

CITY OF OAKLAND
BILL ANALYSIS



Date: May 21, 2009

Bill Number: AB #814

Bill Author: Assembly Member Krekorian

DEPARTMENT INFORMATION

Contact: Lieutenant Kenneth W. Parris
Department: Police
Telephone: (510) 238-3770 **FAX:** (510) 238-3030
E-mail: kwparris@oaklandnet.com

RECOMMENDED POSITION: **SUPPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2009 MAY -7 PM 5:50

Summary of the Bill

California law forbids convicted felons and certain misdemeanants from possessing firearms, recognizing that these individuals represent the greatest risk for future firearm violence. Gaps in the law, however, have allowed many of these criminals to retain firearms they owned before being convicted. As a result, the Department of Justice estimates that as many as 60,000 convicted criminals currently possess firearms in California despite being prohibited by law.¹ AB #814 seeks to reduce this significant threat to public safety.

Penal Code § 12021 prohibits persons from possessing firearms when they have been convicted of a felony or one of a number of misdemeanor offenses. Using a notice and form created by the Department of Justice, defendants are advised to transfer their firearms to a third party designee who must (within 30 days) relinquish the firearms to a local law enforcement agency, sell or transfer them to a third party through a licensed firearms dealer, or sell them to a dealer. Existing law provides no mechanism, however, to ensure that these firearms are actually relinquished.

Penal Code § 12021.3 also allows prohibited persons who relinquish their firearms to a law enforcement agency to sell those firearms. Currently, any firearms relinquished to or seized by law enforcement must be retained and stored by law enforcement for at least 180 days, during which the prohibited person may sell the weapons. This law places an undue burden upon law enforcement to store the firearms of convicted criminals for a lengthy period of time.

¹ California Department of Justice, Office of the Attorney General, *Brown Cracks Down on Illegal Gun Possession*, News Release, Dec. 10, 2007, at: <http://ag.ca.gov/newsalerts/release.php?id=1505>.

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AB #814 is designed to address the following gaps in existing law:

- Establishes a clear process for firearm relinquishment;
- Requires prohibited persons to declare firearm ownership;
- Encourages law enforcement to retrieve prohibited weapons;
- Reduces burden on law enforcement; and
- Prohibits sale of illegally possessed firearms.

Establishes a Clear Process for Timely Firearm Relinquishment

AB #814 will facilitate enforcement of existing state laws prohibiting illegal firearm possession by establishing a clear process and timeline for firearm relinquishment by prohibited persons. Under the bill, upon conviction of a crime disqualifying a defendant from firearm possession, a defendant must be instructed by the judge that he or she is prohibited from owning or possessing any firearms. The judge must also provide the defendant with a notice and form describing the manner in which firearms may be relinquished and the penalties attached to failure to comply.

Upon conviction, a prohibited person must transfer his or her firearms to a designee who must sell the firearms to a dealer, sell or transfer them to a third party through a dealer, or relinquish them to local law enforcement. If the prohibited person is not in law enforcement custody following conviction, the relinquishment process must be completed within 5 days. If the prohibited person remains in custody, the process must be completed within 14 days.

Requires Prohibited Persons to Declare Firearm Ownership

Under the bill, all prohibited persons must (within the relinquishment period) submit a form to local law enforcement stating: 1) whether or not they owned any firearms to relinquish; 2) if so, to whom any firearms were relinquished; and 3) whether they previously owned firearms but could not comply with the relinquishment provisions because those firearms were lost or stolen, explaining in detail the circumstances surrounding the loss or theft and any actions taken to report the matter to a law enforcement agency or insurance provider.

Encourages Law Enforcement to Retrieve Prohibited Weapons

The bill encourages local law enforcement to review each defendant's sworn submissions against the Department of Justice's handgun transfer databases to help identify prohibited persons who have lied about firearm ownership or relinquishment in their sworn submissions. The bill also encourages law enforcement to retrieve prohibited weapons whenever possible.

Reduces Burden on Law Enforcement

This bill reduces the length of time from 180 days to 30 days to which law enforcement must retain a prohibited person's firearms following relinquishment. If a prohibited person has not (through his or her designee) sold a firearm by the end of the 30 days, it becomes the property of the law enforcement agency.

Prohibits Sale of Illegally Possessed Firearms

AB #814 also closes a loophole in existing law that allows a prohibited person to sell firearms in law enforcement custody following his or her conviction, even if the firearms had been seized in conjunction with the person's prosecution for illegal firearm possession. Under the bill, a prohibited person whose firearms are seized by law enforcement may not have the weapons sold or transferred by a firearms dealer. Instead, these weapons will become the property of the seizing law enforcement agency.

Positive Factors for Oakland

This bill would clearly define the process and timelines by which persons convicted of a felony or a prohibited misdemeanor must declare firearm ownership and either sell or transfer their firearms to a third party or surrender them to a local law enforcement agency. This process reduces the time it takes for dangerous firearms to be taken out of the hands of convicted felons and prohibited misdemeanants, lessening the possibility that these firearms will be used in a crime of violence and making the streets of Oakland safer.

The Oakland Police Department (OPD) presently has thousands of firearms housed in its Property and Evidence Unit's storage facility. The sheer volume of firearms processed at the facility makes it extremely burdensome to store (free of charge) firearms that have been surrendered for sale by convicted felons and prohibited misdemeanants for the requisite 180 days. The reduction in the mandatory retention period from 180 to 30 days would greatly enhance OPD's ability to manage these firearms. The law would also transfer ownership of the firearms to the law enforcement agency after a 30 day period, facilitating the agency's ability to properly dispose of the firearms in its custody.

