

CALIFORNIA GUN LAWS

2nd Edition

2015 Supplement

by **C.D. MICHEL**
attorney at law





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COLDRAW PUBLISHING
C. D. Michel
180 E. Ocean Blvd., Suite 200
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562-216-4444 Office ~ 562-216-4445 Fax
www.CalGunLawsBook.com
www.MichellLawyers.com



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ATTENTION!

This is supplemental material for your copy of the Second Edition of *California Gun Laws: A Guide to State and Federal Firearm Regulations*.

It Does Not Replace the Book!

The information contained in this 2015 Supplement can only be put into context by reading the corresponding sections of the Second Edition of *California Gun Laws*. We do not advise using the 2015 Supplement without the book.

If you do not own a copy of the Second Edition of *California Gun Laws*, don't worry. It is available for purchase at www.CalGunLawsBook.com.

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DISCLAIMER

Although every effort has been made to ensure the accuracy of the information contained inside this 2015 Supplement to the Second Edition of *California Gun Laws: A Guide to State and Federal Firearm Regulations*, I do not make any claims, promises, or guarantees about the absolute accuracy, completeness, or adequacy of the contents herein. The explanatory statements in this 2015 Supplement should not be taken as legal advice or a restatement of the law. I also expressly disclaim any liability for errors or omissions that may be contained in this 2015 Supplement. All disclaimers and statements made in the Second Edition of *California Gun Laws* are incorporated by reference into this 2015 Supplement.

INTRODUCTION

After the Second Edition of *California Gun Laws: A Guide to State and Federal Firearm Regulations* was published, the California Legislature began the second half of the 2013-2014 legislative session. Over the course of the legislative year, more than two dozen gun-related bills were introduced for consideration. Many of these bills were merely technical in nature, but they had the potential to have a broad effect on California law.

Fortunately for gun owners, many of the bills failed early in the legislative session. This includes one of the major gun-related bills of this session: Senator Kevin de León's ill-conceived ammunition registration bill, Senate Bill (SB)¹ 53, which failed to garner the necessary votes to move out of the Legislature. On the other hand, Assembly Bill (AB) 1964 was passed early in the legislative session. This new law effectively closes the single-shot pistol exemption to California's "unsafe handgun" laws.

By the end of the legislative session, seven significant gun-related bills had passed and landed on Governor Jerry Brown's desk for his consideration. Governor Brown ultimately signed six of these bills into law (two pro-hunting bills and four anti-gun bills) and expressly vetoed one: Senator de León's highly controversial "ghost gun" bill (SB 808).

Among the signed bills was AB 1014, one of the most controversial and high-profile gun-related bills from this legislative session. Under this new law, a law enforcement officer or "immediate family member" can seek a "gun violence restraining order" to temporarily prohibit a person from owning and possessing firearms and ammunition.

Two other significant pieces of legislation that were signed into law were AB 1609 and SB 199. AB 1609 makes it a crime to transport, import, or otherwise bring into California, firearms that were acquired outside of the state, unless the firearms are transferred through a licensed firearms dealer. SB 199 requires certain airsoft devices and a small number of "BB devices" to be brightly colored.

In total, fourteen gun-related bills were signed into law, many of which will take effect on January 1, 2015.²

While these new laws collectively make important changes to California's regulatory scheme, they were not significant enough to warrant

¹ For a complete list of the abbreviations used throughout this Supplement, please see the table of abbreviations in the Second Edition of *California Gun Laws*.

² See the table on page x for a complete list of the significant gun-related bills that were either signed into law in 2014 or will take effect on January 1, 2015.

a new edition of *California Gun Laws*. So, to keep you and your copy of *California Gun Laws* up-to-date with the current changes in the law, we have created this 2015 Supplement.³

Inside this Supplement, you will find a number of updates and changes to the Second Edition of *California Gun Laws*. This includes the relevant new gun laws that were passed during the 2013-2014 legislative session, technical revisions, as well as important case updates to keep you informed about current Second Amendment litigation.

This Supplement was written in a very specific way to complement the Second Edition of *California Gun Laws*, and the information contained in the Supplement can only be put into context by reading it alongside the book. As will be explained in detail in the “How to Read This Supplement” section herein, each subsection in this Supplement makes reference to a corresponding subsection in the book. There are also important disclaimers and explanations in the book that apply to this Supplement. The Supplement has been specially formatted so it can be printed in booklet form and conveniently placed in the back of the book for quick reference.

This effort would not have been possible without the support of the many gun owners, police officers, lawyers, judges, prosecutors, defense attorneys, and others who purchased the Second Edition of *California Gun Laws*. Without you, this Supplement would not exist, and thousands of gun owners across California would be left uninformed about the many changes in the law.

We shall see how next year’s legislative session goes, but given the political inclinations to pass more and more gun-control laws in Sacramento, it is likely we will be putting out a completely new Third Edition of the book. Stay tuned to www.CalGunLawsBook.com for updates, and thank you for your continuing support.

³ Also referred to as “Supplement.”

HOW TO USE THE 2015 SUPPLEMENT

This 2015 Supplement was specifically written to be read in conjunction with the Second Edition of *California Gun Laws*.¹ Inside you will find a number of updates that will inform you of the most important changes to California's firearms laws since the publication of the CGL Book, as well as technical revisions and additional material that could not be included in the book at the time of publication. The information contained in this Supplement can only be put into context by reading the corresponding material contained in the CGL Book. So, before reading this Supplement, you should be familiar with the CGL Book, especially the Disclaimer (pages xxxi-xxxiii), Introduction (pages xxxv-xlii), and Abbreviations section (xlili-xliv), as well as the corresponding chapters that have been updated, as indicated in this Supplement.

In the first part of the Supplement, you will find a table summarizing the significant gun-related bills that were passed after the publication of the CGL book. This table also contains the bills that were passed in previous years that will take effect on January 1, 2015, and one, AB 711 (2013) (the restriction on lead ammunition for hunting), that will be taking effect sometime in the next couple of years. This table serves as a quick reference guide that summarizes the bills and also lists where you can find the corresponding subject matter in the CGL Book.

In the second part of the Supplement, you will find the latest updates on the significant gun-related cases that were discussed in the CGL Book.

In the third and final part of the Supplement, you will find the majority of the changes, additions, and corrections that update the CGL Book. This part is divided into the chapters contained in the CGL Book, and the corresponding subsection headings that have been updated are listed under each chapter. Chapters that do not have any updates are indicated by “*No Changes*.”

Above each updated or added subsection, you will find an italicized instruction that tells you the exact page(s) and title of the corresponding subsection in the CGL Book.

For the subsections that have been *updated*, we have reproduced the *entire* subsection that now replaces the existing subsection of the CGL Book.

¹ The Second Edition of *California Gun Laws* will hereinafter be referred to as the “CGL Book.”

So, all you need to do is simply “replace” the old subsection of the CGL Book with the corresponding new subsection.²

For example, if the italicized instruction states “*CGL Book Page 32-33 - Replace Subsection D with the following,*” you should *replace* the existing subsection D on pages 32-33 of the CGL Book with the new subsection D that is below the header in the Supplement.

In some chapters, entirely new subsections have been *added* – *i.e.*, there are no corresponding subsections in the CGL Book to replace in these instances. So, the new subsection should be added *after* the subsection that is listed in the italicized instruction.

For example, if the italicized instruction states “*CGL Book Pages 64-68 - Add the following after Subsection 1*” and beneath the instruction is “2. Misdemeanor Conviction Resulting in a Five-Year Restriction,” you should *add* this new subsection 2 and corresponding material after subsection 1. Please note that when a new subsection has been added, the following subsection headings in that chapter of the CGL Book must also be changed accordingly to the next letter or number.

Moreover, any references to chapters, subsections, or any information “above” or “below” in the Supplement refer to the chapters, subsections, or information above or below the subsection in the CGL Book. Also, note that the footnote numbers in the Supplement will not match the footnote numbers that are in the CGL Book.

For your convenience, we have formatted this Supplement so you can print it in booklet format, fold it in half (or staple it if you are so inclined), and place it in the back of your copy of the CGL Book for easy reference. Or you can simply print it so that each Supplement page is on its own 8.5” x. 11” page. To learn how to print this Supplement, please follow the directions at: <http://www.CalGunLawsBook.com/free-2015-supplement/>.

² Of course, we are not advising you to literally “cut and paste” the new supplemental material into the CGL Book (as may be possible with other legal books that are loosely bound, for example); these instructions are intended to guide you on how to read the new material in conjunction with the CGL Book.

NEW LAWS FOR 2015



All of the new and amended laws below are effective as of January 1, 2015, unless otherwise specified. The chapter references indicate where you can find the corresponding subject matter in the Second Edition of *California Gun Laws*.

AB: Assembly Bill

SB: Senate Bill

AB 711: Hunting; Non-Lead Ammunition

Chapter 9

Amends Cal. Fish & Game Code § 3004.5

The California Department of Fish and Game has until July 1, 2015 to adopt regulations to make it illegal for anyone in California to take any game or non-game animal with lead-based ammunition, effectively banning the use of lead-based ammunition while hunting in California.

Note: once adopted, these regulations must go into effect no later than July 1, 2019.

AB 1014: Gun Violence Restraining Orders

Chapters 3 & 10

Amends P.C. § 1524

Adds P.C. § 1542.5

Creates a procedure by which a law enforcement officer or “immediate family member” can seek a gun violence restraining order from a court, which would prohibit a person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms and ammunition.

Note: this law goes into effect on January 1, 2016.

AB 1498: Protective Orders

Chapter N/A

Amends P.C. § 136.2

Expands the circumstances under which a court is required to consider issuing a criminal protective order, on its own motion, in cases involving domestic violence to include cases in which a defendant is charged with rape, statutory rape, spousal rape, or any offense that requires registration as a sex offender.

AB 1591: Firearms; Prohibited Persons; Notification

Chapter N/A

Amends Cal. Welf. & Inst. Code § 8103

Reduces the notice requirement from two court days to one for when a court must notify the California Department of Justice (DOJ) of specific cases relating to mental health or mental illness that could prohibit a person from possessing a firearm or other deadly weapon.

AB 1609: Firearms**Chapter 4**

Amends P.C. §§ 27590, 27600 & 27920
 Adds P.C. § 27585

Makes it a crime to transport, import, or otherwise bring into California, firearms that were acquired from out of state, unless the firearms were transferred through a licensed firearms dealer in California.

AB 1709: Wildlife; Hunting Licenses**Chapter N/A**

Amends & Adds Cal. Fish & Game Code § 3031

Expands eligibility for a junior hunting license to 16 and 17-year-old California residents, which means that residents under 18 now only have to pay a base fee of \$8.25 instead of \$31.25.

AB 1964: Unsafe Handguns; Single-Shot Pistols**Chapter 9**

Amends P.C. § 32100

Removes exemptions for all single-shot pistols, other than those with a break-top or bolt-action, from California's Roster of Unsafe Handguns.

Also removes exemptions for semi-automatic pistols that have been temporarily or permanently altered so that they will not fire in a semi-automatic mode.

AB 2105: Big Game Mammals; Bighorn Sheep**Chapter N/A**

Amends Cal. Fish & Game Code §§ 3953 & 4902
 Adds Cal. Fish & Game Code § 709

Authorizes nonprofit organizations designated by the California Department of Fish and Wildlife that assist in the sale of big game mammal hunting tags to retain 5% of the sale price of the tag, plus any applicable credit card fees, as a vendor fee to cover administrative costs.

Also sets a Nelson bighorn ram tag at \$400 for California residents and requires the Fish and Game Commission to adopt regulations that fix the fee for non-resident tags to not less than \$1,500 by January 1, 2015.

AB 2220: Private Security Services; Private Patrol Operators**Chapter N/A**

Amends Cal. Bus. & Prof. Code §§ 7583.32 & 7583.40; P.C. § 28235
 Adds Cal. Bus. & Prof. Code § 7583.39; P.C. §§ 28010, 28012, 28014, 28016, 28018, 28020, 28022 & 28024

Requires private patrol operators (PPOs) to carry a minimum of \$1 million in insurance coverage for any loss or occurrence due to bodily injury, including death, property damage, or both.

Exempts duly appointed peace officers who are authorized to carry firearms in the course of their duties, have successfully completed requalification training, and are employed by a PPO, from firearms requalification requirements and from having to pass a specific written examination to renew a firearms qualification card.

Beginning July 1, 2016, authorizes a PPO to be the registered owner of a firearm and allows it to assign firearms to security guards when their employment requires them to be armed.

AB 2300: Firearms; Prohibited Armed Persons File Chapter 10

Amends P.C. §§ 30000 & 30005

Requires that the Prohibited Armed Persons File include persons who have ownership or possession of a firearm on or after January 1, 1996.

Previously, the Armed Prohibited Person File included persons who have ownership or possession of a firearm on or after January 1, 1991.

AB 2310: Unlawful Detainer; Nuisance; Unlawful Weapons & Ammunition Chapter 3

Adds Cal. Civ. Code § 3485

Reenacts provisions authorizing a city prosecutor or city attorney in specific counties to file an action for unlawful detainer to abate a nuisance caused by any illegal conduct involving firearms or ammunition.

Note: this law went into effect on September 15, 2014.

SB 199: BB Devices Chapter 9

Amends P.C. §§ 16250 & 16700

Adds P.C. §§ 16250 & 16700

Modifies the exceptions for “imitation firearm” sales and alters the definition of “BB devices.”

Note: this law goes into effect on January 1, 2016.

SB 392: Fish and Game Code; Game Birds and Waterfowl Chapter N/A

Amends Cal. Fish & Game Code §§ 3080 & 12000

Requires the Fish and Game Commission to recommend legislation or adopt regulations on or before January 1, 2015, to clarify when a possession limit is not violated by processing lawfully-taken game birds or mammals into food.

