

AMENDED IN ASSEMBLY MARCH 18, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 876

Introduced by Assembly Member Gabriel
(Coauthors: Assembly Members Chui and Wicks)

February 17, 2021

An act to ~~amend~~ *add* Section ~~18120~~ of 13660 to the Penal Code, relating to ~~gun violence restraining orders~~: *law enforcement*.

LEGISLATIVE COUNSEL'S DIGEST

AB 876, as amended, Gabriel. ~~Gun violence restraining orders~~. *Law enforcement*.

Existing law, subject to exceptions, generally makes it an offense to manufacture or sell an unsafe handgun, as defined, and requires the Department of Justice to compile a roster listing all of the handguns that have been tested and determined not to be unsafe handguns. Existing law, beginning July 1, 2022, requires all handguns not already listed on the roster to be equipped with technology that transfers a microscopic array of characters from the handgun to the cartridge case when the handgun is fired, known as a microstamp. Existing law requires all firearms acquired by a law enforcement agency to be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS).

This bill would require all handguns, with the exception of revolvers, as defined, purchased on or after July 1, 2023, that are owned, used, possessed, or otherwise carried by state, county, city, or other law enforcement officers while on duty to be microstamped within 90 days of purchase or acquisition. The bill would also require all handguns

used by any state, county, city, or other law enforcement officer while on duty to be entered into AFS via CLETS within 90 days of acquisition. By requiring local law enforcement to comply with these provisions, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law establishes a gun violence restraining order that prohibits and enjoins a named person from having in their custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. Existing law requires a person who is subject to a gun violence restraining order to surrender their firearms and ammunition immediately upon request of any law enforcement officer after being served with the restraining order.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13660 is added to the Penal Code, to
- 2 read:
- 3 13660. (a) All handguns purchased or acquired on or after
- 4 July 1, 2023, which are described in subdivision (b), shall, within
- 5 90 days of purchase or acquisition, be equipped with a microscopic
- 6 array of characters used to identify the make, model, and serial
- 7 number of the handgun, etched or otherwise imprinted in one or
- 8 more places on the interior surface or internal working parts of
- 9 the handgun, and that are transferred by imprinting on each
- 10 cartridge case when the firearm is fired.
- 11 (b) (1) This section applies to all of the following:
- 12 (A) Any handgun owned by any state, county, city, city and
- 13 county, or other law enforcement agency.

1 (B) Any handgun used, possessed, or otherwise carried by a
2 state, county, city, city and county, or other peace officer while on
3 duty.

4 (2) This section does not apply to a handgun that is a revolver.

5 (c) All handguns described in subparagraph (B) of paragraph
6 (1) of subdivision (b) shall, within 90 days of acquisition, be
7 entered as an institutional weapon into the Automated Firearms
8 System (AFS) via the California Law Enforcement
9 Telecommunications System (CLETS) by the state, county, city,
10 city and county, or other law enforcement agency. Any law
11 enforcement agency without access to the AFS shall arrange with
12 the sheriff of the county in which the agency is located to input
13 this information via this system.

14 SEC. 2. If the Commission on State Mandates determines that
15 this act contains costs mandated by the state, reimbursement to
16 local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.

19 SECTION 1. ~~Section 18120 of the Penal Code is amended to~~
20 ~~read:~~

21 ~~18120. (a) A person subject to a gun violence restraining order~~
22 ~~issued pursuant to this division shall not have in the person's~~
23 ~~custody or control, own, purchase, possess, or receive any firearms~~
24 ~~or ammunition while that order is in effect.~~

25 ~~(b) (1) Upon issuance of a gun violence restraining order issued~~
26 ~~pursuant to this division, the court shall order the restrained person~~
27 ~~to surrender all firearms and ammunition in the restrained person's~~
28 ~~custody or control, or that the restrained person possesses or owns~~
29 ~~pursuant to this subdivision.~~

30 ~~(2) The surrender ordered pursuant to paragraph (1) shall occur~~
31 ~~by immediately surrendering all firearms and ammunition in a safe~~
32 ~~manner, upon request of a law enforcement officer, to the control~~
33 ~~of the officer, after being served with the restraining order. A law~~
34 ~~enforcement officer serving a gun violence restraining order that~~
35 ~~indicates that the restrained person possesses firearms or~~
36 ~~ammunition shall request that all firearms and ammunition be~~
37 ~~immediately surrendered.~~

38 ~~(3) If the gun violence restraining order is issued as an ex parte~~
39 ~~order or order after notice and hearing, and is served by a person~~
40 ~~other than a law enforcement officer, and if no request is made by~~

1 a law enforcement officer, the surrender shall occur within 24
2 hours of being served with the order, by surrendering all firearms
3 and ammunition in a safe manner to the control of a local law
4 enforcement agency, selling all firearms and ammunition to a
5 licensed firearms dealer, or transferring all firearms and
6 ammunition to a licensed firearms dealer in accordance with
7 Section 29830.

8 (4) The law enforcement officer or licensed firearms dealer
9 taking possession of firearms or ammunition pursuant to this
10 subdivision shall issue a receipt to the person surrendering the
11 firearm or firearms or ammunition or both at the time of surrender.

12 (5) A person ordered to surrender all firearms and ammunition
13 pursuant to this subdivision shall, within 48 hours after being
14 served with the order, do both of the following:

15 (A) File with the court that issued the gun violence restraining
16 order the original receipt showing all firearms and ammunition
17 have been surrendered to a local law enforcement agency or sold
18 or transferred to a licensed firearms dealer. Failure to timely file
19 a receipt shall constitute a violation of the restraining order.

20 (B) File a copy of the receipt described in subparagraph (A)
21 with the law enforcement agency, if any, that served the gun
22 violence restraining order. Failure to timely file a copy of the
23 receipt shall constitute a violation of the restraining order.

24 (e) (1) Except as provided in paragraph (2), firearms or
25 ammunition surrendered to a law enforcement officer or law
26 enforcement agency pursuant to this section shall be retained by
27 the law enforcement agency until the expiration of a gun violence
28 restraining order that has been issued against the restrained person.
29 Upon expiration of an order, the firearms or ammunition shall be
30 returned to the restrained person in accordance with the provisions
31 of Chapter 2 (commencing with Section 33850) of Division 11 of
32 Title 4. Firearms or ammunition that are not claimed are subject
33 to the requirements of Section 34000.

34 (2) A restrained person who owns firearms or ammunition that
35 are in the custody of a law enforcement agency pursuant to this
36 section is entitled to sell the firearms or ammunition to a licensed
37 firearms dealer or transfer the firearms or ammunition to a licensed
38 firearms dealer in accordance with Section 29830 if the firearm
39 or firearms or ammunition are otherwise legal to own or possess

1 and the restrained person otherwise has right to title of the firearm
2 or firearms or ammunition.

3 ~~(d) If a person other than the restrained person claims title to~~
4 ~~firearms or ammunition surrendered pursuant to this section, and~~
5 ~~the person is determined by the law enforcement agency to be the~~
6 ~~lawful owner of the firearm or firearms or ammunition, the firearm~~
7 ~~or firearms or ammunition shall be returned to the person pursuant~~
8 ~~to Chapter 2 (commencing with Section 33850) of Division 11 of~~
9 ~~Title 4.~~

10 ~~(e) Within one business day of receiving the receipt referred to~~
11 ~~in paragraph (4) of subdivision (b), the court that issued the order~~
12 ~~shall transmit a copy of the receipt to the Department of Justice in~~
13 ~~a manner and pursuant to a process prescribed by the department.~~

14 ~~(f) This section shall become operative on September 1, 2020.~~