

AMENDED IN SENATE MAY 1, 2001  
AMENDED IN SENATE APRIL 16, 2001

**SENATE BILL**

**No. 950**

---

---

**Introduced by Senator Brulte  
(Principal coauthor: Senator Scott)**

February 23, 2001

---

---

An act to ~~amend Sections 12001.6 and 12021 of, and to add Article 1.5 (commencing with Section 12010) to Chapter 1 of Title 2 of Part 4 of; the Penal Code, relating to firearms.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 950, as amended, Brulte. Firearms: prohibited possession: ~~prior convictions~~ *data base*.

~~Existing law provides that any person who has been convicted of a misdemeanor violation for assault with a deadly weapon, and who, within 10 years of the conviction owns, possesses, or has custody or control over a firearm is guilty of an offense, punishable by imprisonment in a county jail not exceeding one year, or in the state prison, or by a fine not exceeding \$1,000, or by both imprisonment and the fine.~~

~~Existing law also provides that any person who suffers any conviction for assault with a deadly weapon, and who owns, possesses, or has custody or control over a firearm is guilty of a felony.~~

~~This bill would delete the offense that is punishable by a term of imprisonment in a county jail, or state prison, or by a fine, or by both imprisonment and the fine.~~

~~By increasing local prosecution hearings because of the bill's increase in felony charges, this bill would impose a state-mandated local program.~~

Existing law establishes various automated information systems in regard to the transfer and possession of firearms, and persons who are prohibited from owning or possessing firearms.

This bill would, contingent upon an appropriation in the 2001–02 Budget Act to the Department of Justice for this purpose, establish the Prohibited Armed Persons File, a data base that would cross-reference information for persons relative to the purchase and possession of firearms on or after January 1, 1991, and information indicating those persons who have subsequently been prohibited from owning or possessing firearms, as specified.

~~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.~~

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

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

- 1     ~~SECTION 1.—Section 12001.6 of the Penal Code is amended~~
- 2     ~~to read:~~
- 3     ~~12001.6.—As used in this chapter, an offense which involves~~
- 4     ~~the violent use of a firearm includes any of the following:~~
- 5     ~~(a) A violation of paragraph (2) or (3) of subdivision (a) of~~
- 6     ~~Section 245 or a violation of subdivision (d) of Section 245.~~
- 7     ~~(b) A violation of Section 246.~~
- 8     ~~(c) A violation of paragraph (2) of subdivision (a) of Section~~
- 9     ~~417.~~
- 10    ~~(d) A violation of subdivision (e) of Section 417.~~
- 11    ~~SEC. 2.~~
- 12    ~~SECTION 1.~~ Article 1.5 (commencing with Section 12010) is
- 13    ~~added to Chapter 1 of Title 2 of Part 4 of the Penal Code, to read:~~
- 14



1 Article 1.5. Prohibited Armed Persons File

2  
3 12010. (a) The Attorney General shall establish and maintain  
4 an online data base to be known as the Prohibited Armed Persons  
5 File. The purpose of the file is to cross-reference persons who have  
6 ownership or possession of a firearm on or after January 1, 1991,  
7 as indicated by a Dealers' Record of Sale recorded in the  
8 Automated Firearms System, and who, subsequent to the date of  
9 that ownership or possession of a firearm, fall within a class of  
10 persons who are prohibited from owning or possessing a firearm.

11 (b) The information contained in the Prohibited Armed  
12 Persons File shall only be available to those entities specified in,  
13 and pursuant to, subdivision (b) or (c) of Section 11105, through  
14 the California Law Enforcement Telecommunications System, for  
15 the purpose of determining if persons are armed and prohibited  
16 from possessing firearms.

17 12011. The Prohibited Armed Persons File data base shall  
18 function as follows:

19 (a) Upon entry into the Automated Criminal History System of  
20 a disposition for a conviction of any felony, a conviction for any  
21 firearms-prohibiting charge specified in Section 12021, a  
22 conviction for an offense described in Section 12021.1, a firearms  
23 prohibition pursuant to Section 8100 or 8103 of the Welfare and  
24 Institutions Code, or any firearms possession prohibition  
25 identified by the federal National Instant Check System, the  
26 Department of Justice shall determine if the subject has an entry  
27 in the Automated Firearms System indicating possession or  
28 ownership of a firearm on or after January 1, 1991, or an assault  
29 weapon registration.

