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Daniel Shelton

Pacific McGeorge School of Law

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Chapter 346: Increasing Protection from Knuckle Weapons

Daniel Shelton

Code Section Affected

Penal Code § 12020.1 (amended).
SB 1162 (Maldonado); 2008 STAT. Ch. 346.

I. INTRODUCTION

“My slogan is don’t let them know what hit you. They’re not meant to be seen” says Jason Shepherd, an online retailer of hard plastic knuckles.¹ While metal knuckles, commonly known as “brass knuckles,” are deadly weapons that are illegal to possess or sell in California,² possession of similar “knuckles” made out of hard plastic or wood remain perfectly legal.³ These non-metallic knuckles are as dangerous as their metal counterparts, but also pose an additional threat because they can be easily smuggled through metal detectors at security checkpoints in airports and courthouses.⁴

In 2003, the California Legislature addressed the danger of hard plastic knuckles by making their manufacture, importation, and sale a misdemeanor.⁵ Chapter 346 adds composite and hard wooden knuckles to the list of prohibited items.⁶ Chapter 346’s supporters hope it will close this potentially dangerous loophole in the current law.⁷

II. BACKGROUND

Use of devices worn on the knuckles to inflict deadly force upon an opponent can be traced back to antiquity. In the *Aeneid*, Virgil⁸ described the use of a

1. Ben Wei, *New Undetectable Weapon Could Slip by Security at Airports This Summer*, ABC NEWS, July 3, 2007, <http://blogs.abcnews.com/theblotter/2007/07/new-undetectabl.html> (on file with the *McGeorge Law Review*).

2. CAL. PENAL CODE § 12020 (West 2000 & Supp. 2009).

3. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1162, at G (Mar. 25, 2008).

4. *Id.*; Wei, *supra* note 1.

5. CAL. PENAL CODE § 12020.1 (West Supp. 2009).

6. *Id.* § 12020.1 (amended by Chapter 346) (“As used in this section . . . ‘hard wooden knuckles’ means any device or instrument made wholly or partially of . . . wood, composite, or paper materials that is not a metal knuckle.”).

7. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1162, at G (Mar. 25, 2008).

8. Encyclopædia Britannica Online, Virgil, <http://search.eb.com/eb/article-9108776> (last visited Oct. 14, 2008) (on file with the *McGeorge Law Review*).

Virgil was regarded by the Romans as their greatest poet, an estimation that subsequent generations have upheld. His fame rests chiefly upon the *Aeneid* [from c. 30 BC; unfinished at his death], which tells the story of Rome’s legendary founder and proclaims the Roman mission to civilize the world under divine guidance.

Id.

device fashioned from iron and leather, worn on the fists of gladiators to ensure a deadly fight.⁹ Similarly, ancient Japanese peasants created the *tekko*, a metal device worn over the fist, for use in the martial art of *kobudo*.¹⁰ Modern metal knuckles have been around for at least two centuries and have found their way into popular culture.¹¹ Legislative enactments banning the possession of metal knuckles date back to the nineteenth century, with some states having long recognized the dangers associated with these weapons.¹²

In 1923, the California Legislature explicitly outlawed the possession of brass knuckles.¹³ In 1953, the Legislature first enacted the current section of the Penal Code banning the manufacture, import, sale, supply, or possession of metal knuckles.¹⁴ Over the years, numerous items have been added to the list of prohibited weapons, but the ban against knuckle weapons remained limited to those composed only of metal.¹⁵ Although brass knuckles were not involved in the tragedies of September 11, 2001, those events prompted federal and state governments to reevaluate numerous safety measures.¹⁶

In the wake of September 11, the United States Congress responded by passing thirty-six new airline safety mandates.¹⁷ Similar reassessment of California's safety laws led Governor Davis to enact a ban on the manufacture, importation, and sale of plastic knuckles.¹⁸ The Governor noted his concern that persons with criminal intentions could easily purchase and smuggle these weapons through security checkpoints.¹⁹

While the sale and manufacture of plastic knuckles became illegal in 2003, the possession of these items did not.²⁰ The Legislature intended to protect those citizens who may have been in legal possession of the item at the time the law

9. A DICTIONARY OF GREEK AND ROMAN ANTIQUITIES 269 (William Smith, ed., 1875), available at http://penelope.uchicago.edu/Thayer/E/Roman/Texts/secondary/SMIGRA*/Cestus.html (on file with the *McGeorge Law Review*).

10. Okinawa Karate, Okinawa Kobudo, http://www.karate.org.yu/articles/okinawa_kobudo.htm (last visited Oct. 16, 2008) (on file with the *McGeorge Law Review*).

