

City of Sacramento
State Legislature

BILL REFERRAL



DATE: 2/8/94 COMMITTEE ACTION: _____

TO: Chief Art Venegas DATE: _____

FROM: KENNETH EMANUELS, LEGISLATIVE ADVOCATE

REPLY NO LATER THAN: _____

A.B. 645, As Amended 1-3-94 * Author ALLEN

S.B. _____, As Amended _____ * Author _____

* Date of introduction or latest amendment

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact Ken Emanuels at 444-6789, FAX 444-0303, (1400 K Street, Suite 306, Sacramento, CA 95814.) This questionnaire should be returned to the City Attorney's Office for presentation to the Council Committee on Law and Legislation. **PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.**

NO RECOMMENDATION. If you think no Committee action on this bill should be taken, either because the bill is not of sufficient importance to the City or for any other reason, please mark here, do not fill out the rest of the form, and return this form to the City Attorney's Office. _____

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary.)

Current law makes it a crime, punishable by imprisonment for 2, 3, or 4 years, for any person to bring or possess a loaded firearm upon the grounds of any school. This bill would prohibit the possession of a gun within a school zone, which is defined as within a distance of 1,000 feet of the school grounds. The school zone would not have to be marked. It also increases the penalty to 3, 5, and 7 years. Finally, the bill adds the violation of this section to the list of crimes where, if committed by a juvenile 16 years of age or older, it is presumed that the juvenile is unfit to be handled by the juvenile justice system.

2. This measure should be: (Please circle desired position)

Supported

Opposed

Supported if Amended

Placed on Watch List

Other (explain)

3. Please explain your reasons for the above determination, include how this measure effects your Department and the fiscal impact of this measure on the City. Please make your comments in a format that can be used in a letter to state officials. (Continue on next page or attach additional sheets if necessary.)

There have been more and more instances over the past several years where armed adults or juveniles have been discovered on or in close proximity to schools. Our schools must be a place where students are free to learn without having to fear that they will be the victims of violent acts involving guns.

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

This law conforms to the City's efforts of establishing drug and gun free zones in various areas of the city as well as our support of the schools attempts to establish these zones on their campuses.

5. If this measure could be amended to either improve its favorable aspects or to minimize its adverse aspects, which amendments would you propose?

N/A

6. List known support or opposition to this measure by groups with which you are familiar and include addresses and phone numbers, if known. League of California Cities position:

Support: California Correctional Police Officers Association, California State Sheriff's Association, California Sate Juvenile Officers Association, City of San Diego

Opposition: A.C.L.U., California Public Defenders Association, American Shooting Sports Council

7. Does this bill involve a State-mandated local program? If so, does the bill contain a State-mandated waiver, or an appropriation for allocation and disbursement to local agencies pursuant to Revenue and Taxation code Section 2231?

The bill requires a state-mandated local program, but as with most criminal justice bills stipulates that no reimbursement is required.

8. Using a rating scale of 1 to 10 (with 10 as the most important), how important do you think this bill is to the City of Sacramento? 8

FORM COMPLETED BY: Claudia R. Evans DATE: February 8, 1994

APPROVED:  DATE: 2/10/94
DAVID MARTINEZ, DEPUTY CITY MANAGER

AMENDED IN ASSEMBLY JANUARY 3, 1994

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL

No. 645

Introduced by Assembly Member Allen

February 23, 1993

An act to ~~add Section 671 to amend Section 626.9 of the Penal Code, and to amend Section 707 of the Welfare and Institutions Code, relating to enhancements~~ *gun-free school zones.*

LEGISLATIVE COUNSEL'S DIGEST

AB 645, as amended, Allen. ~~Enhancements: offenses committed on or near school grounds~~ *Gun-Free School Zone Act of 1995.*

Existing law provides that, except for certain enumerated persons, any person who brings or possesses a loaded firearm upon the grounds of, or within, any public school, including the University of California, the California State University, the California Community Colleges, any private school providing instruction in kindergarten or grades 1 to 12, inclusive, or any private university or college, unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished by imprisonment in the state prison for 2, 3, or 4 years.

