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AB-2222 Crime prevention and investigation: informational databases: firearms. (2017-2018)

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Date Published: 09/28/2018 09:00 PM

Assembly Bill No. 2222

CHAPTER 864

An act to amend Sections 11108, 11108.3, 11108.5, 11108.10, 25260, and 33855 of, and to add Section 11108.2 to, the Penal Code, relating to crime prevention and investigation.

[Approved by Governor September 28, 2018. Filed with Secretary of State September 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2222, Quirk. Crime prevention and investigation: informational databases: firearms.

Existing law directs police and sheriffs' departments to submit the description of serialized or uniquely inscribed nonserialized property that has been reported stolen, lost, found, recovered, or under observation, directly to an automated Department of Justice system. Existing law requires that any information entered into the Department of Justice system regarding a firearm remain in the system until the firearm is found, recovered, no longer under observation, or the record is deemed to have been entered in error. Existing law also requires the costs resulting from this requirement to be reimbursed from funds other than those collected from specified fees relating to firearms.

This bill would extend this firearms reporting requirement to all law enforcement agencies in the state, as defined, and would require that the report be entered within 7 days of the agency being notified of the precipitating event.

Existing law also requires police and sheriffs' departments, and authorizes other law enforcement agencies, to report to the Department of Justice any information in their possession necessary to identify and trace the history of a recovered firearm that is illegally possessed, has been used in a crime, or is suspected of having been used in a crime.

This bill would extend this reporting requirement to all law enforcement agencies in the state, as defined, and would require that the information be entered within 7 days of the agency's possession of the information.

This bill would incorporate additional changes to Section 33855 of the Penal Code proposed by SB 746 to be operative only if this bill and SB 746 are enacted and this bill is enacted last.

This bill would make technical and conforming changes.

By imposing new duties on local agencies, this bill would create 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.

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

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

SECTION 1. Section 11108 of the Penal Code is amended to read:

11108. Each sheriff or police chief executive shall submit descriptions of serialized property, or nonserialized property that has been uniquely inscribed, which has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, directly into the appropriate Department of Justice automated property system for stolen bicycles, stolen vehicles, or other property, as the case may be.

SEC. 2. Section 11108.2 is added to the Penal Code, to read:

11108.2. (a) A law enforcement agency shall enter or cause to be entered into the Department of Justice Automated Firearms System each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, within seven calendar days after being notified of the precipitating event.

(b) Information about a firearm entered into the automated system for firearms shall remain in the system until the reported firearm has been found, recovered, is no longer under observation, or the record is determined to have been entered in error.

(c) Any costs incurred by the Department of Justice to implement subdivision (b) shall be reimbursed from funds other than fees charged and collected pursuant to Sections 28225 and 28230.

(d) As used in this section, "law enforcement agency" means a police or sheriff's department, or any department or agency of the state or any political subdivision thereof that employs any peace officer as defined in Section 830, including, but not limited to, the Department of the California Highway Patrol, the Department of Fish and Wildlife, the University of California or California State University Police Departments, and the police department of any school district, transit district, airport, and harbor, port, or housing authority.

SEC. 3. Section 11108.3 of the Penal Code is amended to read:

11108.3. (a) In addition to the requirements of Section 11108.2 that apply to a law enforcement agency's duty to report to the Department of Justice the recovery of a firearm, a law enforcement agency described in Section 11108.2 shall, and any other law enforcement agency or agent, including but not limited to a federal or tribal law enforcement agency or agent, may, report to the department in a manner determined by the Attorney General in consultation with the Bureau of Alcohol, Tobacco, Firearms and Explosives all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime, within seven calendar days of obtaining the information.

(b) When the department receives information from a law enforcement agency pursuant to subdivision (a), it shall promptly forward this information to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives to the extent practicable.

(c) In implementing this section, the Attorney General shall ensure to the maximum extent practical that both of the following apply:

(1) The information he or she provides to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives enables that agency to trace the ownership of the firearm described in subdivision (a).

(2) Law enforcement agencies can report all relevant information without being unduly burdened by this reporting function.

(d) Information collected pursuant to this section shall be maintained by the department for a period of not less than 10 years, and shall be available, under guidelines set forth by the Attorney General, for academic and policy research purposes.

(e) The Attorney General may issue regulations to further the purposes of this section.

SEC. 4. Section 11108.5 of the Penal Code is amended to read:

11108.5. (a) If a law enforcement agency identifies serialized property or any property reported pursuant to Section 21628 of the Business and Professions Code that has been reported lost or stolen by the owner or a person entitled to possession of the property and the property has been entered into the appropriate Department of Justice automated property system pursuant to Section 11108 or 11108.2, the agency shall notify the owner or person claiming to be entitled to possession of the property of the location of the property within 15 days of making the identification. If the location of the property was reported by a licensed pawnbroker or secondhand dealer pursuant to Section 21630 of the Business and Professions Code, notwithstanding the method

by which the property was identified, notice shall be given to the party who reported the property lost or stolen pursuant to Section 21647 of the Business and Professions Code.

(b) If the property is in the custody of the law enforcement agency and it is determined that the property is no longer required for use as evidence in a criminal case, the property shall be made available to the person entitled to possession pursuant to Section 1417.5 or if the property was found in the possession of a licensed pawnbroker or secondhand dealer, pursuant to Section 21647 of the Business and Professions Code.

