

There are several drafting issues which the author may wish to consider:

On page 4, line 18, after "law enforcement" it may be appropriate to insert: and court

On page 4, line 33, the word "expenses" should be deleted and the word "cost" inserted.

12. Related Legislation

Any person may currently report the theft or loss of a firearm. However, this Committee will soon be considering AB 1232

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(Lowenthal) which would require any person whose handgun is stolen or irretrievably lost to, within 5 working days, report the loss to local law enforcement, as specified, with violations punishable as an infraction. If that requirement is enacted into law, it would become another factor in consideration of the

return of a firearm pursuant to this bill, especially if a person sought the return of a stolen handgun.

13. Comment from the Assembly Committee on Public Safety Analysis

The Assembly Public Safety Committee analysis of this bill includes the following:

Disposition of Firearms by Persons Prohibited to Possess a Firearm : Over the last several years, a number of constitutional concerns have been raised as to law enforcement procedures for confiscating and disposing of serialized and other property. In People v. Beck (1994) 25 Cal.App.4th 1095, the Court of Appeal in noting that expropriation of private property was unconstitutional had to essentially write into Penal Code Section 12028 (a weapons nuisance statute) due process protections in order for the statute to survive constitutional attack. Similarly, in People v. Lamonte (1997) 53 Cal.App.4th 544, the Court of Appeals noted Beck and put in place provisions relating to the return of property not used in a criminal action which was seized from a criminal defendant. In Lamonte , the Court specifically stated the right to regain possession of one's property is a substantial right, which may not be dependent upon the whim or caprice [of a court]. Continued official retention of legal property with no further criminal action pending violates the owner's due process rights. Similar attacks can be made on the return of serialized lost or stolen property unless a specific statute is enacted to put in place procedures relating to the prompt return of lost or stolen serialized property. This bill establishes a procedure for the disposal of firearms belonging to persons prohibited from possessing a

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firearm.

EXHIBIT C

AB 2431
Page 1

CONCURRENCE IN SENATE AMENDMENTS
AB 2431 (Steinberg)
As Amended August 23, 2004
Majority vote

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ASSEMBLY:	64-10	(May 20, 2004)	SENATE:	39-0	(August 25, 2004)
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Original Committee Reference: PUB. S.

SUMMARY : Requires a person requesting the return of a firearm in the custody of the court or law enforcement to make an application to the Department of Justice (DOJ) to determine if that person is eligible to possess a firearm, and provides for the disposal of firearms belonging to persons prohibited from possessing a firearm.

The Senate amendments :

- 1) Make it a misdemeanor to knowingly omit required information or to furnish fictional information on the application to determine eligibility.
- 2) Clarify that a non-resident may submit a valid driver's license or state issued identification card from the state of residence as proof of identity.
- 3) Set the DOJ fee for processing the firearm clearance request at \$20 plus \$3 for each additional handgun being processed as part of the request and allows for future increases based on the California Consumer Price Index.
- 4) Exempts an individual seeking to retrieve a stolen firearm from the processing fee if the firearm was reported stolen to a law enforcement agency, as specified.
- 5) Allows the imposition of a storage fee; however, it may be waived by the local or state agency upon proof that the firearm was stolen, and limits the storage fee, as specified.
- 6) Exempt a law enforcement agency that returns a firearm from firearm licensing requirements.

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Page 2

- 7) Allow DOJ 30 days to complete the background check except as specified.

EXISTING LAW requires that any law enforcement agency that retains custody of any firearm pursuant to Penal Code Section 12030 or that destroys a firearm pursuant to Penal Code Section 12028 shall notify DOJ of the retention or destruction, with the notification consisting of a complete description of each firearm, including the name of the manufacturer or brand name, model, caliber, and serial number.

AS PASSED BY THE ASSEMBLY , this bill:

- 1) Required that the applicant provide DOJ with valid Department of Motor Vehicle (DMV) identification, name, address, date of birth, citizenship status, and the firearms make model and serial number.
- 2) Prohibited a law enforcement agency, or a court, that has taken custody of a gun, from returning the weapon to a person until: a) that person verifies he or she is not prohibited from owning a gun; and, b) the agency or court verifies that the gun has not been stolen and has been recorded in the Automated Firearms System (AFS) by the person seeking its return.
- 3) Required DOJ, if it determines that an applicant is eligible to possess a gun, to enter the weapon and the person's name into AFS and provide the applicant written notification that the applicant is eligible to possess the gun, with a description of the gun.
- 4) Required DOJ, if it denies an application, to notify the applicant and provide a form to enable the applicant to sell

or transfer the firearm to a licensed dealer.

- 5)Authorized DOJ to charge a fee sufficient to cover its costs for firearm clearance determinations, and requires that the funds be deposited into the Dealer's Record of Sale (DR0S) Special Account.
- 6)Deleted obsolete handgun waiting period requirements that have been replaced by newer requirements.
- 7)Substituted the word "handgun" in place of references to

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pistol, revolver, or firearm capable of being concealed upon the person.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis, DOJ estimates it would cost about \$240,000 annually to conduct an estimated 12,000 background checks on persons requesting the return of a gun from a law enforcement agency. DOJ would need an additional \$200,000 on a one-time basis to develop new tracking programs for gun clearances and to modify existing programs. These costs would be covered by a \$20 applicant fee that would be deposited into DOJ's DR0S Account.

These costs are based on DOJ's current experience conducting similar background checks on about 6,000 persons per year. DOJ estimates that about 300 of 720 law enforcement agencies currently require this type of background check, which costs DOJ about \$120,000 per year. DOJ states it cannot continue to absorb this cost and estimates that the workload will double as a result of this bill.

COMMENTS : According to the author, "This bill codifies DOJ recommended practices requiring law enforcement agencies to take specified steps to stop prohibited people from possessing guns. Under current law, a gun seized during an investigation may be returned without checking to see if the person receiving the gun is on the prohibited list.

"DOJ has been training and encouraging peace officers to (a) conduct a background check before returning a gun to its owner; (b) enter guns into the AFS when they are returned to owners; and (c) establish procedures for disposing of guns when the person from whom the gun was taken is prohibited from possessing a gun.

"According to DOJ, about 300 law enforcement agencies consistently contact DOJ for background checks before returning a firearm to its owner. On the basis of these checks, about 14% of the time the person is prohibited from owning a gun, compared with about 1% of the time for guns purchased at gun dealers."

AB 2431
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Analysis Prepared by : Gregory Pagan / PUB. S. / (916)
319-3744

FN: 0008551

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Fernandez, v. Los Angeles County, et al.*
Case No.: 2:20-cv-09876 DMG (PDx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

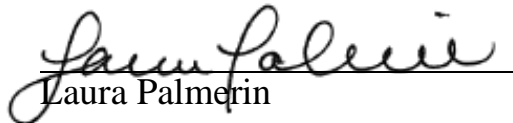
on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Amber A. Logan
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lmh@lmhfir.com
Logan Mathevosian & Hur LLP
3435 Wilshire Blvd., Suite 2740
Los Angeles, CA 90010

*Attorneys for Defendants Los Angeles County,
Wyatt Waldron, and John Roth*

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

Executed April 12, 2024.


Laura Palmerin