

2. PERSONS INELIGIBLE TO POSSESS FIREARMS AND AMMUNITION

Persons Convicted of Felonies or Other Specified Crimes

Any person who (a) has been convicted of a felony under the laws of the United States, the State of

California, or any other state, government, or country, or (b) is addicted to any narcotic drug may not own or have in his or her possession, custody, or control **any firearm**. (Penal Code § 12021(a).)

It is unlawful for any person who is prohibited from possessing firearms, to possess ammunition. (Penal Code § 12316(b).)

A *felony* conviction refers to a conviction of an offense that can only result in felony punishment under California law, or any sentence to a federal correctional facility for more than 30 days, or a fine of more than \$1,000, or both. (Penal Code § 12021(f).)

Any person convicted of any of the following crimes specified in Penal Code sections 12001.6 and

12021.1, whether as a felony or misdemeanor, may not lawfully possess or have under his or her custody or control any firearm:

- Murder or voluntary manslaughter.
- Mayhem.
- Rape.
- Sodomy or oral copulation by force, violence, duress, menace, or threat of great bodily harm.
- Lewd acts on a child under the age of 14.
- Any felony punishable by death or imprisonment in the state prison for life.
- Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which has been charged and proven.
- Attempted murder.
- Assault with intent to commit rape or robbery.
- Assault with a deadly weapon or instrument on a peace officer.
- Assault by a life prisoner on a non-inmate.
- Assault with a deadly weapon by an inmate.
- Arson.
- Exploding a destructive device or any explosive with intent to injure or murder.
- Exploding a destructive device or any explosive causing great bodily injury.
- Robbery.
- Kidnapping.
- Taking of a hostage by a state prison inmate.
- Attempting to commit a felony punishable by death or imprisonment in the state prison for life.
- Any felony in which the defendant personally used a dangerous or deadly weapon.
- Escape from a state prison by use of force or violence.
- Assault with a deadly weapon or force likely to produce great bodily injury.
- Any attempt to commit any of the above crimes other than an assault.
- Assault upon a person with a firearm.

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- Shooting at an inhabited dwelling house or occupied building.

NOTE: This offense is committed even though no person was actually inside the specified structure at the time of the shooting.

- Drawing, exhibiting, or unlawfully using any handgun or firearm in a rude, angry, or threatening

manner in the presence of a peace officer regardless of whether the firearm is loaded.

- Carjacking.

- Two or more convictions for drawing or exhibiting any firearm in a rude, angry, or threatening manner in the presence of another regardless of whether the firearm is loaded.

Persons Convicted of Misdemeanor Violations of Specified Offenses

Any person convicted of a misdemeanor violation for one or more of the following offenses is prohibited from owning, possessing or having under his or her custody or control any firearm within

10 years of the conviction (Penal Code § 12021(c)(1)):

- Threatening public officers and employees and school officials. (Penal Code § 71.)

- Threatening certain public officials, appointees, judges, staff or their immediate families. (Penal Code § 76.)

- Possession of a deadly weapon with intent to commit an assault (Penal Code § 12024.)

- Possession of a deadly weapon with the intent to intimidate a witness. (Penal Code § 136.5.)

- Unauthorized possession/transportation of a machinegun. (Penal Code § 12220.)

- Threatening witnesses, victims, or informants. (Penal Code § 140.)

- Obstructing or delaying an officer or emergency medical technician and removing or attempting

to remove a firearm from these individuals. (Penal Code § 148(d).)

- Unauthorized possession of a weapon in a courtroom, courthouse or court building, or at a public meeting. (Penal Code § 171b.)

- Bringing into or possessing a loaded firearm within the state capitol, legislative offices, etc. (Penal Code § 171c.)

- Taking into or possessing loaded firearms within the Governor's Mansion or residence or other constitutional office, etc. (Penal Code § 171d.)

- Supplying firearms to any street gang member for use in street gang activity. (Penal Code § 186.28.)

- Assault. (Penal Code §§ 240, 241.)

- Battery. (Penal Code §§ 242, 243.)

- Assault with a stun gun or taser weapon. (Penal Code § 244.5.)