Negative Factors for Oakland

While there are no local unfunded mandates, the bill's language "encourages" local law enforcement to "review each defendant's sworn submissions against the Department of Justice's handgun transfer databases to help identify prohibited persons who have lied about firearm ownership or relinquishment in their sworn submissions. The bill also encourages law enforcement to retrieve prohibited weapons whenever possible." To effectively respond to this

encouragement would require local law enforcement agencies to engage existing limited resources in the conduct of the recommended checks and firearms seizures; however, for the bill to be fully effective, this activity is essential. To do otherwise would signal to felons and prohibited misdemeanants that adherence to this law is optional so long as you are willing to run the risk the local law enforcement agency will be too burdened with other tasks to bother with completing the tasks encouraged by the bill

This bill does not include funding to enable local law enforcement to carry out any of the aforementioned activities. It is anticipated that with an existing large volume of firearms to process already, OPD may find the new processes and encouragement too costly and time consuming to initiate.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

Critical (top priority for City lobbyist, city position required ASAP)

Very Important (priority for City lobbyist, city position necessary)

Somewhat Important (City position desirable if time and resources are available)

Minimal or **None** (do not review with City Council, position not required)

Known support:

Alameda County District Attorney's Office
Brady Campaign to Prevent Gun Violence, California Chapters
Brady Campaign to Prevent Gun Violence, Oakland/Alameda County
Brady Campaign to Prevent Gun Violence, Orange County
Chief of Police, City of Emeryville
California Partnership to End Domestic Violence
Chief of Police, City of Fremont
Chief of Police, City of Richmond
City of Los Angeles
Coalition to Stop Gun Violence
Friends Committee on Legislation
Legal Community Against Violence
Office of the District Attorney, City and County of San Francisco
Peace Over Violence
Physicians for Social Responsibility
Rainbow Services

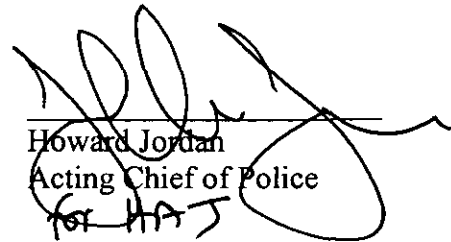
San Francisco District Attorney
Santa Ana Police Department
Women Against Gun Violence
Youth Alive

Known Opposition:

None

Attach bill text and state/federal legislative committee analysis, if available.

Respectfully Submitted,



Howard Jordan
Acting Chief of Police
for HAT

Prepared by:
Lt. Kenneth Parris
Bureau of Investigation

APPROVED FOR FORWARDING TO
RULES & LEGISLATION COMMITTEE:



Office of City Administrator

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Date of Hearing: April 29, 2009

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Kevin De Leon, Chair

AB 814 (Krekorian) - As Amended: April 13, 2009

Policy Committee: Public
SafetyVote: 7-0

Urgency: No State Mandated Local Program:
Yes Reimbursable: Yes

SUMMARY

This bill creates a process for persons who are prohibited from possessing a gun as a result of the person's criminal history to sell that weapon to a gun dealer, to a third party through a dealer, or to relinquish the gun to a law enforcement agency. Specifically, this bill:

- 1) Requires the person to name a designee and grant the designee power of attorney for the purpose of transferring or disposing of any gun. The defendant may name a consenting law enforcement agency as his or her designee.
- 2) Requires the court to provide a notice and a form developed by the Department of Justice (DOJ) instructing a convicted person that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control any gun, and that he or she shall relinquish all guns through a designee.
- 3) Requires the defendant to declare whether or not he or she owned or possessed any guns at the time judgment was imposed, including circumstances describing any guns that may have been lost or stolen, and to submit information to the arresting law agency and DOJ, as specified.
- 4) Specifies the procedures for persons not in custody after conviction, including that the offender's designee must dispose of any gun the offender owns or possesses within five days of conviction.
- 5) Specifies procedures for persons in custody after conviction,

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including that the offender must dispose of any gun the offender owns or possesses within 14 days of the conviction.

- 6) Makes failure by a defendant or a designee, except a designee that is a law enforcement agency, to timely file the completed form with the arresting law enforcement agency an infraction, punishable by a fine not to exceed \$500.
- 7) Specifies a law enforcement agency is not required to retain a relinquished gun for more than 30 days. After the 30-day period has expired, the law enforcement agency shall destroy the weapon, unless it is retained for official purposes.

FISCAL EFFECT

- 1) Moderate annual costs to DOJ, likely in the range of \$600,000, to process paperwork related to relinquished guns. Assuming about 360,000 persons are prohibited from possessing a gun, based on conviction data, assuming 20% of these offenders submit forms as required, and assuming 15 minutes per review, the annual cost would be \$630,000. (This paperwork is largely duplicative, as guns sold by a dealer or relinquished to a law enforcement agency are currently entered into the automated firearms system (AFS).)
- 2) Unknown, potentially state-reimbursable annual costs, likely in the same range as the DOJ cost, to local law enforcement agencies to review and process forms as specified.

COMMENTS

- 1) Rationale. The author's intent is to facilitate enforcement of current law prohibiting gun possession by establishing a procedures and timelines for relinquishing guns possessed by offenders in a prohibited class.