30 (b) Upon an entry into any department automated information  
31 system that is used for the identification of persons who are  
32 prohibited from acquiring, owning, or possessing firearms, the  
33 department shall determine if the subject has an entry in the  
34 Automated Firearms System indicating ownership or possession  
35 of a firearm on or after January 1, 1991, or an assault weapon  
36 registration.

37 (c) If the department determines that, pursuant to subdivision  
38 (a) ~~of (a)~~ or (b), the subject has an entry in the Automated Firearms  
39 System indicating possession or ownership of a firearm on or after  
40 January 1, 1991, or an assault weapon registration, the following



1 information shall be entered into the Prohibited Armed Persons  
2 File:

- 3 (1) The subject’s name.
- 4 (2) The subject’s date of birth.
- 5 (3) The subject’s physical description.
- 6 (4) Any other identifying information regarding the subject  
7 that is deemed necessary by the Attorney General.
- 8 (5) The basis of the firearms possession prohibition.
- 9 (6) A description of all firearms owned or possessed by the  
10 subject, as reflected by the Automated Firearms System.

11 12012. The Attorney General shall provide investigative  
12 assistance to local law enforcement agencies to better ensure the  
13 investigation of individuals who are armed and prohibited from  
14 possessing a firearm.

15 ~~SEC. 3.—Section 12021 of the Penal Code is amended to read:~~

16 ~~12021. (a) (1) Any person who has been convicted of a  
17 felony under the laws of the United States, of the State of  
18 California, or any other state, government, or country, or of an  
19 offense enumerated in subdivision (a), (b), or (d) of Section  
20 12001.6, or who is addicted to the use of any narcotic drug, who  
21 owns or has in his or her possession or under his or her custody or  
22 control any firearm is guilty of a felony.~~

23 ~~(2) Any person who has two or more convictions for violating  
24 paragraph (2) of subdivision (a) of Section 417 and who owns or  
25 has in his or her possession or under his or her custody or control  
26 any firearm is guilty of a felony.~~

27 ~~(b) Notwithstanding subdivision (a), any person who has been  
28 convicted of a felony or of an offense enumerated in Section  
29 12001.6, when that conviction results from certification by the  
30 juvenile court for prosecution as an adult in an adult court under  
31 Section 707 of the Welfare and Institutions Code, who owns or has  
32 in his or her possession or under his or her custody or control any  
33 firearm is guilty of a felony.~~

34 ~~(c) (1) Except as provided in subdivision (a) or paragraph (2)  
35 of this subdivision, any person who has been convicted of a  
36 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140;  
37 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,  
38 240, 241, 242, 243, 244.5, 245.5, 246, 246.3, 247, 273.5, 273.6,  
39 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024,  
40 subdivision (b) or (d) of Section 12034, Section 12040,~~



1 ~~subdivision (b) of Section 12072, subdivision (a) of former~~  
2 ~~Section 12100, Section 12220, 12320, or 12590, or Section 8100,~~  
3 ~~8101, or 8103 of the Welfare and Institutions Code, any~~  
4 ~~firearm-related offense pursuant to Sections 871.5 and 1001.5 of~~  
5 ~~the Welfare and Institutions Code, or of the conduct punished in~~  
6 ~~paragraph (3) of subdivision (g) of Section 12072, and who, within~~  
7 ~~10 years of the conviction, owns, or has in his or her possession or~~  
8 ~~under his or her custody or control, any firearm is guilty of a public~~  
9 ~~offense, which shall be punishable by imprisonment in a county~~  
10 ~~jail not exceeding one year or in the state prison, by a fine not~~  
11 ~~exceeding one thousand dollars (\$1,000), or by both that~~  
12 ~~imprisonment and fine. The court, on forms prescribed by the~~  
13 ~~Department of Justice, shall notify the department of persons~~  
14 ~~subject to this subdivision. However, the prohibition in this~~  
15 ~~paragraph may be reduced, eliminated, or conditioned as provided~~  
16 ~~in paragraph (2) or (3).~~

