

Senate Bill No. 238

Passed the Senate September 11, 2003

Secretary of the Senate

Passed the Assembly September 8, 2003

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Section 12101 of the Health and Safety Code, and to amend Sections 666.7, 11108.3, 12021, 12028, 12201, 12280, 12285, 12287, 12290, and 12301 of the Penal Code, relating to deadly weapons.

LEGISLATIVE COUNSEL'S DIGEST

SB 238, Perata. Deadly weapons.

Existing law requires police and sheriff's departments to report specified information about firearms to the federal Bureau of Alcohol, Tobacco, and Firearms, whenever they recover a firearm that is illegally possessed, has been used in a crime, or is suspected of having been used in a crime.

This bill would authorize other law enforcement entities to report that information, and would additionally authorize any law enforcement entity to report the information, as described above, when a firearm is otherwise taken into custody by them, excepting the case where the firearm is voluntarily placed with the agency for safekeeping.

Existing law provides that persons convicted of certain misdemeanors are prohibited from owning or possessing a firearm for a period of 10 years, as specified.

This bill would delete the provisions imposing the 10-year prohibition for conviction of a specified misdemeanor regarding discharge of a firearm at a dwelling, other building, or vehicle, as specified.

Existing law provides that a firearm owned or possessed in violation of certain provisions of law is a nuisance.

This bill would provide that with regard to violations of those specific provisions of law, if the firearm owner disposes of the firearm pursuant to a specified procedure, then the firearm would not be a nuisance.

Existing law requires a firearms dealer to record specified information pertaining to a firearms transaction in a register or record of electronic transfer.

This bill would additionally require the firearms dealer to record on the register or record of electronic transfer the date that the



firearm is delivered. This bill would make other technical conforming amendments to these provisions.

Existing law generally regulates machineguns, and, in regard to machineguns, authorizes the sale to, purchase by, and manufacture for, various law enforcement agencies, and other specified government entities.

This bill would require that persons selling machineguns to those entities be permitted and licensed as specified.

Existing law, subject to certain exceptions, makes it a crime, punishable either as a felony or a misdemeanor, for any person to possess any assault weapon, as defined. However, if a person charged with a first-time violation of that offense presents proof that he or she lawfully possessed the assault weapon within a specified period, and has since registered the weapon or relinquished it, the offense is punishable as an infraction, if the person has also complied with specified conditions, and the firearm would be returned to the person, subject to exceptions.

This bill would eliminate the provisions authorizing return of the firearm and instead provide for destruction of the assault weapon. This bill would make other nonsubstantive conforming changes to various cross-references necessitated by the bill's provisions.

Existing law authorizes a licensed firearms dealer to sell an assault weapon to a person who has a permit to possess one.

This bill would additionally require the firearms dealer to have a permit authorizing the dealer to sell assault weapons.

Existing codified provisions specify that the law forbidding the possession, transfer, or sale of assault weapons does not apply to possession by a retired peace officer of a weapon sold or transferred to that officer by his or her employing agency upon retirement, or to that sale or transfer. These provisions have been held by the Ninth Circuit Court of Appeals in *Silveira v. Lockyer* (2002) 312 F.3d 1052 to violate the equal protection clause of the United States Constitution.

This bill would repeal the provisions exempting retired peace officers from the application of the assault weapon ban.

Existing law defines and generally regulates “destructive devices.” Existing law also generally provides, subject to certain exceptions, that the possession, transport or sale of destructive devices are crimes subject to various punishments.



This bill would add to the list of destructive devices, any device designed or intended to emit or propel a burning stream of combustible or flammable liquid.

By expanding the scope of existing crimes, this bill would impose a state-mandated local program.

This bill would incorporate additional changes in Section 12021 of the Penal Code, proposed by AB 319, AB 1290, and SB 226, to become operative only if this bill and one or more of the other bills are enacted and become effective on or before January 1, 2004, and this bill is enacted last.

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.

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

SECTION 1. Section 12101 of the Health and Safety Code is amended to read:

12101. (a) No person shall do any one of the following without first having made application for and received a permit in accordance with this section:

- (1) Manufacture explosives.
- (2) Sell, furnish, or give away explosives.
- (3) Receive, store, or possess explosives.
- (4) Transport explosives.
- (5) Use explosives.
- (6) Operate a terminal for handling explosives.
- (7) Park or leave standing any vehicle carrying explosives,

except when parked or left standing in or at a safe stopping place designated as such by the Department of the California Highway Patrol under Division 14 (commencing with Section 31600) of the Vehicle Code.

