

### Los Angeles Guns & Weapons Defense Lawyer Tracy M. Grayson

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Contact criminal defense attorney Tracy M. Grayson for a free consultation if you have a gun or weapons case or a case involving any felony matter where a gun or weapons enhancement is alleged. Mr. Grayson has an outstanding trial and settlement track record regarding such cases. Many of his clients charged with gun and weapons possession cases have been granted probation even when they were facing many years in prison.

Recently, at the downtown criminal courts building in Los Angeles, Mr. Grayson had a client charged with “ex-felon in possession of a firearm,” who was facing 25 years-to-life in prison because he had two prior strikes and because he had just recently been released from prison. Mr. Grayson filed a Motion to Suppress Evidence, arguing that the LAPD officer illegally stopped his client, and ended up getting the DA to make an offer of only three years in prison at half-time, which was to run concurrent with (at the same time as) the client’s one-year parole violation. During the incident, the LAPD not only seized the gun, but also the client’s money. Mr. Grayson obtained an order from the court directing the LAPD to return the young man’s \$500. The client was extremely pleased with the whole outcome.

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#### **The Law**

There is a surprisingly long list of crimes associated with possessing, giving, lending, importing, manufacturing, and selling firearms and other weapons, along with gun and weapons enhancements. Weapons include not only guns or firearms, but also knives, dirks, daggers, swords, brass or metal knuckles, blackjacks or billy clubs, bats or sticks, ammunition, exploding bullets, nunchaku (nunchucks), shuriken, pepper spray, vehicles, any blunt object or instrument, and even your hands and feet. In fact, virtually any object could be used as a weapon. What follows are just a few of the crimes associated with guns and other weapons, followed by the law pertaining to three of the more common gun crimes:

- Possession, importation, or manufacture of illegal firearm or weapon (e.g., sawed-off shotgun)
- Carrying concealed firearm on person or in vehicle
- Carrying loaded firearm on person or in vehicle
- Ex-felon in possession of a firearm
- Possession of assault weapon
- Brandishing a firearm, knife, or other weapons
- Discharge of a firearm (into occupied home or vehicle)
- Shooting from a vehicle
- Unlawful sale of a firearm
- Possession, sale, or transportation of explosive or destructive device
- Possession of dirk or dagger
- Carrying concealed dirk or dagger
- Possession of switchblade knife
- Possession of ammunition

To be found guilty of carrying a concealed firearm on one's person, the prosecutor must prove that: you carried on your person a firearm capable of being concealed on the person; you knew that you were carrying a firearm; and the firearm was substantially concealed on your person.

To be found guilty of carrying a loaded firearm, the prosecutor must prove that: you carried a loaded firearm on your person or in a vehicle; you knew that you were carrying a firearm; and at that time, you were in a public place or on a public street.

To be found guilty of possessing an illegal weapon (e.g., sawed-off shotgun), the prosecutor must prove that: you possessed an illegal weapon; you knew that you possessed an illegal weapon; and you possessed the object as a weapon.

All three of the common gun crimes above are wobblers, which means they could be charged as either misdemeanors or felonies. If convicted of a felony, you face a maximum of three years in state prison, while a misdemeanor could land you in jail for up to one year; however, you could also get time-served. For nearly every gun and weapons charge, you face at most three years in state prison if convicted of a felony, and up to one year in the county jail if

convicted of a misdemeanor. For many gun and weapons charges, you could get time-served, but a few carry 90-day-minimum jail sentences, mostly for having prior convictions.

### **Firearm and Other Weapons Enhancements**

In addition to being charged with possessing, importing, or manufacturing guns and other weapons, the DA or prosecutor will often allege a special enhancement if a gun or other weapon was involved in your felony case (robbery, kidnapping, and murder, etc.), which will expose you to additional time in prison. For example, if you are charged with robbery and it is alleged that you used a gun while the robbery was being committed, the DA will also charge you with personally using a gun. The robbery charge exposes you to five years in state prison, however, personal use of a gun carries ten years, so your total exposure in this example would be fifteen years state prison. As this example shows, sometimes the enhancement carries more time than the main charge.