17 ~~(2) Any person employed as a peace officer described in~~  
18 ~~Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose~~  
19 ~~employment or livelihood is dependent on the ability to legally~~  
20 ~~possess a firearm, who is subject to the prohibition imposed by this~~  
21 ~~subdivision because of a conviction under Section 273.5, 273.6, or~~  
22 ~~646.9, may petition the court only once for relief from this~~  
23 ~~prohibition. The petition shall be filed with the court in which the~~  
24 ~~petitioner was sentenced. If possible, the matter shall be heard~~  
25 ~~before the same judge that sentenced the petitioner. Upon filing the~~  
26 ~~petition, the clerk of the court shall set the hearing date and shall~~  
27 ~~notify the petitioner and the prosecuting attorney of the date of the~~  
28 ~~hearing. Upon making each of the following findings, the court~~  
29 ~~may reduce or eliminate the prohibition, impose conditions on~~  
30 ~~reduction or elimination of the prohibition, or otherwise grant~~  
31 ~~relief from the prohibition as the court deems appropriate:~~

32 ~~(A) Finds by a preponderance of the evidence that the~~  
33 ~~petitioner is likely to use a firearm in a safe and lawful manner.~~

34 ~~(B) Finds that the petitioner is not within a prohibited class as~~  
35 ~~specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,~~  
36 ~~and the court is not presented with any credible evidence that the~~  
37 ~~petitioner is a person described in Section 8100 or 8103 of the~~  
38 ~~Welfare and Institutions Code.~~



1 ~~(C) Finds that the petitioner does not have a previous~~  
2 ~~conviction under this subdivision no matter when the prior~~  
3 ~~conviction occurred.~~

4 ~~In making its decision, the court shall consider the petitioner's~~  
5 ~~continued employment, the interest of justice, any relevant~~  
6 ~~evidence, and the totality of the circumstances. The court shall~~  
7 ~~require, as a condition of granting relief from the prohibition under~~  
8 ~~this section, that the petitioner agree to participate in counseling~~  
9 ~~as deemed appropriate by the court. Relief from the prohibition~~  
10 ~~shall not relieve any other person or entity from any liability that~~  
11 ~~might otherwise be imposed. It is the intent of the Legislature that~~  
12 ~~courts exercise broad discretion in fashioning appropriate relief~~  
13 ~~under this paragraph in cases in which relief is warranted.~~  
14 ~~However, nothing in this paragraph shall be construed to require~~  
15 ~~courts to grant relief to any particular petitioner. It is the intent of~~  
16 ~~the Legislature to permit persons who were convicted of an offense~~  
17 ~~specified in Section 273.5, 273.6, or 646.9 to seek relief from the~~  
18 ~~prohibition imposed by this subdivision.~~

19 ~~(3) Any person who is subject to the prohibition imposed by~~  
20 ~~this subdivision because of a conviction of an offense prior to that~~  
21 ~~offense being added to paragraph (1), may petition the court only~~  
22 ~~once for relief from this prohibition. The petition shall be filed~~  
23 ~~with the court in which the petitioner was sentenced. If possible,~~  
24 ~~the matter shall be heard before the same judge that sentenced the~~  
25 ~~petitioner. Upon filing the petition, the clerk of the court shall set~~  
26 ~~the hearing date and notify the petitioner and the prosecuting~~  
27 ~~attorney of the date of the hearing. Upon making each of the~~  
28 ~~following findings, the court may reduce or eliminate the~~  
29 ~~prohibition, impose conditions on reduction or elimination of the~~  
30 ~~prohibition, or otherwise grant relief from the prohibition as the~~  
31 ~~court deems appropriate:~~

32 ~~(A) Finds by a preponderance of the evidence that the~~  
33 ~~petitioner is likely to use a firearm in a safe and lawful manner.~~

34 ~~(B) Finds that the petitioner is not within a prohibited class as~~  
35 ~~specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,~~  
36 ~~and the court is not presented with any credible evidence that the~~  
37 ~~petitioner is a person described in Section 8100 or 8103 of the~~  
38 ~~Welfare and Institutions Code.~~



1 ~~(C) Finds that the petitioner does not have a previous~~  
2 ~~conviction under this subdivision, no matter when the prior~~  
3 ~~conviction occurred.~~

4 ~~In making its decision, the court may consider the interest of~~  
5 ~~justice, any relevant evidence, and the totality of the~~  
6 ~~circumstances. It is the intent of the Legislature that courts exercise~~  
7 ~~broad discretion in fashioning appropriate relief under this~~  
8 ~~paragraph in cases in which relief is warranted. However, nothing~~  
9 ~~in this paragraph shall be construed to require courts to grant relief~~  
10 ~~to any particular petitioner.~~

