



REPORT TO LAW &  
LEGISLATION COMMITTEE  
City of Sacramento

915 I Street, Sacramento, CA 95814-2671

**CONSENT REPORT**  
**August 5, 2010**

Honorable Members of the  
Law and Legislation Committee

**Title:** Legislative Position: Support Assembly Bill 1934 – An act to make it a misdemeanor to carry an exposed handgun in a public place or on a public street in a city or in prohibited areas of unincorporated county territory.

**Location/Council District:** Citywide

**Recommendation:** Staff recommends that the Law and Legislation Committee adopt a support position for California Assembly Bill 1934. The purpose of the legislation is to make it a misdemeanor, punishable by \$1,000 fine and six months in jail, to carry an exposed handgun in a public place or on a public street in a city or in prohibited areas of unincorporated county territory.

**Contact:** Alisa Buckley, Sergeant, Office of the Chief, (916) 808-0832

**Presenters:** N/A

**Department:** Police

**Division:** Office of Operations

**Department ID:** 11001111

**Description/Analysis**

**Issue:** Staff is making a recommendation that the Law and Legislation Committee adopt a support position regarding California Assembly Bill 1934. The purpose of the legislation is to make it a misdemeanor, punishable by \$1,000 fine and six months in jail, to carry an exposed handgun in a public place or on a public street in a city or in prohibited areas of unincorporated county territory.

This bill establishes numerous exceptions to the specified offense including display of a firearm by a peace officer, firearms dealers, target-shooters at firing ranges, gun-show participants, licensed hunters while engaged in hunting

activities, and by members of specified organizations traveling directly to or from official parade duty or ceremonial occasions, as specified.

Assembly Bill 1934 is designed to assist police officers who must respond to reports of an armed individual or group of armed subjects without knowing whether the firearms in question are loaded or if the participants are violent. Current California law currently allows police officers to examine whether the firearms are loaded but prohibits the demand for identification or gun-registration documents from the involved parties.

Assembly Bill 1934 has been sponsored by Assembly Member Lori Saldana (D - San Diego) and was introduced on February 17, 2010. On April 6, 2010, Assembly Bill 1934 was amended in Assembly.

**Policy Considerations:** This act would amend Sections 7574.14 and 7582.2 of the Business and Professions Code, and amend Sections 626.9, 12001, 12025, 12026, 12026.2, and 12590 of, as well as add Section 12037 to, the California Penal Code, relating to firearms.

**Environmental Considerations:** None.

**Rationale for Recommendation:** Existing law, subject to exceptions, makes it an offense to carry a concealed handgun on the person or in a vehicle, as specified. It is important to note, however, that existing law provides that firearms carried openly in belt holsters are not defined as "concealed" within the meaning of the current provisions. Assembly Bill 1934 would delete the exception pertaining to firearms carried openly in belt holsters. By expanding the scope of an existing offense, this bill would impose a state-mandated local program.

Assembly Bill 1934 would make it possible to charge, prosecute, and institute punishment for individuals who openly display holstered firearms and potentially intimidate members of the public and/or business owners. These individuals needlessly waste the time and resources of law enforcement and create the increased likelihood for injury and death due to the accidental or intentional use of firearms. These actions pose a great risk to both the citizens of the City of Sacramento and to the police officers who attempt to contact these armed subjects. In most instances, responding officers are unable to verify that the firearms publicly displayed by open carry participants are unloaded without physical firearms inspections. The passage of this legislation would levy a penalty commensurate with criminal behavior which presents a greater risk to our community.

**Financial Considerations:** There are no General Fund impacts or financial considerations associated with this report at the local level. No reimbursement is required by this act pursuant to Section Six of Article XIII B of the California Constitution

**Assembly Bill 1934****August 5, 2010**

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. This bill must be reviewed at the State level by the Fiscal Committee and as a State-mandated local program.

**Emerging Small Business Development (ESBD):** None.

Respectfully Submitted by:   
Alisa Buckley, Sergeant

Approved by:   
Rick Brazel, Chief of Police

Recommendation Approved:



**GUS VINA**  
Interim City Manager

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**Assembly Bill 1934**

**August 5, 2010**

**Attachment 1**

August 5, 2010

Assembly Member Lori Saldana  
76<sup>th</sup> Assembly District  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0076

**Subject: Support Assembly Bill 1934 - An act to make it a misdemeanor to carry an exposed handgun in a public place or on a public street in a city or in prohibited areas of unincorporated county territory.**

Dear Assembly Member Saldana,

On behalf of the City of Sacramento, I am pleased to support Assembly Bill 1934. This legislation would make it a misdemeanor, punishable by \$1,000 fine and six months in jail, to carry an exposed handgun in a public place or on a public street in a city or in prohibited areas of unincorporated county territory.

Over the past two years in the City of Sacramento, the Sacramento Police Department has responded to numerous 911 calls involving supporters of the open carry movement who openly display holstered firearms in public places. It is our contention that these individuals needlessly waste the time and resources of law enforcement and create the increased likelihood for injury and death due to the accidental or intentional use of firearms. These actions pose a serious risk to both the citizens of the State of California and to the police officers who attempt to contact open carry participants.

If adopted, Assembly Bill 1934 would delete the exception pertaining to firearms carried openly in belt holsters. This type of criminal behavior occurs in a multitude of jurisdictions contained within the State of California and the passing of this act would provide all California law enforcement agencies with an additional prosecutorial option.

Thank you for supporting this important legislation and for bringing this critical public safety issue to the forefront of public attention.

Sincerely,

Lauren Hammond, Chair  
Law and Legislation Committee

**Assembly Bill 1934**

**August 5, 2010**

cc: Senator Darrell Steinberg  
Assembly Member Dave Jones  
Assembly Member Roger Niello  
Assembly Member Alyson Huber  
Mayor Kevin Johnson and Sacramento City Council  
Emanuel Jones and Associates

AMENDED IN SENATE JUNE 30, 2010

AMENDED IN SENATE JUNE 10, 2010

AMENDED IN ASSEMBLY APRIL 28, 2010

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1934**

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**Introduced by Assembly Members ~~Saldana~~ *Saldaña* and Ammiano  
(Coauthor: Assembly Member Lieu)**

February 17, 2010

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An act to amend Sections 7574.14 and 7582.2 of the Business and Professions Code, and to amend Sections 626.9, 12001, 12025, 12026, 12026.2, and 12590 of, and to add Section 12037 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1934, as amended, ~~Saldana~~ *Saldaña*. Firearms.

Existing law, subject to 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 delete the exception pertaining to firearms carried openly in belt holsters. The bill would also establish an exemption to the offense for transportation of a firearm by members of specified organizations going directly to or from official parade duty or ceremonial occasions, as specified.

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

Existing law, subject to exceptions, makes it an offense to carry a loaded firearm in specified public areas.

The bill would, subject to exceptions, make it a misdemeanor to openly carry an unloaded handgun on the person in specified public areas.

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

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.  
State-mandated local program: yes.