According to the Legal Community Against Violence, "The goal of AB 814 is simple: to help get guns out of the hands of people who have been convicted of crimes which render them ineligible to possess firearms. The legislation is needed because existing state law provides no clear process for firearm relinquishment under these circumstances, and no mechanism to ensure that relinquishment ever occurs. As a result, convicted criminals remain in possession of firearms statewide. According to the DOJ, as many as 60,000 prohibited

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persons currently possess guns in violation of state law,

creating a direct threat to public safety.

"AB 814 addresses this problem by establishing a clear procedure and timeline for firearm relinquishment. Under this bill, when a person is convicted of a crime disqualifying him or her from possessing firearms, the person is informed of the disqualification by the court and given a form describing the specific manner in which firearms may be relinquished."

2) Current law :

- a) Makes it a felony, punishable by 16 months, 2, or 3 years in state prison, for any person convicted of a felony, or who is addicted to the use of any narcotic drug, to own or possess a gun.
- b) Makes it a wobbler, punishable by up to 1 year in county jail and/or a fine of up to \$1,000, or by 16 months, 2, or 3 years in state prison, for any person who has been convicted of specified misdemeanors, and who, within 10 years of conviction, owns or possesses a gun.
- c) Requires DOJ to establish and maintain the Prohibited Armed Persons File, an online database for cross-referencing persons who fall within the class of persons prohibited from owning or possessing a gun.

3) DOJ's Prohibited Armed Persons File was created in 2001 (SB 950, Brulte) to ensure prohibited persons do not possess guns. To enforce laws prohibiting certain offenders from possessing guns, DOJ developed the Armed Prohibited Persons System (APPS) to track handgun and assault weapon owners who pose a threat to public safety. APPS maintains information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or an assault weapon. It also provides authorized law enforcement agencies with inquiry capabilities to determine the prohibition status of a person of interest.

4) Concerns. Much of this measure could be simplified and clarified, particularly regarding paperwork, reporting, and basic requirements. The author and DOJ will continue to work on the language while the bill is on Suspense.

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Analysis Prepared by : Geoff Long / APPR. / (916) 319-2081

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 814

Introduced by Assembly Member Krekorian

February 26, 2009

An act to amend Section 12021 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 814, as amended, Krekorian. Firearms: surrender.

Existing law makes it an offense for a person convicted of a felony, who is addicted to narcotics, or, for a period of 10 years, for a person who is convicted of specified misdemeanors, to own, purchase, receive, have in their possession or under their custody or control any firearm, as specified. Existing law provides for a notice to a defendant of these provisions, as specified.

This bill would establish a procedure for ~~defendants~~ *a defendant* who ~~own, have~~ *owns, has* possession, ~~or~~ custody, or control of ~~firearms~~ *a firearm*, to sell the firearm to a firearms dealer or relinquish the firearm to a law enforcement agency in order to comply with the prohibitions described above. The procedure would in part require the defendant to disclose, ~~under penalty of perjury~~, whether the defendant owns or has possession ~~or~~ custody, or control of any firearms and to list those firearms. The bill would provide procedures for persons in or out of custody to relinquish their firearms, including designating a law enforcement agency or a person as the defendant's *designee*, ~~and would require the defendant or the defendant's designee to file a form showing, among other things, the date the firearm was relinquished.~~ Failure to

timely file the form would, subject to exception, be an infraction punishable by a fine not exceeding ~~\$100~~ \$500.

By ~~expanding the scope of the offense of perjury, and~~ creating a new infraction, this bill would impose a state-mandated local program. By imposing additional duties on local law enforcement agencies, 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. Section 12021 of the Penal Code is amended to
2 read:

3 12021. (a) (1) Any person who has been convicted of a felony
4 under the laws of the United States, the State of California, or any
5 other state, government, or country or of an offense enumerated
6 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
7 to the use of any narcotic drug, and who owns, purchases, receives,
8 or has in his or her possession or under his or her custody or control
9 any firearm is guilty of a felony.

10 (2) Any person who has two or more convictions for violating
11 paragraph (2) of subdivision (a) of Section 417 and who owns,
12 purchases, receives, or has in his or her possession or under his or
13 her custody or control any firearm is guilty of a felony.

14 (b) Notwithstanding subdivision (a), any person who has been
15 convicted of a felony or of an offense enumerated in Section
16 12001.6, when that conviction results from certification by the
17 juvenile court for prosecution as an adult in an adult court under
18 Section 707 of the Welfare and Institutions Code, and who owns
19 or has in his or her possession or under his or her custody or control
20 any firearm is guilty of a felony.

1 (c) (1) Except as provided in subdivision (a) or paragraph (2)
2 of this subdivision, any person who has been convicted of a
3 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
4 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
5 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5,
6 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision
7 (b) or (d) of Section 12034, Section 12040, subdivision (b) of
8 Section 12072, subdivision (a) of former Section 12100, Section
9 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the
10 Welfare and Institutions Code, any firearm-related offense pursuant
11 to Sections 871.5 and 1001.5 of the Welfare and Institutions Code,
12 or of the conduct punished in paragraph (3) of subdivision (g) of
13 Section 12072, and who, within 10 years of the conviction, owns,
14 purchases, receives, or has in his or her possession or under his or
15 her custody or control, any firearm is guilty of a public offense,
16 which shall be punishable by imprisonment in a county jail not
17 exceeding one year or in the state prison, by a fine not exceeding
18 one thousand dollars (\$1,000), or by both that imprisonment and
19 fine. The court, on forms prescribed by the Department of Justice,
20 shall notify the department of persons subject to this subdivision.
21 However, the prohibition in this paragraph may be reduced,
22 eliminated, or conditioned as provided in paragraph (2) or (3).