Existing law also provides that, except for certain enumerated persons, any person who brings or possesses a firearm upon the grounds of, or within, any public school, including the University of California, the California State University, the California Community Colleges, any private school providing instruction in kindergarten or grades 1 to 12, inclusive, or any private university or college, unless with that

written permission, shall be punished by imprisonment in the state prison for 1, 2, or 3 years.

This bill, instead, would create the Gun-Free School Zone Act of 1995, which would provide that, except as specified, any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined, shall be punished by imprisonment in the state prison for 2, 3, or 5 years, and any person who with reckless disregard for the safety of another, discharges, or attempts to discharge, a firearm in a school zone, as defined, shall be punished by imprisonment in the state prison for 3, 5, or 7 years. Because these provisions would expand the scope of an existing crime, it would impose a state-mandated local program.

Existing law provides that the commission of any of one or more specified offenses by a minor when he or she was 16 years of age or older raises a presumption that the minor is not a fit and proper subject to be dealt with under the juvenile court law, unless the juvenile court makes a finding of fitness, as specified.

This bill would add to those provisions the crimes specified in the Gun-Free School Zone Act of 1995, as provided in this bill. Because this bill would impose increased duties on local criminal justice systems that are equivalent to those imposed by the establishment of a new crime, it 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 no reimbursement is required by this act for a specified reason.

Existing law makes an assault or battery a misdemeanor, provides for increased punishments for an assault or battery where the offense is committed on school or park property, and makes these offenses a misdemeanor or a felony where the offense is committed against a school employee, as specified, and an injury is inflicted on the victim.

Existing law makes an assault with a deadly weapon, by means likely to produce great bodily injury, or a firearm, as specified, a misdemeanor or a felony and makes these offenses

a felony where the offense is upon the person of a school employee, as specified.

Existing law also makes it a misdemeanor or a felony to bring or possess weapons on school grounds and a felony to bring or possess a loaded or unloaded firearm upon the grounds of, or within, any public school, as defined.

Existing law also provides for enhanced penalties under the Street Terrorism Enforcement and Prevention Act for felonies committed for the benefit of, at the direction of, or in association with any criminal street gang, as specified, committed on the grounds of, or within 1,000 feet of, specified schools, as specified.

This bill would provide that where any felony offense takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the offender shall receive an additional punishment of 3, 4, or 5 years at the court's discretion.

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

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

1 SECTION 1. Section 671 is added to the Penal Code;
2 SECTION 1. Section 626.9 of the Penal Code is
3 amended to read:

4 626.9. (a) Any person who brings or possesses a
5 loaded firearm upon the grounds of, or within, any public
6 school, including the University of California, the
7 California State University, the California Community
8 Colleges, or any private school providing instruction in
9 kindergarten or grades 1 to 12, inclusive, or any private
10 university or college, This section shall be known, and
11 may be cited, as the Gun-Free School Zone Act of 1995.

12 (b) Any person who possesses a firearm in a place that
13 the person knows, or reasonably should know, is a school
14 zone, as defined in paragraph (1) of subdivision (e),
15 unless it is with the written permission of the school

1 district superintendent, his or her designee, or equivalent
2 school authority, shall be punished by imprisonment in
3 the state prison for two, three, or four years as specified
4 in subdivision (f).

5 ~~(b)~~ Any person who brings or possesses a firearm upon
6 the grounds of, or within, any public school, including the
7 University of California, the California State University,
8 the California Community Colleges, any private school
9 providing instruction in kindergarten or grades 1 to 12,
10 inclusive, or any private university or college, unless it is
11 with the written permission of the school district
12 superintendent, his or her designee, or equivalent school
13 authority, shall be punished by imprisonment in the state
14 prison for one, two, or three years.

15 (c) Subdivision (b) shall not apply to the possession of
16 a firearm under any of the following circumstances:

17 (1) On private property not part of school grounds.

18 (2) If the individual who possesses the firearm is
19 authorized to do so on school grounds consistent with the
20 terms of subdivision (b).

21 (3) The firearm is an unloaded pistol, revolver, or
22 other firearm capable of being concealed on the person
23 and is in a locked container or within the locked trunk of
24 a motor vehicle.