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

- 1 SECTION 1. Section 7574.14 of the Business and Professions
- 2 Code is amended to read:
- 3 7574.14. This chapter shall not apply to the following:
- 4 (a) An officer or employee of the United States of America, or
- 5 of this state or a political subdivision thereof, while the officer or
- 6 employee is engaged in the performance of his or her official
- 7 duties, including uniformed peace officers employed part time by
- 8 a public agency pursuant to a written agreement between a chief
- 9 of police or sheriff and the public agency, provided the part-time
- 10 employment does not exceed 50 hours in any calendar month.
- 11 (b) A person engaged exclusively in the business of obtaining
- 12 and furnishing information as to the financial rating of persons.
- 13 (c) A charitable philanthropic society or association incorporated
- 14 under the laws of this state that is organized and duly maintained
- 15 for the public good and not for private profit.
- 16 (d) Patrol special police officers appointed by the police
- 17 commission of any city, county, or city and county under the
- 18 express terms of its charter who also under the express terms of
- 19 the charter (1) are subject to suspension or dismissal after a hearing
- 20 on charges duly filed with the commission after a fair and impartial
- 21 trial, (2) must be not less than 18 years of age nor more than 40

1 years of age, (3) must possess physical qualifications prescribed  
2 by the commission, and (4) are designated by the police  
3 commission as the owners of a certain beat or territory as may be  
4 fixed from time to time by the police commission.

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

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

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

17 (h) Any bank subject to the jurisdiction of the Commissioner  
18 of Financial Institutions of the State of California under Division  
19 1 (commencing with Section 99) of the Financial Code or the  
20 Comptroller of Currency of the United States.

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

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

33 (k) A retired peace officer of the state or political subdivision  
34 thereof when the retired peace officer is employed by a private  
35 employer in employment approved by the chief law enforcement  
36 officer of the jurisdiction where the employment takes place,  
37 provided that the retired officer is in a uniform of a public law  
38 enforcement agency, has registered with the bureau on a form  
39 approved by the director, and has met any training requirements  
40 or their equivalent as established for security personnel under

- 1 Section 7583.5. This officer may not carry an unloaded and  
2 exposed handgun unless exempted by Section 12037 of the Penal  
3 Code, or a loaded or concealed firearm unless he or she is exempted  
4 under the provisions of subdivision (a) of Section 12027 of the  
5 Penal Code or paragraph (1) of subdivision (b) of Section 12031  
6 of the Penal Code or has met the requirements set forth in Section  
7 12033 of the Penal Code. However, nothing herein shall exempt  
8 the retired peace officer who contracts for his or her services or  
9 the services of others as a private patrol operator.
- 10 (l) A licensed insurance adjuster in performing his or her duties  
11 within the scope of his or her license as an insurance adjuster.
- 12 (m) Any savings association subject to the jurisdiction of the  
13 Commissioner of Financial Institutions or the Office of Thrift  
14 Supervision.
- 15 (n) Any secured creditor engaged in the repossession of the  
16 creditor's collateral and any lessor engaged in the repossession of  
17 leased property in which it claims an interest.
- 18 (o) A peace officer in his or her official police uniform acting  
19 in accordance with subdivisions (c) and (d) of Section 70 of the  
20 Penal Code.
- 21 (p) An unarmed, uniformed security person employed  
22 exclusively and regularly by a motion picture studio facility  
23 employer who does not provide contract security services for other  
24 entities or persons in connection with the affairs of that employer  
25 only and where there exists an employer-employee relationship if  
26 that person at no time carries or uses any deadly weapon, as defined  
27 in subdivision (a), in the performance of his or her duties, which  
28 may include, but are not limited to, the following business  
29 purposes:
- 30 (1) The screening and monitoring access of employees of the  
31 same employer.
- 32 (2) The screening and monitoring access of prearranged and  
33 preauthorized invited guests.
- 34 (3) The screening and monitoring of vendors and suppliers.
- 35 (4) Patrolling the private property facilities for the safety and  
36 welfare of all who have been legitimately authorized to have access  
37 to the facility.
- 38 (q) An armored contract carrier operating armored vehicles  
39 pursuant to the authority of the Department of the California

1 Highway Patrol or the Public Utilities Commission, or an armored  
2 vehicle guard employed by an armored contract carrier.

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

5 7582.2. This chapter does not apply to the following:

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

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

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

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

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

1 commission as the owners of a certain beat or territory as may be  
2 fixed from time to time by the police commission.

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

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

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

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

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

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

31 (l) A retired peace officer of the state or political subdivision  
32 thereof when the retired peace officer is employed by a private  
33 employer in employment approved by the chief law enforcement  
34 officer of the jurisdiction where the employment takes place,  
35 provided that the retired officer is in a uniform of a public law  
36 enforcement agency, has registered with the bureau on a form  
37 approved by the director, and has met any training requirements  
38 or their equivalent as established for security personnel under  
39 Section 7583.5. This officer may not carry an unloaded and  
40 exposed handgun unless exempted by Section 12037 of the Penal

1 Code, or a loaded or concealed firearm unless he or she is exempted  
2 under the provisions of subdivision (a) of Section 12027 of the  
3 Penal Code or paragraph (1) of subdivision (b) of Section 12031  
4 of the Penal Code or has met the requirements set forth in Section  
5 12033 of the Penal Code. However, nothing herein shall exempt  
6 the retired peace officer who contracts for his or her services or  
7 the services of others as a private patrol operator.

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

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

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

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

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

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

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

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

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

36 (r) The changes made to this section by the act adding this  
37 subdivision during the 2005–06 Regular Session of the Legislature  
38 shall apply as follows:

39 (1) On and after July 1, 2006, to a person hired as a security  
40 officer on and after January 1, 2006.

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

3 SEC. 3. Section 626.9 of the Penal Code is amended to read:

4 626.9. (a) This section shall be known, and may be cited, as  
5 the Gun-Free School Zone Act of 1995.

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

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

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

18 (2) When the firearm is an unloaded handgun and is in a locked  
19 container or within the locked trunk of a motor vehicle.

20 This section does not prohibit or limit the otherwise lawful  
21 transportation of any other firearm, other than a handgun, in  
22 accordance with state law.

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

34 (4) When the person is exempt from the prohibition against  
35 carrying a concealed firearm pursuant to subdivision (b), (d), (e),  
36 or (h) of Section 12027.

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

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

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

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

9 (2) "Firearm" has the same meaning as that term is given in  
10 Section 12001.

11 (3) "Locked container" has the same meaning as that term is  
12 given in subdivision (c) of Section 12026.1.

13 (4) "Concealed firearm" has the same meaning as that term is  
14 given in Sections 12025 and 12026.1.

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

20 (2) Any person who violates subdivision (b) by possessing a  
21 firearm within a distance of 1,000 feet from the grounds of a public  
22 or private school providing instruction in kindergarten or grades  
23 1 to 12, inclusive, shall be punished as follows:

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

26 (i) If the person previously has been convicted of any felony,  
27 or of any crime made punishable by Chapter 1 (commencing with  
28 Section 12000) of Title 2 of Part 4.

29 (ii) If the person is within a class of persons prohibited from  
30 possessing or acquiring a firearm pursuant to Section 12021 or  
31 12021.1 of this code or Section 8100 or 8103 of the Welfare and  
32 Institutions Code.

33 (iii) If the firearm is any handgun and the offense is punished  
34 as a felony pursuant to Section 12025.

