



## Background Information on the “Knew or Reasonably Should Have Known” Standard in SB 1366

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Under SB 1366 (DeSaulnier), commencing January 1, 2013, any person whose firearm is lost or stolen would be required to report the loss or theft to a local law enforcement agency within 48 hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost. As discussed below, the “knew or reasonably should have known” standard is used in a significant number of places in California’s criminal laws and has repeatedly been upheld by California courts. Law enforcement’s ability to enforce SB 1366 is significantly enhanced by the inclusion of that standard.

### **I. A “knew or reasonably should have known” standard is often used in California’s criminal laws and has been repeatedly upheld by the courts.**

As a California appellate court observed in 2003, “The concept of reasonableness in criminal statutes is not new.”<sup>1</sup> In fact, the “knew or reasonably should have known” standard is employed in a number of areas of California’s criminal laws. In legal challenges to these laws, California courts have repeatedly found that “knew or reasonably should have known” is an objective standard, and have rejected claims that the standard is unreasonably vague.

One such case involved the state law that makes a murderer eligible for the death penalty if the victim was a peace officer engaged in the performance of his or her duties when killed and the killer knew “or reasonably should have known” the victim was such an officer.<sup>2</sup> In rejecting the defendant’s legal challenge, the California Supreme Court noted that his request for additional jury instructions about the meaning of “reasonably should have known” would not bring any additional clarity to the self-explanatory concept:

Appellant also suggests the statute is vague and overbroad because the word “reasonable” does not provide “an ascertainable and fixed standard of guilt.”...

This argument is troubling only if one believes the average juror is unable to ascertain and apply the meaning of “reasonably should have known” in the instruction reiterating the statutory language. We doubt this is the case. First, any instruction elaborating on the term “reasonable” would add little, if anything, to the understanding of most jurors.\* Moreover, the average juror has the ability to cull from everyday experience a standard by which to assess the ability of a defendant to know the status of his or her victim.

\* Such an instruction could do little more than inform the jury that “‘reasonable’ means ‘what an average person of average intelligence would have known under the circumstances.’”<sup>3</sup>

Additionally, the Penal Code defines rape to include sexual intercourse “where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was

<sup>1</sup> *People v. Linwood*, 129 Cal. Rptr. 2d 73, 78 (Cal. Ct. App. 2003).

<sup>2</sup> Cal. Penal Code § 190.2(a)(7).

<sup>3</sup> *People v. Rodriguez*, 726 P.2d 113, 146-47 (Cal. 1986) (internal citations omitted).

known, or reasonably should have been known by the accused.”<sup>4</sup> The California Court of Appeal upheld the use of this standard in *People v. Linwood*, where the court remarked:

The use of such a standard does not make a statute uncertain; it requires either actual or constructive knowledge of the risk. Imputed knowledge of the risk is tested on an objective basis: “[I]f a reasonable person in defendant’s position would have been aware of the risk involved, then defendant is presumed to have had such an awareness.”<sup>5</sup>

California courts have also upheld state laws:

- Prohibiting the drawing or exhibition of a firearm “in a rude, angry, or threatening manner” while in the immediate presence of a peace officer, where the gun possessor “knows, or reasonably should know” that the person is a peace officer engaged in the performance of his or her duties.<sup>6</sup>
- Providing for a sentence enhancement for the commission of certain crimes where the victim is under the age of 14, age 65 or older, or disabled, and “that disability or condition is known or reasonably should be known to the person committing the crime.”<sup>7</sup>
- Prohibiting the possession of assault weapons. While the statute prohibiting the possession of assault weapons does not specify a mental state,<sup>8</sup> the California Supreme Court held that prosecutors would be required to show that a defendant “knew or reasonably should have known” that the firearm in his possession had the characteristics that made it an assault weapon.<sup>9</sup> The court rejected the defendant’s argument that actual knowledge of those characteristics ought to be required.

## II. The “knew or reasonably should have known” standard facilitates effective enforcement.

SB 1366 uses the “knew or reasonably should have known” standard in order to facilitate enforcement of the statute. Without the inclusion of “reasonably should have known,” defendants could escape liability by simply claiming that they did not actually know that their firearms were missing.

Concerns about enforceability influenced the California Supreme Court’s decision to require prosecutors seeking to enforce the state’s ban on the possession of assault weapons to show that the defendant “knew or reasonably should have known” that the firearm in his possession had the characteristics that brought it within the scope of the ban. Rejecting an “actual knowledge” standard, the court stated:

An actual knowledge element has significant potential to impair effective enforcement. Although knowledge may be proven circumstantially, in many instances a defendant’s direct testimony or prior statement that he or she was actually ignorant of the weapon’s salient characteristics will be sufficient to create reasonable doubt. Although the People could rebut a claim of actual ignorance by evidence of the defendant’s long and close acquaintance with the particular weapon or familiarity with firearms in general, production of such evidence would predictably constitute a heavy burden for the prosecution.<sup>10</sup>

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<sup>4</sup> Cal. Penal Code § 261(a)(3).

<sup>5</sup> *Linwood*, 129 Cal. Rptr. 2d at 78 (internal citations omitted).

<sup>6</sup> Cal. Penal Code § 417(c). See *People v. Mathews*, 30 Cal. Rptr. 2d 330, 334 (Cal. Ct. App. 1994).

<sup>7</sup> Cal. Penal Code § 667.9(a). See *People v. Smith*, 16 Cal. Rptr. 2d 820, 824 (Cal. Ct. App. 1993).

<sup>8</sup> Cal. Penal Code § 30605(a) (formerly § 12280(b)).

<sup>9</sup> *In re Jorge M.*, 4 P.3d 297, 311 (Cal. 2000).

<sup>10</sup> *In re Jorge M.*, 4 P.3d at 309.