25 This section shall not prohibit or limit the otherwise
26 lawful transportation of any other firearm, other than a
27 pistol, revolver, or other firearm capable of being
28 concealed on the person, in a motor vehicle in
29 accordance with state law.

30 (d) Except as provided in subdivision (b), it shall be
31 unlawful for any person with reckless disregard for the
32 safety of another, to discharge, or attempt to discharge,
33 a firearm in a school zone, as defined in paragraph (1) of
34 subdivision (e).

35 The prohibition of this subdivision shall not apply to the
36 discharge of a firearm to the extent that the conditions of
37 paragraphs (1) and (2) of subdivision (c) are satisfied.

38 (e) As used in this section, the following definitions
39 shall apply:

40 (1) "School zone" means an area in, or on the grounds

1 of, a public or private school, college, or university and
2 within a distance of 1,000 feet from the grounds of the
3 public or private school, college, or university.

4 (2) "Firearm" has the same meaning as that term is
5 given in Section 12001.

6 (3) "Locked container" has the same meaning as that
7 term is given in subdivision (c) of Section 12026.1.

8 (4) "Concealed firearm" has the same meaning as that
9 term is given in Sections 12025 and 12026.1.

10 (f) Any person who violates subdivision (b) shall be
11 punished by imprisonment in the state prison for two,
12 three, or five years.

13 (g) Any person who violates subdivision (d) shall be
14 punished by imprisonment in the state prison for three,
15 five, or seven years.

16 (h) This section shall not require either that notice be
17 posted regarding the proscribed conduct or that the
18 applicable 1,000-foot boundary limit, as specified in
19 paragraph (1) of subdivision (e), be marked.

20 (i) This section shall not apply to a duly appointed
21 peace officer as defined in Chapter 4.5 (commencing
22 with Section 830) of Title 3 of Part 2, a full-time paid
23 peace officer of another state or the federal government
24 who is carrying out official duties while in California, any
25 person summoned by any of these officers to assist in
26 making arrests or preserving the peace while he or she is
27 actually engaged in assisting the officer, a member of the
28 military forces of this state or of the United States who is
29 engaged in the performance of his or her duties, a person
30 holding a valid license to carry the firearm pursuant to
31 Article 3 (commencing with Section 12050) of Chapter 1
32 of Title 2 of Part 4, or an armored vehicle guard, who is
33 engaged in the performance of his or her duties, as
34 defined in subdivision (e) of Section 7521 of the Business
35 and Professions Code.

36 ~~(d)~~ For purposes of this section, a firearm shall be
37 deemed to be loaded when there is an unexpended
38 cartridge or shell, consisting of a case which holds a
39 charge of powder and a bullet or shot, in, or attached in
40 any manner to, the firearm, including, but not limited to,

1 in the firing chamber, magazine, or clip thereof attached
2 to the firearm. A muzzle loader firearm shall be deemed
3 to be loaded when it is capped or primed and has a
4 powder charge and ball or shot in the barrel or cylinder.

5 *SEC. 2. Section 707 of the Welfare and Institutions*
6 *Code is amended to read:*

7 707. (a) In any case in which a minor is alleged to be
8 a person described in Section 602 by reason of the
9 violation, when he or she was 16 years of age or older, of
10 any criminal statute or ordinance except those listed in
11 subdivision (b), upon motion of the petitioner made
12 prior to the attachment of jeopardy, the court shall cause
13 the probation officer to investigate and submit a report
14 on the behavioral patterns and social history of the minor
15 being considered for a determination of unfitness.
16 Following submission and consideration of the report,
17 and of any other relevant evidence ~~which~~ *that* the
18 petitioner or the minor may wish to submit, the juvenile
19 court may find that the minor is not a fit and proper
20 subject to be dealt with under the juvenile court law if it
21 concludes that the minor would not be amenable to the
22 care, treatment, and training program available through
23 the facilities of the juvenile court, based upon an
24 evaluation of the following criteria:

25 (1) The degree of criminal sophistication exhibited by
26 the minor.