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

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

1 (g) (1) Every person convicted under this section for a  
2 misdemeanor violation of subdivision (b) who has been convicted  
3 previously of a misdemeanor offense enumerated in Section  
4 12001.6 shall be punished by imprisonment in a county jail for  
5 not less than three months, or if probation is granted or if the  
6 execution or imposition of sentence is suspended, it shall be a  
7 condition thereof that he or she be imprisoned in a county jail for  
8 not less than three months.

9 (2) Every person convicted under this section of a felony  
10 violation of subdivision (b) or (d) who has been convicted  
11 previously of a misdemeanor offense enumerated in Section  
12 12001.6, if probation is granted or if the execution of sentence is  
13 suspended, it shall be a condition thereof that he or she be  
14 imprisoned in a county jail for not less than three months.

15 (3) Every person convicted under this section for a felony  
16 violation of subdivision (b) or (d) who has been convicted  
17 previously of any felony, or of any crime made punishable by  
18 Chapter 1 (commencing with Section 12000) of Title 2 of Part 4,  
19 if probation is granted or if the execution or imposition of sentence  
20 is suspended, it shall be a condition thereof that he or she be  
21 imprisoned in a county jail for not less than three months.

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

32 (h) Notwithstanding Section 12026, any person who brings or  
33 possesses a loaded firearm upon the grounds of a campus of, or  
34 buildings owned or operated for student housing, teaching,  
35 research, or administration by, a public or private university or  
36 college, that are contiguous or are clearly marked university  
37 property, unless it is with the written permission of the university  
38 or college president, his or her designee, or equivalent university  
39 or college authority, shall be punished by imprisonment in the state  
40 prison for two, three, or four years. Notwithstanding subdivision

1 (k), a university or college shall post a prominent notice at primary  
2 entrances on noncontiguous property stating that firearms are  
3 prohibited on that property pursuant to this subdivision.

4 (i) Notwithstanding Section 12026, any person who brings or  
5 possesses a firearm upon the grounds of a campus of, or buildings  
6 owned or operated for student housing, teaching, research, or  
7 administration by, a public or private university or college, that  
8 are contiguous or are clearly marked university property, unless  
9 it is with the written permission of the university or college  
10 president, his or her designee, or equivalent university or college  
11 authority, shall be punished by imprisonment in the state prison  
12 for one, two, or three years. Notwithstanding subdivision (k), a  
13 university or college shall post a prominent notice at primary  
14 entrances on noncontiguous property stating that firearms are  
15 prohibited on that property pursuant to this subdivision.

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

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

26 (l) This section does not apply to a duly appointed peace officer  
27 as defined in Chapter 4.5 (commencing with Section 830) of Title  
28 3 of Part 2, a full-time paid peace officer of another state or the  
29 federal government who is carrying out official duties while in  
30 California, any person summoned by any of these officers to assist  
31 in making arrests or preserving the peace while he or she is actually  
32 engaged in assisting the officer, a member of the military forces  
33 of this state or of the United States who is engaged in the  
34 performance of his or her duties, a person holding a valid license  
35 to carry the firearm pursuant to Article 3 (commencing with Section  
36 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle  
37 guard, engaged in the performance of his or her duties, as defined  
38 in subdivision (d) of Section 7582.1 of the Business and  
39 Professions Code.

1 (m) This section does not apply to a security guard authorized  
2 to carry a loaded firearm pursuant to Section 12031 or to openly  
3 carry an unloaded handgun pursuant to Section 12037.

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

6 (o) This section does not apply to an honorably retired peace  
7 officer authorized to carry a concealed or loaded firearm pursuant  
8 to subdivision (a) or (i) of Section 12027 or paragraph (1) or (8)  
9 of subdivision (b) of Section 12031 or to openly carry an unloaded  
10 handgun pursuant to Section 12037.

11 SEC. 4. Section 12001 of the Penal Code is amended to read:

12 12001. (a) (1) As used in this title, the terms “pistol,”  
13 “revolver,” and “firearm capable of being concealed upon the  
14 person” shall apply to and include any device designed to be used  
15 as a weapon, from which is expelled a projectile by the force of  
16 any explosion, or other form of combustion, and that has a barrel  
17 less than 16 inches in length. These terms also include any device  
18 that has a barrel 16 inches or more in length which is designed to  
19 be interchanged with a barrel less than 16 inches in length.

20 (2) As used in this title, the term “handgun” means any “pistol,”  
21 “revolver,” or “firearm capable of being concealed upon the  
22 person.”

23 (b) As used in this title, “firearm” means any device, designed  
24 to be used as a weapon, from which is expelled through a barrel,  
25 a projectile by the force of any explosion or other form of  
26 combustion.

27 (c) As used in Sections 12021, 12021.1, 12070, 12071, 12072,  
28 12073, 12078, 12101, and 12801 of this code, and Sections 8100,  
29 8101, and 8103 of the Welfare and Institutions Code, the term  
30 “firearm” includes the frame or receiver of the weapon.

31 (d) For the purposes of Sections 12025 and 12031, the term  
32 “firearm” also shall include any rocket, rocket propelled projectile  
33 launcher, or similar device containing any explosive or incendiary  
34 material whether or not the device is designed for emergency or  
35 distress signaling purposes.

36 (e) For purposes of Sections 12037, 12070, 12071, and  
37 paragraph (8) of subdivision (a), and subdivisions (b), (c), (d), and  
38 (f) of Section 12072, the term “firearm” does not include an  
39 unloaded firearm that is defined as an “antique firearm” in Section  
40 921(a)(16) of Title 18 of the United States Code.

1 (f) Nothing shall prevent a device defined as a “handgun,”  
2 “pistol,” “revolver,” or “firearm capable of being concealed upon  
3 the person” from also being found to be a short-barreled shotgun  
4 or a short-barreled rifle, as defined in Section 12020.

5 (g) For purposes of Sections 12551 and 12552, the term “BB  
6 device” means any instrument that expels a projectile, such as a  
7 BB or a pellet, not exceeding 6mm caliber, through the force of  
8 air pressure, gas pressure, or spring action, or any spot marker gun.

9 (h) As used in this title, “wholesaler” means any person who is  
10 licensed as a dealer pursuant to Chapter 44 (commencing with  
11 Section 921) of Title 18 of the United States Code and the  
12 regulations issued pursuant thereto who sells, transfers, or assigns  
13 firearms, or parts of firearms, to persons who are licensed as  
14 manufacturers, importers, or gunsmiths pursuant to Chapter 44  
15 (commencing with Section 921) of Title 18 of the United States  
16 Code, or persons licensed pursuant to Section 12071, and includes  
17 persons who receive finished parts of firearms and assemble them  
18 into completed or partially completed firearms in furtherance of  
19 that purpose.

20 “Wholesaler” shall not include a manufacturer, importer, or  
21 gunsmith who is licensed to engage in those activities pursuant to  
22 Chapter 44 (commencing with Section 921) of Title 18 of the  
23 United States Code or a person licensed pursuant to Section 12071  
24 and the regulations issued pursuant thereto. A wholesaler also does  
25 not include those persons dealing exclusively in grips, stocks, and  
26 other parts of firearms that are not frames or receivers thereof.

27 (i) As used in Section 12071 or 12072, “application to purchase”  
28 means any of the following:

29 (1) The initial completion of the register by the purchaser,  
30 transferee, or person being loaned the firearm as required by  
31 subdivision (b) of Section 12076.