(c) Subdivision (a) shall not apply to the return to an owner of a lost or stolen vehicle, as defined in Section 670 of the Vehicle Code if the report of theft or loss of the vehicle into the automated property system preceded the report of the acquisition of property as set forth in Section 21628 of the Business and Professions Code by a licensed pawnbroker.

SEC. 5. Section 11108.10 of the Penal Code is amended to read:

11108.10. (a) In addition to the requirements of Sections 11108.2 and 11108.3, a local law enforcement agency may cause to be entered into the United States Department of Justice, National Integrated Ballistic Information Network (NIBIN) information to ensure that representative samples of fired bullets and cartridge cases collected at crime scenes, from test-fires of firearms recovered at crime scenes, and other firearm information needed to investigate crimes, are recorded into the NIBIN in accordance with the protocol set forth in subdivision (b).

(b) The Attorney General, in cooperation with those law enforcement agencies that choose to do so, shall develop a protocol for the implementation of this section.

(c) The Attorney General shall have the authority to issue guidelines to further the purposes of this section.

SEC. 6. Section 25260 of the Penal Code is amended to read:

25260. Pursuant to Section 11108.2, every sheriff or police chief shall submit a description of each firearm that has been reported lost or stolen directly into the Department of Justice Automated Firearms System.

SEC. 7. Section 33855 of the Penal Code is amended to read:

33855. A law enforcement agency or court that has taken custody of any firearm shall not return the firearm to any individual unless the following requirements are satisfied:

(a) The individual presents to the agency or court notification of a determination by the department pursuant to Section 33865 that the person is eligible to possess firearms.

(b) If the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108.2, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.

(c) If the firearm has been reported lost or stolen pursuant to Section 11108.2, a law enforcement agency shall notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to Section 33865.

(d) This section does not prevent the local law enforcement agency from charging the rightful owner or person entitled to possession of the firearm the fees described in Section 33880. However, an individual who is applying for a background check to retrieve a firearm that came into the custody or control of a court or law enforcement agency pursuant to Section 33850 shall be exempt from the fees in Section 33860, provided that the court or agency determines the firearm was reported stolen to a law enforcement agency prior to the date the firearm came into custody or control of the court or law enforcement agency, or within five business days of the firearm being stolen from its owner. The court or agency shall notify the Department of Justice of this fee exemption in a manner prescribed by the department.

SEC. 7.5. Section 33855 of the Penal Code is amended to read:

33855. A law enforcement agency or court that has taken custody of any firearm shall not return the firearm to any individual unless the following requirements are satisfied:

(a) The individual presents to the agency or court notification of a determination by the department pursuant to Section 33865 that the person is eligible to possess firearms.

(b) If the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108.2, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.

(c) If the firearm has been reported lost or stolen pursuant to Section 11108.2, a law enforcement agency shall notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to Section 33865.

(d) This section does not prevent the local law enforcement agency from charging the rightful owner or person entitled to possession of the firearm the fees described in Section 33880. However, an individual who is applying for a background check to retrieve a firearm that came into the custody or control of a court or law enforcement agency pursuant to Section 33850 shall be exempt from the fees in Section 33860, provided that the court or agency determines the firearm was reported stolen to a law enforcement agency prior to the date the firearm came into custody or control of the court or law enforcement agency, or within five business days of the firearm being stolen from its owner. The court or agency shall notify the Department of Justice of this fee exemption in a manner prescribed by the department.

(e) This section shall remain in effect only until July 1, 2020, and as of that date is repealed.

SEC. 7.6. Section 33855 is added to the Penal Code, to read:

33855. A law enforcement agency or court that has taken custody of any firearm, ammunition feeding device, or ammunition shall not return the firearm, ammunition feeding device, or ammunition to any individual unless all of the following requirements are satisfied:

(a) The individual presents to the agency or court notification of a determination by the department pursuant to Section 33865 that the person is eligible to possess a firearm, ammunition feeding device, or ammunition.

(b) If the seized property is a firearm and the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108.2, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.

(c) If the firearm has been reported lost or stolen pursuant to Section 11108.2, a law enforcement agency shall notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to Section 33865.

(d) This section does not prevent the local law enforcement agency from charging the rightful owner or person entitled to possession of the firearm the fees described in Section 33880. However, an individual who is applying for a background check to retrieve a firearm that came into the custody or control of a court or law enforcement agency pursuant to Section 33850 shall be exempt from the fees in Section 33860, provided that the court or agency determines the firearm was reported stolen to a law enforcement agency prior to the date the firearm came into custody or control of the court or law enforcement agency, or within five business days of the firearm being stolen from its owner. The court or agency shall notify the Department of Justice of this fee exemption in a manner prescribed by the department.

(e) This section shall become operative on July 1, 2020.

SEC. 8. Sections 7.5 and 7.6 of this bill incorporate amendments to Section 33855 of the Penal Code proposed by both this bill and Senate Bill 746. Those sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 33855 of the Penal Code, and (3) this bill is enacted after Senate Bill 746, in which case Section 7 of this bill shall not become operative.

SEC. 9. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.