23 (2) Any person employed as a peace officer described in Section
24 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
25 or livelihood is dependent on the ability to legally possess a
26 firearm, who is subject to the prohibition imposed by this
27 subdivision because of a conviction under Section 273.5, 273.6,
28 or 646.9, may petition the court only once for relief from this
29 prohibition. The petition shall be filed with the court in which the
30 petitioner was sentenced. If possible, the matter shall be heard
31 before the same judge who sentenced the petitioner. Upon filing
32 the petition, the clerk of the court shall set the hearing date and
33 shall notify the petitioner and the prosecuting attorney of the date
34 of the hearing. Upon making each of the following findings, the
35 court may reduce or eliminate the prohibition, impose conditions
36 on reduction or elimination of the prohibition, or otherwise grant
37 relief from the prohibition as the court deems appropriate:

38 (A) Finds by a preponderance of the evidence that the petitioner
39 is likely to use a firearm in a safe and lawful manner.

1 (B) Finds that the petitioner is not within a prohibited class as
2 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
3 and the court is not presented with any credible evidence that the
4 petitioner is a person described in Section 8100 or 8103 of the
5 Welfare and Institutions Code.

6 (C) (i) Finds that the petitioner does not have a previous
7 conviction under this subdivision no matter when the prior
8 conviction occurred.

9 (ii) In making its decision, the court shall consider the
10 petitioner's continued employment, the interest of justice, any
11 relevant evidence, and the totality of the circumstances. The court
12 shall require, as a condition of granting relief from the prohibition
13 under this section, that the petitioner agree to participate in
14 counseling as deemed appropriate by the court. Relief from the
15 prohibition shall not relieve any other person or entity from any
16 liability that might otherwise be imposed. It is the intent of the
17 Legislature that courts exercise broad discretion in fashioning
18 appropriate relief under this paragraph in cases in which relief is
19 warranted. However, nothing in this paragraph shall be construed
20 to require courts to grant relief to any particular petitioner. It is
21 the intent of the Legislature to permit persons who were convicted
22 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
23 relief from the prohibition imposed by this subdivision.

24 (3) Any person who is subject to the prohibition imposed by
25 this subdivision because of a conviction of an offense prior to that
26 offense being added to paragraph (1) may petition the court only
27 once for relief from this prohibition. The petition shall be filed
28 with the court in which the petitioner was sentenced. If possible,
29 the matter shall be heard before the same judge that sentenced the
30 petitioner. Upon filing the petition, the clerk of the court shall set
31 the hearing date and notify the petitioner and the prosecuting
32 attorney of the date of the hearing. Upon making each of the
33 following findings, the court may reduce or eliminate the
34 prohibition, impose conditions on reduction or elimination of the
35 prohibition, or otherwise grant relief from the prohibition as the
36 court deems appropriate:

37 (A) Finds by a preponderance of the evidence that the petitioner
38 is likely to use a firearm in a safe and lawful manner.

39 (B) Finds that the petitioner is not within a prohibited class as
40 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,

1 and the court is not presented with any credible evidence that the
2 petitioner is a person described in Section 8100 or 8103 of the
3 Welfare and Institutions Code.

4 (C) (i) Finds that the petitioner does not have a previous
5 conviction under this subdivision, no matter when the prior
6 conviction occurred.

7 (ii) In making its decision, the court may consider the interest
8 of justice, any relevant evidence, and the totality of the
9 circumstances. It is the intent of the Legislature that courts exercise
10 broad discretion in fashioning appropriate relief under this
11 paragraph in cases in which relief is warranted. However, nothing
12 in this paragraph shall be construed to require courts to grant relief
13 to any particular petitioner.

14 (4) Law enforcement officials who enforce the prohibition
15 specified in this subdivision against a person who has been granted
16 relief pursuant to paragraph (2) or (3) shall be immune from any
17 liability for false arrest arising from the enforcement of this
18 subdivision unless the person has in his or her possession a certified
19 copy of the court order that granted the person relief from the
20 prohibition. This immunity from liability shall not relieve any
21 person or entity from any other liability that might otherwise be
22 imposed.

23 (d) (1) Any person who, as an express condition of probation,
24 is prohibited or restricted from owning, possessing, controlling,
25 receiving, or purchasing a firearm and who owns, purchases,
26 receives, or has in his or her possession or under his or her custody
27 or control, any firearm but who is not subject to subdivision (a) or
28 (c) is guilty of a public offense, which shall be punishable by
29 imprisonment in a county jail not exceeding one year or in the
30 state prison, by a fine not exceeding one thousand dollars (\$1,000),
31 or by both that imprisonment and fine. The court, on forms
32 provided by the Department of Justice, shall notify the department
33 of persons subject to this subdivision. The notice shall include a
34 copy of the order of probation and a copy of any minute order or
35 abstract reflecting the order and conditions of probation.