32 (2) The initial completion and transmission to the department  
33 of the record of electronic or telephonic transfer by the dealer on  
34 the purchaser, transferee, or person being loaned the firearm as  
35 required by subdivision (c) of Section 12076.

36 (j) For purposes of Section 12023, a firearm shall be deemed  
37 to be “loaded” whenever both the firearm and the unexpended  
38 ammunition capable of being discharged from the firearm are in  
39 the immediate possession of the same person.

- 1 (k) For purposes of Sections 12021, 12021.1, 12025, 12070,  
2 12072, 12073, 12078, 12101, and 12801 of this code, and Sections  
3 8100, 8101, and 8103 of the Welfare and Institutions Code,  
4 notwithstanding the fact that the term “any firearm” may be used  
5 in those sections, each firearm or the frame or receiver of the same  
6 shall constitute a distinct and separate offense under those sections.
- 7 (l) For purposes of Section 12020, a violation of that section as  
8 to each firearm, weapon, or device enumerated therein shall  
9 constitute a distinct and separate offense.
- 10 (m) Each application that requires any firearms eligibility  
11 determination involving the issuance of any license, permit, or  
12 certificate pursuant to this title shall include two copies of the  
13 applicant’s fingerprints on forms prescribed by the Department of  
14 Justice. One copy of the fingerprints may be submitted to the  
15 United States Federal Bureau of Investigation.
- 16 (n) As used in this chapter, a “personal handgun importer”  
17 means an individual who meets all of the following criteria:
- 18 (1) He or she is not a person licensed pursuant to Section 12071.  
19 (2) He or she is not a licensed manufacturer of firearms pursuant  
20 to Chapter 44 (commencing with Section 921) of Title 18 of the  
21 United States Code.
- 22 (3) He or she is not a licensed importer of firearms pursuant to  
23 Chapter 44 (commencing with Section 921) of Title 18 of the  
24 United States Code and the regulations issued pursuant thereto.
- 25 (4) He or she is the owner of a handgun.
- 26 (5) He or she acquired that handgun outside of California.
- 27 (6) He or she moves into this state on or after January 1, 1998,  
28 as a resident of this state.
- 29 (7) He or she intends to possess that handgun within this state  
30 on or after January 1, 1998.
- 31 (8) The handgun was not delivered to him or her by a person  
32 licensed pursuant to Section 12071 who delivered that handgun  
33 following the procedures set forth in Section 12071 and subdivision  
34 (c) of Section 12072.
- 35 (9) He or she, while a resident of this state, had not previously  
36 reported his or her ownership of that handgun to the Department  
37 of Justice in a manner prescribed by the department that included  
38 information concerning him or her and a description of the firearm.
- 39 (10) The handgun is not a firearm that is prohibited by  
40 subdivision (a) of Section 12020.

1 (11) The handgun is not an assault weapon, as defined in Section  
2 12276 or 12276.1.

3 (12) The handgun is not a machinegun, as defined in Section  
4 12200.

5 (13) The person is 18 years of age or older.

6 (o) For purposes of paragraph (6) of subdivision (n):

7 (1) Except as provided in paragraph (2), residency shall be  
8 determined in the same manner as is the case for establishing  
9 residency pursuant to Section 12505 of the Vehicle Code.

10 (2) In the case of members of the Armed Forces of the United  
11 States, residency shall be deemed to be established when he or she  
12 was discharged from active service in this state.

13 (p) As used in this code, "basic firearms safety certificate"  
14 means a certificate issued by the Department of Justice pursuant  
15 to Article 8 (commencing with Section 12800) of Chapter 6 of  
16 Title 2 of Part 4, prior to January 1, 2003.

17 (q) As used in this code, "handgun safety certificate" means a  
18 certificate issued by the Department of Justice pursuant to Article  
19 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part  
20 4, as that article is operative on or after January 1, 2003.

21 (r) As used in this title, "gunsmith" means any person who is  
22 licensed as a dealer pursuant to Chapter 44 (commencing with  
23 Section 921) of Title 18 of the United States Code and the  
24 regulations issued pursuant thereto, who is engaged primarily in  
25 the business of repairing firearms, or making or fitting special  
26 barrels, stocks, or trigger mechanisms to firearms, or the agent or  
27 employee of that person.

28 (s) As used in this title, "consultant-evaluator" means a  
29 consultant or evaluator who, in the course of his or her profession  
30 is loaned firearms from a person licensed pursuant to Chapter 44  
31 (commencing with Section 921) of Title 18 of the United States  
32 Code and the regulations issued pursuant thereto, for his or her  
33 research or evaluation, and has a current certificate of eligibility  
34 issued to him or her pursuant to Section 12071.

35 SEC. 5. Section 12025 of the Penal Code is amended to read:

36 12025. (a) A person is guilty of carrying a concealed firearm  
37 when he or she does any of the following:

38 (1) Carries concealed within any vehicle which is under his or  
39 her control or direction any handgun.

40 (2) Carries concealed upon his or her person any handgun.

- 1 (3) Causes to be carried concealed within any vehicle in which  
2 he or she is an occupant any handgun.
- 3 (b) Carrying a concealed firearm in violation of this section is  
4 punishable, as follows:
- 5 (1) Where the person previously has been convicted of any  
6 felony, or of any crime made punishable by this chapter, as a  
7 felony.
- 8 (2) Where the firearm is stolen and the person knew or had  
9 reasonable cause to believe that it was stolen, as a felony.
- 10 (3) Where the person is an active participant in a criminal street  
11 gang, as defined in subdivision (a) of Section 186.22, under the  
12 Street Terrorism Enforcement and Prevention Act (Chapter 11  
13 commencing with Section 186.20) of Title 7 of Part 1), as a felony.
- 14 (4) Where the person is not in lawful possession of the firearm,  
15 as defined in this section, or the person is within a class of persons  
16 prohibited from possessing or acquiring a firearm pursuant to  
17 Section 12021 or 12021.1 of this code or Section 8100 or 8103 of  
18 the Welfare and Institutions Code, as a felony.
- 19 (5) Where the person has been convicted of a crime against a  
20 person or property, or of a narcotics or dangerous drug violation,  
21 by imprisonment in the state prison, or by imprisonment in a county  
22 jail not to exceed one year, by a fine not to exceed one thousand  
23 dollars (\$1,000), or by both that imprisonment and fine.
- 24 (6) By imprisonment in the state prison, or by imprisonment in  
25 a county jail not to exceed one year, by a fine not to exceed one  
26 thousand dollars (\$1,000), or by both that fine and imprisonment  
27 if both of the following conditions are met:
- 28 (A) Both the handgun and the unexpended ammunition capable  
29 of being discharged from that firearm are either in the immediate  
30 possession of the person or readily accessible to that person, or  
31 the handgun is loaded as defined in subdivision (g) of Section  
32 12031.
- 33 (B) The person is not listed with the Department of Justice  
34 pursuant to paragraph (1) of subdivision (c) of Section 11106, as  
35 the registered owner of that handgun.
- 36 (7) In all cases other than those specified in paragraphs (1) to  
37 (6), inclusive, by imprisonment in a county jail not to exceed one  
38 year, by a fine not to exceed one thousand dollars (\$1,000), or by  
39 both that imprisonment and fine.