11. Gordon D. Beresford, *Brass Knuckles*, ANTIQUE TRADER WKLY., Sept. 30, 1981, at 72, available at http://www.knuckledusterbook.com/index_files/articles/article.pdf (on file with the *McGeorge Law Review*).

12. See 13B WASH. PRAC., CRIM. LAW § 2804 (2007-08) (noting that Washington's 1891 Territorial Code explicitly prohibits possession of metal knuckles).

13. See *People v. Quinones*, 140 Cal. App. 609, 609, 35 P.2d 638, 638 (1st Dist. 1934) (noting that section 1 of chapter 339 of the Statutes of 1923 outlawed the possession of metal knuckles in California).

14. CAL. PENAL CODE § 12020 (1953) (current version at CAL. PENAL CODE § 12020 (West 2000 & Supp. 2009)).

15. See CAL. PENAL CODE § 12020 (Historical and Statutory Note) (noting 1961 amendment adding sawed-off shotguns and 1983 amendment adding subdivision for knives carried in sheaths).

16. John Ellis & Cyndee Fontana, *New Baggage Check Delays Fliers; Passengers Advised to Arrive Two Hours Early or Risk Being Rebooked on Later Flights*, FRESNO BEE, Dec. 31, 2002, at A1.

17. *Id.*

18. CAL. PENAL CODE § 12020.1 (West Supp. 2009).

19. *Notebook*, SEATTLE TIMES, Aug. 25, 2002, at A5.

20. CAL. PENAL CODE § 12020.1.

was created, while restricting future widespread legal distribution.²¹ Until the enactment of Chapter 346, however, a person could still legally sell any knuckle composed of a material other than metal or plastic in California.²² In fact, wooden knuckles may still be commercially available from online retailers.²³

III. CHAPTER 346

Chapter 346 addresses concerns about the rising use of hard knuckles, composed of materials other than metal or plastic, by violent criminals.²⁴ Chapter 346 achieves this goal by prohibiting the manufacture, importation, or sale of hard wooden or composite knuckles.²⁵ Chapter 346 amends the Penal Code, which previously prohibited only plastic knuckles,²⁶ to include any device made “wholly or partially” of “plastic, wood, composite or paper products.”²⁷ Chapter 346 defines these “knuckles” as any device worn on the hand for “purposes of offense or defense . . . that either protects the wearer’s hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow.”²⁸

IV. ANALYSIS OF CHAPTER 346

Recently, several other states have recognized the danger posed by non-metal knuckles by enacting legislation curbing their use and distribution. In 2008, at least three states expanded prohibition of knuckle weapons beyond that which is prohibited in California by Chapter 346.²⁹ First, New York expanded its list of unlawful dangerous weapons to include plastic knuckles, and thereby outlawed their possession, manufacture, and transportation in the state.³⁰ Likewise, Illinois enacted a ban on the sale, manufacture, purchase, possession, and carrying of any

21. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1162, at H (Mar. 25, 2008).

22. See CAL. PENAL CODE § 12020 (West 2000 & Supp. 2009) (prohibiting sale of metal knuckles); CAL. PENAL CODE § 12020.1 (West 2003) (amended by Chapter 346) (prohibiting sale of plastic knuckles).

23. See BoingBoing, Wooden Brass Knuckles, <http://www.boingboing.net/2008/03/24/wooden-brass-knuckle.html> (last visited Oct. 16, 2008) (on file with the *McGeorge Law Review*) (listing wooden knuckles for \$40.00).

24. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1162, at G (Mar. 25, 2008).

25. CAL. PENAL CODE § 12020.1 (amended by Chapter 346) (“Any person in this state who commercially manufactures or causes to be commercially manufactured, or who knowingly imports into the state for commercial sale, keeps for commercial sale, or offers or exposes for commercial sale, any hard plastic knuckles or hard wooden knuckles is guilty of a misdemeanor.” (emphasis added)). Section 12020.1 does not set forth any specific penalties other than stating that the infraction is a misdemeanor. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. GA. CODE ANN. § 16-11-126 (2003); 720 ILL. COMP. STAT. ANN. 5/24-1 (West 2003); N.Y. PENAL LAW § 265.01 (McKinney 2008) (possession); N.Y. PENAL LAW § 265.10 (McKinney 2008) (manufacture and transportation).

