

RESOLUTION LF-01-2018

DIGEST

Firearms: Possession by a Minor

Amends Penal Code section 29610 to prohibit a minor from possessing all firearms, including rifles and shotguns.

STATEMENT OF REASONS

The Problem: Under existing law, a minor is generally prohibited from possessing a firearm capable of being concealed upon the person, defined as a gun with “a barrel less than 16 inches in length.” (Cal. Pen. Code, §§ 16530, 29610.) Exceptions include when a minor is engaged in a recreational activity while accompanied by a parent or guardian, or with their prior written consent if the minor is at least 16 years old. (See Cal. Pen. Code, § 29615.) However, no laws prohibit a minor’s possession of a non-registrable long gun, such as a shotgun or a ‘featureless’ semi-automatic rifle. (See, e.g., Sterling and Martin, *Enterprising Gun Makers Create Workarounds To California’s New Assault Weapon Ban* (Jun. 20, 2017) CBS SF Bay Area, <http://sanfrancisco.cbslocal.com/2017/06/20/enterprising-gun-makers-workarounds-california-assault-weapon-ban>.)

Since Columbine, minors have used shotguns and semi-automatic rifles in school shootings to inflict mass casualties. The February 14 incident in Parkland, Florida, followed by dozens of threats by minors to carry out similar attacks in Southern California, demonstrate the need and urgency to regulate the possession of long guns. (See Ratzlaff, *Here’s a timeline of Southern California school threats that have been reported after the Florida shooting* (Mar. 4, 2018) Los Angeles Daily News, <https://www.dailynews.com/2018/02/23/heres-a-timeline-of-southern-california-school-threats-that-have-been-reported-after-the-florida-shooting>.) In particular, there appears to be no legitimate reason to permit a minor to possess a shotgun or semi-automatic rifle in any circumstance where they cannot have a handgun. Minors do not have the same Second Amendment right to bear arms as adults, because of “their inability to make critical decisions in an informed, mature manner.” (*United States v. Rene E.* (1st Cir. 2009) 583 F.3d 8, 16 fn.8.)

The Solution: This resolution improves public safety by closing a significant loophole in California’s gun laws and gives law enforcement and courts the ability to intervene when a minor possesses a shotgun or a semi-automatic rifle, outside of specified activities and without parental consent. (See Cal. Pen. Code, § 29615.) A violation of Penal Code section 29610 is a misdemeanor, unless the minor has a prior conviction, in which case the offense is a wobbler. (See Cal. Pen. Code, § 29700.) In any case, the offense would be processed through a juvenile delinquency court, where all records are automatically sealed and ordered destroyed upon satisfactory completion of probation. (See Welf. & Inst. Code, § 786.)

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 29610 to read as follows:

1 § 29610

2 A minor shall not possess a pistol, revolver, or other firearm ~~capable of being concealed~~
3 ~~upon the person.~~

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

PROPONENT: Michael Fern, Nick Stewart-Oaten, Darin Wessel, Frank Leidman, Shaun Jacobs, Ujvala Singh, Mark Harvis, Ben Rudin, Kim Tran, Pamela Villanueva

IMPACT STATEMENT:

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

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RESPONSIBLE FLOOR DELEGATE: Michael Fern

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 29610 to prohibit a minor from possessing all firearms, including rifles and shotguns. This resolution should be approved in principle because minors should not be allowed to possess any firearm without parental knowledge or consent.

Under current law, a minor cannot possess a firearm that is capable of being concealed on their person unless they are accompanied by a parent, legal guardian, responsible adult with the written consent of the parent or 16 years of age with the written consent of the parent and are actively engaged in a recreational sport which involves the use of a firearm. This restriction is reasonable because a minor should not be able to carry a weapon they can conceal upon their person for obvious reasons. However, in California, if a minor were to possess a shotgun, rifle or even a semi-automatic weapon, the minor would not be in violation of any law.

Twenty-one states and the District of Columbia have set minimum age laws for a minor to possess a long gun, i.e., shotgun or rifle, ranging from 14 to 21 years of age. Because minors have used shotguns, rifles or semi-automatic weapons in school shootings to inflict mass casualties, minors should not be allowed to possess a firearm, much less a shotgun or rifle without parental knowledge or consent. Further, age limits are set so that minors cannot purchase alcohol or tobacco, which can cause serious damage to the body, because minors do not have the maturity to make sound informed decisions. Therefore, it is reasonable to prohibit a minor from possessing any firearm, including a shotgun, rifle or semi-automatic weapon,

something that can cause more damage to a person's body than alcohol or tobacco.

The proposed resolution is reasonable and would be a minimal restriction on the ability of minors to use guns. It would also provide a first line of defense towards minors' use of guns for unlawful purposes as well as close a loophole in the law. Because minors do not have the same Second Amendment rights to bear arms that adults do, there would not be a potential challenge to the Second Amendment right to bear arms.