

RESOLUTION 16-06-2017

DIGEST

Lost and Stolen Guns: Technical Amendments Regarding Mandatory Reporting

Amends Penal Code sections 16520 and 27535 to make technical changes to implement the new provisions requiring mandatory reporting of lost and stolen guns.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code sections 16520 and 27535 to make technical changes to implement the new provisions requiring mandatory reporting of lost and stolen guns. This resolution should be approved in principle because it will properly align the Penal Code with the changes enacted by the passage of Proposition 63.

The current language of Penal Code sections 16520 and 27535 make no reference to the newly created sections 25250 to 25275. Proposition 63 created sections 25250 to 27275 and went into effect on January 1, 2017. However, Proposition 63 failed to make the appropriate changes to sections 16520 and 27535. This proposed amendment would address that failure.

Penal Code section 16520, subdivision (a) reads as follows: “As used in this part, ‘firearm’ means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.” Subdivision (b) states: “As used in the following provisions, ‘firearm’ includes the frame or receiver of the weapon...” which is followed by a list of Penal Code sections to apply the above stated definition. However, section 25250 to 25275, are not included and should be listed for completeness.

Penal Code section 27535, subdivision (b)(11) states: “The replacement of a handgun when the person’s handgun was lost or stolen, and the person reported that firearm lost or stolen prior to the completion of the application to purchase to any local enforcement agency of the city, county, or city and county in which the person resides.” The language of this section needs to reflect the changes to the Penal Code under the new sections 25250 to 25275. This resolution does so.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 16520 and 27535 to read as follows:

- 1 § 16520
- 2 (a) As used in this part, “firearm” means any device, designed to be used as a weapon,
- 3 from which is expelled through a barrel, a projectile by the force of any explosion or other form

4 of combustion.

5 (b) As used in the following provisions, “firearm” includes the frame or receiver of the
6 weapon:

7 (1) Section 16550.

8 (2) Section 16730.

9 (3) Section 16960.

10 (4) Section 16990.

11 (5) Section 17070.

12 (6) Section 17310.

13 (7) Sections 25250 to 25275, inclusive

14 ~~(7)~~ (8) Sections 26500 to 26588, inclusive.

15 ~~(8)~~ (9) Sections 26600 to 27140, inclusive.

16 ~~(9)~~ (10) Sections 27400 to 28000, inclusive.

17 ~~(10)~~ (11) Section 28100.

18 ~~(11)~~ (12) Sections 28400 to 28415, inclusive.

19 ~~(12)~~ (13) Sections 29010 to 29150, inclusive.

20 ~~(13)~~ (14) Section 29180.

21 ~~(14)~~ (15) Sections 29610 to 29750, inclusive.

22 ~~(15)~~ (16) Sections 29800 to 29905, inclusive.

23 ~~(16)~~ (17) Sections 30150 to 30165, inclusive.

24 ~~(17)~~ (18) Section 31615.

25 ~~(18)~~ (19) Sections 31705 to 31830, inclusive.

26 ~~(19)~~ (20) Sections 34355 to 34370, inclusive.

27 ~~(20)~~ (21) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

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

31 (1) Section 16750.

32 (2) Subdivision (b) of Section 16840.

33 (3) Section 25400.

34 (4) Sections 25850 to 26025, inclusive.

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

36 (6) Sections 26035 to 26055, inclusive.

37 (d) As used in the following provisions, “firearm” does not include an unloaded antique
38 firearm:

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

40 (2) Section 16550.

41 (3) Section 16960.

42 (4) Section 17310.

43 (5) Division 4.5 (commencing with Section 25250) of Title 4.

44 ~~(5)~~ (6) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.

45 ~~(6)~~ (7) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.

46 ~~(7)~~ (8) Sections 26500 to 26588, inclusive.

47 ~~(8)~~ (9) Sections 26700 to 26915, inclusive.

48 ~~(9)~~ (10) Section 27510.

49 ~~(10)~~ (11) Section 27530.

50 ~~(11)~~ (12) Section 27540.
51 ~~(12)~~ (13) Section 27545.
52 ~~(13)~~ (14) Sections 27555 to 27585, inclusive.
53 ~~(14)~~ (15) Sections 29010 to 29150, inclusive.
54 ~~(15)~~ (16) Section 25135.
55 (e) As used in Sections 34005 and 34010, “firearm” does not include a destructive device.
56 (f) As used in Sections 17280 and 24680, “firearm” has the same meaning as in Section
57 922 of Title 18 of the United States Code.
58 (g) As used in Sections 29010 to 29150, inclusive, “firearm” includes the unfinished
59 frame or receiver of a weapon that can be readily converted to the functional condition of a
60 finished frame or receiver.
61
62 § 27535
63 (a) No person shall make an application to purchase more than one handgun within any
64 30-day period.
65 (b) Subdivision (a) shall not apply to any of the following:
66 (1) Any law enforcement agency.
67 (2) Any agency duly authorized to perform law enforcement duties.
68 (3) Any state or local correctional facility.
69 (4) Any private security company licensed to do business in California.
70 (5) Any person who is properly identified as a full-time paid peace officer, as defined in
71 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and who is authorized to, and
72 does carry a firearm during the course and scope of employment as a peace officer.
73 (6) Any motion picture, television, or video production company or entertainment or
74 theatrical company whose production by its nature involves the use of a firearm.
75 (7) Any person who may, pursuant to Article 2 (commencing with Section 27600),
76 Article 3 (commencing with Section 27650), or Article 4 (commencing with Section 27700),
77 claim an exemption from the waiting period set forth in Section 27540.
78 (8) Any transaction conducted through a licensed firearms dealer pursuant to Chapter 5
79 (commencing with Section 28050).
80 (9) Any person who is licensed as a collector pursuant to Chapter 44 (commencing with
81 Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto,
82 and has a current certificate of eligibility issued by the Department of Justice pursuant to Article
83 1 (commencing with Section 26700) of Chapter 2.
84 (10) The exchange of a handgun where the dealer purchased that firearm from the person
85 seeking the exchange within the 30-day period immediately preceding the date of exchange or
86 replacement.
87 (11) The replacement of a handgun when the person’s handgun was lost or stolen, and the
88 person reported that firearm lost or stolen under Section 25250 prior to the completion of the
89 application to purchase the replacement handgun ~~to any local law enforcement agency of the~~
90 ~~city, county, or city and county in which the person resides.~~
91 (12) The return of any handgun to its owner.
92 (13) A community college that is certified by the Commission on Peace Officer
93 Standards and Training to present the law enforcement academy basic course or other
94 commission-certified law enforcement training.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: After the approval of Proposition 63 in 2016, reporting a lost or stolen handgun is now required for gun owners. However, Prop 63 failed to include some housekeeping edits to the Penal Code to go with that requirement.

The Solution: This resolution implements housekeeping changes to ensure the penal code is fluid regarding the mandatory reporting of stolen guns, by including the sections in the firearms definition.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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