30. N.Y. PENAL LAW § 265.01 (possession); *id.* § 265.10 (manufacture and transportation).

“knuckle weapon regardless of its composition.”³¹ Finally, Georgia expanded its list of prohibited concealed weapons to include “knuckles whether made from metal, thermoplastic, wood, or other similar material.”³²

California’s prohibition of knuckle weapons falls short of the protection afforded by these other states because California law does not prevent the possession of knuckle weapons other than metal knuckles.³³ As originally introduced, the bill that was eventually enacted as Chapter 346 included a provision prohibiting the possession of plastic or wooden knuckles in addition to their manufacture, importation, and sale;³⁴ however, a subsequent amendment to the bill reduced its scope.³⁵ Even so, the goal remained the same: to update the law to encourage the prohibition of the potentially deadly wooden knuckles³⁶ and ultimately reduce their prevalence.³⁷ As the author of Chapter 346 noted, “[i]n order to curb the possession of all metal, wood, plastic and other composite constructed knuckles, the manufacture of these ‘knuckles’ must first be stopped.”³⁸ Chapter 346, however, only addresses the commercial sale and production of these knuckles,³⁹ and given the relative ease with which one can produce homemade knuckle weapons, a loophole will remain until the actual possession of these weapons is made unlawful.⁴⁰

Progress toward a complete prohibition on possession of knuckle weapons is likely to continue in the near future. During the prior legislative session, the California State Senate and Assembly passed a bill outlawing the possession of these knuckle weapons.⁴¹ Notably, the bill did not receive a single “no” vote in either house,⁴² thus showing its broad-based support. In vetoing the bill, Governor

31. 720 ILL. COMP. STAT. 5/24-1.

32. GA. CODE ANN. § 16-11-126.

33. CAL. PENAL CODE § 12020 (West 2000 & Supp. 2009) (prohibiting possession of metal knuckles).

34. SB 1162, 2008 Leg., 2007-2008 Sess. (Cal. 2008) (as introduced on Feb. 6, 2008, but not enacted) (repealing CAL. PENAL CODE § 12020.1 and adding “plastic, wood, composite, or paper products” to metal knuckles under CAL. PENAL CODE § 12020).

35. SB 1162, 2008 Leg., 2007-2008 Sess. (Cal. 2008) (as amended on Apr. 1, 2008, but not enacted) (adding “wood, composite, or paper products” to plastic knuckles under PENAL CODE § 12020.1).

36. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS SB 1162, at 1 (June 18, 2008).

37. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS SB 1162, at 2 (June 10, 2008).

38. *Id.*

39. CAL. PENAL CODE § 12020.1 (amended by Chapter 346).

40. A Google search for “how to make plastic knuckles” reveals numerous web pages with written and video instruction on how to make various forms of knuckle weapons. *See, e.g.*, Instructables.com, How to Make Brass Knuckles (Out of Plastic and Duct Tape!!!), <http://www.instructables.com/id/how-to-make-brass-knuckles-out-of-plastic-and-duct/> (last visited Feb. 6, 2009) (on file with the *McGeorge Law Review*) (describing how to make plastic knuckles).

41. AB 2706, 2008 Leg., 2007-2008 Sess. (Cal. 2008) (as enrolled on Sept. 26, 2008, but not enacted) (enrolled bill amending CAL. PENAL CODE § 12020.1 prohibiting possession of composite knuckles).

42. *See* SENATE FLOOR VOTE, UNOFFICIAL BALLOT FOR AB 2706, at 1 (Aug. 11, 2008) (passing the bill 35-0); ASSEMBLY FLOOR VOTE, UNOFFICIAL BALLOT FOR AB 2706, at 1 (Aug. 13, 2008) (passing the bill 78-0).

Schwarzenegger cited the historic delay in passing the 2008-2009 state budget and remained silent as to its substance.⁴³

V. CONCLUSION

Prior to Chapter 346, California law prevented the manufacture, importation, and sale of metal and plastic knuckles, but not hard wooden or composite knuckles.⁴⁴ Although wooden knuckles are potentially just as deadly as their metal counterparts,⁴⁵ lawmakers previously overlooked these wooden weapons.⁴⁶ With the rising popularity of these weapons, Chapter 346 outlaws wooden knuckles to the same extent as plastic knuckles, but stops short of criminalizing their possession.⁴⁷

43. AB 2706, 2008 Leg., 2007-2008 Sess. (Cal. 2008) (as vetoed on Sept. 28, 2008) ("The historic delay in passing the 2008-2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session.").

44. See *supra* Part II and notes 11-17 (discussing the history of California legislation on metallic knuckles).

45. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1162, at G (Mar. 25, 2008).

46. See CAL. PENAL CODE § 12020 (West 2000 & Supp. 2009) (prohibiting sale of metal knuckles); *Id.* § 12020.1 (West 2003) (amended by Chapter 346) (prohibiting sale of plastic knuckles).

47. *Id.* § 12020.1 (amended by Chapter 346).