The following are some of the most common gun and weapons enhancements and how much prison time each allegation can add to your sentence:

#### **Penal Code section 12022**

armed with a gun or firearm: 1 year

personal use of a deadly or dangerous weapon: 1 year

**Penal Code section 12022.3**

use of firearm or deadly weapon during sex offense\*: up to 10 years

armed with firearm or deadly weapon during sex offense: up to 5 years

**Penal Code section 12022.5**

personal use of a firearm during felony\*: up to 10 years

**Penal Code section 12022.53**

personal use of a firearm during certain felonies\*: 10 years

personal discharge of firearm during certain felonies\*: 20 years

personal use of firearm which causes great bodily injury during certain felonies\*: 25 years-to-life

Daring the commission of a crime, being armed with a gun, firearm or other weapon is different from personal use. To be armed with a firearm or other weapon simply means that you are carrying it. On the other hand, personal use of a firearm or other weapon means you are displaying it in a menacing manner, hitting someone with it, or firing it. It is not necessary to actually discharge or fire a gun or to actually stab someone with a knife. In fact, a gun or firearm does not even have to be loaded or operable. If a one-year "armed with a firearm" enhancement is alleged per Penal Code section 12022(a)(1), keep in mind that *you* do not have to be personally armed with a firearm. It is enough if a co-defendant or "crimée" is armed. Moreover, you do not even have to be aware that they are armed.

Under Penal Code section 12022.53 subdivisions (b)-(d) above, if the DA or prosecutor can demonstrate that you are a gang member, that you violated the gang enhancement law, and that at least one of your co-defendants or "crimée's" violated any one of the 12022.53 enhancements, you could also be convicted and sentenced to 10 or 20 years, or 25 years-to-life in state prison on the enhancements alone--even though you never touched a gun or firearm during the crime.

\*Makes the crime a serious and/or violent strike under California's Three Strikes Law, which could make you ineligible for half-time custody credits. If the crime is a violent strike, you may earn only 15 percent credits.

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### **Possible Consequences**

- County jail or state prison
- Probation or parole
- Having a criminal record (which may or may not be later expunged, reduced, or dismissed)
- Fines and fees involving hundreds or even thousands of dollars
- Community service or work (your time and money)
- May constitute a violent and/or serious strike, which could result in a longer prison sentence now and if you commit a future felony
- Five-year prior could later add five years to prison sentence if you commit a future felony
- May have to provide DNA sample which goes into a nationwide database
- Destruction of weapon in current case
- No longer able to own, use or possess a gun or weapon

- Possible deportation or other immigration consequences
- Could affect current job, future employment or professional license
- Could affect right to vote, jury service, and holding public office

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### **Defenses**

If you are facing gun or weapons charges or have a felony case with a gun or weapons enhancement, it is extremely important to immediately hire an experienced and skilled attorney like Tracy Grayson, preferably the day you are arrested. Mr. Grayson has been very successful in convincing the DA or prosecutor to dismiss or reduce charges, to not consider prior strikes for purposes of sentencing, and to reduce the amount of time in custody.

Insufficient or lack of evidence, mistaken identity, witness credibility, gun carried openly in a holster, ownership issues, no evidence of possession, and lack of fingerprints and/or DNA are some of the most common defenses and issues which have arisen during Attorney Grayson's 15 years of successfully fighting gun and weapons cases. Be aware that with certain gun charges, a firearm need not be in working order if it was designed to shoot and appears capable of shooting.

Police officers are often present when gun or weapons possession cases occur, and therefore can be important witnesses. They can be important if, for example, you say something incriminating (never talk to the police!); or if they find the weapon when you, or your car, property or residence are searched (never consent or agree to a search!), etc. Keep in mind that when the police stop, detain, or search you, they may have violated your Fourth Amendment rights to be free of illegal searches and seizures. If so, the evidence could be suppressed and your case dismissed.

Either way, as an experienced and skilled attorney, Tracy Grayson will thoroughly review, investigate and prepare your case, interview prosecution and defense witnesses, obtain

additional discovery, research complexities in the law, prepare motions, appoint experts, aggressively fight for your freedom in court, and make certain that we do everything possible to win your case.

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If you want to beat your gun or weapons case, contact attorney Tracy Grayson now!