Provides that a violation of these regulations is either a misdemeanor or an infraction.

SB 505: Peace Officers; Welfare Checks; Firearms Chapter 10

Adds P.C. § 11106.4

Requires law enforcement agencies to develop, adopt, and implement written policies and standard protocols pertaining to the best manner to conduct a “welfare check” when the inquiry into the welfare or well-being of a person is motivated by a concern that the person may be a danger to himself, herself, or others.

SB 683: Firearms; Firearm Safety Certificate Chapters 2 & 4

Amends P.C. §§ 27540, 27875, 27880, 27920, 27925, 28160, 31615, 31620, 31625, 31630, 31635, 31640, 31645, 31650, 31655, 31660, 31700 & 31810

Adds P.C. §§ 16535, 16865, 26840, 26860 & 1610

Expands California's Handgun Safety Certificate requirement to apply to all firearms after January 1, 2015, with exceptions, and requires individuals who purchase or receive a firearm to possess a Firearm Safety Certificate and demonstrate safe handling of such firearm.

SB 910: Domestic Violence; Restraining Orders Chapter N/A

Amends P.C. § 136.2

Expands the definition of "domestic violence" for purposes of the issuance of a protective order to include any abuse perpetrated against a child of a party to the domestic violence proceeding, or a child who is the subject of an action under the Uniform Parentage Act, or against any other person related to the defendant by consanguinity or affinity within the second degree.

CASE UPDATES¹

Peruta v. County of San Diego

10-56971, 2014 WL 555862 (9th Cir. Feb. 13, 2014)

Referenced at CGL Book² page 214, footnote 79 & page 333, footnote 192:

On November 12, 2014, the Ninth Circuit Court of Appeals denied an attempt by Attorney General (AG) Kamala Harris, the Brady Campaign, California Police Chief Association, and California Peace Officer Association to intervene in the case. In a relatively lengthy published order, the Ninth Circuit explained that it exercised its discretion to deny the petitions to intervene because they were untimely. The court also held that the AG was not entitled to intervene in the case because *Peruta* does not implicate the constitutionality of any state statute. Instead, the case challenges San Diego's specific policy for issuing carry licenses. Although this is another significant win for California gun owners, the decision in *Peruta* is still not final. To stay up-to-date on this case and other firearms laws, visit www.CalGunLawsBook.com.

Heller v. District of Columbia

Civil Action No. 08-1289 (D.D.C. Jul. 20, 2008)

Referenced at CGL Book page 315, footnote 117:

On May 15, 2014, United States District Judge James E. Boasberg upheld Washington D.C.'s "assault weapons" ban, finding that it did not violate the Second Amendment. This decision is currently being appealed to the United States Court of Appeals for the District of Columbia.

Gentry v. Harris

Sup. Ct. Cal. filed on Sept. 24, 2013

Referenced at CGL Book page 53, footnote 20 & page 117, footnote 48:

As of October 31, 2014, the Defendants' discovery responses are being reviewed.

¹ We advise that you first read about these cases where they are referenced in the Second Edition of *California Gun Laws: A Guide to State and Federal Firearm Regulations*. Updates, briefs, and opinions for these cases can be found at www.MichellLawyers.com.

² "CGL Book" refers to the Second Edition of *California Gun Laws: A Guide to State and Federal Firearm Regulations*.

New York State Rifle & Pistol Association (NYSRPA) v. Cuomo

13-cv-00297-WMS (W.D.N.Y., complaint filed Mar. 21, 2013)

Referenced at CGL Book page 315, footnote 118:

On December 31, 2013, Western District Chief Judge William Skretny found that even though New York’s “assault weapons” ban is “not constitutionally flawless,” its major elements do not violate the Second Amendment. Judge Skretny took issue with a provision limiting magazine capacity to seven rounds and three minor provisions where the language was unconstitutionally vague, but his ruling still largely conformed to the current judicial trend of upholding the constitutionality of the Assault Weapons Control Act (AWCA) and its ban on “assault weapons.”

Parker v. State of California

221 Cal. App. 4th 340 (2013)

Referenced at CGL Book page 45, footnote 94 & page 164, footnote 264:

As of October 31, 2014, the case is still pending review by the California Supreme Court.

Bauer v. Harris

No. 1:11-at-00526 (E.D. Cal. filed on Aug. 25, 2011)

Referenced at CGL Book page 117, footnote 48:

This case is pending in the U.S. District Court for the Eastern District of California, and dispositive motions will be filed on or before December 19, 2014.

Chapter 1:
**THE CALIFORNIA REGULATORY
ENVIRONMENT**

No Changes.

Chapter 2:

WHAT IS LEGALLY CONSIDERED A "FIREARM" AND "AMMUNITION"?

*CGL Book*¹ Pages 32-33 – Replace Subsection D with the following:

D. Definition of "Weapon"

An element included in all the above definitions of "firearm" is that, in order to be a "firearm," it must first be considered a "weapon."² Although neither California nor federal law specifically defines what a "weapon" is, courts have provided some guidance. California courts instruct that "[a] weapon may be broadly defined as an instrument of offensive or defensive combat."³ Federal courts similarly explain that, to be considered a "firearm," a device must be *designed* as a "weapon," "i.e. an instrument of offense or defense."⁴

Certain items will indisputably meet any reasonable "weapon" definition, such as standard firearms, dirks, and daggers.⁵ But whether an item is actually a "weapon" is not always so clear when its uses for "combat" are uncertain or untraditional, such as pen guns (discussed in Section III). California courts have held that one must know an object *is* a "weapon," may be *used* as a weapon, or must possess the object "as a weapon" for it to legally be considered a "weapon."⁶ Knowledge of an item's use can be proved by circumstantial evidence.⁷

In *People v. Fannin*, the California Court of Appeal considered whether a bicycle chain with a lock at the end was a "slungshot," which

¹ "CGL Book" refers to the Second Edition of *California Gun Laws: A Guide to State and Federal Firearm Regulations*.

² This issue rears its head again in Chapter 9 concerning "destructive devices." In order to be a "destructive device," an item must be a "weapon." P.C. § 16460.

³ 63 CAL. JUR. 3d *Weapons* § 1 (citing Am. Jur. 2d, *Weapons and Firearms* § 1).

⁴ 1 STEPHEN P. HALBROOK, *FIREARMS LAW DESKBOOK* 601 (West 2013-2014 ed. 2013) (italics added).

⁵ See *People v. Reid*, 133 Cal. App. 3d 354, 365 (1982).

⁶ *People v. Gaitan*, 92 Cal. App. 4th 540, 547 (2001); *People v. Taylor*, 93 Cal. App. 4th 933, 941 (2001); *People v. Fannin*, 91 Cal. App. 4th 1399, 1404-05 (2001).

⁷ The prosecution does not need to prove that the defendant knew there was a law against possessing the item, nor that the defendant intended to break or violate the law; it must prove that the defendant knew of the item's uses. *People v. King*, 38 Cal. 4th 617, 627 (2006). Evidence is circumstantial when it is "based on inference and not on personal knowledge or observation." BLACK'S LAW DICTIONARY 595 (8th ed. 2004).

is a prohibited weapon under the Penal Code.⁸ The court held that “if the object is not a weapon per se, but an instrument with ordinary innocent uses, the prosecution must prove that the object was possessed as a *weapon*.”⁹

In short, although no set legal definition for “weapon” exists, there are items, such as certain standard firearms, that are likely to be considered “weapons per se.” Items that do not fall within the “weapons per se” category are characterized by considering the person’s knowledge of the item’s uses or the person’s actual or intended use of the item as a weapon to determine whether the item is legally considered a “weapon.”¹⁰

CGL Book Page 37 – Replace the picture and caption at the end of Subsection F with the following:

F. “Curios or Relics”

*Example of a “Curio or Relic”:
An M1 Garand*



⁸ *People v. Fannin*, 91 Cal. App. 4th 1399, 1400 (2001).

⁹ *People v. Fannin*, 91 Cal. App. 4th 1399, 1404 (2001); see also *People v. Grubb*, 63 Cal. 2d 614, 621 (1965) (possession of modified baseball bat).

¹⁰ See discussion on pen guns, coyote catchers, and potato guns in Section III for application of this rule.

Chapter 3:

WHO CAN OWN AND POSSESS FIREARMS AND AMMUNITION?

*CGL Book Pages 64-68 – Add the following after
Subsection 1:*

2. Misdemeanor Conviction Resulting in a Five-Year Restriction

Beginning January 1, 2016, any person who has been convicted of a misdemeanor under P.C. section 18205 (possessing a firearm while a “gun violence restraining order” is in effect) is prohibited from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for five years, beginning the date the gun violence restraining order expires.¹



*CGL Book Pages 76-77 – Add the following after
Subsection I:*

J. Unlawful Detainer Actions

In 2014, the California Legislature passed an urgency bill, AB 2310, to reenact provisions that allow city attorneys and city prosecutors in Los Angeles, Long Beach, Sacramento, and Oakland to initiate eviction proceedings against tenants for committing nuisance violations involving “unlawful weapons and ammunition purpose.”² The original law ended on January 1, 2014. This bill became effective immediately upon it being signed by the Governor on September 15, 2014. This law will remain in effect until January 1, 2019.³



For purposes of this law, a nuisance violation involving “unlawful weapons and ammunition purpose” is defined as the illegal use, manu-

¹ P.C. § 18205 (effective January 1, 2016).

² CAL. CIV. CODE § 3485; AB 2310, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2310# (last visited Oct. 20, 2014).

³ CAL. CIV. CODE § 3485; AB 2310, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2310# (last visited Oct. 20, 2014).

facturing, causing to be manufactured, importation, possession, possession for sale, sale, furnishing, or the giving away of any:

- (1) Firearm;⁴ *or*
- (2) Ammunition;⁵ *or*
- (3) Assault Weapon;⁶ *or*
- (4) .50 BMG Rifle;⁷ *or*
- (5) Tear gas weapon.⁸

Anytime a person is arrested for any of the above violations, the city attorney or prosecutor is allowed to bring an unlawful detainer proceeding to evict the person from his or her residence, even if the person has not been convicted of the offense.



This law was backed by Los Angeles City Attorney Mike Feuer, who was a former assemblymember. You may remember some of Mr. Feuer's more infamous firearm bills. For example, he was responsible for AB 809 (2011), which requires the registration of long guns, and AB 1471 (2007), which requires microstamping for semiautomatic pistols. Mr. Feuer has never been a supporter of the Second Amendment, and the position his office currently takes on firearm-related cases is a prime example. And while the former provisions that allowed city attorneys and city prosecutors to bring these types of eviction cases were rarely utilized by the Los Angeles City Attorney's office, given Mr. Feuer's notorious anti-firearm positions and strong support for this bill, we can expect a significant number of people to be evicted from their homes in the foreseeable future.

CGL Book Pages 97-98 – Replace Subsection A with the following:

A. California Law Restrictions

Under California law, if you are subject to a restraining order, temporary restraining order, or court order under any of the following code sections, you are prohibited from owning, purchasing, receiving, possessing, or attempting to purchase and receive firearms:

⁴ As defined in P.C. section 16520(a).

⁵ As defined in P.C. sections 16150(b), 16650, 16660.

⁶ As defined in P.C. sections 30510, 30515.

⁷ As defined in P.C. section 30530.

⁸ P.C. § 3485. Tear gas weapons are defined in P.C. section 17250.

- (1) California Code of Civil Procedure (Cal. Civ. Proc. Code) section 527.6 (civil harassment temporary restraining order or injunction); *or*
- (2) Cal. Civ. Proc. Code section 527.8 (employers seeking a temporary restraining order or an injunction for an employee who has suffered unlawful violence or credible threat of violence); *or*
- (3) Cal. Civ. Proc. Code section 527.85 (schools seeking temporary restraining orders or injunctions for students who have suffered off-campus credible threats of violence); *or*
- (4) California Family Code (Cal. Fam. Code) section 6218 (protective orders issued in accordance with Cal. Fam. Code sections 6320, 6321, and 6322); *or*
- (5) P.C. sections 136.2 and 646.91 (court orders against victim and/or witness intimidation and orders protecting against stalking); *or*
- (6) Cal. Welf. & Inst. Code section 15657.03 (protective order in response to elder or dependent adult abuse);⁹ *or*
- (7) Beginning January 1, 2016, P.C. section 18205 (gun violence restraining orders).¹⁰

In instances where a temporary restraining order is issued, and regardless of whether the court ultimately issues a permanent restraining order, you are prohibited from possessing firearms until the temporary order ends or expires. If you knowingly violate this term of the restraining order, you can be held criminally liable.¹¹

Individuals served with a restraining order are required to sell their firearms or, as of January 1, 2014,¹² store them with an FFL, or turn them in to law enforcement.¹³ However, individuals who are served with a “gun violence restraining order” do not have the option to store their firearms with an FFL. Instead, they must either turn their firearms over to law enforcement or sell them to an FFL.¹⁴ These requirements and their exceptions are specifically discussed in Chapter 10.

In certain cases, the court may grant exemptions from the relinquishment requirement of most of the previously-mentioned restraining

⁹ P.C. § 29825(a)-(b).

¹⁰ See AB 1014, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1014# (last visited Oct. 20, 2014).

¹¹ P.C. §§ 29825(a)-(b), 18205 (effective January 1, 2016).

¹² See P.C. § 29830. This was created by AB 539 (2013).

¹³ P.C. § 29825(d).

¹⁴ P.C. § 18120(b)(2) (effective January 1, 2016).

orders,¹⁵ for a particular firearm. To do this, the person subject to the order must “show that a particular firearm is necessary . . . [for] continued employment and that [his or her] current employer is unable to reassign the [person] to another position where a firearm is unnecessary” or, if the person is a peace officer “who as a condition of employment and whose personal safety depends on the ability to carry a firearm,” he or she may be able “to continue . . . carry[ing] a firearm, either on duty or off duty, if the court finds . . . that the officer does not pose a threat of harm.”¹⁶ The former exemption covers most restraining orders; the latter only exempts those served with a restraining order under the California Family Code.