36 ~~(2) (A) (i) For any person who is subject to subdivision (a),~~
37 ~~(b), or (c), the court shall, at the time judgment is imposed, instruct~~
38 ~~the defendant that he or she is prohibited from owning, purchasing,~~
39 ~~receiving, possessing, or having under his or her custody or control,~~
40 ~~any firearm, and that he or she shall relinquish all firearms in the~~

1 manner provided in this section. The court shall provide a notice
2 and form which shall state the prohibition, the manner in which
3 firearms may be relinquished, and the penalty imposed for failure
4 to comply. The form shall require the defendant to declare, under
5 penalty of perjury, whether or not he or she owned, possessed, or
6 had in his or her custody any firearms at the time judgment was
7 imposed, and shall require the defendant to specify, with as much
8 detail as possible, the make, model, and location of each of the
9 firearms. The form shall require the defendant to relinquish all
10 firearms within five days of the earlier of judgment or release from
11 custody, or within 14 days if he or she is in custody continuously
12 for that period following judgment, and to state the date that each
13 firearm was relinquished and the name of the firearms dealer or
14 law enforcement agency to which it was relinquished. The form
15 shall inform the defendant that a person who relinquishes any
16 firearm to a law enforcement agency pursuant to this section
17 voluntarily abandons all rights and claims to the relinquished
18 firearm, and shall not be entitled to sell or transfer title of the
19 firearm to anyone following relinquishment of the firearm to the
20 law enforcement agency.

21 (ii) The form shall require the defendant to explain in detail the
22 circumstances surrounding the loss or theft of any firearm that the
23 defendant previously owned, possessed, or had under his or her
24 custody or control, the loss or theft of which renders him or her
25 unable to fully comply with these provisions. The form shall further
26 require the defendant to explain in detail any action taken to report
27 the loss or theft to any law enforcement agency or insurance
28 provider. The arresting law enforcement agency shall forward to
29 the Department of Justice any form submitted by a defendant which
30 identifies lost or stolen firearms. The form shall also provide for
31 the defendant to grant power of attorney over any identified
32 firearms and name a designee, pursuant to subparagraph (D).
33 Failure to provide the notice shall not be a defense to a violation
34 of this section.

35 (D) For any person who is subject to subdivision (a), (b), or (c),
36 following the imposition of judgment the defendant shall relinquish
37 any firearm he or she owns, possesses, or has within his or her
38 custody or control in the manner described in subparagraphs (C)
39 and (D).

- 1 ~~(C) (i) For any defendant who is not in custody following the~~
2 ~~imposition of judgment, the defendant shall dispose of any firearm~~
3 ~~he or she owns, possesses, or has within his or her custody or~~
4 ~~control within five days of the imposition of judgment by~~
5 ~~surrendering the firearm to the control of local law enforcement~~
6 ~~officials, or by selling the firearm to a licensed firearms dealer.~~
7 ~~(ii) During the five days following the imposition of judgment,~~
8 ~~the defendant shall not be prosecuted under subdivision (a), (b),~~
9 ~~or (c) for his or her ownership, custody or control of a firearm, or~~
10 ~~his or her possession of a firearm either within his or her home or~~
11 ~~while lawfully transporting the firearm in order to comply with~~
12 ~~these provisions:~~
13 ~~(iii) Following relinquishment, but within the five days~~
14 ~~following the imposition of judgment, the defendant shall submit~~
15 ~~the completed form described in subparagraph (A) to the arresting~~
16 ~~law enforcement agency.~~
17 ~~(D) (i) For any defendant who is in custody following the~~
18 ~~imposition of judgment, the defendant shall, using the form~~
19 ~~described in subparagraph (A), grant power of attorney over any~~
20 ~~firearm identified pursuant to subparagraph (A) to a designee not~~
21 ~~otherwise prohibited from possessing firearms under state and~~
22 ~~federal law. The defendant may name a law enforcement agency~~
23 ~~as his or her designee.~~
24 ~~(ii) Within 14 days following the imposition of judgment, the~~
25 ~~designee shall dispose of any firearm by surrendering the firearm~~
26 ~~to the control of local law enforcement officials, or by selling the~~
27 ~~firearm to a licensed firearms dealer.~~
28 ~~(iii) During the 14 days following the imposition of judgment,~~
29 ~~a defendant who is in custody shall not be prosecuted under~~
30 ~~subdivision (a), (b), or (c) for his or her ownership of a firearm to~~
31 ~~be relinquished.~~
32 ~~(iv) Following relinquishment, but within the 14 days following~~
33 ~~the imposition of judgment, the designee shall submit the~~
34 ~~completed form described in subparagraph (A) to the arresting law~~
35 ~~enforcement agency.~~
36 ~~(v) If the defendant is released from custody during the 14 days~~
37 ~~following the imposition of judgment and a designee has not yet~~
38 ~~taken temporary possession of any firearm to be relinquished as~~
39 ~~described above, the defendant shall, within five days following~~

1 his or her release, relinquish any firearm in the manner described
2 in subparagraph (C).

3 ~~(E) Where relinquishment of a firearm threatens a defendant's~~
4 ~~constitutional right against self-incrimination, the defendant shall~~
5 ~~have use immunity for the act of relinquishment.~~

6 ~~(F) Failure by a defendant who was not in custody or of a~~
7 ~~designee of a defendant who was in custody, except a designee~~
8 ~~that is a law enforcement agency, to timely file the completed form~~
9 ~~described in subparagraph (A) with the arresting law enforcement~~
10 ~~agency shall constitute an infraction punishable by a fine not~~
11 ~~exceeding one hundred dollars (\$100).~~