- Assault with a deadly weapon or force likely to cause great bodily injury. (Penal Code § 245.)

- Assault with a deadly weapon or instrument, by any means likely to produce great bodily injury, or with a stun gun or taser, on a school employee engaged in the performance of duties. (Penal Code § 245.5.)

- Discharging a firearm in a grossly negligent manner. (Penal Code § 246.3.)

- Shooting at an unoccupied aircraft, motor vehicle, or uninhabited building or dwelling house. (Penal Code § 247.)

- Drawing or exhibiting any deadly weapon, including a firearm, in a rude or

threatening manner. (Penal Code § 417.)

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- Drawing or exhibiting a firearm or other deadly weapon with the intentional infliction of serious bodily injury. (Penal Code § 417.6.)
- Bringing into or possessing firearms upon or within public or private schools, playgrounds and youth centers. (Penal Code § 626.9.)
- Willful infliction of corporal injury of a spouse or cohabitant. (Penal Code § 273.5.)
- Willful violation of a court order to prevent domestic violence. (Penal Code § 273.6.)
- Stalking. (Penal Code § 646.9.)
- Carrying a loaded firearm with the intent to commit a felony. (Penal Code § 12023.)
- Driver or owner of any vehicle who knowingly permits another person to discharge a firearm from the vehicle or any person who willfully and maliciously discharges a firearm from a motor vehicle. (Penal Code §§ 12034(b) and (d).)
- Criminal possession of a firearm. (Penal Code § 12040.)
- Selling a concealable firearm to a minor. (Penal Code § 12072(b).)
- Possessing handgun ammunition designed to penetrate metal or armor. (Penal Code § 12320.)
- Carrying a concealed or loaded firearm or other deadly weapon or wearing a peace officer uniform while picketing, carrying a concealed loaded weapon, or wearing a peace officer uniform. (Penal Code § 12590.)
- Possession of a firearm by a person ineligible to possess firearms because of his or her mental history. (Welfare and Institutions Code § 8100).
- Providing a firearm or deadly weapon to a person who is prohibited from possessing firearms because of his or her mental history. (Welfare and Institutions Code § 8101).
- Possession of a firearm by a person ineligible to possess firearms because of specific mental prohibitions. (Welfare and Institutions Code § 8103).
- Bringing or sending firearms or other contraband into a juvenile detention facility. (Welfare and Institutions Code § 871.5)
- Bringing or sending firearms or other contraband into youth authority institutions. (Welfare and Institutions Code § 1001.5.)
- Violating Penal Code section 12072 involving sales and transfers of firearms, including:
 - selling or furnishing a firearm to any person whom the individual has reason to believe is within a prohibited class;
 - selling or furnishing a handgun to a minor;
 - selling or furnishing a firearm to any person whom the seller knows, or has cause to believe, is not intended to be the actual purchaser or transferee;
 - acquiring a firearm for the purpose of providing it to a prohibited individual;
 - selling or transferring a firearm without having the transaction processed through a licensed dealer or law enforcement agency;
 - committing any act of collusion relating to a Handgun Safety Certificate.
- Intimidating a witness or victim. (Penal Code § 136.1.)
- Threatening to cause death or great bodily injury to another person. (Penal Code § 422)

Persons Prohibited From Possession, Purchase of Firearms As a Condition of Probation

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Any person convicted of any crime for which the express condition of probation prohibits or restricts the possession of firearms may not lawfully own, possess, control, receive or purchase a firearm for the duration of the probation. (Penal Code § 12021(d).)

Persons Subject to a Protective Order

Persons who are subject to a protective order issued by a court pursuant to section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of the Penal Code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, may

not own, possess, purchase, or receive a firearm for the duration of the order. (Penal Code § 12021(g).) This includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

- A court-issued order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party. (Family Code § 6320.)
- A court-issued order to exclude a party from the family dwelling, the dwelling of the other party, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence. (Family Code § 6321.)
- A court-issued order enjoining a party from other specified behaviors as determined by that court. (Family Code § 6322.)
- A court-issued order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting, or coming within a specified distance of, and elder or dependent adult. (Welfare and Institutions Code § 15657.03.)