California law does not specifically address how those who receive restraining orders per P.C. section 646.91 should dispose of their firearms. However, P.C. section 29825(d) requires that individuals subject to protective orders surrender their firearms to the local law enforcement agency within the court’s jurisdiction, sell them to a licensed firearms dealer, or transfer them to a licensed firearms dealer under P.C. section 29830 for the duration of the protective order. Additionally, proof of surrender or sale of the firearms must be filed within a specified time of receiving the order.¹⁷

CGL Book Pages 97-98 – Add the following after Subsection A:

1. “Gun Violence Restraining Orders”¹⁸

Beginning January 1, 2016, if you are subject to a “gun violence restraining order,” you are prohibited from having in your custody or control, possessing, receiving, or attempting to purchase or receive, firearms or ammunition while the restraining order is in effect.¹⁹ “Gun violence restraining orders” were created by AB 1014,²⁰ which was passed by the California Legislature in 2014 in response to the Isla Vista shootings in Santa Barbara, California.



¹⁵ CAL. CIV. PROC. CODE § 527.9(f); CAL. FAM. CODE § 6389(h). This exemption does not exist for “gun violence restraining orders.”

¹⁶ CAL. CIV. PROC. CODE § 527.9(f); CAL. FAM. CODE § 6389(h).

¹⁷ P.C. § 29825(d).

¹⁸ This section will only cover the “gun violence restraining order” insofar as it relates to firearm restrictions. For a more detailed analysis of “gun violence restraining orders,” please visit www.CalGunLawsBook.com.

¹⁹ P.C. § 18120(a) (effective January 1, 2016).

²⁰ See AB 1014, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1014# (last visited Oct. 20, 2014).

Under AB 1014, law enforcement officers and “immediate family members” are allowed to seek a temporary or permanent “gun violence restraining order” to prevent a person, whom they believe is a danger to themselves or another, from owning and possessing firearms and ammunition.²¹ If granted, a “gun violence restraining order” can last for up to 21 days and can be extended for up to a year after notice and a hearing.

Although the language of this bill would lead most people to believe that only an “immediate family member,” such as a spouse, parent, or child, could request a “gun violence restraining order,” the definition of the phrase is actually much more expansive. An “immediate family member” is defined as “any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.”²²

Under this definition, not only could your spouse, parents, or children request a “gun violence restraining order,” but also your roommates, long-term house guests, and even your in-laws.

As a practical matter, allowing all of these people to seek a “gun violence restraining order” leaves the process open to rampant abuse. For example, a disgruntled roommate could seek a “gun violence restraining order” against you as a form of retaliation, or an ex-wife could potentially request the order to gain an advantage in another lawsuit.

The potential for abuse is exacerbated by the fact that the evidentiary standard for obtaining a temporary “gun violence restraining order” is very low.²³ In fact, under this bill, a court can issue an emergency “gun violence restraining order” to a law enforcement officer if it simply finds that there is a *reasonable cause* to believe that an individual will cause personal injury to himself, herself, or to another, and that there are no other less restrictive alternatives available.²⁴ Similarly, a court can also issue a temporary “gun violence restraining order” to an “immediate family member” if it finds that there is a *substantial likelihood*²⁵ that the individual will cause personal injury to himself, herself, or to another, and that there are no other less restrictive alternatives available.²⁶

²¹ See P.C. §§ 18125(b), 18150(a), 18170, 18175(d), 18205 (all effective January 1, 2016).

²² P.C. § 422.4(b)(3).

²³ See P.C. §§ 18125(a), 18150(b), 18155(b), 18175(a)-(b) (all effective January 1, 2016).

²⁴ P.C. § 18125(a) (effective January 1, 2016).

²⁵ However, one of the major issues with AB 1014 is that the evidentiary standard for a “substantial likelihood” is never defined, which makes it unclear as to what exactly this standard would be.

²⁶ P.C. § 18150(b) (effective January 1, 2016).

To make matters worse, a court can issue a temporary “gun violence restraining order” without providing prior notice or a hearing to the individual, and without providing them with a mental health or medical evaluation to ensure that he or she is actually a danger to himself or herself, or to another.

Given these issues, the “gun violence restraining order” process can easily be abused by both law enforcement officers and “immediate family members” to temporarily deprive a person of the right to own and possess firearms and ammunition.



That being said, AB 1014 does make it illegal to file a frivolous request for a “gun violence restraining order.” Specifically, under this bill, it is a misdemeanor for a person to file a petition for a “gun violence restraining order” knowing that the information in the petition is false, or if the petition was filed with the intent to harass.²⁷ If you believe that someone has frivolously requested a “gun violence restraining order” against you, you should immediately contact an attorney experienced in firearms law.

²⁷ P.C. § 18200(b) (effective January 1, 2016).

Chapter 4

HOW TO OBTAIN FIREARMS AND AMMUNITION

CGL Book Page 114 – Replace Subsection iii with the following:

iii. Dual Residency

Federal law recognizes “dual residency,” *i.e.*, when a person maintains a home in two states and resides in one or the other for certain periods of the year.¹ This means that if you are a resident of another state in addition to California, you can purchase firearms in the other state during the time you *reside* there, presumably even if the firearms would be illegal in California.

For example, what if you live in California but also have a home in Arkansas where you spend your summers, and you want to purchase a firearm in Arkansas? First, you must determine where you actually “reside” under the law. According to federal law, an individual resides in a state if he or she is present in a state with the intention of making a home in that state.² The ATF determines residency by looking at where the individual resides, so if the individual has multiple homes in multiple states, he or she will be considered a resident of each state, respectively, for the portion of the year he or she resides there.³

In most instances, you must be a resident of the state in which you are acquiring a firearm.⁴ To prove residency, you need to provide valid ID as required by federal law and the laws of that state concerning firearm transactions (if the state has any). For example, if you want to purchase a firearm in Arkansas directly from an FFL licensed in that state, you need to be an Arkansas resident.⁵ If you aren’t, you need to have the firearm sent to an FFL in the state you reside.⁶ However, you cannot

¹ 27 C.F.R. § 478.11 (see definition for “state of residence”). For example, if you maintain a home in state X and then travel to state Y on a hunting trip, you do not become a state Y resident because of such trip. On the other hand, if you maintain a home in state X and a home in state Y and reside in state X during the week and summer months and state Y for weekends and the rest of the year, you are a state X resident when you are in state X, and you are a state Y resident when you are in state Y.

² 27 C.F.R. § 478.11.

³ 27 C.F.R. § 478.11.

⁴ 18 U.S.C. § 922(a)(3), (b)(3).

⁵ This requirement is subject to a federal exemption for rifles and shotguns (discussed below) that does not apply to a person who only resides in California.

⁶ 18 U.S.C. § 922(a)(3), (b)(3).

send or bring firearms into California that are illegal to possess here, even if you obtained them legally in another state.

Thanks to AB 1609,⁷ as of January 1, 2015, you cannot send or bring a firearm that you lawfully purchased or otherwise obtained on or after January 1, 2015, from another state into California, unless the firearm is first delivered to an FFL in California, or you meet one of the few exceptions (discussed in Chapter 4, Section (IV)(A)).⁸ This means that all the pertinent California requirements (*i.e.*, ten-day wait, DROS, etc.) must be satisfied before you can lawfully bring the firearm into the state.



CGL Book Page 126 – Replace Table 4.2 with the following:

Table 4.2

PROOF OF RESIDENCY REQUIREMENT AN ADDITIONAL REQUIREMENT WHEN PURCHASING HANDGUNS IN CALIFORNIA
<p>In addition to providing proof of your identity, you must also provide documentation that you are a California resident if you are attempting to purchase a handgun in California. Any of the following documents will be accepted to show proof of residency⁹:</p> <p>(1) Utility Bill: A utility bill is a statement of charges for providing direct services to your residence. This includes either a physical connection (<i>i.e.</i>, a landline telephone, water, gas connection, etc.)¹⁰ or a telemetric connection (<i>i.e.</i>, satellite TV, or radio broadcast service bill) to a non-mobile, fixed antenna reception device. The utility bill must state the following in order to fulfill the proof of residency requirements:</p> <ul style="list-style-type: none"> (a) Your name; <i>and</i> (b) A date that is within three months of the current date; <i>and</i> (c) Either your current residential address as declared on the DROS form or your address (or change of address) as it appears on (or attached to) your California driver license or California ID. <p>(2) Residential Lease: A Residential Lease is <i>either</i> a signed and dated contract by which a tenant agrees to pay some amount or provides other consideration for the right to occupy a residence for a specified period of time, <i>or</i> a rental agreement signed and dated, in which the tenant agrees to pay some amount or provide other consideration at fixed intervals for the right to occupy a residence. The lease must state the following:</p> <ul style="list-style-type: none"> (a) Your name; <i>and</i> (b) Either your current residential address as declared on the DROS form or your address (or change of address) as it appears on (or attached to) your California driver license or California ID.

⁷ AB 1609, 2013-2014, Leg. Counsel's Digest (Cal. 2014) available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1609 (last visited Oct. 20, 2014).

⁸ P.C. § 27560(a) (effective January 1, 2015).

⁹ See CAL. CODE REGS. tit. 11, § 4045.

¹⁰ A cable bill can also be used as a utility bill.

**PROOF OF RESIDENCY REQUIREMENT
AN ADDITIONAL REQUIREMENT WHEN PURCHASING HANDGUNS IN CALIFORNIA**

- (3) **Property Deed:** A property deed is a valid deed of trust for your current residence that identifies you as the grantee of trust, or a valid Certificate of Title issued by a licensed title insurance company that identifies you as a title holder to your property of current residence. The property deed must state the following:
- (a) Your name; *and*
 - (b) Either your current residential address as declared on the DROS form or your address (or change of address) as it appears on (or attached to) your California driver license or California ID.
- (4) **Other Evidence of Residency:** The DOJ may accept other forms of proof of residence. This includes a valid peace officer credential issued by a California law enforcement agency to an active, reserve, or retired peace officer. This other proof of residency also includes a current government-issued license, permit, or registration (other than a California driver license or ID) that has a specific expiration date or period of validity. The license, permit, or registration must include the following:
- (a) Your name; *and*
 - (b) Either your current residential address as declared on the DROS form or your address (or change of address) as it appears on (or attached to) your California driver license or California ID.

CGL Book Page 134 – Replace Subsection A with the following:

A. California Law

In most cases, firearm transfers by anyone without an FFL must be “infrequent,” even when the transfers are all processed through an FFL.¹¹ For handguns, “infrequent” under California law means making no more than six transactions in a “calendar year.” A “transaction” in this context means a single transfer of any number of handguns.¹² This means that, under California law, you could sell 100 handguns or more, all at once, without violating the law, as long as you do not do this more than five additional times that same “calendar year.”¹³

A “calendar year” begins January 1 and ends December 31.¹⁴ By ending in December rather than being *any* twelve-month period, use of the term “calendar year” in this context is significant. It means you can lawfully make all six of your handgun transactions for the year in

¹¹ P.C. §§ 26500, 26520.

¹² P.C. § 16730.

¹³ Of course, if you are transferring firearms in the hundreds, the ATF might want to ask you a couple of questions about dealing firearms without a license. This is discussed further in the next section.

¹⁴ BLACK’S LAW DICTIONARY 217 (8th ed. 2004).

December and still make up to another six the following January, only a month later, so long as you do not make any other transfers until the following January.

For *non*-handguns, “infrequent” means transfers that are “occasional and without regularity.”¹⁵ Because this is a vague standard, it is unclear how often you can lawfully transfer non-handguns. Also, the term “transaction” is not defined for non-handguns as it is for handguns. Presumably, “transaction” means the same thing for both handguns and non-handguns, meaning you can transfer as many non-handguns as you want as long as it is done in a single transaction with the same person.

CGL Book Pages 136-137 – Replace Subsection A with the following:

A. Transfers From Out-of-State Dealers

A California resident can purchase a firearm from an out-of-state FFL as long as the transfer would be lawful in California (*e.g.*, the firearm cannot be an “assault weapon,” or an “unsafe handgun”).¹⁶ There are, however, certain restrictions.

If the firearm is *not a rifle or shotgun* (*i.e.*, a lawful handgun or other non-long gun), under federal law, the out-of-state FFL cannot transfer it directly to you, but instead must ship it to a California FFL, who will then process the transfer according to California law.¹⁷

As of January 1, 2015, barring an exception, the federal requirement that firearms acquired by a California resident outside of California must be pass through an FFL, will also be a requirement under California law.¹⁸ This means that once the out-of-state FFL transfers a handgun or other non-long gun to a California FFL for transfer and delivery to you, all pertinent California regulation requirements must be satisfied (*i.e.*, the ten-day wait, DROS, etc.) before the firearm can finally be given to you. This restriction applies to all “firearms” (handguns *and* long guns).¹⁹

¹⁵ P.C. § 16730(a)(2).

¹⁶ 18 U.S.C. § 922(b)(2); 27 C.F.R. § 478.99(b). Firearms that are illegal to possess or have restrictions on transfer in California are discussed in Chapters 8 and 9.

¹⁷ 18 U.S.C. §§ 922(a)(3), 922(b)(3).

¹⁸ P.C. § 27585 (effective January 1, 2015); *see* AB 1609, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1609 (last visited Oct. 20, 2014).

¹⁹ P.C. § 27585 (effective January 1, 2015).