12 ~~(G) Local law enforcement agencies are urged to sign up with~~
13 ~~the Department of Justice to receive updated information from the~~
14 ~~Prohibited Armed Persons File, as described in Sections 12010 to~~
15 ~~12012, inclusive. Local law enforcement is further encouraged to~~
16 ~~review this information against the declarations in the submitted~~
17 ~~forms described in subparagraph (A) and to retrieve illegally~~
18 ~~possessed firearms whenever possible.~~

19 *(2) (A) For any person who is subject to subdivision (a), (b),*
20 *or (c), the defendant shall, following conviction, relinquish all*
21 *firearms he or she owns, possesses, or has within his or her custody*
22 *or control in the manner described in subparagraphs (C) and (D).*
23 *Using the form described in subparagraph (B), the defendant shall*
24 *name a designee and grant the designee power of attorney for the*
25 *purpose of transferring or disposing of any firearm. The defendant*
26 *may name a consenting law enforcement agency as his or her*
27 *designee.*

28 *(B) (i) For any person who is subject to subdivision (a), (b), or*
29 *(c), the court shall, upon conviction, instruct the defendant that*
30 *he or she is prohibited from owning, purchasing, receiving,*
31 *possessing, or having under his or her custody or control any*
32 *firearm, and that he or she shall relinquish all firearms through*
33 *a designee in the manner provided in this section. The court shall*
34 *provide the defendant with a notice and form developed by the*
35 *Department of Justice which shall state the prohibition, the manner*
36 *in which firearms may be relinquished, and the penalty imposed*
37 *for failure to comply. Failure to provide the notice shall not be a*
38 *defense to a violation of this section.*

39 *(ii) The form shall require the defendant to declare whether he*
40 *or she owned, possessed, or had in his or her custody any firearms*

1 at the time of conviction, and shall require the defendant to
2 describe the firearms with as much detail as possible.

3 (iii) The form shall authorize the defendant to name a designee
4 and grant the designee power of attorney for the purpose of
5 transferring or disposing of any firearms pursuant to subparagraph
6 (A). The form shall require the designee to declare that he or she
7 is not prohibited from possessing firearms under state or federal
8 law. The form shall also require the designee to indicate his or
9 her consent to the designation and to state the date each firearm
10 was relinquished and the name of the party to whom it was
11 relinquished.

12 (iv) The form shall require the defendant to explain in detail
13 the circumstances surrounding the loss or theft of any firearm the
14 defendant previously owned, possessed, or had under his or her
15 custody or control, the loss or theft of which renders him or her
16 unable to fully comply with these provisions. The form shall further
17 require the defendant to explain in detail any action taken to report
18 the loss or theft to any law enforcement agency or insurance
19 provider. The form shall require the defendant to notify both the
20 arresting law enforcement agency and the Department of Justice
21 that he or she no longer owns or possesses the firearm.

22 (C) The following procedures shall apply to any defendant who
23 is not in custody following conviction:

24 (i) The designee shall dispose of any firearm the defendant
25 owns, possesses, or has within his or her custody or control within
26 five days of the conviction by surrendering the firearm to the
27 control of local law enforcement officials, selling the firearm to a
28 firearms dealer, or selling or transferring the firearm to a third
29 party by completing the sale or transfer through a firearms dealer.

30 (ii) During the five-day period following conviction, the
31 defendant shall not be prosecuted under subdivision (a), (b), or
32 (c) for his or her ownership, custody or control, or possession of
33 a firearm within his or her home, provided the firearm was owned
34 by the defendant prior to conviction. This provision shall not apply
35 to a defendant who was, prior to conviction, already prohibited
36 from owning, purchasing, receiving, possessing, or having under
37 his or her custody or control any firearm by subdivision (a), (b),
38 or (c).

39 (iii) If the defendant does not own, possess, or have within his
40 or her custody or control any firearms to relinquish, the defendant

1 shall, within five days following conviction, submit the completed
2 form described in subparagraph (B) to the arresting law
3 enforcement agency.

4 (iv) If the defendant owns, possesses, or has within his or her
5 custody or control any firearms to relinquish, following
6 relinquishment, but within five days following the conviction, the
7 designee shall submit the completed form described in
8 subparagraph (A) to the arresting law enforcement agency.
9 Pursuant to clause (iv) of subparagraph (B), the defendant shall,
10 within the five days following conviction, notify both the arresting
11 law enforcement agency and the Department of Justice regarding
12 any lost or stolen firearms.

13 (D) The following procedures shall apply to any defendant who
14 remains in custody following conviction:

15 (i) The designee shall dispose of any firearm the defendant
16 owns, possesses, or has within his or her custody or control within
17 14 days of the conviction, by surrendering the firearm to the control
18 of local law enforcement officials, selling the firearm to a firearms
19 dealer, or selling or transferring the firearm to a third party by
20 completing the sale or transfer through a firearms dealer.

21 (ii) During the 14-day period following the conviction, a
22 defendant who remains in custody shall not be prosecuted under
23 subdivision (a), (b), or (c) for his or her ownership of a firearm
24 to be relinquished, provided the firearm was owned by the
25 defendant prior to conviction. This provision shall not apply to a
26 defendant who was, prior to conviction, already prohibited from
27 owning, purchasing, receiving, possessing, or having under his or
28 her custody or control any firearm by subdivision (a), (b), or (c).

29 (iii) If the defendant does not own, possess, or have within his
30 or her custody or control any firearms to relinquish, the defendant
31 shall, within 14 days following conviction, submit the completed
32 form described in subparagraph (B) to the arresting law
33 enforcement agency.