The court, upon issuance of a protective order shall additionally require the respondent to sell any

firearms in that person's control to a licensed firearms dealer or relinquish them for the duration of

the protective order. (Family Code § 6389(c).)

As of January 1, 2007, any person subject to a protective order which includes the relinquishment

of firearms must immediately surrender his or her firearm(s) in a safe manner, upon the request of

any law enforcement officer, or within 24 hours when no request for relinquishment is made by a law enforcement officer (FC § 6389).

Any person subject to a protective order must file a receipt with the court acknowledging the surrender of his or her firearms within 48 hours after being served with the order. Failure to file a receipt with the court in a timely manner constitutes a violation of the protective order (FC § 6389).

Persons Subject to a Temporary Restraining Order

Persons who are subject to a temporary restraining order issued pursuant to section 527.6 or 527.8

of the Civil Code for harassing behavior may not own, possess, purchase or receive a firearm for the

duration of the order. (Penal Code § 12021(g).)

As of January 1, 2007, any person subject to a temporary restraining order is required to surrender his or her firearm(s) within 24 hours of being served with the order or injunction, without regard to whether the person appeared in court at the time the order was issued (Civil Code § 527.9).

Any person subject to a temporary restraining order must present a receipt to the court acknowledging the surrender of his or her firearms within 48 hours after receipt of the temporary restraining order or injunction (Civil Code § 527.9).

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Persons Subject to Juvenile Court Law

Any person subject to juvenile court law and adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the following offenses, shall

not own, possess, or have under his or her custody or control any firearm until reaching 30 years of

age (Penal Code § 12021(e)):

- Murder.
- Arson that causes great bodily injury or arson of an inhabited structure or property. (Penal Code §§ 451(a) and (b).)
- Robbery while armed with a dangerous or deadly weapon.
- Rape with force or violence or threat of great bodily harm.
- Sodomy by force, violence, duress, menace, or threat of great bodily harm.
- Lewd or lascivious act on a child under the age of 14. (Penal Code § 288(b).)
- Oral copulation by force, violence, duress, menace, or threat of great bodily harm.
- Sexual assault with a foreign object. (Penal Code § 289.)
- Kidnapping for ransom.
- Kidnapping for purpose of robbery, rape, spousal rape, etc. (Penal Code § 209(b)(1).)
- Kidnapping with bodily harm.
- Assault with intent to murder or attempted murder.
- Assault with a firearm or destructive device.
- Assault by any means of force likely to produce great bodily injury.
- Discharge of a firearm into an inhabited or occupied building.
- Specified crimes against persons 60 years of age or older, blind persons, paraplegics, or quadriplegics as described in Penal Code section 1203.09.
- Use of a firearm in the commission or attempted commission of a felony; discharge of a firearm at an occupied motor vehicle causing great bodily injury or death; use of a firearm to commit the controlled substances violations described in Penal Code sections 12022.5 or 12022.53.
- Any felony offense in which the minor personally used a weapon described in Penal Code section 12020(a).
- Felony intimidation of a witness and victim as described in Penal Code section 136.1 or influencing the testimony or information given to a law enforcement official as described in Penal

Code section 137.

- Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in Health and Safety Code section 11055(e).
- Possessing for sale, or selling a substance containing 28.5 grams or more of cocaine as specified in Penal Code section 1203.073.
- Any of the specified violent felonies listed in Penal Code section 667.5(c) committed for the benefit, direction, or association with any criminal street gang as described in Penal Code section 186.22(b).
- Intentionally inflicting great bodily injury on an employee of a juvenile facility during an escape by the use of force or violence in violation of Welfare and Institutions Code section 871(b).
- Torture as described in Penal Code sections 206 and 206.1.
- Aggravated mayhem as described in Penal Code section 205.