However, there are a limited number of exceptions to the *California* restrictions. This includes:

- (1) A licensed collector who is subject to and complies with P.C. Section 27565.²⁰
- (2) A dealer, if the dealer is acting in the course and scope of his or her activities as a dealer.²¹
- (3) A wholesaler, if the wholesaler is acting in the course and scope of his or her activities as a wholesaler.²²
- (4) A person licensed as an importer of firearms or ammunition or licensed as a manufacturer of firearms or ammunition, in accordance with 18 U.S.C. sections 921-931 and their regulations, if the importer or manufacturer is acting in the course and scope of his or her activities as a licensed importer or manufacturer.²³
- (5) A personal firearms importer who is subject to and complies with P.C. section 27560.²⁴
- (6) A person who complies with P.C. section 27875(b),²⁵ provided the following criteria are met:
 - (a) The person acquires ownership of the firearm from an immediate family member by bequest or intestate succession; *and*
 - (b) The person has obtained a valid FSC, except that in the case of a handgun, a valid unexpired HSC may be used; *and*
 - (c) The receipt of any firearm by the individual by bequest or intestate succession is infrequent as defined in P.C. section 16730; *and*
 - (d) Within 30 days of that person taking possession of the firearm and importing, bringing, or transporting it into the state, the person must submit a report to the DOJ, in a manner prescribed by the department, that includes information concerning the individual taking possession

²⁰ P.C. § 27585(b)(1) (effective January 1, 2015). Relating to the registration of curio or relic firearm(s) when a curio or relic collector brings these firearm(s) acquired outside of the state into California, which is discussed in this chapter.

²¹ P.C. § 27585(b)(2) (effective January 1, 2015).

²² P.C. § 27585(b)(3) (effective January 1, 2015).

²³ P.C. § 27585(b)(4) (effective January 1, 2015).

²⁴ P.C. § 27585(b)(5) (effective January 1, 2015). “Personal firearm importers” are defined and discussed later in this chapter.

²⁵ As amended by AB 1609. AB 1609, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1609 (last visited Oct. 20, 2014).

of the firearm, how title was obtained and from whom, and a description of the firearm in question.²⁶

- (7) A person who acquired ownership of a firearm as an executor or administrator of an estate, and he or she meets the following criteria:
- (a) If the firearm has been acquired in California, the receipt of the firearm by the executor or administrator would be exempt from the provisions of P.C. section 27545(1)(a); *and*
 - (b) Within 30 days of taking possession of the firearm and importing, bringing, or transporting it into California, the executor or administrator must submit a report to the DOJ, in a manner proscribed by the department, that includes information concerning himself or herself, i.e., the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question; *and*
 - (c) If the executor or administrator subsequently acquires ownership of that firearm in an individual capacity, prior to transferring ownership to himself or herself, he or she shall obtain a valid FSC, except that in the case of a handgun, a valid unexpired HSC may be used; *and*
 - (d) The executor or administrator is 18 years of age or older.²⁷
- (8) A person who acquired ownership of the firearm by bequest or intestate succession as a surviving spouse or as the surviving registered domestic partner of the decedent who owned that firearm, and meets the following criteria:
- (a) If acquisition of the firearm has occurred within California, the receipt of the firearm by the surviving spouse or registered domestic partner would be exempt from the provisions of P.C. section 27545(2)(a) by virtue of P.C. section 16990; *and*
 - (b) Within 30 days of taking possession of the firearm and importing, bringing, or transporting it into this state, the person must submit a report to the DOJ, in a manner described by the department, that includes information concerning the individual taking possession of the

²⁶ P.C. §§ 27585(b)(6), 27875(b) (all effective January 1, 2015).

²⁷ P.C. §§ 27585(b)(7), 27920(b) (all effective January 1, 2015).

- firearm, how title was obtained and from whom, and a description of the firearm in question; *and*
- (c) The person obtained a valid FSC, except that in case of a handgun, a valid unexpired HSC may be used.²⁸
- (9) A person who imports the firearm into this county pursuant to the provisions of 18 U.S.C. 925(a)(4),²⁹ and meets the following criteria:
- (a) The person is not subject to the requirements of P.C. section 27560; *and*
 - (b) The firearm is not a firearm that is prohibited by any provision listed in P.C. section 16590; *and*
 - (c) The firearm is not an assault weapon; *and*
 - (d) The firearm is not a machinegun; *and*
 - (e) The firearm is not a .50 BMG rifle; *and*
 - (f) The firearm is not a destructive device; *and*
 - (g) The person is 18 years of age or older; *and*
 - (h) Within 30 days of taking possession of the firearm and importing, bringing, or transporting it into this state, the person must submit a report to the DOJ, in a manner described by the department, that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question.³⁰
- (10) A person who is on the centralized list of exempted federal firearms licensees (FFLs) under P.C. section 28450 if the person is acting within the course and scope of his or her activities as a licensee.³¹
- (11) A firearm regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 acquired by a person who holds a permit issued pursuant to Article 3 (commencing

²⁸ P.C. §§ 27585(b)(7), 27920(c) (all effective January 1, 2015).

²⁹ This provision of federal law allows certain members of the United States Armed Forces to bring certain firearms into the United States.

³⁰ P.C. §§ 27585(b)(7), 27920(d) (all effective January 1, 2015). This requirement appears to be at odds with the rule governing military members who are active law enforcement and bring their own firearms into the state. Under P.C. section 17000, members of the Armed Forces *do not* need to register their personal firearms until they are discharged from active service in California. This new law requires active military members to register their firearms acquired from another state using this rather obscure federal law.

³¹ P.C. § 27585(b)(8) (effective January 1, 2015).

with Section 18900) of Chapter 1 of Division 5 of Title 2,³² if that person is acting within the course and scope of his or her activities as a licensee and in accordance with the terms and conditions of the permit.³³

- (12) A firearm regulated pursuant to Chapter 2 (commencing with P.C. section 30500) of Division 10 acquired by a person who holds a permit issued pursuant to Section 31005,³⁴ if that person is acting within the course and scope of his or her activities as a licensee and in accordance with the terms and conditions of the permit.³⁵
- (13) A firearm regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 acquired by a person who holds a permit issued pursuant to Section 32650,³⁶ if that person is acting within the course and scope of his or her activities as a licensee and in accordance with the terms and conditions of the permit.³⁷
- (14) A firearm regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 acquired by a person who holds a permit issued pursuant to Section 33300,³⁸ if that person is acting within the course and scope of his or her activities as a licensee and in accordance with the terms and conditions of the permit.³⁹
- (15) The importation of a firearm into the state, bringing a firearm into the state, or transportation of a firearm into the state, that is regulated by any of the following statutes, if the acquisition of that firearm occurred outside of California and is conducted in accordance with the applicable provisions of the following statutes:
 - (a) Chapter 1 (commencing with P.C. section 18710) of Division 5 of Title 2, relating to destructive devices and explosives; *and*

³² Referring to “destructive devices” and permits issued allowing a person to lawfully possess, manufacture, transport, import, and/or sell a destructive device under California law, as discussed in Chapter 9.

³³ P.C. § 27585(b)(9) (effective January 1, 2015).

³⁴ Referring to “assault weapons” and .50 BMG rifles and the permits a person may acquire to lawfully possess, import, make, transport and/or sell these devices under California law, discussed in Chapter 8.

³⁵ P.C. § 27585(b)(10) (effective January 1, 2015).


³⁶ Referring to “machineguns” and the permits required for possession, manufacture, or transportation of “machineguns” under California law. “Machineguns” are discussed in Chapter 9.

³⁷ P.C. § 27585(b)(11) (effective January 1, 2015).

³⁸ Referring to “short-barreled rifles” and “short-barreled shotguns” and the permits required to lawfully possess them.

³⁹ P.C. § 27585(b)(12) (effective January 1, 2015).

- (b) P.C. section 24410, relating to cane guns; *and*
- (c) P.C. section 24510, relating to firearms that are not immediately recognizable as firearms; *and*
- (d) P.C. sections 24610 and 24680, relating to undetectable firearms; *and*
- (e) P.C. section 24710, relating to wallet guns; *and*
- (f) Chapter 2 (commencing with P.C. section 30500) of Division 10, relating to “assault weapons;”⁴⁰ *and*
- (g) P.C. section 31500, relating to unconventional pistols; *and*
- (h) P.C. sections 33215 and 33225, inclusive, relating to “short-barreled rifles” and “short-barreled shotguns”; *and*
- (i) Chapter 6 (commencing with P.C. section 32160) of Division 10, relating to machineguns; *and*
- (j) P.C. section 33600, relating to zip guns and the exemption in Chapter 1 (commencing with P.C. section 17700) of Division 2 of Title 2, as they relate to zip guns.⁴¹

Keep in mind, the above exceptions are for the requirement *under California law* that firearms acquired outside of California pass through a licensed firearms dealer in California. This means that, despite many of these exceptions, you are still required to transfer the firearm through a firearms dealer under *federal law*. 

Never assume that because you are in compliance with California law, your concerns are over. You must also comply with *federal law* (and vice versa). For example, a number of the exceptions to the California law allow you to acquire firearms pursuant to a permit, or because they are specific firearms regulated by certain statutes. However, under federal law, you are still required to transfer the firearm through a dealer, and, in certain situations relating to NFA “firearms,” seek ATF approval before receiving the firearm in California.

Under federal law, an FFL may transfer *rifles or shotguns* over the counter to an out-of-state resident if both states’ laws and requirements are satisfied.⁴² However, given California’s mandatory ten-day wait on all firearm transactions and the DROS process, an out-of-state dealer cannot abide by California’s stringent transfer requirements. Therefore, barring limited exception to the federal requirement (discussed below

⁴⁰ Oddly, .50 BMG rifles are not mentioned here despite the fact that they are regulated in this Chapter of the P.C.

⁴¹ P.C. § 27585(b)(13) (effective January 1, 2015).

⁴² 18 U.S.C. § 922(b)(3).

under “Inheriting Firearms From Out of State”), under federal law, almost all firearms a California resident acquires from outside of California must be passed through a California FFL.

In addition, given California’s requirement that all firearms purchasers have a valid California DMV-issued ID (see above), it is also difficult for out-of-state residents to purchase long guns in California, even though it is legal for them to do so under federal law.

Recall that your “state of residence” is the state where you are present and where you also intend to make your home, and that you can be a “resident” of more than one state.⁴³ The ATF has explained that:

An individual resides in a State if he or she is present in a State with the intention of making a home in that State. Ownership of a home or land within a given State is not sufficient, by itself, to establish a State of residence. However, ownership of a home or land within a particular State is not required to establish presence and intent to make a home in that State. Furthermore, temporary travel, such as short-term stays, vacations, or other transient acts in a State are not sufficient to establish a State of residence because the individual demonstrates no intention of making a home in that State.⁴⁴

Military members on active duty are residents of the state where their permanent duty station is located.⁴⁵ Nevertheless, while on leave, military members may be able to be residents of their home state for purposes of firearm acquisition if they are making their “home” in that state while on leave.

CGL Book Page 145 – Replace Subsection 2 with the following:

2. Handguns

To transfer handguns through an intra-family transaction, the transferring party does not need to do anything, but the receiving party must:

⁴³ 27 C.F.R. § 478.11.

⁴⁴ ATF Rul. 2010-6 (Nov. 10, 2010).

⁴⁵ 18 U.S.C. § 921(b); 27 C.F.R. § 478.11.

- (1) Give the DOJ a completed “Report of Operation of Law or Intra-Familial Firearm Transaction” form within 30 days of receiving the firearm; *and*
- (2) Get an HSC; *and*
- (3) Be at least age 18.⁴⁶

After January 1, 2015, if the transfer only involves one or more handguns, the transferee may take possession of the handgun(s) with a valid HSC or FSC; in all other situations (meaning transfers involving handguns and long guns or just long guns), the recipient must possess an FSC.⁴⁷

CGL Book Page 145 – Change Subsection B to Subsection 3 and replace with the following:

3. Inheriting Firearms From Out of State

If you inherit a firearm from a resident of another state by bequest or intestate succession (regardless of whether you are a family member of the decedent), federal law allows you to take that firearm in the other state and transport it back into California without using an FFL.⁴⁸ However, under California law, you can only bypass the need for an FFL if you inherit the firearm from an immediate family member (effective January 1, 2015).⁴⁹ Both the California and federal rules assume that the firearm is lawful for you to possess in California in the first place and you must register the firearm with the DOJ upon reentering the state per P.C. section 27875(b).



CGL Book Pages 151-152 – Replace Subsection G with the following:

G. “Gun Buybacks”

A number of the restrictions on transferring firearms are suspended if you transfer your firearms to a state, local, or federal government entity, so long as the transfer is for the governmental entity, and the entity is acquiring the firearm “as part of an authorized, voluntary pro-

⁴⁶ P.C. § 27875.

⁴⁷ P.C. § 27875(a)(4) (effective January 1, 2015). Subject to the person being exempt from this requirement.

⁴⁸ 18 U.S.C. § 922(a)(3); 27 C.F.R. § 478.30(a).

⁴⁹ P.C. § 27875. Discussed above.

gram in which the entity is buying or receiving weapons from private individuals.”⁵⁰ These events are known as “gun buybacks.”

At a gun buyback, government entities will often exchange money (for example, a prepaid credit or gift card) for firearms. The buyback events are often advertised as “no questions asked” opportunities where the public can turn in their firearms.⁵¹ With the hopes that a large number of firearms will be taken in, the promoters of these events usually claim that the firearms turned in will not be investigated and that no background check will be run on them. Herein lies one huge problem with these types of events. The “no questions asked” policy gives criminals the opportunity to turn in firearms either used in crimes (like homicides) or stolen from lawful owners. Not only can criminals get rid of the evidence of a crime, but they also get paid for it. The lawful firearm owner who had his or her firearm stolen will *never* see that firearm again.