34 (iv) If the defendant owns, possesses, or has within his or her
35 custody or control any firearms to relinquish, the designee shall,
36 following relinquishment, but within 14 days following conviction,
37 submit the completed form described in subparagraph (A) to the
38 arresting law enforcement agency. Pursuant to clause (iv) of
39 subparagraph (B), the defendant shall, within the 14 days following

1 conviction, notify both the arresting law enforcement agency and
2 the Department of Justice regarding any lost or stolen firearms.

3 (v) If the defendant is released from custody during the 14 days
4 following conviction and a designee has not yet taken temporary
5 possession of any firearm to be relinquished as described above,
6 the defendant shall, within five days following his or her release,
7 relinquish any firearm in the manner described in subparagraph
8 (C).

9 (E) Pursuant to Section 1324, no information directly or
10 indirectly derived from the form described in subparagraph (B)
11 or from a relinquished firearm shall be used in a criminal
12 prosecution for illegal possession of that firearm prior to
13 relinquishment. This protection shall not extend to any prosecution
14 for the unlawful use of any firearm.

15 (F) Failure by a defendant or a designee, except a designee that
16 is a consenting law enforcement agency, to timely file the
17 completed form described in subparagraph (A) with the arresting
18 law enforcement agency shall constitute an infraction punishable
19 by a fine not exceeding five hundred dollars (\$500).

20 (G) Local law enforcement agencies are urged to obtain a
21 secured mailbox from the Department of Justice in order to receive
22 updated information from the Prohibited Armed Persons File, as
23 described in Sections 12010 to 12012, inclusive. Local law
24 enforcement is further encouraged to review this information
25 against the declarations in the submitted forms described in
26 subparagraph (A) and to retrieve illegally possessed firearms
27 whenever possible.

28 (H) A law enforcement agency shall not be required to retain
29 a firearm that was relinquished to the law enforcement agency
30 pursuant this subdivision for more than 30 days after the date on
31 which the firearm was relinquished. After the 30-day period has
32 expired, the law enforcement agency shall destroy the firearm,
33 unless the firearm is retained for official purposes pursuant to
34 Section 12030.

35 (e) Any person who (1) is alleged to have committed an offense
36 listed in subdivision (b) of Section 707 of the Welfare and
37 Institutions Code, an offense described in subdivision (b) of Section
38 1203.073, any offense enumerated in paragraph (1) of subdivision
39 (c), or any offense described in subdivision (a) of Section 12025,
40 subdivision (a) of Section 12031, or subdivision (a) of Section

1 12034, and (2) is subsequently adjudged a ward of the juvenile
2 court within the meaning of Section 602 of the Welfare and
3 Institutions Code because the person committed an offense listed
4 in subdivision (b) of Section 707 of the Welfare and Institutions
5 Code, an offense described in subdivision (b) of Section 1203.073,
6 any offense enumerated in paragraph (1) of subdivision (c), or any
7 offense described in subdivision (a) of Section 12025, subdivision
8 (a) of Section 12031, or subdivision (a) of Section 12034, shall
9 not own, or have in his or her possession or under his or her
10 custody or control, any firearm until the age of 30 years. A
11 violation of this subdivision shall be punishable by imprisonment
12 in a county jail not exceeding one year or in the state prison, by a
13 fine not exceeding one thousand dollars (\$1,000), or by both that
14 imprisonment and fine. The juvenile court, on forms prescribed
15 by the Department of Justice, shall notify the department of persons
16 subject to this subdivision. Notwithstanding any other law, the
17 forms required to be submitted to the department pursuant to this
18 subdivision may be used to determine eligibility to acquire a
19 firearm.

20 (f) Subdivision (a) shall not apply to a person who has been
21 convicted of a felony under the laws of the United States unless
22 either of the following criteria is satisfied:

23 (1) Conviction of a like offense under California law can only
24 result in imposition of felony punishment.

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

28 (g) (1) Every person who purchases or receives, or attempts to
29 purchase or receive, a firearm knowing that he or she is prohibited
30 from doing so by a temporary restraining order or injunction issued
31 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure,
32 a protective order as defined in Section 6218 of the Family Code,
33 a protective order issued pursuant to Section 136.2 or 646.91 of
34 this code, or a protective order issued pursuant to Section 15657.03
35 of the Welfare and Institutions Code, is guilty of a public offense,
36 which shall be punishable by imprisonment in a county jail not
37 exceeding one year or in the state prison, by a fine not exceeding
38 one thousand dollars (\$1,000), or by both that imprisonment and
39 fine.

1 (2) Every person who owns or possesses a firearm knowing that
2 he or she is prohibited from doing so by a temporary restraining
3 order or injunction issued pursuant to Section 527.6 or 527.8 of
4 the Code of Civil Procedure, a protective order as defined in
5 Section 6218 of the Family Code, a protective order issued pursuant
6 to Section 136.2 or 646.91 of this code, or a protective order issued
7 pursuant to Section 15657.03 of the Welfare and Institutions Code,
8 is guilty of a public offense, which shall be punishable by
9 imprisonment in a county jail not exceeding one year, by a fine
10 not exceeding one thousand dollars (\$1,000), or by both that
11 imprisonment and fine.

12 (3) The Judicial Council shall provide notice on all protective
13 orders that the respondent is prohibited from owning, possessing,
14 purchasing, receiving, or attempting to purchase or receive a
15 firearm while the protective order is in effect. The order shall also
16 state that the firearm shall be relinquished to the local law
17 enforcement agency for that jurisdiction or sold to a licensed gun
18 dealer, and that proof of surrender or sale shall be filed within a
19 specified time of receipt of the order. The order shall state the
20 penalties for a violation of the prohibition. The order shall also
21 state on its face the expiration date for relinquishment.