27 (2) Whether the minor can be rehabilitated prior to
28 the expiration of the juvenile court's jurisdiction.

29 (3) The minor's previous delinquent history.

30 (4) Success of previous attempts by the juvenile court
31 to rehabilitate the minor.

32 (5) The circumstances and gravity of the offense
33 alleged to have been committed by the minor.

34 A determination that the minor is not a fit and proper
35 subject to be dealt with under the juvenile court law may
36 be based on any one or a combination of the factors set
37 forth above, ~~which~~ *that* shall be recited in the order of
38 unfitness. In any case in which a hearing has been noticed
39 pursuant to this section, the court shall postpone the
40 taking of a plea to the petition until the conclusion of the

1 fitness hearing, and no plea ~~which~~ *that* may already have
2 been entered shall constitute evidence at the hearing.

3 (b) Subdivision (c) shall be applicable in any case in
4 which a minor is alleged to be a person described in
5 Section 602 by reason of the violation, when he or she was
6 16 years of age or older, of one of the following offenses:

7 (1) Murder.

8 (2) Arson of an inhabited building.

9 (3) Robbery while armed with a dangerous or deadly
10 weapon.

11 (4) Rape with force or violence or threat of great
12 bodily harm.

13 (5) Sodomy by force, violence, duress, menace, or
14 threat of great bodily harm.

15 (6) Lewd or lascivious act as provided in subdivision
16 (b) of Section 288 of the Penal Code.

17 (7) Oral copulation by force, violence, duress, menace,
18 or threat of great bodily harm.

19 (8) Any offense specified in Section 289 of the Penal
20 Code.

21 (9) Kidnapping for ransom.

22 (10) Kidnapping for purpose of robbery.

23 (11) Kidnapping with bodily harm.

24 (12) Assault with intent to murder or attempted
25 murder.

26 (13) Assault with a firearm or destructive device.

27 (14) Assault by any means of force likely to produce
28 great bodily injury.

29 (15) Discharge of a firearm into an inhabited or
30 occupied building.

31 (16) Any offense described in Section 1203.09 of the
32 Penal Code.

33 (17) Any offense described in Section 12022.5 of the
34 Penal Code.

35 (18) Any felony offense in which the minor personally
36 used a weapon listed in subdivision (a) of Section 12020
37 of the Penal Code.

38 (19) Any felony offense described in Section 136.1 or
39 137 of the Penal Code.

40 (20) Manufacturing, compounding, or selling one-half

1 ounce or more of any salt or solution of a controlled
2 substance specified in subdivision (e) of Section 11055 of
3 the Health and Safety Code.

4 (21) Any violent felony, as defined in subdivision (c)
5 of Section 667.5 of the Penal Code, ~~which~~ *that* would also
6 constitute a felony violation of subdivision (b) of Section
7 186.22 of the Penal Code.

8 (22) Escape, by the use of force or violence, from any
9 county juvenile hall, home, ranch, camp, or forestry camp
10 in violation of subdivision (b) of Section 871 where great
11 bodily injury is intentionally inflicted upon an employee
12 of the juvenile facility during the commission of the
13 escape.

14 (23) Torture as described in Sections 206 and 206.1 of
15 the Penal Code.

16 (24) Aggravated mayhem as described in Section 205
17 of the Penal Code.

18 (25) Carjacking, as described in Section 215 of the
19 Penal Code, while armed with a dangerous or deadly
20 weapon.

21 (26) *Any offense described in Section 626.9 of the*
22 *Penal Code.*

23 (c) With regard to a minor alleged to be a person
24 described in Section 602 by reason of the violation, when
25 he or she was 16 years of age or older, of any of the
26 offenses listed in subdivision (b), upon motion of the
27 petitioner made prior to the attachment of jeopardy the
28 court shall cause the probation officer to investigate and
29 submit a report on the behavioral patterns and social
30 history of the minor being considered for a determination
31 of unfitness. Following submission and consideration of
32 the report, and of any other relevant evidence ~~which~~
33 *that* the petitioner or the minor may wish to submit the
34 minor shall be presumed to be not a fit and proper subject
35 to be dealt with under the juvenile court law unless the
36 juvenile court concludes, based upon evidence, which
37 evidence may be of extenuating or mitigating
38 circumstances, that the minor would be amenable to the
39 care, treatment, and training program available through
40 the facilities of the juvenile court based upon an

1 evaluation of each of the following criteria:

2 (1) The degree of criminal sophistication exhibited by
3 the minor.