For legitimate firearm owners who turn in their firearms, these gun buybacks provide a different concern. For instance, in some cases, the money the gun buyback agency is offering for the firearm is less than what the firearm is worth. Gun buybacks treat junk guns and valuable antiques equally. People often do not know the true value of their firearms, and there are often more cost-effective ways of lawfully disposing of your firearms if you no longer want or need them. For example, firearms dealers and certain nonprofit organizations may be willing to accept your firearm (and potentially provide you more money for the firearm than the buyback will).



I strongly suggest contacting a local gun shop to see if they are interested in buying the firearm or offering your firearm to a nonprofit for a potential tax write-off before giving a firearm to a gun buyback.

⁵⁰ P.C. §§ 27850, 31725.

⁵¹ Recently, the California legislature tried to make gun buybacks a “questions asked” opportunity with AB 2662. If this bill had been passed, instead of dying in the Senate, it would have required government entities running buybacks to do ballistics testing, perform a firearms trace, or catalog and store all guns obtained through the buyback. See AB 2662, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2662 (last visited Oct. 31, 2014).

CGL Book Page 152 – Replace Section VIII with the following:

VIII. BUILDING YOUR OWN FIREARM

Another way to obtain a firearm is by making one or assembling one from parts. This practice *can be* lawful under both California and federal law. Federal law prohibits “manufacturing” firearms without a license but only considers those who are “engaged in the business” of making firearms (*i.e.*, those who devote time, attention, and labor to doing so as a regular course of business) to be “manufacturers” who need a license.⁵² This means that making a firearm for personal use does not require a license under federal or California law as long as you do not build an item that is prohibited to possess or make under California and federal law (see Chapter 8).⁵³

Excepting licensed manufacturers with government permission and those fixing lawfully acquired firearms,⁵⁴ federal law prohibits assembling a semiautomatic rifle or any shotgun using more than ten “imported parts”⁵⁵ if the assembled firearm is prohibited from being imported⁵⁶ on the basis that it is not “particularly suitable for or readily adaptable to sporting purposes.”⁵⁷

Also, unless you make a “firearm” as defined under the National Firearms Act (NFA) (see Chapter 9), requiring a tax payment and ATF approval,⁵⁸ there is generally no California or federal requirement that you register a firearm assembled for personal use. And although not legally required, it is a good idea to at least identify the firearm with a serial number in case it is ever lost or stolen.⁵⁹

⁵² 18 U.S.C. §§ 921(a)(10), (21), 923(a)(1).

⁵³ Though there are other prohibited items, the main concern is to avoid inadvertently building an “assault weapon” (Chapter 8).

⁵⁴ 27 C.F.R. § 478.39(b).

⁵⁵ 27 C.F.R. § 478.39(a). “Imported parts” are: (1) frames, receivers, receiver castings, forgings, or stampings; (2) barrels; (3) barrel extensions; (4) mounting blocks (trunions); (5) muzzle attachments; (6) bolts; (7) bolt carriers; (8) operating rods; (9) gas pistons; (10) trigger housings; (11) triggers; (12) hammers; (13) sears; (14) disconnectors; (15) buttstocks; (16) pistol grips; (17) forearm, handguards; (18) magazine bodies; (19) followers; and (20) floor plates. 27 C.F.R. § 478.39(c).

⁵⁶ 18 U.S.C. § 925(d)(3); 26 U.S.C. § 5845(a).

⁵⁷ 18 U.S.C. §§ 922(r), 925(d)(3); 27 C.F.R. § 478.39(a).

⁵⁸ See 26 U.S.C. § 5822.

⁵⁹ On September 30, 2014, Governor Jerry Brown vetoed SB 808, which would have required everyone making or assembling a firearm to first apply for a unique serial number or other mark of identification from the DOJ and then engrave or permanently affix that number or mark to the firearm within ten days of manufacture or assembly. Also, SB 808 would have required any person owning a firearm that does not have such number or mark as of July 1, 2016, to apply for such identification by January 1, 2017, and it would have required everyone to engrave or attach the

Generally, four different processes exist for building a personal firearm, and each has distinct legal implications, as outlined below.

CGL Book Pages 153-154 – Replace Subsection B with the following:

B. Creating a Firearm From an 80% Receiver

The second way is to machine a firearm either from completely raw materials or partially finished materials. Making a firearm from partially finished materials is more popular, as it takes less skill. Generally, you start with an incomplete receiver commonly referred to as an “80% receiver” or “80% side plate.”

The “80%” denotes how close the receiver is to being a complete firearm – though this is more of an estimate since it is impossible to say what percentage of work remains for a given firearm, which can vary based on experience, available tools, etc. An “80% receiver” is not considered a “firearm” under either federal or state law for the purposes of transfers. You must machine the remaining “20%” to complete the receiver, at which point it is considered a “firearm.” Thereafter, you can either purchase the remaining parts (*e.g.*, barrel, stock, etc.) or machine them from raw materials and then attach them to the receiver.

unique number or mark in a manner that meets or exceeds the requirements imposed on federally-licensed firearms manufacturers — something extremely hard to do for an amateur hobbyist without highly sophisticated equipment. Authored by Senator Kevin de León, SB 808 would have substantially limited the entire practice of personally building firearms in California, even though de León said SB 808 was aimed towards 3D printed firearms or “ghost guns.” State Senator Kevin de León Press Release, *Senator de León Calls for Ban of Ghost Guns “If Congress Isn’t Going to Protect the Public — We Will*, <http://sd22.senate.ca.gov/news/2014-01-13-release-senator-de-leon-calls-ban-ghost-guns-%E2%80%9Cif-congress-isn-t-going-protect-public> (last visited Oct. 20, 2014).

CGL Book Pages 158-159 – Replace Subsection A with the following:

A. Criminal Storage in the First, Second, and Third Degree for Loaded Firearms

Historically, you could only be criminally prosecuted in situations where children gained access to your firearms. However, with the passage of SB 363 in 2013, criminal liability has been expanded to cover situations where others gain possession of your firearms. Specifically, effective January 1, 2014, you may be prosecuted if you store a firearm in a place under your custody or control in a way a person prohibited from possessing firearms under state or federal law may gain access to it and cause tragic results (as discussed below).⁶⁰ This would be considered “criminal storage of a firearm” in the first degree or second degree.⁶¹

As the law now reads, you may be prosecuted for criminally storing a firearm if you keep a loaded firearm anywhere under your custody or control where you know, or reasonably should know, a child or a person prohibited from possessing firearms under state or federal law is likely to gain unpermitted access to it, a child or prohibited person does get access to it, and death or great bodily injury occurs as a result.⁶² This is “criminal storage of a firearm” in the first degree.

Though it is a lesser offense, you may also be prosecuted if a child or prohibited person who accesses your firearm either “brandishes” it or carries it to a public place.⁶³ This is “criminal storage of a firearm” in the second degree.

In 2013, California enacted Assembly Bill (AB) 231, which creates new crimes relating to gun storage and children. As of January 1, 2014, you may be prosecuted for a misdemeanor if you negligently store or leave a loaded firearm in a location where you know, or reasonably should know, that a child is likely to gain access to the firearm. This is considered “criminal storage of a firearm” in the third degree.⁶⁴ To violate this new law, there is no requirement that the child harm someone or take the firearm to a public place. It is important to note that this crime may be committed even if the child does not actually gain possession of the firearm.

⁶⁰ P.C. § 25100.

⁶¹ P.C. § 25100(a)-(b).

⁶² P.C. § 25100(a).

⁶³ P.C. § 25100(b)(3).

⁶⁴ P.C. § 25100(c).

You are not liable under this law if you took reasonable action to secure the firearm against access by the child, or your conduct falls under any of the exceptions discussed below.

One important criticism of this law, and something that you should be vigilant of, is the fact that the law seems to leave open a large amount of discretion for law enforcement to determine what constitutes negligent storage. Where the person who allegedly stored a firearm in violation of P.C. section 25100 is the parent or guardian of a child injured or killed, California law gives prosecutors express discretion to bring or not bring charges. It suggests charges should only be brought where the parent acted in a grossly negligent manner or where other “egregious circumstances” exist. But it is best to avoid tragedy and reliance on a prosecutor’s mercy by properly storing your firearms whenever children are present.

CGL Book Pages 164-165 – Replace Subsection A with the following:

A. Assembly Bill 962 and Similar Ammunition Regulation Efforts

AB 962, authored by Senator Kevin de León in 2009, would have imposed burdensome and ill-conceived restrictions on the sale of ammunition within and into California. It required “handgun ammunition” to be stored out of customers’ reach and transferred in a face-to-face transaction, thereby making mail-order sales illegal. AB 962 also required ammunition vendors to collect sales information that included ammunition purchasers’ thumbprints.



AB 962’s main provisions were found unconstitutionally vague because its definition of “handgun ammunition” was unclear.⁶⁵ That court decision was appealed by the government, but as of the publication of the CGL book, AB 962 remains largely unenforceable pending a final decision in the California courts. The ultimate outcome of the appeal could cause AB 962 to go into effect in the future or be repealed permanently. Subscribe to or check www.CalGunLawsBook.com for AB 962’s current status.

⁶⁵ See *Parker v. State of California*, 221 Cal. App. 4th 340 (2013); see also Civil Rights Cases, MICHEL & ASSOCIATES, P.C., <http://michellawyers.com/significant-cases/civil-rights-cases/> (last visited Oct. 20, 2014). In *Parker*, the Court of Appeal invalidated AB 962. The State petitioned for review, and the California Supreme Court accepted review. The ultimate effects of *Parker* on ammunition regulation are not yet known. Visit www.CalGunLawsBook.com for updates on this case and other firearms laws.

Finally, several cities and counties currently regulate ammunition transactions similar to AB 962's provisions. But instead of regulating "handgun ammunition" in isolation, they regulate the sale of *all* ammunition. Los Angeles, Sacramento, San Francisco, Inglewood, Santa Ana, Beverly Hills, and Contra Costa County are examples. Consult your local municipal code to confirm whether ordinances like these exist in your city or county.

During the 2013 legislative session, Senator de León introduced SB 53, which proposed similar restrictions on the sale of all ammunition in California.⁶⁶ As proposed, this bill would have required ammunition purchasers to register with the DOJ prior to purchasing any ammunition, which would have required people to submit their fingerprints, a background check, and pay processing fees.⁶⁷ Moreover, the bill would have required the collection and reporting of personal consumer information and thumb printing for all ammunition purchases in California, thereby making online and mail-order sales of all ammunition illegal.⁶⁸ Fortunately, this bill failed to garner the necessary votes to pass out of the Legislature.

⁶⁶ SB 53, 2013-2014, Leg. Counsel's Digest (Cal. 2014) available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB53# (last visited Oct. 20, 2014).

⁶⁷ SB 53, 2013-2014, Leg. Counsel's Digest (Cal. 2014) available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB53# (last visited Oct. 20, 2014).

⁶⁸ SB 53, 2013-2014, Leg. Counsel's Digest (Cal. 2014) available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB53# (last visited Oct. 20, 2014).

Chapter 5: CARRYING FIREARMS OPENLY, CONCEALED, AND/OR LOADED

CGL Book Pages 168-169 – Add the following after Section I:

II. What Does “In A Vehicle Mean?” What Does “On” or “Upon” the Person Mean?

With respect to vehicles, courts have held that a firearm does not even need to be in contact with the person to be considered “carried” in the vehicle unlawfully. A firearm under the seat of a vehicle, for example, is being “carried” by the person controlling the car, even if it is not in that person’s exclusive possession.¹ Some courts have similarly held that firearms are “carried on the person” even when they are not physically attached to the person’s body, such as a firearm kept inside a suitcase.² However, a recent decision, *People v. Pellecer*, 215 Cal. App. 4th 508 (2013), appears to expressly disagree with that view.³

In *Pellecer*, the defendant was leaning on a closed backpack that contained a dagger.⁴ The court held that this was not considered “carried upon the person” because “upon the person” means just that, and if the legislature intended that term to include items beyond the body, it could have said so.⁵ It should also be noted that although the *Pellecer* court distinguishes “on or about the person” with “on the person,” it uses the words “upon” and “on” interchangeably. This could mean two things. This could be an oversight by the court, and it meant “upon” when it said “on.” But given the frequency it used “on” in place of “upon,” that is probably unlikely. The other, and more possible, option is the court meant that the two words (“upon” and “on”) are interchangeable.

¹ See *People v. Davis*, 157 Cal. App. 2d 33, 36 (1958) (defendant found to be “carrying” a concealed revolver under the driver’s seat; exclusive possession was not required because the vehicle was under the control and/or direction of the defendant).

² *People v. Dunn*, 61 Cal. App. 3d Supp. 12, 14 (1976) (defendant found to be “carrying” a concealed handgun in his locked suitcase when the locked suitcase passed through an airport x-ray machine). It should be noted that this case was from the Appellate Department of the Los Angeles County Superior Court. *Pellecer* was decided by the California Court of Appeal, Second District, Division 1, a higher court located in the same jurisdiction as the *Dunn* court.

³ *People v. Pellecer*, 215 Cal. App. 4th 508 (2013).

⁴ *People v. Pellecer*, 215 Cal. App. 4th 508, 511 (2013).

⁵ *People v. Pellecer*, 215 Cal. App. 4th 508, 517 (2013).

Laws for the four different types of restricted carry, discussed below, use the same language when they discuss a person carrying a firearm illegally. The restriction for carrying concealed says “upon the person,”⁶ the restriction for carrying a loaded firearm says “on the person,”⁷ and the restriction for open carry of a handgun says “upon his or her person” while the person is outside a vehicle, and that it doesn’t matter “whether or not [the handgun is] on his or her person” while the person is inside or on a vehicle.⁸ Moreover, the restriction for carrying a firearm that is not a handgun in public says “upon his or her person.”⁹

But, be careful. While the decision’s reasoning should be the same with respect to firearms – meaning a firearm contained in a backpack or suitcase shouldn’t be considered “carried on or upon the person” and would therefore be legal – it has not been applied to firearms yet. Also, the decision is still rather recent and untested in other courts. This legal principle could be changed or limited in the future.