1 (c) A peace officer may arrest a person for a violation of  
2 paragraph (6) of subdivision (b) if the peace officer has probable  
3 cause to believe that the person is not listed with the Department  
4 of Justice pursuant to paragraph (1) of subdivision (c) of Section  
5 11106 as the registered owner of the handgun, and one or more of  
6 the conditions in subparagraph (A) of paragraph (6) of subdivision  
7 (b) are met.

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

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

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

31 (f) For purposes of this section, "lawful possession of the  
32 firearm" means that the person who has possession or custody of  
33 the firearm either lawfully owns the firearm or has the permission  
34 of the lawful owner or a person who otherwise has apparent  
35 authority to possess or have custody of the firearm. A person who  
36 takes a firearm without the permission of the lawful owner or  
37 without the permission of a person who has lawful custody of the  
38 firearm does not have lawful possession of the firearm.

39 SEC. 6. Section 12026 of the Penal Code is amended to read:

1 12026. (a) Sections 12025 and 12037 shall not apply to or  
2 affect any citizen of the United States or legal resident over the  
3 age of 18 years who resides or is temporarily within this state, and  
4 who is not within the excepted classes prescribed by Section 12021  
5 or 12021.1 of this code or Section 8100 or 8103 of the Welfare  
6 and Institutions Code, who carries, either openly or concealed,  
7 anywhere within the citizen's or legal resident's place of residence,  
8 place of business, or on private property owned or lawfully  
9 possessed by the citizen or legal resident any handgun.

10 (b) No permit or license to purchase, own, possess, keep, or  
11 carry, either openly or concealed, shall be required of any citizen  
12 of the United States or legal resident over the age of 18 years who  
13 resides or is temporarily within this state, and who is not within  
14 the excepted classes prescribed by Section 12021 or 12021.1 of  
15 this code or Section 8100 or 8103 of the Welfare and Institutions  
16 Code, to purchase, own, possess, keep, or carry, either openly or  
17 concealed, a handgun within the citizen's or legal resident's place  
18 of residence, place of business, or on private property owned or  
19 lawfully possessed by the citizen or legal resident.

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

22 SEC. 7. Section 12026.2 of the Penal Code is amended to read:

23 12026.2. (a) Section 12025 does not apply to, or affect, any  
24 of the following:

25 (1) The possession of a firearm by an authorized participant in  
26 a motion picture, television, or video production or entertainment  
27 event when the participant lawfully uses the firearm as part of that  
28 production or event or while going directly to, or coming directly  
29 from, that production or event.

30 (2) The possession of a firearm in a locked container by a  
31 member of any club or organization, organized for the purpose of  
32 lawfully collecting and lawfully displaying pistols, revolvers, or  
33 other firearms, while the member is at meetings of the clubs or  
34 organizations or while going directly to, and coming directly from,  
35 those meetings.

36 (3) The transportation of a firearm by a participant when going  
37 directly to, or coming directly from, a recognized safety or hunter  
38 safety class, or a recognized sporting event involving that firearm.

1 (4) The transportation of a firearm by a person listed in Section  
2 12026 directly between any of the places mentioned in Section  
3 12026.

4 (5) The transportation of a firearm by a person when going  
5 directly to, or coming directly from, a fixed place of business or  
6 private residential property for the purpose of the lawful repair or  
7 the lawful transfer, sale, or loan of that firearm.

8 (6) The transportation of a firearm by a person listed in Section  
9 12026 when going directly from the place where that person  
10 lawfully received that firearm to that person's place of residence  
11 or place of business or to private property owned or lawfully  
12 possessed by that person.

13 (7) The transportation of a firearm by a person when going  
14 directly to, or coming directly from, a gun show, swap meet, or  
15 similar event to which the public is invited, for the purpose of  
16 displaying that firearm in a lawful manner.

17 (8) The transportation of a firearm by an authorized employee  
18 or agent of a supplier of firearms when going directly to, or coming  
19 directly from, a motion picture, television, or video production or  
20 entertainment event for the purpose of providing that firearm to  
21 an authorized participant to lawfully use as a part of that production  
22 or event.

23 (9) The transportation of a firearm by a person when going  
24 directly to, or coming directly from, a target range, which holds a  
25 regulatory or business license, for the purposes of practicing  
26 shooting at targets with that firearm at that target range.

27 (10) The transportation of a firearm by a person when going  
28 directly to, or coming directly from, a place designated by a person  
29 authorized to issue licenses pursuant to Section 12050 when done  
30 at the request of the issuing agency so that the issuing agency can  
31 determine whether or not a license should be issued to that person  
32 to carry that firearm.

33 (11) The transportation of a firearm by a person when going  
34 directly to, or coming directly from, a lawful camping activity for  
35 the purpose of having that firearm available for lawful personal  
36 protection while at the lawful campsite. This paragraph shall not  
37 be construed to override the statutory authority granted to the  
38 Department of Parks and Recreation or any other state or local  
39 governmental agencies to promulgate rules and regulations  
40 governing the administration of parks and campgrounds.

- 1 (12) The transportation of a firearm by a person in order to  
2 comply with subdivision (c) or (i) of Section 12078 as it pertains  
3 to that firearm.
- 4 (13) The transportation of a firearm by a person in order to  
5 utilize subdivision (l) of Section 12078 as it pertains to that firearm.
- 6 (14) The transportation of a firearm by a person when going  
7 directly to, or coming directly from, a gun show or event, as  
8 defined in Section 478.100 of Title 27 of the Code of Federal  
9 Regulations, for the purpose of lawfully transferring, selling, or  
10 loaning that firearm in accordance with subdivision (d) of Section  
11 12072.
- 12 (15) The transportation of a firearm by a person in order to  
13 utilize paragraph (6) of subdivision (a) of Section 12078 as it  
14 pertains to that firearm.
- 15 (16) The transportation of a firearm by a person who finds the  
16 firearm in order to comply with Article 1 (commencing with  
17 Section 2080) of Chapter 4 of Division 3 of the Civil Code as it  
18 pertains to that firearm and if that firearm is being transported to  
19 a law enforcement agency, the person gives prior notice to the law  
20 enforcement agency that he or she is transporting the firearm to  
21 the law enforcement agency.
- 22 (17) The transportation of a firearm by a person in order to  
23 comply with paragraph (2) or (3) of subdivision (f) of Section  
24 12072 as it pertains to that firearm.
- 25 (18) The transportation of a firearm by a person who finds the  
26 firearm and is transporting it to a law enforcement agency for  
27 disposition according to law, if he or she gives prior notice to the  
28 law enforcement agency that he or she is transporting the firearm  
29 to the law enforcement agency for disposition according to law.
- 30 (19) The transportation of a firearm by a person for the purpose  
31 of obtaining an identification number or mark assigned for that  
32 firearm from the Department of Justice pursuant to Section 12092.
- 33 (20) The transportation by a member of an organization of a  
34 firearm directly to, or directly from, official parade duty or  
35 ceremonial occasions of that organization, or a place for the  
36 purpose of rehearsing or practicing for official parade duty or  
37 ceremonial occasions of that organization, if the organization is  
38 chartered by the Congress of the United States, or is a nonprofit  
39 mutual or public benefit corporation organized and recognized as

1 a nonprofit tax-exempt organization by the Internal Revenue  
2 Service.