11 ~~(4) Law enforcement officials who enforce the prohibition~~  
12 ~~specified in this subdivision against a person who has been granted~~  
13 ~~relief pursuant to paragraph (2) or (3), shall be immune from any~~  
14 ~~liability for false arrest arising from the enforcement of this~~  
15 ~~subdivision unless the person has in his or her possession a~~  
16 ~~certified copy of the court order that granted the person relief from~~  
17 ~~the prohibition. This immunity from liability shall not relieve any~~  
18 ~~person or entity from any other liability that might otherwise be~~  
19 ~~imposed.~~

20 ~~(d) Any person who, as an express condition of probation, is~~  
21 ~~prohibited or restricted from owning, possessing, controlling,~~  
22 ~~receiving, or purchasing a firearm and who owns, or has in his or~~  
23 ~~her possession or under his or her custody or control, any firearm~~  
24 ~~but who is not subject to subdivision (a) or (c) is guilty of a public~~  
25 ~~offense, which shall be punishable by imprisonment in a county~~  
26 ~~jail not exceeding one year or in the state prison, by a fine not~~  
27 ~~exceeding one thousand dollars (\$1,000), or by both that~~  
28 ~~imprisonment and fine. The court, on forms provided by the~~  
29 ~~Department of Justice, shall notify the department of persons~~  
30 ~~subject to this subdivision. The notice shall include a copy of the~~  
31 ~~order of probation and a copy of any minute order or abstract~~  
32 ~~reflecting the order and conditions of probation.~~

33 ~~(e) Any person who (1) is alleged to have committed an offense~~  
34 ~~listed in subdivision (b) of Section 707 of the Welfare and~~  
35 ~~Institutions Code, an offense described in subdivision (b) of~~  
36 ~~Section 1203.073, or any offense enumerated in paragraph (1) of~~  
37 ~~subdivision (c), and (2) is subsequently adjudged a ward of the~~  
38 ~~juvenile court within the meaning of Section 602 of the Welfare~~  
39 ~~and Institutions Code because the person committed an offense~~  
40 ~~listed in subdivision (b) of Section 707 of the Welfare and~~



1 ~~Institutions Code, an offense described in subdivision (b) of~~  
2 ~~Section 1203.073, or any offense enumerated in paragraph (1) of~~  
3 ~~subdivision (c) shall not own, or have in his or her possession or~~  
4 ~~under his or her custody or control, any firearm until the age of 30~~  
5 ~~years. A violation of this subdivision shall be punishable by~~  
6 ~~imprisonment in a county jail not exceeding one year or in the state~~  
7 ~~prison, by a fine not exceeding one thousand dollars (\$1,000), or~~  
8 ~~by both that imprisonment and fine. The juvenile court, on forms~~  
9 ~~prescribed by the Department of Justice, shall notify the~~  
10 ~~department of persons subject to this subdivision.~~  
11 ~~Notwithstanding any other law, the forms required to be submitted~~  
12 ~~to the department pursuant to this subdivision may be used to~~  
13 ~~determine eligibility to acquire a firearm.~~

14 ~~(f) Subdivision (a) shall not apply to a person who has been~~  
15 ~~convicted of a felony under the laws of the United States unless~~  
16 ~~either of the following criteria is satisfied:~~

17 ~~(1) Conviction of a like offense under California law can only~~  
18 ~~result in imposition of felony punishment.~~

19 ~~(2) The defendant was sentenced to a federal correctional~~  
20 ~~facility for more than 30 days, or received a fine of more than one~~  
21 ~~thousand dollars (\$1,000), or received both punishments.~~

