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AB-950 Firearms: gun violence restraining orders. (2015-2016)

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Assembly Bill No. 950

CHAPTER 205

An act to amend Sections 18120, 29830, and 33880 of the Penal Code, relating to firearms.

[Approved by Governor August 13, 2015. Filed with Secretary of State August 13, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 950, Melendez. Firearms: gun violence restraining orders.

Existing law allows an immediate family member or a law enforcement officer to request a court to issue a gun violence restraining order to enjoin a person from owning or possessing a firearm or ammunition for a period of one year upon a showing that the person poses a significant danger of personal injury to himself, herself, or another and that a gun violence restraining order is necessary to prevent that injury. Existing law requires a person who is subject to a gun violence restraining order to surrender his or her firearms and ammunition immediately upon request of any law enforcement officer. If no request is made, existing law requires the person to surrender his or her firearms or ammunition to a local law enforcement agency or to sell his or her firearms or ammunition to a licensed firearms dealer within 24 hours.

Existing law allows any person who is prohibited from owning or possessing a firearm to transfer his or her firearms to a licensed firearms dealer for the duration of the prohibition.

This bill would allow a person who is subject to a gun violence restraining order to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition. If the firearms or ammunition have been surrendered to a law enforcement agency, the bill would entitle the owner to have them transferred to a licensed firearms dealer. The bill would additionally provide for the transfer of ammunition to a licensed firearms dealer by any person who is prohibited from owning or possessing ammunition. By imposing additional duties on local law enforcement, this bill would impose a state-mandated local program.

Existing law allows a city, county, or city and county to impose a charge relating to the seizure, impounding, storage, or release of a firearm, which may not exceed the actual costs incurred for expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed firearm dealer or to the owner.

This bill would extend the authority to impose this charge for the above specified activities in regard to ammunition.

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 no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

18120. (a) A person subject to a gun violence restraining order issued pursuant to this division shall not have in his or her custody or control, own, purchase, possess, or receive any firearms or ammunition while that order is in effect.

(b) (1) Upon issuance of a gun violence restraining order issued pursuant to this division, the court shall order the restrained person to surrender all firearms and ammunition in the restrained person's custody or control, or which the restrained person possesses or owns pursuant to paragraph (2).

(2) The surrender ordered pursuant to paragraph (1) shall occur by immediately surrendering all firearms and ammunition in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the restraining order. A law enforcement officer serving a gun violence restraining order that indicates that the restrained person possesses any firearms or ammunition shall request that all firearms and ammunition be immediately surrendered. Alternatively, if no request is made by a law enforcement officer, the surrender shall occur within 24 hours of being served with the order, by surrendering all firearms and ammunition in a safe manner to the control of the local law enforcement agency, selling all firearms and ammunition to a licensed firearms dealer, or transferring all firearms and ammunition to a licensed firearms dealer in accordance with Section 29830. The law enforcement officer or licensed firearms dealer taking possession of any firearms or ammunition pursuant to this subdivision shall issue a receipt to the person surrendering the firearm or firearms or ammunition or both at the time of surrender. A person ordered to surrender all firearms and ammunition pursuant to this subdivision shall, within 48 hours after being served with the order, do both of the following:

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

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

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

(2) A restrained person who owns any firearms or ammunition that are in the custody of a law enforcement agency pursuant to this section is entitled to sell any firearms or ammunition to a licensed firearms dealer or transfer any firearms or ammunition to a licensed firearms dealer in accordance with Section 29830, provided that the firearm or firearms or ammunition are otherwise legal to own or possess and the restrained person otherwise has right to title of the firearm or firearms or ammunition.

(d) If a person other than the restrained person claims title to any firearms or ammunition surrendered pursuant to this section, and he or she is determined by the law enforcement agency to be the lawful owner of the firearm or firearms or ammunition, the firearm or firearms or ammunition shall be returned to him or her pursuant to Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

SEC. 2. Section 29830 of the Penal Code is amended to read:

29830. (a) Any person who is prohibited from owning or possessing a firearm or ammunition pursuant to this article, or who is prohibited from owning or possessing a firearm or ammunition pursuant to any other law, may transfer or cause to be transferred, any firearm or firearms or ammunition in his or her possession, or of which he or she is the owner, to a firearms dealer licensed pursuant to Section 26700 to 26915, inclusive, for storage during the duration of the prohibition, if the prohibition on owning or possessing the firearm will expire on a date specified in the court order.

(b) A firearms dealer who stores a firearm or firearms or ammunition pursuant to subdivision (a), may charge the owner a reasonable fee for the storage of the firearm or firearms or ammunition.

(c) A firearms dealer who stores a firearm or firearms or ammunition pursuant to subdivision (a) shall notify the Department of Justice of the date that the firearms dealer has taken possession of the firearm or firearms or ammunition.

(d) Any firearm that is returned by a dealer to the owner of the firearm pursuant to this section shall be returned in accordance with the procedures set forth in Section 27540 and Article 1 (commencing with Section 26700) and Article 2 (commencing with

Section 26800) of Chapter 2 of Division 6.

SEC. 3. Section 33880 of the Penal Code is amended to read:

33880. (a) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of a firearm or ammunition.

(b) The fee under subdivision (a) shall not exceed the actual costs incurred for the expenses directly related to taking possession of a firearm or ammunition, storing the firearm or ammunition, and surrendering possession of the firearm or ammunition to a licensed firearms dealer or to the owner.

(c) The administrative costs described in subdivisions (a) and (b) may be waived by the local or state agency upon verifiable proof that the firearm or ammunition was reported stolen at the time the firearm came into the custody or control of the law enforcement agency.

(d) The following apply to any charges imposed for administrative costs pursuant to this section:

(1) The charges shall only be imposed on the person claiming title to the firearm or ammunition.

(2) Any charges shall be collected by the local or state authority only from the person claiming title to the firearm or ammunition.

(3) The charges shall be in addition to any other charges authorized or imposed pursuant to this code.

(4) A charge may not be imposed for a hearing or appeal relating to the removal, impound, storage, or release of a firearm or ammunition, unless that hearing or appeal was requested in writing by the legal owner of the firearm or ammunition. In addition, the charge may be imposed only upon the person requesting that hearing or appeal.

(e) Costs for a hearing or appeal related to the release of a firearm or ammunition shall not be charged to the legal owner who redeems the firearm or ammunition, unless the legal owner voluntarily requests the post-storage hearing or appeal. A city, county, city and county, or state agency shall not require a legal owner to request a post-storage hearing as a requirement for release of the firearm or ammunition to the legal owner.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.