3 (b) In order for a firearm to be exempted under subdivision (a),  
4 while being transported to or from a place, the firearm shall be  
5 unloaded, kept in a locked container, as defined in subdivision (d),  
6 and the course of travel shall include only those deviations between  
7 authorized locations as are reasonably necessary under the  
8 circumstances.

9 (c) This section does not prohibit or limit the otherwise lawful  
10 carrying or transportation of any handgun in accordance with this  
11 chapter.

12 (d) As used in this section, "locked container" means a secure  
13 container which is fully enclosed and locked by a padlock, keylock,  
14 combination lock, or similar locking device. The term "locked  
15 container" does not include the utility or glove compartment of a  
16 motor vehicle.

17 SEC. 8. Section 12037 is added to the Penal Code, to read:

18 12037. (a) A person is guilty of openly carrying an unloaded  
19 handgun when that person carries an exposed and unloaded  
20 handgun outside a vehicle on his or her person while in any public  
21 place or on any public street in an incorporated city or in any public  
22 place or on any public street in a prohibited area of an  
23 unincorporated territory.

24 (b) A violation of this section is punishable by imprisonment  
25 in a county jail not to exceed six months, by a fine not to exceed  
26 one thousand dollars (\$1,000), or by both that fine and  
27 imprisonment.

28 (c) (1) Nothing in this section shall preclude prosecution under  
29 Sections 12021 and 12021.1 of this code, Section 8100 or 8103 of  
30 the Welfare and Institutions Code, or any other law with a penalty  
31 greater than is set forth in this section.

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

37 (d) Subdivision (a) does not apply to, or affect, any of the  
38 following:

39 (1) The open carrying of an unloaded handgun by any peace  
40 officer or any honorably retired peace officer if he or she may

- 1 carry a concealed firearm pursuant to Section 12027 or a loaded  
2 firearm pursuant to Section 12031.
- 3 (2) The open carrying of an unloaded handgun by any person  
4 to the extent that person may carry a loaded firearm pursuant to  
5 Section 12031.
- 6 (3) The open carrying of an unloaded handgun as merchandise  
7 by a person who is engaged in the business of manufacturing,  
8 importing, wholesaling, repairing, or dealing in firearms and who  
9 is licensed to engage in that business or the authorized  
10 representative or authorized agent of that person while engaged  
11 in the lawful course of the business.
- 12 (4) The open carrying of an unloaded handgun by duly  
13 authorized military or civil organizations while parading or while  
14 rehearsing or practicing parading, or the members thereof when  
15 at the meeting places of their respective organizations.
- 16 (5) The open carrying of an unloaded handgun by a member of  
17 any club or organization organized for the purpose of practicing  
18 shooting at targets upon established target ranges, whether public  
19 or private, while the members are using handguns upon the target  
20 ranges or incident to the use of a handgun at that target range.
- 21 (6) The open carrying of an unloaded handgun by a licensed  
22 hunter while engaged in ~~lawful~~ hunting or while transporting that  
23 handgun when going to or returning from ~~lawful hunting~~ *that*  
24 *hunting expedition*.
- 25 (7) The open carrying of an unloaded handgun incident to  
26 transportation of a handgun by a person operating a licensed  
27 common carrier or an authorized agent or employee thereof when  
28 transported in conformance with applicable federal law.
- 29 (8) The open carrying of an unloaded handgun by a member of  
30 an organization chartered by the Congress of the United States or  
31 a nonprofit mutual or public benefit corporation organized and  
32 recognized as a nonprofit tax-exempt organization by the Internal  
33 Revenue Service while on official parade duty or ceremonial  
34 occasions of that organization or while rehearsing or practicing  
35 for official parade duty or ceremonial occasions.
- 36 (9) The open carrying of an unloaded handgun within a gun  
37 show conducted pursuant to Sections 12071.1 and 12071.4.
- 38 (10) The open carrying of an unloaded handgun within a school  
39 zone, as defined in Section 626.9, with the written permission of

1 the school district superintendent, his or her designee, or equivalent  
2 school authority.

3 (11) The open carrying of an unloaded handgun when in  
4 accordance with the provisions of Section 171b.

5 (12) The open carrying of an unloaded handgun by any person  
6 while engaged in the act of making or attempting to make a lawful  
7 arrest.

8 (13) The open carrying of an unloaded handgun incident to  
9 loaning, selling, or transferring the same in accordance with Section  
10 12072 or any of the exemptions from subdivision (d) of Section  
11 12072 so long as that handgun is possessed within private property  
12 and the possession and carrying is with the permission of the owner  
13 or lessee of that private property.

14 (14) The open carrying of an unloaded handgun by a person  
15 engaged in firearms-related activities, while on the premises of a  
16 fixed place of business which is licensed to conduct and conducts,  
17 as a regular course of its business, activities related to the sale,  
18 making, repair, transfer, pawn, or the use of firearms, or related  
19 to firearms training.

20 (15) The open carrying of an unloaded handgun by an authorized  
21 participant in, or an authorized employee or agent of a supplier of  
22 firearms for, a motion picture, television or video production, or  
23 entertainment event when the participant lawfully uses the handgun  
24 as part of that production or event, as part of rehearsing or  
25 practicing for participation in that production or event, or while  
26 the participant or authorized employee or agent is at that production  
27 or event, or rehearsal or practice for that production or event.

28 (16) The open carrying of an unloaded handgun incident to  
29 obtaining an identification number or mark assigned for that  
30 handgun from the Department of Justice pursuant to Section 12092.

31 (17) The open carrying of an unloaded handgun at established  
32 target ranges, whether public or private, while the person is using  
33 the handgun upon the target ranges.

34 (18) The open carrying of an unloaded handgun by a person  
35 when that person is summoned by a peace officer to assist in  
36 making arrests or preserving the peace while he or she is actually  
37 engaged in assisting that officer.

38 (19) The open carrying of an unloaded handgun incident to:

39 (A) Complying with paragraph (2) or (3) of subdivision (f) of  
40 Section 12072 as it pertains to that handgun.

1 (B) Subdivision (l) of Section 12078 as it pertains to that  
2 handgun.

3 (C) Paragraph (6) of subdivision (a) of Section 12078 as it  
4 pertains to that handgun.

5 (D) Complying with subdivision (c) or (i) of Section 12078 as  
6 it pertains to that handgun.

7 (20) ~~The open and unloaded carrying of a~~ *carrying of an*  
8 *unloaded* handgun incident to and in the course and scope of  
9 training of or by an individual to become a sworn peace officer as  
10 part of a course of study approved by the Commission on Peace  
11 Officer Standards and Training.

12 (21) ~~The open and unloaded carrying of a~~ *carrying of an*  
13 *unloaded* handgun incident to and in the course and scope of  
14 training of or by an individual to become licensed pursuant to  
15 Section 12050 as part of a course of study necessary or authorized  
16 by the person authorized to issue the license pursuant to Section  
17 12050.

18 (22) ~~The open and unloaded carrying of a~~ *carrying of an*  
19 *unloaded* handgun incident to and at the request of a sheriff or  
20 chief or other head of a municipal police department.