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- Carjacking as described in Penal Code section 215 while armed with a dangerous or deadly weapon.
- Kidnapping as punishable in Penal Code section 209.5.
- Willfully and maliciously discharging a firearm from a motor vehicle at another person other than an occupant of a motor vehicle.
- Exploding, igniting, or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
- Any of the offenses listed in Penal Code section 12021(c)(1).
- Carrying a concealed handgun. (Penal Code § 12025).
- Carrying a loaded handgun. (Penal Code § 12031).
- Allowing another to transport a loaded handgun in a vehicle. (Penal Code § 12034).

Mental Patients, Mentally Disordered Sex Offenders, Persons Adjudicated a Danger to Others,

Persons Incompetent to Stand Trial, Gravely Disabled Conservatees, and Persons Taken Into

Custody as a Danger to Self or Others Because of a Mental Disorder

No person who is receiving inpatient treatment because he or she is a danger to self or others may

have in his or her possession or under his or her custody, or control, nor may he or she purchase or

receive, or attempt to purchase or receive, any firearm. This applies even though the person has consented to the treatment. (Welfare and Institutions Code § 8100.)

No person who communicates to a licensed psychotherapist a serious threat of physical violence against a victim may purchase, possess, control, or have custody of any firearms for a period of six

months after the threat is reported to a local law enforcement agency.

Attempts to purchase, possess, or control firearms are also prohibited. Persons prohibited under this

section may petition a court for restoration of firearms privileges. (Welfare and Institutions Code § 8100(b).)

No person adjudicated by a court of any state to be (a) a danger to others as a result of mental

disorder or mental illness, or (b) a mentally disordered sex offender shall have in his or her possession, custody, or control any firearm. (Welfare and Institutions Code § 8103(a.)
No person found not guilty by reason of insanity of specified crimes in any state may have in his or her possession, custody, or control any firearm. (Welfare and Institutions Code § 8103(b.)
No person found by a court to be mentally incompetent to stand trial on a criminal charge shall have in his or her possession, custody, or control any firearm. (Welfare and Institutions Code § 8103(d.)
No person placed under conservatorship by a court, because the person is gravely disabled, shall have in his or her possession, custody, or control any firearm, where prohibited by the court. (Welfare and Institutions Code § 8103(e).)
No person taken into custody, assessed, and admitted to a designated facility pursuant to Welfare and Institutions Code section 5150 because that person is a danger to himself, herself, or others shall own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. (Welfare and Institutions Code § 8103(f.)

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Under California law, no person who has been certified for intensive treatment pursuant to Welfare and Institutions Code sections 5250, 5260 or 5270.15 may own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. However, such a person is considered to have been adjudicated as a mental defective under federal law and therefore may not possess firearms even beyond the five years provided under California law. (Welfare and Institutions Code § 8103(g)), 18 USC 922(g)(4).)

NOTE: Any person who knowingly supplies, sells, gives, or otherwise allows such an individual to possess or control any firearm or deadly weapon is guilty of a felony or an alternate felony/misdemeanor, respectively. (Welfare and Institutions Code § 8101.)

Justifiable Possession of a Firearm by Certain Prohibited Classes

Any person found to have committed an offense enumerated in Penal Code section 12021, subdivisions (a) through (e), is prohibited from owning, possessing, or having under his or her custody or control, any firearm. A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where

all of the following conditions are met:

- The person found the firearm or took the firearm from the person who was committing the crime against him or her.
- The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.
- If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of section 12026.2.
- If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine

whether the defendant was acting within the provisions of the exemption created by this subdivision.

The defendant has the burden of proving by a preponderance of the evidence that he or she comes

within the provisions of the exemption created by this subdivision. (Penal Code § 12021(h).)

Personal Firearms Eligibility Check

Any person may request directly from the Department of Justice a determination as to whether he

or she is eligible to possess firearms. The application form and instructions to request a personal firearms eligibility check is on the DOJ Bureau of Firearms website at <http://www.ag.ca.gov/firearms/forms/>. The cost for such an eligibility check is \$20. (PC § 12077.5.)

NOTE: As of January 1, 2007, any person who is prohibited from obtaining a firearm who knowingly furnishes a fictitious name or address, knowingly furnishes any incorrect information, or knowingly omits any information required on the Dealer's Record of Sale (DROS) is guilty of a crime punishable by imprisonment in a county jail not exceeding