In early 2014, the California Assembly tried to introduce such a change through AB 2305,¹⁰ which would have barred the carrying of firearms “on or about the person.” Backed by Los Angeles prosecutors in an effort to circumvent *People v. Pellecer*, AB 2305 specifically defined “on or about the person” as including a bag or container carried by the person.¹¹ Although AB 2305 died before the Legislature could vote on it, similar bills might be brought and passed in the future.

⁶ P.C. § 25400(a)(2).

⁷ P.C. § 25850(a).

⁸ P.C. § 26350(a)(1)-(2).

⁹ P.C. § 26400(a).

¹⁰ AB 2305, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2305 (last visited Oct. 20, 2014).

¹¹ AB 2305, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2305 (last visited Oct. 20, 2014).

Chapter 6:
**FIREARM CARRY RESTRICTION
EXEMPTIONS AND TRANSPORTING
FIREARMS**

No Changes.

Chapter 7:
**PLACES WHERE FIREARM POSSESSION
IS PROHIBITED AND FIREARM USE
IS RESTRICTED**

No Changes.

Chapter 8:

REGULATION OF "ASSAULT WEAPONS" AND .50 BMG RIFLES

CGL Book Pages 323-325 – Replace Subsection D with the following:

D. Making Category 3 "Assault Weapons" Comply With California Law

Some rifle owners and manufacturers comply with California law by removing one of the three prerequisite characteristics (semiautomatic, centerfire, or accepting a "detachable magazine") from their firearms so they are no longer legally considered "assault weapons." Some convert their semiautomatic rifles or pistols to manual-cycled, convert their centerfire rifles to rimfire, or try to make "detachable magazines" legally "non-detachable" so the firearm (rifle, pistol, or shotgun) cannot accept a "detachable magazine." As explained below, however, this does not work for all firearms.

In making the firearm unable to accept a "detachable magazine," these individuals typically retrofit their firearms with an aftermarket product generally called a "magazine lock." The most common kind is known as a "Bullet Button." The standard magazine release for a "detachable magazine" can usually operate with the push of a finger, so no "tool" is required to release the magazine. The typical "magazine lock," however, replaces the standard one-piece magazine release button with a two-piece assembly that cannot be operated with just the push of a finger.

The new two-piece magazine release typically has an inner and outer button. The outer button directly replaces the standard magazine release button in shape and size but without actuating the spring that allows magazine removal. The much smaller inner button sits recessed within the outer button and becomes the firearm's true magazine removal mechanism. Since the inner button is too small and recessed to be pushed by a finger, a tool is needed to push the inner button in to release the magazine so it can be removed. The most common "tool" used to push the recessed button and remove the magazine is the tip of a bullet, hence the common term "Bullet Button." Because a tool is needed to release the magazine, the firearm can no longer be said to have the capacity to accept a "detachable magazine."

The Sacramento Police and the Orange County Sheriff have advised their officers about the legal effect of magazine locks consistent with our analysis.¹ However, confusion still exists among some law enforcement agencies. Nevertheless, hundreds of thousands of magazine locks are currently being manufactured and used in California, generally without any legal consequences (though there have been isolated incidents of improper arrests).

Again, attaching a magazine lock like a “Bullet Button” to a firearm renders the magazine “non-detachable.” Doing this removes one of the features some rifles, pistols, and shotguns must have to be legally considered a Category 3 “assault weapon.”² This means that if a “magazine lock” is attached to a semiautomatic, centerfire rifle that is not already a Category 1 or 2 “assault weapon,” even with any of the other characteristics listed in P.C. section 30515(a)(1)(A)-(F), the rifle should not be legally classified as an “assault weapon” based on 30515(a)(1)’s definition, nor should someone with such a firearm be considered “in possession” of an unregistered “assault weapon.”³ But keep in mind that it may still be an “assault weapon” or be considered by law enforcement to meet the definition of an “assault weapon” as discussed below.

As mentioned, however, some firearms are not capable of accepting a “detachable magazine” but are still Category 3 “assault weapons.” Semiautomatic, centerfire rifles and semiautomatic pistols, both with “fixed magazines” that can accept more than 10 rounds, and semiautomatic, centerfire rifles with an overall length of less than 30 inches still classify as Category 3 “assault weapons,” despite not having “detachable magazines.”⁴ Shotguns can be Category 3 “assault weapons” if they are semiautomatic and have a folding or telescoping stock; and a pistol grip, thumbhole stock, or vertical handgrip;⁵ or if the shotgun has a revolving cylinder,⁶ regardless of whether it has a “magazine lock.” And a “magazine lock” may actually convert an otherwise legal rifle or pistol *into* a Category 3 “assault weapon.” This is based on some law enforcement agencies’ apparent opinion that attaching a “magazine lock” to a firearm renders the magazine “fixed,” and thus an “assault weapon,” if a maga-

¹ Copies of these opinions are available at www.MichellLawyers.com.

² Pistols and shotguns with “magazine locks” are also considered incapable of accepting “detachable magazines.”

³ See P.C. § 30605.

⁴ P.C. § 30515(a)(2)-(3).

⁵ P.C. § 30515(a)(6).

⁶ P.C. § 30515(a)(8).

zine capable of accepting more than 10 rounds is used.⁷ However, this analysis might not be accurate.

The AWIG defines a "fixed magazine" as "[a] magazine which remains affixed to the firearm during loading. Frequently a fixed magazine is charged (loaded) from a clip (en bloc or stripper) of cartridges inserted through the open breech into the magazine."⁸ As discussed above, semiautomatic, centerfire rifles and semiautomatic pistols with "fixed magazines" that can accept more than 10 rounds are "assault weapons." But firearms with magazine locks are usually not reloaded with the magazine remaining affixed to the firearm. Shooters tend to use the magazine release tool to eject the magazine and insert a fresh one. Rarely do they go through the tedious process of manually reloading their firearm through the breech (by using a clip) when the "magazine lock" is attached. Because shooters do not have to manually reload their firearms through the breech or by using a clip, it is inaccurate to say that firearms with "magazine locks" have a "fixed magazine." They also cannot be said to have "detachable magazines" because a tool is needed to remove the magazine. Firearms with "magazine locks" thus fall into a legal classification that is not typically used in firearms parlance. This is why the term "non-detachable" is used above to describe firearms with magazine locks.

Because distinguishing "non-detachable" and "fixed magazines" still causes confusion and law enforcement consider firearms with "magazine locks" to have a "fixed magazine," magazines capable of accepting more than 10 rounds should not be used in firearms with a "magazine lock."



⁷ P.C. § 30515(a)(2). For example, a standard Ruger Mini 14 rifle (*i.e.*, without a pistol grip or "flash suppressor") is not an "assault weapon" under any category. You can lawfully use magazines capable of accepting more than 10 rounds in the rifle. But if you were to put a "magazine lock" on that same rifle, using magazines that hold over 10 rounds could convert it into an "assault weapon." So making a rifle *more* difficult to reload could actually convert it into an "assault weapon."

⁸ CAL. DEPT. OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL, ASSAULT WEAPONS IDENTIFICATION GUIDE (3rd ed. Nov. 2001), available at <http://oag.ca.gov/sites/all/files/pdfs/firearms/forms/awguide.pdf> (last visited Oct. 20, 2014).

Chapter 9:

OTHER HEAVILY REGULATED FIREARMS AND DEVICES

CGL Book Pages 388-389 – Replace Subsection 7 with the following:

7. Certain Handguns Exempt From the Roster Requirement

Certain handguns are exempt from the Roster requirement. All listed “curios or relics” as defined in 27 C.F.R. section 478.11 are exempt.¹ Single-action revolvers with at least a five-cartridge capacity and barrel lengths of at least three inches are also exempt if the firearm meets *any* of the following specifications:

- (1) It was originally manufactured prior to 1900 and is a “curio or relic,” as defined in 27 C.F.R. section 478.11; *or*
- (2) It has an overall length measured parallel to the barrel of at least 7½ inches when the handle, frame or receiver, and barrel are assembled; *or*
- (3) It has an overall length measured parallel to the barrel of at least 7½ inches when the handle, frame or receiver, and barrel are assembled and is currently lawful to import into the U.S. per 18 U.S.C. section 925(d)(3).²

Certain pistols designed expressly for Olympic target shooting events are also exempt.³

A law passed in the summer of 2014 limited the amount of pistols exempt from the “unsafe handgun” restriction.⁴ On January 1, 2015, the Roster requirement also does not apply to single-shot pistols with a break top or bolt action, a barrel length of six inches or more, and “an overall length of at least 10½ inches when the handle, frame or receiver, and barrel are assembled.”⁵ However, even if a single-shot pistol meets



¹ P.C. § 32000(b)(3).

² P.C. § 32100(a).

³ See P.C. § 32105; CAL. CODE REGS. tit. 11, § 5455 (listing exempt Olympic pistols).

⁴ See AB 1964, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) *available at* http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1964 (last visited Oct. 31, 2014).

⁵ P.C. § 32100(b) (effective January 1, 2015).

these requirements, it will still be subject to Roster requirements if it is a semiautomatic pistol that has been temporarily or permanently altered so that it will not fire in a semiautomatic mode.⁶

This new law closes a “loophole” that some Californians used to buy certain pistols not on the approved Roster. Typically, the purchaser would buy the pistol from an out-of-state FFL. That FFL (if he or she has a manufacturer’s license) or another FFL (with a manufacturer’s license) would install a longer barrel so that the pistol meets the length requirements for the exception to apply and then inserts a mechanism to make the handgun a single-shot pistol. This modified single-shot pistol would then be sent to an FFL in California. The California FFL would then note in the Dealer’s Record of Sale (DROS) form that the handgun is exempt from these Roster requirements because of its dimensions and because it is single-shot, and the transfer would be conducted like any other handgun transaction.

Now, importing “off-Roster” handguns this way is an extremely more difficult and riskier process. There is also no case law yet concerning what will make a semiautomatic pistol look like it has been temporarily or permanently altered so that it will not fire in a semiautomatic mode. If asked about it by law enforcement, you may wish to exercise your right to remain silent and to consult a lawyer.



As a practical matter, the DOJ’s Roster has greatly limited the number of handguns available for purchase in California, such as through its microstamping requirement that took effect in May 2013. As a result of the microstamping requirement, the DOJ’s Newly Added Firearms list has not seen much activity since May 2013, as the microstamping requirement cannot be met by manufacturers of certain pistols. Meanwhile, hundreds of firearms fell off the list since May 2013 and can no longer be sold by retailers in California.

A way for manufacturers to get firearms on the Roster is for the firearm to be “similar” to one already on the Roster.⁷ Firearms determined to be “similar” to handguns already on the roster can be added to the Roster without testing. Generally, the changes must be purely cosmetic. Changes in function, parts, or a handgun’s mechanics are viewed by the DOJ as substantial changes requiring the handgun to be retested before it is considered *not* unsafe.

⁶ P.C. § 32100(b) (effective January 1, 2015).

⁷ P.C. § 32030.

CGL Book Pages 395-397 – Replace Subsection D with the following:

D. Lead-Based Ammunition Used in Certain Hunting Applications

Federal law limits the types of ammunition that can be used to hunt certain animals. For example, federal law prohibits using lead shot when hunting waterfowl.⁸ In addition, California currently prohibits using projectiles with more than 1% lead when hunting big game (deer, black bear, wild pig, elk, pronghorn antelope, and bighorn sheep),⁹ non-game birds, or non-game mammals¹⁰ in designated California condor range areas.¹¹ In California condor range areas, it is also illegal for hunters to possess the combination of:

- (1) Lead-based ammunition; *and*
- (2) A firearm capable of firing that lead-based ammunition, even if the lead-based ammunition is not being used for hunting.¹²

Different states have different regulations related to the use of lead-based ammunition, but the limitations on lead-based ammunition across the country are generally related to migratory bird hunting or other forms of hunting occurring near some type of water source (*e.g.*, river, pond, lake).¹³

By the end of this decade, it will be illegal to hunt in California using traditional lead-based ammunition. California Governor Jerry Brown signed AB 711 on October 11, 2013, which requires that the California Fish & Game Commission (referred to in this section as the Commission) enact regulations by July 1, 2015, that make it illegal for anyone in California to take any game or non-game animal with lead-based ammunition.¹⁴ The regulations are to be in complete effect no

⁸ 50 C.F.R. §§ 20.21(j), 20.108.

⁹ CAL. FISH & GAME CODE § 3004.5; CAL. CODE REGS. tit. 14, §§ 350, 353(h).

¹⁰ CAL. CODE REGS. tit. 14, § 475(f).

¹¹ CAL. FISH & GAME CODE § 3004.5(a). For the California Condor range, see *Ridley-Tree Condor Preservation Act*, CAL. DEPT. OF FISH & GAME, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=82802> (last visited Oct. 20, 2014).

¹² CAL. CODE REGS. tit. 14, §§ 353(h), 475(f).

¹³ *State Regulations*, HUNTFORTRUTH.ORG, <http://www.huntfortruth.org/legal/state-regulations/> (last visited Oct. 20, 2013).

¹⁴ CAL. FISH & GAME CODE § 3004.5(i); Letter from Edmund G. Brown, Governor of California, to the Members of the California State Assembly (Oct. 11, 2013), available at http://gov.ca.gov/docs/AB_711_2013_Signing_Message.pdf (last visited Oct. 20, 2014). These regulations should be proposed sometime around November 2014. For the latest news on these regulations, visit www.HuntForTruth.org.

later than July 1, 2019.¹⁵ Unless another state rushes to impose its own ban, California will be the first state in the nation to impose a complete ban on using lead-based ammunition when hunting within the state. As often is the case with firearms laws, there is a concern that once California's laws are in place, other states will duplicate the lead restriction. This is all the more reason why people in other states should concern themselves with the laws of California.