21 (23) ~~The open and unloaded carrying of a~~ *carrying of an*  
22 *unloaded* handgun by a person when done within a place of  
23 business, a place of residence, or on private property, if done with  
24 the permission of a person ~~who is exempt from the prohibitions~~  
25 ~~set forth in this section by virtue of the provisions of subdivision~~  
26 ~~(a) of Section 12026, by virtue of subdivision (a) of Section 12026,~~  
27 *may carry openly an unloaded handgun within that place of*  
28 *business, place of residence, or on that private property owned or*  
29 *lawfully possessed by that person.*

30 (24) *The open carrying of an unloaded handgun at an auction*  
31 *or similar event of a nonprofit public benefit or mutual benefit*  
32 *corporation at which firearms are auctioned or otherwise sold to*  
33 *fund the activities of that corporation or the local chapters of that*  
34 *corporation if that handgun is a handgun that is to be auctioned*  
35 *or otherwise sold for that nonprofit public benefit or mutual benefit*  
36 *and it is to be delivered by a person licensed pursuant to, and*  
37 *operating in accordance with, Section 12071.*

38 (e) Notwithstanding the fact that the term “an unloaded  
39 handgun” is used in this section, each handgun shall constitute a  
40 distinct and separate offense under this section.

- 1 (f) For purposes of this section, the following shall apply:  
2 (1) A handgun shall be deemed unloaded if it is not "loaded"  
3 within the meaning of subdivision (g) of Section 12031.  
4 (2) The term "prohibited area" means any place where it is  
5 unlawful to discharge a weapon.  
6 (3) The term "public place" shall have the same meaning as in  
7 Section 12031.  
8 SEC. 9. Section 12590 of the Penal Code is amended to read:  
9 12590. (a) Any person who does any of the following acts  
10 while engaged in picketing, or other informational activities in a  
11 public place relating to a concerted refusal to work, is guilty of a  
12 misdemeanor:  
13 (1) Carries concealed upon his or her person or within any  
14 vehicle which is under his or her control or direction any handgun.  
15 (2) Carries a loaded firearm upon his or her person or within  
16 any vehicle which is under his or her control or direction.  
17 (3) Carries a deadly weapon.  
18 (4) Wears the uniform of a peace officer, whether or not the  
19 person is a peace officer.  
20 (5) Carries an unloaded handgun openly on his or her person  
21 outside of a vehicle.  
22 (b) This section shall not be construed to authorize or ratify any  
23 picketing or other informational activities not otherwise authorized  
24 by law.  
25 (c) Section 12027 shall not be construed to authorize any  
26 conduct described in paragraph (1) of subdivision (a), nor shall  
27 subdivision (b) of Section 12031 be construed to authorize any  
28 conduct described in paragraph (2) of subdivision (a), nor shall  
29 subdivision (d) of Section 12037 be construed to authorize any  
30 conduct described in paragraph (5) of subdivision (a).  
31 SEC. 10. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district will be incurred because this act creates a new crime or  
35 infraction, eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section 17556 of  
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O

BILL ANALYSIS

SENATE COMMITTEE ON PUBLIC SAFETY  
Senator Mark Leno, Chair  
2009-2010 Regular Session

A  
B  
  
1  
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4

AB 1934 (Saldana)  
As Amended June 10, 2010  
Hearing date: June 22, 2010  
Penal Code  
SM:mc

OPEN CARRYING OF UNLOADED HANDGUNS

HISTORY

Source: Author

Prior Legislation: 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; Brady Campaign to Prevent Gun Violence,  
Orange County Chapter; California Police Chiefs  
Association; City of Los Angeles; City of West  
Hollywood; Coalition Against Gun Violence, Santa  
Barbara County; Councilmember Marti Emerald, City of  
San Diego; Friends Committee on Legislation of  
California; Interfaith Council of Contra Costa County;  
Legal Community Against Violence; Los Angeles Sheriff's  
Department; Peace Officer Research Association of  
California; Violence Prevention Coalition of Greater  
Los Angeles; Violence Prevention Coalition of Orange  
County; Women Against Gun Violence; City of Santa  
Barbara; Taxpayers for Improving Public Safety; Council

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Member, District 2, for City of San Jose; numerous  
individuals

Opposition: California Rifle and Pistol Association; National  
Rifle Association; Republican Liberty Caucus of  
California; The Bay Area Open Carry Movement; numerous  
individuals

Assembly Floor Vote: Ayes 46 - Noes 30

KEY ISSUE

SHOULD THE OPEN CARRYING OF UNLOADED HANDGUNS IN PUBLIC BE  
PROHIBITED, EXCEPT AS SPECIFIED?

PURPOSE

The purpose of this bill is to prohibit the open carrying of unloaded handguns in public, except as specified.

Existing law defines "handgun" as any "pistol," "revolver," or "firearm capable of being concealed upon the person." (Penal Code 12001(a)(2).)

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,

Carries concealed upon his or her person any pistol,

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revolver, or other firearm capable of being concealed upon the person. (Penal Code 12025(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:

o 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,

o The person is not listed with the Department of Justice (DOJ) as the registered owner of the firearm. (Penal Code 12025(b).)

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 12025.5, 12026, 12026.1, 12026.2, 12027, and 12050.)

Existing law authorizes the sheriff of a county, or the chief or other head of a municipal police department of any city or city

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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 12050.)

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 12025(b) and provide numerous exceptions and limitation to this prohibition. (Penal Code 12031.)

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 12031(g).)

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

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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 12031(b).)

Existing law 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,"

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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 629.9.)

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 12021(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 would make it a misdemeanor, punishable by up to six months in jail, a fine of up to \$1000, or both, for a person to carry an exposed and unloaded handgun outside a vehicle 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 on any public street in a prohibited area of an unincorporated territory.

This bill states that it would not preclude prosecution under any other law with a penalty greater than is set forth in this section.

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This bill provides that its 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 would exempt the following circumstances from the prohibition proposed by this bill:

The open carrying of an unloaded handgun by any peace officer or any honorably retired peace officer if he or she may carry a concealed firearm pursuant to Section 12027 or a loaded firearm pursuant to Section 12031.

The open carrying of an unloaded handgun by any person to the extent that person may carry a loaded firearm pursuant to Section 12031.

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.

The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading or while rehearsing or practicing parading, or the members thereof when at the meeting places of their respective organizations.

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.

The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting or while transporting that handgun when going to or returning from lawful hunting.

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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 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.

The open carrying of an unloaded handgun within a gun show conducted pursuant to Sections 12071.1 and 12071.4.

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, his or her designee, or equivalent school authority.

The open carrying of an unloaded handgun when in accordance with the provisions of Section 171b.

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 in accordance with Section 12072 or any of the exemptions from subdivision (d) of Section 12072 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

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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.

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 12092.

The open carrying of an unloaded handgun at established target ranges, whether public or private, while the person is using the handgun upon the target ranges.

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 incident to:

- o Complying with paragraph (2) or (3) of subdivision (f) of Section 12072 as it pertains to that handgun.
- o Subdivision (l) of Section 12078 as it pertains to that handgun.
- o Paragraph (6) of subdivision (a) of Section 12078 as it pertains to that handgun.
- o Complying with subdivision (c) or (i) of Section 12078 as it pertains to that handgun.

