

**RESOLUTION 06-10-2018**

**DIGEST**

Firearms: No Felony Conviction for Possession if Accused has an Outstanding Warrant  
Amends Penal Code sections 29800 and 29805 to prohibit the conviction of an individual in possession of a firearm when the person only has an outstanding warrant.

**STATEMENT OF REASONS**

The Problem: Because of a poorly drafted recent change to criminal law, a person who has been secretly accused of any felony, or numerous misdemeanors, is subject to felony prosecution for owning a legally purchased and properly registered firearm, even if they are never convicted of the underlying charge, never knew that the underlying charge existed, and never knew that they were subject to the firearms ban. Thus, because the recent change to the above-referenced statute allows prosecution wherever a “warrant” is issued, Californians who legally purchased a firearm are subject to felony prosecution for illegal ownership of a firearm if they are ever even accused of a crime and a warrant for their arrest is issued by the court.

The Solution: Prop. 63 has already created an intensive process to ensure that defendant’s convicted of qualifying offenses forfeit any firearms in their possession and are barred from ownership in the future. This resolution would clarify that a defendant simply accused of a crime may not be prosecuted for otherwise lawful gun-ownership. Importantly, this resolution would not prevent courts from ordering defendants to surrender any firearms as a condition of release pending resolution of the case.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 29800 and 29805 to read as follows:

- 1 § 29800
- 2 (a)(1) Any person who has been convicted of, ~~or has an outstanding warrant for,~~ a felony
- 3 under the laws of the United States, the State of California, or any other state, government, or
- 4 country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 23515, or who is
- 5 addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in possession
- 6 or under custody or control any firearm is guilty of a felony.
- 7 (2) Any person who has two or more convictions for violating paragraph (2) of
- 8 subdivision (a) of Section 417 and who owns, purchases, receives, or has in possession or under
- 9 custody or control any firearm is guilty of a felony.
- 10 (b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of
- 11 an offense enumerated in Section 23515, when that conviction results from certification by the
- 12 juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and
- 13 Institutions Code, and who owns or has in possession or under custody or control any firearm is
- 14 guilty of a felony.
- 15 (c) Subdivision (a) shall not apply to a person who has been convicted of a felony under
- 16 the laws of the United States unless either of the following criteria is satisfied:
- 17 (1) Conviction of a like offense under California law can only result in imposition of

18 felony punishment.

19 (2) The defendant was sentenced to a federal correctional facility for more than 30 days,  
20 or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

21  
22 § 29805

23 Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who  
24 has been convicted of ~~, or has an outstanding warrant for,~~ a misdemeanor violation of Section 71,  
25 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of  
26 subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5,  
27 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former  
28 Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter  
29 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes  
30 of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section  
31 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code,  
32 any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions  
33 Code, Section 490.2 if the property taken was a firearm, or of the conduct punished in  
34 subdivision (c) of Section 27590, and who, within 10 years of the conviction, or if the individual  
35 has an outstanding warrant, owns, purchases, receives, or has in possession or under custody or  
36 control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a  
37 county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand  
38 dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the  
39 Department of Justice, shall notify the department of persons subject to this section. However,  
40 the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section  
41 29855 or 29860.

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

**PROPONENT:** Los Angeles County Bar Association

**IMPACT STATEMENT**

This 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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