There is one exception written into AB 711 that could theoretically reduce the scope of the ban, but it seems unlikely to have any real impact. AB 711 allows, but does not require, the Director of California's Department of Fish & Wildlife to temporarily suspend the ban for any caliber of non-lead ammunition that is not "commercially available . . . because of federal prohibitions relating to armor-piercing ammunition . . ." ¹⁶ It is unclear what this provision means exactly, though it was probably based on the assumption that, by the time AB 711 is actually put into full effect, the federal government will have resolved the fact that some "nontoxic" bullets may technically be within the federal definition of illegal "armor-piercing ammunition" (discussed above).¹⁷ And in any event, even if this exception is triggered, it will not apply to any ammunition use that is currently illegal under the 2008 Condor Zone ban.

CGL Book Page 402 – Replace Subsection A with the following:

A. BB Guns

California law does not use the term "BB gun" but rather "BB device." A "BB device" is anything "that expels a projectile, such as a BB or a pellet, . . . [under] 6mm caliber, through . . . air pressure, gas pressure, or spring action, or any spot marker gun."¹⁸ Devices that meet this definition are *not* "firearms."¹⁹ Starting on January 1, 2016, the part about the projectile being under 6mm caliber will be deleted from the definition. This means that any spot marker gun or device expelling *any* projectile



¹⁵ CAL. FISH & GAME CODE § 3004.5(i).

¹⁶ CAL. FISH & GAME CODE § 3004.5(j)(1).

¹⁷ Some of the California "certified nonlead" alternative projectiles are made of "armor piercing" material, e.g., tungsten alloy, which appears to make ammunition based on such projectiles "armor piercing" illegal under federal law. 18 U.S.C. § 921(a)(17)(B) (listing tungsten alloy projectiles and projectile cores "which may be used in a handgun" as "armor piercing ammunition"); see *Certified Nonlead Ammunition Information*, CAL. DEPT. OF FISH & WILDLIFE, <http://www.dfg.ca.gov/wildlife/hunting/condor/certifiedammo.html> (listing nonlead cartridges containing tungsten alloy-based projectiles) (last visited Oct. 20, 2014).

¹⁸ P.C. § 16250.

¹⁹ "Firearms" are discussed and defined in Chapter 2.

through air pressure, gas pressure, or spring action will be considered a “BB device.”²⁰

It’s illegal to sell “BB devices” to minors, and no one may loan or give a “BB device” to a minor without permission from that minor’s parent or legal guardian.²¹

Despite generally being considered a non-lethal weapon, a BB gun used by a juvenile while committing a robbery is a “dangerous weapon,” according to a decision by the California Court of Appeal.²² Under California law, a person who uses a deadly or “dangerous weapon” in the commission of a felony can receive an additional jail sentence on top of the jail sentence they receive for a felony conviction. These are referred to as sentence enhancements.²³ So don’t think you won’t face serious charges just because you use a BB gun to commit a crime and not a real firearm.

CGL Book Pages 402-405 – Replace Subsection B with the following:

B. Toy Guns a.k.a. “Imitation Firearms”

When discussing “imitation firearms,” it is best to start with federal law and work back to California law. Under federal law, it is illegal for anyone “to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce”²⁴

Unless there is an exception or the Secretary of Commerce has provided for an alternate marking or device,²⁵ “each toy, look-alike, or imitation firearm shall have as an integral part, permanently affixed, a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation

²⁰ P.C. § 16250(a) (effective January 1, 2016). This is due to SB 199, which was signed into law in September 2014. See SB 199, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB199 (last visited Oct. 20, 2014).

²¹ P.C. §§ 19910, 19915.

²² *In re Bartholomew D.*, 131 Cal. App. 4th 317, 322-26 (2005).

²³ P.C. § 12022(b).

²⁴ 15 U.S.C. § 5001(a).

²⁵ The Secretary of Commerce has promulgated a number of regulations concerning alternate markings and identifies how to request a waiver from the marking requirement if you seek to use an imitation firearm in the entertainment industry. See 15 U.S.C. § 50001(b)(2); 15 C.F.R. §§ 272.1-272.5.

firearm. Such plug shall be recessed no more than 6 millimeters from the muzzle end of the barrel of such firearm.”²⁶

A “look-alike firearm” means any imitation of any original firearm which was manufactured, designed, and produced since 1898, including and limited to toy guns, water guns, replica nonguns, and airsoft guns firing nonmetallic projectiles.²⁷ A “look-alike firearm” does *not include* “any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional BB, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure.”²⁸ That is why certain airsoft guns need the orange tips while BB guns that fire metallic pellets do not, despite looking in all other respects identical.

Going back to California law, an “imitation firearm” is “any BB device, toy gun, replica of a firearm, or other device that is so substantially similar” in color and overall appearance to an existing firearm that a reasonable person would think it is a firearm.²⁹

Anyone who modifies an “imitation firearm” to look more like a firearm is guilty of a misdemeanor.³⁰ This does not apply to manufacturers, importers, or imitation firearm distributors or those who lawfully use imitation firearms for theatrical, film, or television productions.³¹ Manufacturers, importers, or distributors of imitation firearms who fail to comply with federal law or regulations relating to the markings of “a toy, look-alike, or imitation firearm, as defined by federal law or regulation,” (discussed above) can be prosecuted criminally under California law.³²

California puts additional burdens on those who purchase, sell, manufacture, ship, transport, distribute, or receive (by mail order or in any other manner) “imitation firearms” for commercial purposes, unless the firearm is:

- (1) Only for “export” (interstate or internationally) in commerce; *or*
- (2) Only “for lawful use in theatrical productions, including motion picture, television, and stage productions”; *or*
- (3) For “a certified or regulated sporting event or competition”; *or*
- (4) For “military or civil defense activities, or ceremonial activities”; *or*
- (5) For public displays authorized by public or private schools.³³

²⁶ 15 U.S.C. § 5001(b)(1).

²⁷ 15 U.S.C. § 5001(c).

²⁸ 15 U.S.C. § 5001(c).

²⁹ P.C. § 16700(a).

³⁰ P.C. § 20150(a).

³¹ P.C. § 20150(b)-(c).

³² P.C. § 20155.

³³ P.C. § 20165.

However, these restrictions (relating to the purchase, sale, manufacture, shipping, transporting, distribution, or receipt of “imitation firearms” in P.C. section 20165) do not include: non-firing collector’s replicas that are “historically significant and offered for sale in conjunction with a wall plaque or presentation case”; a “BB device”; or a “device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either” by itself or predominantly “with other colors in any pattern, as provided by federal regulations governing imitation firearms, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device’s complete contents, as provided by federal regulations governing imitation firearms.”³⁴

But, beginning January 1, 2016, only the following types of BB devices will be exempt from the restrictions on the purchase, sale, manufacture, shipment, transportation, distribution, or receipt (by mail order or in any other manner) of “imitation firearms” for commercial purposes under P.C. section 20165:

- (1) A BB device that expels a projectile that is neither 6mm nor 8mm caliber; *or*
- (2) A BB device that is an airsoft gun expelling a 6mm or 8 mm caliber projectile, only if it has the blaze orange ring on the barrel required by federal law, a trigger guard entirely covered in fluorescent colors, *and*
 - (a) If it is configured as a handgun, a two centimeter wide adhesive band³⁵ around the circumference of a fluorescently-colored protruding pistol grip; *or*
 - (b) If it is configured as a rifle or long gun, a two centimeter wide adhesive band³⁶ around the circumference of any two of the following: the protruding pistol grip, the buttstock, or a protruding ammunition magazine or clip.³⁷

³⁴ P.C. § 16700(b).

³⁵ This adhesive band needs to be in place before the BB device is sold to a customer and must be applied in a manner where it is not intended for removal. P.C. § 16700(c) (effective January 1, 2016).

³⁶ This adhesive band needs to be in place before the BB device is sold to a customer and must be applied in a manner where it is not intended for removal. P.C. § 16700(c) (effective January 1, 2016).

³⁷ P.C. § 16700(b)(3), (4), (d) (effective January 1, 2016). This is due to the passing of SB 199. See SB 199, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB199 (last visited Oct. 31, 2014).



Also starting on January 1, 2016, spot marker guns that expel a projectile greater than 10 mm caliber will be exempt from these restrictions, as they too will not be considered to be “imitation firearms for purposes of P.C. section 20165.”³⁸ As will “a nonfiring collector’s replica that is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.”³⁹

While we may think we know what an “airsoft gun” is, the Legislature did not do the California public and retailers any favors in defining the term. It is still not yet known what items the Legislature meant to regulate as “airsoft guns” and what items are covered under this restriction. This is yet another example of the legislators in Sacramento, and particularly Senator de León (again), drafting legislation that does not provide clear indication what is legal or illegal in California.

Finally, a person cannot openly display or expose an “imitation firearm” in a “public place”⁴⁰ unless it is:

- (1) Packaged or concealed so it is not subject to public viewing; *or*
- (2) Displayed or exposed for commerce, including commercial film or video productions, or for service, repair, or restoration; *or*
- (3) Used for a theatrical, movie, video, television, or stage production; *or*
- (4) Used in conjunction with a certified or regulated sporting event or competition; *or*
- (5) Used in conjunction with lawful hunting or pest-control activities; *or*
- (6) Used or possessed at a certified or regulated shooting range; *or*
- (7) Used at a fair, exhibition, exposition, or other similar activity for which the proper permits have been obtained; *or*
- (8) Used in military, civil defense, or civic activities, including flag ceremonies, color guards, parades, award presentations, historical reenactments, and memorials; *or*
- (9) Used for public displays authorized by any school or museum; *or*
- (10) Used in a parade, ceremony, or other similar activity for which proper permits have been obtained; *or*

³⁸ P.C. § 16700(b)(2), (d) (effective January 1, 2016).

³⁹ P.C. § 16700(b)(1), (d) (effective January 1, 2016).

⁴⁰ A “public place” is any “area open to the public” including streets; sidewalks; bridges; alleys; plazas; parks; driveways; front yards; parking lots; automobiles, whether moving or not; buildings open to the general public, including those that serve food or drink or provide entertainment; and the doorways and entrances to buildings or dwellings, including public schools and colleges or universities. P.C. § 20170(b).

- (11) Displayed on a wall plaque or in a presentation case; *or*
- (12) Used where discharging a firearm is lawful; *or*
- (13) “The entire exterior surface of the imitation firearm is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple,” either by itself or mainly with other colors, or “the entire device is constructed of transparent or translucent material that permits unmistakable observation of the device’s complete contents.” Merely having an orange tip is not enough. “The entire surface must be colored or transparent or translucent.”⁴¹

Also, even if you meet one of the above “displaying” exceptions, you may still be prosecuted for possessing the device⁴² at a state or local public building or meeting,⁴³ in an airport,⁴⁴ or on school grounds.⁴⁵

⁴¹ P.C. § 20175.

⁴² See P.C. § 20180(c) (“[n]othing in Section 20170, 20175, or this section shall be construed to preclude prosecution for a violation of Section 171b, 171.5, or 626.10”).

⁴³ P.C. § 171b.

⁴⁴ P.C. § 171.5.

⁴⁵ P.C. § 626.10.

Chapter 10:

SEIZURE, TURN-IN, OR FORFEITURE OF FIREARMS – AND GETTING THEM BACK

CGL Book Pages 422-423 – Add the following after Subsection C:

1. Welfare Checks

In response to the Isla Vista Shootings in Santa Barbara, the California Legislature passed Senate Bill (SB) 505.¹ This bill requires that every law enforcement agency develop, adopt, and implement written policies and standard protocols on how to best conduct a “welfare check,” when the inquiry into the welfare or well-being of the person is motivated by a concern that the person may be a danger to himself, herself, or to others.² These policies must encourage peace officers to conduct an Automated Firearms Search (AFS) to determine whether the person is a registered owner of a firearm, whenever it is reasonably possible.

Although this information will help peace officers better assess whether the person is a danger to himself, herself, or to another, it *does not* give them the permission to *seize* a firearm during a “welfare check.”

CGL Book Pages 424-426 – Replace Subsection G with the following:

G. Restraining Orders

People prohibited from possessing firearms because they are subject to a restraining order under any of the following code sections must either surrender their firearms to law enforcement or sell them to or store them with a Federal Firearms Licensee (FFL) within 24 hours of being served with the order:

¹ See BILL ANALYSIS: HEARING ON SB 505 BEFORE THE ASSEMB. COMM. ON PUBLIC SAFETY, at 2 (June 24, 2014), available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB505 (last visited Oct. 20, 2014).

² SB 505, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB505 (last visited Oct. 31, 2014).

- (1) California Code of Civil Procedure (Cal. Civ. Proc. Code) section 527.6 (civil harassment temporary restraining order or injunction); *or*
- (2) Cal. Civ. Proc. Code section 527.8 (employers seeking a temporary restraining order or an injunction for an employee who has suffered unlawful violence or credible threat of violence); *or*
- (3) Cal. Civ. Proc. Code section 527.85 (schools seeking temporary restraining orders or injunctions for students who have suffered off-campus credible threats of violence); *or*
- (4) California Family Code (Cal. Fam. Code) section 6218 (protective orders issued in accordance with Cal. Fam. Code sections 6320, 6321, and 6322); *or*
- (5) P.C. sections 136.2 and 646.91 (court orders against victim and/or witness intimidation and orders protecting against stalking); *or*
- (6) Cal. Welf. & Inst. Code section 15657.03 (elder or dependent adult abuse temporary and permanent restraining orders).³

This requirement applies to any firearm in, or subject to, immediate possession or control of the restrained person because these types of orders prohibit restrained persons from possessing or controlling *any* firearm *for the duration of any of the above orders*.⁴ Within 48 hours of receiving the order, the restrained person must file a receipt with the court showing that any firearms in, or subject to, his or her “immediate possession or control” were either surrendered to law enforcement or sold to or stored with an FFL.⁵ Those subject to domestic violence restraining orders must also show proof of turning in the firearms to law enforcement.⁶



If you are given the choice of the three options above, I would strongly suggest turning your lawfully owned firearms in for storage with an FFL. Selling your firearms often entails you losing family heirlooms and irreplaceable mementos. Turning the firearms in to law en-

³ CAL. CIV. PROC. CODE § 527.9(b); P.C. § 29830.