22 ~~(g) (1) Every person who purchases or receives, or attempts to~~  
23 ~~purchase or receive, a firearm knowing that he or she is subject to~~  
24 ~~a protective order as defined in Section 6218 of the Family Code,~~  
25 ~~Section 136.2, or a temporary restraining order or injunction~~  
26 ~~issued pursuant to Section 527.6 or 527.8 of the Code of Civil~~  
27 ~~Procedure, is guilty of a public offense, which shall be punishable~~  
28 ~~by imprisonment in a county jail not exceeding one year or in the~~  
29 ~~state prison, by a fine not exceeding one thousand dollars (\$1,000),~~  
30 ~~or by both that imprisonment and fine. This subdivision does not~~  
31 ~~apply unless the copy of the restraining order personally served on~~  
32 ~~the person against whom the restraining order is issued contains a~~  
33 ~~notice in bold print stating (1) that the person is prohibited from~~  
34 ~~purchasing or receiving or attempting to purchase or receive a~~  
35 ~~firearm and (2) specifying the penalties for violating this~~  
36 ~~subdivision, or a court has provided actual verbal notice of the~~  
37 ~~firearm prohibition and penalty as provided in Section 6304 of the~~  
38 ~~Family Code.~~

39 ~~(2) Every person who owns or possesses a firearm knowing that~~  
40 ~~he or she is prohibited from owning or possessing a firearm by the~~



1 provisions of a protective order as defined in Section 6218 of the  
2 Family Code, Section 136.2 of the Penal Code, or a temporary  
3 restraining order or injunction issued pursuant to Section 527.6 or  
4 527.8 of the Code of Civil Procedure, is guilty of a public offense,  
5 which shall be punishable by imprisonment in a county jail not  
6 exceeding one year, by a fine not exceeding one thousand dollars  
7 (\$1,000), or by both that imprisonment and fine. This subdivision  
8 does not apply unless a copy of the restraining order personally  
9 served on the person against whom the restraining order is issued  
10 contains a notice in bold print stating (1) that the person is  
11 prohibited from owning or possessing or attempting to own or  
12 possess a firearm and (2) specifying the penalties for violating this  
13 subdivision, or a court has provided actual verbal notice of the  
14 firearm prohibition and penalty as provided in Section 6304 of the  
15 Family Code.

16 (3) Judicial Council shall provide notice on all protective  
17 orders that the respondent is prohibited from owning, possessing,  
18 purchasing, or receiving a firearm while the protective order is in  
19 effect and that the firearm shall be relinquished to the local law  
20 enforcement agency for that jurisdiction or sold to a licensed gun  
21 dealer, and that proof of surrender or sale shall be filed within a  
22 specified time of receipt of the order. The order shall also state on  
23 its face the expiration date for relinquishment.

24 (4) If probation is granted upon conviction of a violation of this  
25 subdivision, the court shall impose probation consistent with the  
26 provisions of Section 1203.097.

27 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is  
28 justifiable where all of the following conditions are met:

29 (A) The person found the firearm or took the firearm from a  
30 person who was committing a crime against him or her.

31 (B) The person possessed the firearm no longer than was  
32 necessary to deliver or transport the firearm to a law enforcement  
33 agency for that agency's disposition according to law.

34 (C) If the firearm was transported to a law enforcement agency,  
35 it was transported in accordance with paragraph (18) of  
36 subdivision (a) of Section 12026.2.

37 (D) If the firearm is being transported to a law enforcement  
38 agency, the person transporting the firearm has given prior notice  
39 to the law enforcement agency that he or she is transporting the



1 ~~firearm to the law enforcement agency for disposition according~~  
2 ~~to law.~~

3 ~~(2) Upon the trial for violating subdivision (a), (b), (c), (d), or~~  
4 ~~(e), the trier of fact shall determine whether the defendant was~~  
5 ~~acting within the provisions of the exemption created by this~~  
6 ~~subdivision.~~

7 ~~(3) The defendant has the burden of proving by a~~  
8 ~~preponderance of the evidence that he or she comes within the~~  
9 ~~provisions of the exemption created by this subdivision.~~

10 ~~SEC. 4.~~

11 ~~SEC. 2.~~ Section 2 of this act shall become operative only if  
12 funds are appropriated in the 2001–02 Budget Act to the  
13 Department of Justice for the purposes described therein.

14 ~~SEC. 5.—No reimbursement is required by this act pursuant to~~  
15 ~~Section 6 of Article XIII B of the California Constitution because~~  
16 ~~the only costs that may be incurred by a local agency or school~~  
17 ~~district will be incurred because this act creates a new crime or~~  
18 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
19 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
20 ~~the Government Code, or changes the definition of a crime within~~  
21 ~~the meaning of Section 6 of Article XIII B of the California~~  
22 ~~Constitution.~~