The open and unloaded carrying of a 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.

The open and unloaded carrying of a handgun incident to and in the course and scope of training of or by an individual to become licensed pursuant to Section 12050 as

part of a course of study necessary or authorized by the person authorized to issue the license pursuant to Section 12050.

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The open and unloaded carrying of a handgun incident to and at the request of a sheriff or chief or other head of a municipal police department.

The open and unloaded carrying of a 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 is exempt from the prohibitions set forth in this section, as specified.

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.

For purposes of this section, the following shall apply:

- o A handgun shall be deemed unloaded if it is not "loaded" within the meaning of subdivision (g) of Section 12031.
- o The term "prohibited area" means any place where it is unlawful to discharge a weapon.
- o The term "public place" shall have the same meaning as in Section 12031.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

The severe prison overcrowding problem California has experienced for the last several years has not been solved. In December of 2006 plaintiffs in two federal lawsuits against the Department of Corrections and Rehabilitation sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a federal three-judge panel issued an order requiring the state to reduce its inmate population to 137.5 percent of design capacity -- a reduction of roughly 40,000 inmates -- within two years. In a prior, related 184-page Opinion and Order dated August 4, 2009, that court stated in part:

"California's correctional system is in a tailspin," the state's independent oversight agency has reported.  
. . . (Jan. 2007 Little Hoover Commission Report,  
"Solving California's Corrections Crisis: Time Is

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Running Out"). Tough-on-crime politics have increased the population of California's prisons dramatically while making necessary reforms impossible. . . . As a result, the state's prisons have become places "of extreme peril to the safety of persons" they house, . . . (Governor Schwarzenegger's Oct. 4, 2006 Prison Overcrowding State of Emergency Declaration), while contributing little to the safety of California's

residents, . . . . California "spends more on corrections than most countries in the world," but the state "reaps fewer public safety benefits." . . . . Although California's existing prison system serves

neither the public nor the inmates well, the state has for years been unable or unwilling to implement the reforms necessary to reverse its continuing deterioration. (Some citations omitted.)

. . . .

The massive 750% increase in the California prison population since the mid-1970s is the result of political decisions made over three decades, including the shift to inflexible determinate sentencing and the passage of harsh mandatory minimum and three-strikes laws, as well as the state's counterproductive parole system. Unfortunately, as California's prison population has grown, California's political decision-makers have failed to provide the resources and facilities required to meet the additional need for space and for other necessities of prison existence. Likewise, although state-appointed experts have repeatedly provided numerous methods by which the state could safely reduce its prison population, their recommendations have been ignored, underfunded, or postponed indefinitely. The convergence of tough-on-crime policies and an unwillingness to expend the necessary funds to support the population growth has brought California's prisons to the breaking point. The state of emergency declared by Governor Schwarzenegger almost three years ago continues to

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this day, California's prisons remain severely overcrowded, and inmates in the California prison system continue to languish without constitutionally adequate medical and mental health care.<1>

The court stayed implementation of its January 12, 2010, ruling pending the state's appeal of the decision to the U.S. Supreme Court. On Monday, June 14, 2010, the U.S. Supreme Court agreed to hear the state's appeal in this case.

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

#### COMMENTS

##### 1. Need for This Bill

According to the author:

As part of a growing "open carry movement" in California, gun enthusiasts have been openly carrying unloaded handguns in public places like coffee shops and restaurants, and at political rallies. Open carry advocates seek to normalize the carrying of firearms in public places. Their threatening and confrontational conduct intimidates the public, wastes law enforcement resources and needlessly increases the risk of firearm-related deaths and injuries.

##### 2. Background - The "Open Carry Movement" in California

California has some of the nation's strictest regulations

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<1> Three Judge Court Opinion and Order, Coleman v. Schwarzenegger, Plata v. Schwarzenegger, in the United States District Courts for the Eastern District of California and the Northern District of California United States District Court composed of three judges pursuant to Section 2284, Title 28 United States Code (August 4, 2009).

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regarding gun ownership. One practice that has remained unregulated is carrying an unconcealed, unloaded handgun. In 2004 and 2005, three bills unsuccessfully attempted to prohibit this practice. (AB 2828 (Cohn) (2004); AB 2501 (Horton) (2004); AB 98 (Cohn) (2005).) A new movement to promote the open carrying of firearms in California and around the country has heightened debate around the issue, as recently 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.

"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."

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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.](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

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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: \_

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.)

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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

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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 will 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. Argument in Support

The California Police Chiefs Association states:

Current statutes do not presumptively prohibit the exposed carrying of an unloaded handgun in public areas. "Open carry" does not require a permit. By contrast, carrying a concealed firearm does require the applicant to demonstrate responsibility and a need to their respective police chief or county sheriff. As a result, there has been an increase in controversial events where individuals openly carry unloaded handguns in public streets and businesses. For instance, a group of about 100 armed citizens hoping to make it easier to carry loaded guns in California gathered at a restaurant in the San Francisco Bay area suburbs in February 2010.

People who open carry often carry ammunition separately, which is permitted under current law. According to CaliforniaOpenCarry.org, "... with a little practice, one can easily load a handgun in

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under two seconds."

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. They may have few details other than that one or more people are present at a location and are armed. Should the gun-carrying person move in a way that could be construed as threatening, peace officers may feel compelled to respond in a manner that could be lethal and unsafe not only for the gun-carrying individual, but for others nearby as well.

When responding to calls from concerned citizens, law enforcement agents must determine whether the guns are actually unloaded. The California Police Chiefs Association would submit that in the context of the state's current economic challenges that the practice of openly carrying a handgun in public areas has created an additional drain on police services that are already stretched thin.

5. Argument in Opposition

The California Rifle and Pistol Association states:

On behalf of the membership of the California Rifle and

Pistol Association (CRPA), I am expressing our opposition to AB 1934 for many reasons, including the following:

AB 1934 does not take into account public and private lands used by the public for outdoor recreation purposes.

Hunters, fishermen, hikers, campers, and others would not be able to openly carry a handgun while recreating on vast tracts of public land.

Unarmed individuals would be at risk in remote areas with no means to protect themselves.

AB 1934's checkerboard approach to allowing individuals to carry a loaded or unloaded handgun outside

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of a vehicle in remote areas and not in a prohibited areas adjacent to remote areas (e.g., campgrounds, going to and from campgrounds, returning from fishing to a campground, crossing a designated dirt road or trail, etc.) would cause confusion for the public and make law abiding citizens into criminals because they may not be aware of the specific prohibited areas.

Many remote areas do not have cell phone coverage making it impossible to call for law enforcement help. Even if a person were able to call for help, the time for law enforcement to respond would be too long to be of any assistance. As an example, having a handgun could literally mean the difference between life and death in the case of a predatory mountain lion attack. Pepper spray is not always effective at halting dangerous animals and predators. And, in the case of attacks, you will not have time to open a locked gun case to defend yourself.

People need the option to carry a handgun for self defense. Backcountry areas are known to harbor illegal meth labs and marijuana gardens. The criminal element that engages in these activities pose a threat to hunters, fishermen, hikers, campers, and anyone who uses public lands and private timberlands open to the public for recreational purposes.

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