4 (2) Whether the minor can be rehabilitated prior to
5 the expiration of the juvenile court's jurisdiction.

6 (3) The minor's previous delinquent history.

7 (4) Success of previous attempts by the juvenile court
8 to rehabilitate the minor.

9 (5) The circumstances and gravity of the offenses
10 alleged to have been committed by the minor.

11 A determination that the minor is a fit and proper
12 subject to be dealt with under the juvenile court law shall
13 be based on a finding of amenability after consideration
14 of the criteria set forth above, and findings therefor
15 recited in the order as to each of the above criteria that
16 the minor is fit and proper under each and every one of
17 the above criteria. In making a finding of fitness, the
18 court may consider extenuating or mitigating
19 circumstances in evaluating each of the above criteria. In
20 any case in which a hearing has been noticed pursuant to
21 this section, the court shall postpone the taking of a plea
22 to the petition until the conclusion of the fitness hearing
23 and no plea ~~which~~ *that* may already have been entered
24 shall constitute evidence at the hearing.

25 (d) If, subsequent to a finding that a minor is an unfit
26 subject to be dealt with under the juvenile court law, the
27 minor is convicted in a court of criminal jurisdiction of an
28 offense listed in subdivision (b) of this section or listed in
29 paragraph (24) of subdivision (c) of Section 1192.7 of the
30 Penal Code, the finding of unfitness ~~which~~ *that* preceded
31 the conviction is applicable to the violation of any law or
32 ordinance defining crime ~~which~~ *that* is alleged to have
33 been committed subsequent to the conviction if the
34 violation would otherwise cause the minor to be a person
35 described in Section 602. The probation officer shall not
36 be required to investigate or submit a report regarding
37 the fitness of a minor for the subsequent charge. This
38 subdivision shall not be construed to affect the right to
39 appellate review of a finding of unfitness or the duration
40 of the jurisdiction of the juvenile court as specified in

1 Section 607.

2 *SEC. 3. No reimbursement is required by this act*
3 *pursuant to Section 6 of Article XIII B of the California*
4 *Constitution because the only costs which may be*
5 *incurred by a local agency or school district will be*
6 *incurred because this act creates a new crime or*
7 *infraction, changes the definition of a crime or infraction,*
8 *changes the penalty for a crime or infraction, or*
9 *eliminates a crime or infraction. Notwithstanding Section*
10 *17580 of the Government Code, unless otherwise*
11 *specified in this act, the provisions of this act shall become*
12 *operative on the same date that the act takes effect*
13 *pursuant to the California Constitution.*

14 *to read:*

15 **671. (a)** Any person who commits a felony offense,
16 where the violation takes place upon the grounds of, or
17 within 1,000 feet of, a public or private elementary,
18 vocational, junior high, or high school during hours that
19 the school is open for classes or school-related programs,
20 or at any time when minors are using the facility where
21 the offense occurs, shall receive an additional
22 punishment of 3, 4, or 5 years at the court's discretion.

23 **(b)** The additional term provided in this section shall
24 not be imposed unless the allegation is charged in the
25 accusatory pleading and admitted or found to be true by
26 the trier of fact.

27 **(c)** The additional term provided in this section shall
28 be in addition to any other punishment provided by law
29 and shall not be limited by any other provision of law.

30 **(d)** Notwithstanding any other provision of law, the
31 court may strike the additional punishment for the
32 enhancement provided in this section if it determines
33 that there are circumstances in mitigation of the
34 additional punishment and states on the record its
35 reasons for striking the additional punishment.

36 **(e)** "Within 1,000 feet of a public or private
37 elementary, vocational, junior high, or high school"
38 means any public area or business establishment where
39 minors are legally permitted to conduct business which
40 is located within 1,000 feet of any public or private

1 elementary, vocational, junior high, or high school.

O