22 (4) If probation is granted upon conviction of a violation of this
23 subdivision, the court shall impose probation consistent with
24 Section 1203.097.

25 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
26 justifiable where all of the following conditions are met:

27 (A) The person found the firearm or took the firearm from a
28 person who was committing a crime against him or her.

29 (B) The person possessed the firearm no longer than was
30 necessary to deliver or transport the firearm to a law enforcement
31 agency for that agency's disposition according to law.

32 (C) If the firearm was transported to a law enforcement agency,
33 it was transported in accordance with paragraph (18) of subdivision
34 (a) of Section 12026.2.

35 (D) If the firearm is being transported to a law enforcement
36 agency, the person transporting the firearm has given prior notice
37 to the law enforcement agency that he or she is transporting the
38 firearm to the law enforcement agency for disposition according
39 to law.

1 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
2 (e), the trier of fact shall determine whether the defendant was
3 acting within the provisions of the exemption created by this
4 subdivision.

5 (3) The defendant has the burden of proving by a preponderance
6 of the evidence that he or she comes within the provisions of the
7 exemption created by this subdivision.

8 (i) Subject to available funding, the Attorney General, working
9 with the Judicial Council, the California Alliance Against Domestic
10 Violence, prosecutors, and law enforcement, probation, and parole
11 officers, shall develop a protocol for the implementation of the
12 provisions of this section. The protocol shall be designed to
13 facilitate the enforcement of restrictions on firearm ownership,
14 including provisions for giving notice to defendants who are
15 restricted, provisions for informing those defendants of the
16 procedures by which defendants shall dispose of firearms when
17 required to do so, provisions explaining how defendants shall
18 provide proof of the lawful disposition of firearms, and provisions
19 explaining how defendants may obtain possession of seized
20 firearms when legally permitted to do so pursuant to this section
21 or any other provision of law. The protocol shall be completed on
22 or before January 1, 2005.

23 SEC. 2. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution for certain
25 costs that may be incurred by a local agency or school district
26 because, in that regard, this act creates a new crime or infraction,
27 eliminates a crime or infraction, or changes the penalty for a crime
28 or infraction, within the meaning of Section 17556 of the
29 Government Code, or changes the definition of a crime within the
30 meaning of Section 6 of Article XIII B of the California
31 Constitution.

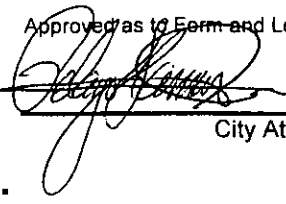
32 However, if the Commission on State Mandates determines that
33 this act contains other costs mandated by the state, reimbursement
34 to local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.

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FILED
OFFICE OF THE CITY CLERK
OAKLAND
2009 MAY -7 PM 5:50

OAKLAND CITY COUNCIL

Approved as to Form and Legality



City Attorney

RESOLUTION NO. _____ C.M.S.

RESOLUTION IN SUPPORT OF CALIFORNIA STATE ASSEMBLY BILL #814 (AB 814 KREKORIAN), WHICH ADDRESSES GAPS IN EXISTING LAW WITH REGARDS TO THE POSSESSION OF FIREARMS BY CONVICTED FELONS AND OTHER PROHIBITED MISDEMEANANTS IN THE STATE OF CALIFORNIA

WHEREAS, it is the desire of the City of Oakland (hereinafter "City") to eliminate violence, especially violence attributed to firearms; and

WHEREAS, the City wishes to enhance the Oakland Police Department's (hereinafter "OPD") ability to identify and prosecute convicted felons and prohibited misdemeanants who unlawfully possess firearms; and

WHEREAS, the California Department of Justice (hereinafter DOJ) estimates there are approximately 60,000 convicted felons and prohibited misdemeanants in possession of firearms in the state; and

WHEREAS, there are gaps in existing law that inhibit law enforcement's ability to ensure convicted felons and prohibited misdemeanants are not in possession firearms; and

WHEREAS, Assembly Bill #814 is designed to address these serious gaps in the law and empowers law enforcement agencies throughout the state to get firearms out of the hands of convicted felons and prohibited misdemeanants; and

WHEREAS, existing law provides for excessive and sometimes unclear timelines for convicted felons and prohibited misdemeanants to surrender or dispose of firearms in their possession; and

WHEREAS, Assembly Bill #814 relieves local law enforcement of the obligation of providing 180 days of free storage for prohibited firearms pending sale by convicted felons and prohibited misdemeanants; and

WHEREAS, Assembly Bill #814 gives local law enforcement ownership of prohibited firearms stored in their possession by convicted felons and prohibited misdemeanants for more than 30 days; and

WHEREAS, existing law allows convicted felons and prohibited misdemeanants to profit from the sale of prohibited firearms; and

WHEREAS, Assembly Bill #814 prohibits convicted felons and prohibited misdemeanants from profiting from the sale of illegally possessed firearms; now, therefore, be it

RESOLVED: That the City Council expresses its strong support for the passage of Assembly Bill #814; and be it

FURTHER RESOLVED: That the City Council hereby directs the City Administrator and the City's legislative lobbyist to advocate for the above positions in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST _____
LaTonda Simmons
City Clerk and Clerk of the Council,
City of Oakland, California