

RESOLUTION 16-09-2017

DIGEST

Convictions: Advisement of Ten-Year Firearms Ban

Amends Penal Code section 29805 to require courts to notify a person that they are subject to a 10-year firearms ban.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVED IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 29805 to require courts to notify a person that they are subject to a 10-year firearms ban. This resolution should be approved in principle because it incentivizes courts to properly advise a defendant who was not previously notified of the requirement that firearms be relinquished, and it protects those defendants from punishment who unknowingly violated the firearms ban pursuant to Penal Code section 29805.

The proposed language provides a proper balance between requiring the court to advise a defendant about the firearms ban pursuant to Penal Code section 29810 on the one hand, and protecting the rights of the defendant who was not aware of the ban on the other. A defendant should not be held liable for violation of Penal Code section 29805 when he/she was not properly provided notice about the ban by the court at the time the court took the defendant’s plea and/or entered the defendant’s conviction. Additionally, the resolution correctly places the burden on the court to ensure that the defendant is properly advised of his/her obligations originating from the judgment. The result of this resolution is that if the court failed to properly advise the defendant of the firearms ban, then the defendant will still have any firearms in his/her possession confiscated, but he/she would not be subject to charges for violating this section.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 29805 to read as follows:

- 1 § 29805
- 2 (a) Except as provided in Section 29855 or subdivision (a) of Section 29800, any person
- 3 who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
- 4 subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c,
- 5 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6,
- 6 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any
- 7 time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it
- 8 was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300,
- 9 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section
- 10 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant

11 to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 490.2 if the property
12 taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who,
13 within 10 years of the conviction, owns, purchases, receives, or has in possession or under
14 custody or control, any firearm is guilty of a public offense, which shall be punishable by
15 imprisonment in a county jail not exceeding one year or in the state prison, by a fine not
16 exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on
17 forms prescribed by the Department of Justice, shall notify the department of persons subject to
18 this section. However, the prohibition in this section may be reduced, eliminated, or conditioned
19 as provided in Section 29855 or 29860.

20 (b) Except as stated below, failure to provide notice of the firearms ban as described in
21 Penal Code Section 29810 is not a defense to a violation of this chapter.

22 (c) Where a defendant charged with a violation of section 29805 was not previously
23 notified of the firearms ban as required by Penal Code section 29810, the court must notify the
24 defendant of the firearms ban as required in section 29810, update the defendant's original
25 record of conviction to note the advisement, order any firearms in the defendant's possession
26 confiscated and destroyed, and then dismiss the new charge. A defendant so notified is subject
27 to prosecution for any future violation of section 29805.

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

PROPONENT: Katherine DeGovia, Mark Harvis, Robin Bernstein-Lev, Arwen Johnson, Dylan Ford, Rourke Stacy, Tom Moore, Graciela Martinez, Albert Camacho, Nick Stewart-Oaten.

STATEMENT OF REASONS

The Problem: Under existing criminal law, some (but not all) misdemeanor defendants are subject to a ten year firearms ban. For example, a security guard who gets into a bar fight and pleads to a single misdemeanor count of battery with six months of probation is not permitted to own a gun for ten years. The problem is that although courts are technically required to advise such defendants that they are subject to such bans, in practice, given the sheer number of misdemeanors which are subject to the ban, they often do not. As a result, people who legally purchased a firearm (including going through a DOJ background check) *before* they pled on a qualifying misdemeanor are never informed that their continued possession of their lawfully purchased weapon is now unlawful. Such a result is both unfair (because it criminalizes people who tried to comply with gun laws but are never informed that their legal status has changed) and impractical (because those who are unaware that they are no longer allowed to own a gun have no reason to get rid of their gun). Further, the recent passage of Proposition 63 does not alleviate this problem because, while the court's obligation to notify the defendant of the restriction of section 29810 has been reiterated, there is still no consequence if a court fails to advise the defendant of the ban as required.

The Solution: The proposed resolution would strengthen section 29810's requirement that courts advise people newly subject to a firearm ban of the existence of the ban. Where a person who legally purchased a firearm *before* he was convicted of a qualifying misdemeanor but was never told that his continued possession of the legally purchased firearm is now illegal, the resolution

would require courts to advise that person of the existence of the ban, confiscate and destroy the firearm, and then dismiss the case. *Importantly, subsequent possession of a firearm after advisement of the ban will still subject a defendant to prosecution.* By enforcing the requirement that courts tell people who are no longer allowed to have their legally purchased firearm that they are no longer allowed to have it, this resolution will increase the number of voluntarily surrendered firearms, while also preventing the unfair prosecutions of those who would happily comply with the ban but simply were never informed of its existence.

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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