⁴ CAL. CIV. PROC. CODE § 527.9(a)-(b), (e); P.C. § 29825.

⁵ CAL. CIV. PROC. CODE § 527.9(b). Pursuant to Cal. Civ. Proc. Code section 527.9(g), an individual can sell the firearms in law enforcement’s possession to an FFL. Once an FFL presents a bill of sale or receipt showing that all firearms owned by the restrained person have been sold to him or her, the FFL shall be given those firearms within five days of presenting that receipt to law enforcement.

⁶ CAL. FAMILY CODE § 6389(c)(2)(B).

forcement presents a number of problems, the least of which is the potential criminal prosecution if you happen to turn in a firearm you were not aware was illegal for you to possess (but you shouldn't be concerned about that after reading this book, right?). Law enforcement will probably not store firearms in a way you would prefer. Sometimes firearms get thrown into a bin and stacked one on top of the other. The other problem with turning firearms in to law enforcement is the requirements you must follow to get them back. As discussed below, there are a number of legally required hoops you must jump through in addition to the (potentially unlawful) requirements a law enforcement agency may impose on you in order to get your lawfully possessed firearms back after your firearm rights are restored. As of the publication of the Supplement, I do not know any dealers who offer this service. However, call around and see if you can find a dealer is willing to provide this service.

For court orders issued under the California Family Code,⁷ the requirements are slightly different. These types of protective orders, defined in Cal. Fam. Code section 6218,⁸ require any firearm in, or subject to, a person's immediate possession or control to be safely surrendered to a law enforcement officer (upon request) after the person is served with the protective order.⁹ If law enforcement does not demand otherwise, the person subject to the protective order must dispose of his or her firearms as outlined above, *i.e.*, turn in, sell, or store them (as discussed above) within 24 hours of being served and show proof to the court within 48 hours of being served.¹⁰ Additionally, law enforcement may seek to seize a firearm that is in plain sight or discovered while they are serving a Cal. Fam. Code section 6218 protective order.¹¹

California statutes do not specifically address how persons should dispose of their firearms once they become prohibited from possessing them due to a protective order issued under P.C. section 646.91. But P.C. section 29825(d) requires that all restraining orders state that the firearms must be relinquished to the local law enforcement agency for

⁷ Restraining orders will typically specify under what law the order is issued.

⁸ These orders include those issued under Cal. Fam. Code sections 6320 (enjoining specific abuse), 6321 (excluding a person from a dwelling), and 6322 (enjoining other specific behavior).

⁹ CAL. FAM. CODE § 6389(c)(2). This scenario raises serious Fourth and Fifth Amendment concerns because the court is essentially requiring restrained persons to give law enforcement their property without a valid warrant. Cal. Fam. Code section 6389(d) allows those who are served with a Family Code protective order to invoke Fifth Amendment protection and receive "use immunity" (*i.e.*, information provided to law enforcement could not be used against them), but such an invocation of rights is unlikely when a person is faced with a valid court order and armed law enforcement officers are demanding the firearms.

¹⁰ CAL. FAM. CODE § 6389(c)(2).

¹¹ P.C. § 18250.

that jurisdiction, sold to a licensed firearms dealer, or transferred to a licensed firearms dealer pursuant to P.C. section 29830,¹² as long as the protective order is in effect, and that proof of surrender or sale must be filed within a specified time of receipt of the order. Therefore, presumably the same procedure for surrendering firearms for other restraining orders also applies to P.C. section 646.91 orders, unless the orders expressly state otherwise.

CGL Book Page 426 – Add the following after Subsection 1:

2. “Gun Violence Restraining Orders”



Beginning January 1, 2016, any person served with a temporary “gun violence restraining order” (*i.e.* an emergency¹³ or *ex parte*¹⁴ order) must immediately surrender *all* of his or her firearms and ammunition, in a safe manner, to a law enforcement officer (upon request).¹⁵ However, if the law enforcement officer does not request the firearms, then the restrained person must either immediately surrender the firearms or ammunition to law enforcement or sell them to an FFL within 24 hours.¹⁶ Note that there is no provision to *store* the firearms with a licensed dealer as is allowed for under other restraining orders.

Regardless of whether the restrained person surrenders or sells his or her firearms and ammunition, he or she must file a receipt with the court and the law enforcement agency that served the “gun violence restraining order” within 48 hours of being served with the order that proves the firearms and ammunition were either surrendered or sold.¹⁷ Failing to give this proof to the court or the law enforcement agency is a violation of the restraining order.¹⁸

Any person who is served with a permanent “gun violence restraining order” (*i.e.*, an order issued after notice and a hearing) must also surrender or sell all his or her firearms and ammunition as outlined in the paragraph above.¹⁹ Moreover, if the person was already subject

¹² P.C. section 29830 was added to the Penal Code by AB 539 (2013).

¹³ Issued under P.C. sections 18125-18145 (effective January 1, 2016).

¹⁴ Issued under P.C. sections 18150-18165 (effective January 1, 2016).

¹⁵ P.C. § 18120(b)(2) (effective January 1, 2016).

¹⁶ P.C. § 18120(b)(2) (effective January 1, 2016).

¹⁷ P.C. § 18120(b)(2) (effective January 1, 2016).

¹⁸ P.C. § 18120(b)(2) (effective January 1, 2016).

¹⁹ P.C. § 18120(b)(2) (effective January 1, 2016).

to a temporary “gun violence restraining order,” then he or she must surrender or sell all their firearms and ammunition as outlined in the paragraph above, if they have not already done so.²⁰

After a temporary or permanent “gun violence restraining order” has been issued, law enforcement must seize any firearms or ammunition that are found during a consensual or otherwise lawful search, if the firearms and ammunition are in the restrained person’s custody or control.²¹

Further, a court can issue a search warrant to law enforcement if the restrained person does not surrender or sell his or her firearms and ammunition within 24 hours of being served with the “gun violence restraining order.”²² Clearly, any firearms or ammunition that are in the custody or control of the restrained person that are found while a law enforcement officer is executing a search warrant are subject to seizure.

However, if the firearms or ammunition are discovered during a search of a jointly held home, and the firearms or ammunition are owned by someone other than the person who is subject to the order, a law enforcement officer is not allowed to seize the firearms or ammunition if:

- (1) The firearms or ammunition are removed from the restrained person’s custody or control or possession and stored in a manner that the restrained person does not have access to or control of the firearm or ammunition; *and*
- (2) There is no evidence that the owner is unlawfully possessing the firearm or ammunition.²³

Additionally, a law enforcement officer is not allowed to open a locked gun safe that is discovered during a search of a jointly occupied residence if it is owned by someone other than restrained person. However, the law enforcement officer can search the locked gun safe if he or she has a valid warrant, or if the owner of the locked gun safe is present and gives the law enforcement officer consent to search the safe.²⁴

²⁰ P.C. § 18180(a)(4) (effective January 1, 2016).

²¹ P.C. § 1542.5(a) (effective January 1, 2016).

²² P.C. § 1524(a)(14) (effective January 1, 2016).

²³ P.C. § 1542.5(b)(1) (effective January 1, 2016).

²⁴ P.C. § 1542.5(b)(2) (effective January 1, 2016).

CGL Book Pages 427-428 – Replace Subsection I with the following:

I. Increased Seizures Resulting From Armed Prohibited Person System (APPS) Enforcement



Once a person becomes prohibited from owning and possessing firearms under California or federal law (see Chapter 3), that person's name is entered into the Automated Criminal History System. The California Department of Justice (DOJ) then cross-references the name with the Consolidated Firearms Information System to determine if the person has an entry that indicates he or she possessed or owned a firearm on or after January 1, 1996.²⁵ If there is a match, that information is entered into the Prohibited Armed Persons File. This is referred to as the Armed Prohibited Persons System (APPS). Until a couple of years ago, enforcement of the APPS program was rather rare. That has since changed.

As a result of Senate Bill (SB) 819, which was introduced by Senator Mark Leno and became law in 2012,²⁶ money collected from DROS fees can be used to pay for the APPS program, allowing law enforcement to target more people on the APPS list. In the wake of sweeping gun control legislation introduced in 2013, the California legislature passed a bill authorizing the DOJ to raid the \$24 million surplus in the Dealer's Record of Sales (DROS) Special Account of the General Fund (money acquired by the state for each firearm sale/transaction)²⁷ to pay for APPS enforcement.²⁸ Consequently, there has been a rise in law enforcement visiting and arresting people who have firearms registered in their name and have a potentially prohibiting event in their past.

While I was writing the second edition of the CGL book, the California State auditor published a report entitled "Armed Persons with Mental Illness."²⁹ The DOJ has routinely dropped the ball concerning in-

²⁵ P.C. § 30005(a) (effective January 1, 2015). See AB 2300, 2013-2014, Leg. Counsel's Digest (Cal. 2014) available at, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2300# (last visited Oct. 20, 2014).

²⁶ SB 819, 2011-2012, Leg. Counsel's Digest (Cal. 2011), available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0801-0850/sb_819_bill_20111009_chaptered.pdf (last visited Oct. 20, 2014).

²⁷ The DROS fee and surplus are discussed further in Chapter 4.

²⁸ In 2013, Senators Hannah-Beth Jackson and Mark Leno introduced SB 580 to try and appropriate even more money for APPS enforcement. Although the bill failed in the Assembly, had the bill passed, it would have appropriate \$15 million more dollars from the Firearms Safety and Enforcement Special Fund (money once again acquired by the state for each firearms sale/transaction) to pay for APPS enforcement. SB 580, 2013-2014, Leg. Counsel's Digest (Cal. 2014), available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB580 (last visited Oct. 20, 2014).

²⁹ A copy of this report can be located at: <https://www.bsa.ca.gov/pdfs/reports/2013-103.pdf>.

dividuals with mental health restrictions. Either the DOJ failed to indicate the person was an “armed prohibited person,” or in other instances the DOJ had difficulty processing the information it received from courts and hospitals.

Moreover, the report identified an immense shortcoming with the APPS database. Apparently, the Consolidated Firearms Information System (the database that was supposed to contain records on people who own or possess firearms on or after January 1, 1991) only contained firearms records that dated back to January 1, 1996. And although the DOJ had records pre-dating January 1, 1996, the records were considered to be “extremely unreliable.” Because of this shortcoming, the DOJ has failed to identify a number of people who owned or possessed firearms prior to January 1, 1996 as “armed prohibited persons” and was running a system that was not fully consistent with California law.

In 2014, the California legislature passed AB 2300³⁰ to fix this “flaw.” Now, the DOJ is only required to cross-reference prohibited persons with the firearm ownership records that are in the Consolidated Firearms Information System that date back to January 1, 1996.³¹ This means that the backlog of historical records that the DOJ was required to comb through to determine people’s eligibility has substantially decreased. Interestingly, despite the decrease in the DOJ’s workload, Senators Hannah-Beth Jackson and Mark Leno introduced a bill in the same legislative year asking for more money to help fund the DOJ and the ever failing APPS program.

The enforcement of the APPS program is not the dream program the media and the Attorney General (AG) make it out to be. The Automated Firearms System (AFS) (the database where firearm information is kept) is notoriously inaccurate. Consequently, law enforcement officers sometimes go to peoples’ homes only to find that the firearms they are looking for are long gone. Additionally, just because a person is subject to APPS does not mean that law enforcement can kick down that person’s door. The information in APPS does not provide enough “probable cause” for law enforcement to seek a warrant, so if the person tells law enforcement to “take a hike,” there is usually not much law enforcement can do.

Nevertheless, the APPS program has resulted in arrests and confiscation of firearms from people who did not know they were prohibited,

³⁰ AB 2300, 2013-2014, Leg. Counsel’s Digest (Cal. 2014) available at, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2300# (last visited Oct. 20, 2014).

³¹ P.C. 30005 (effective January 1, 2015).

such as persons with firearm restrictions almost ten years old and people who have a single misdemeanor criminal conviction on their record.³²

³² Senator Kevin de León introduced SB 38 during the 2013 legislative session. The bill would have directed the DOJ to establish a 30-day amnesty period during which a person prohibited from possessing a gun could surrender it to local law enforcement without prosecution for that possession.

Chapter 11:
SELF-DEFENSE AND THE USE OF FORCE

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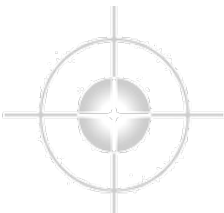
Michel & Associates, P.C., is a full-service law firm representing businesses throughout the country. Owner C.D. “Chuck” Michel leads a team of over a dozen highly qualified and experienced attorneys with extensive experience in a variety of legal specialties. The firm has been litigating civil and criminal firearm cases since 1991.

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Mr. Michel is frequently quoted concerning Second Amendment rights by the major daily newspapers and by television and radio stations. He is the author of *California Gun Laws: A Guide to State and Federal Firearm Regulations* (available at www.CalGunLawsBook.com.) Mr. Michel has been honored and profiled in recognition of his corporate and civil rights work in multiple periodicals and by the NRA, which awarded him the prestigious *Defender of Justice Award* in 2013. Mr. Michel also teaches *Firearms Law* and *Law Practice Management* at Chapman University Dale E. Fowler School of Law.