(b) Application for a permit shall be made to the appropriate issuing authority.

(c) (1) A permit shall be obtained from the issuing authority having the responsibility in the area where the activity, as specified in subdivision (a), is to be conducted.



(2) If the person holding a valid permit for the use or storage of explosives desires to purchase or receive explosives in a jurisdiction other than that of intended use or storage, the person shall first present the permit to the issuing authority in the jurisdiction of purchase or receipt for endorsement. The issuing authority may include any reasonable restrictions or conditions which the authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives within the authority's jurisdiction. If, for any reason, the issuing authority refuses to endorse the permit previously issued in the area of intended use or storage, the authority shall immediately notify both the issuing authority who issued the permit and the Department of Justice of the fact of the refusal and the reasons for the refusal.

(3) Every person who sells, gives away, delivers, or otherwise disposes of explosives to another person shall first be satisfied that the person receiving the explosives has a permit valid for that purpose. When the permit to receive explosives indicates that the intended storage or use of the explosives is other than in that area in which the permittee receives the explosives, the person who sells, gives away, delivers, or otherwise disposes of the explosives shall insure that the permit has been properly endorsed by a local issuing authority and, further, shall immediately send a copy of the record of sale to the issuing authority who originally issued the permit in the area of intended storage or use. The issuing authority in the area in which the explosives are received or sold shall not issue a permit for the possession, use, or storage of explosives in an area not within the authority's jurisdiction.

(d) In the event any person desires to receive explosives for use in an area outside of this state, a permit to receive the explosives shall be obtained from the State Fire Marshal.

(e) A permit may include any restrictions or conditions which the issuing authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives.

(f) A permit shall remain valid only until the time when the act or acts authorized by the permit are performed, but in no event shall the permit remain valid for a period longer than one year from the date of issuance of the permit.



(g) Any valid permit which authorizes the performance of any act shall not constitute authorization for the performance of any act not stipulated in the permit.

(h) An issuing authority shall not issue a permit authorizing the transportation of explosives pursuant to this section if the display of placards for that transportation is required by Section 27903 of the Vehicle Code, unless the driver possesses a license for the transportation of hazardous materials issued pursuant to Division 14.1 (commencing with Section 32000) of the Vehicle Code, or the explosives are a hazardous waste or extremely hazardous waste, as defined in Sections 25117 and 25115 of the Health and Safety Code, and the transporter is currently registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code.

(i) An issuing authority shall not issue a permit pursuant to this section authorizing the handling or storage of division 1.1, 1.2, or 1.3 explosives in a building, unless the building has caution placards which meet the standards established pursuant to subdivision (g) of Section 12081.

(j) (1) A permit shall not be issued to a person who meets any of the following criteria:

(A) He or she has been convicted of a felony.

(B) He or she is addicted to a narcotic drug.

(C) He or she is in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code or Section 12021 or 12021.1 of the Penal Code.

(2) For purposes of determining whether a person meets any of the criteria set forth in this subdivision, the issuing authority shall obtain two sets of fingerprints on prescribed cards from all persons applying for a permit under this section and shall submit these cards to the Department of Justice. The Department of Justice shall utilize the fingerprint cards to make inquiries both within this state and to the Federal Bureau of Investigation regarding the criminal history of the applicant identified on the fingerprint card.

This paragraph does not apply to any person possessing a current certificate of eligibility issued pursuant to paragraph (4) of subdivision (a) of Section 12071 or to any holder of a dangerous weapons permit or license issued pursuant to Section 12095, 12230, 12250, 12286, or 12305 of the Penal Code.



(k) An issuing authority shall inquire with the Department of Justice for the purposes of determining whether a person who is applying for a permit meets any of the criteria specified in subdivision (j). The Department of Justice shall determine whether a person who is applying for a permit meets any of the criteria specified in subdivision (j) and shall either grant or deny clearance for a permit to be issued pursuant to the determination. The Department of Justice shall not disclose the contents of a person's records to any person who is not authorized to receive the information in order to ensure confidentiality.

SEC. 2. Section 666.7 of the Penal Code is amended to read:

666.7. It is the intent of the Legislature that this section serve merely as a nonsubstantive comparative reference of current sentence enhancement provisions. Nothing in this section shall have any substantive effect on the application of any sentence enhancement contained in any provision of law, including, but not limited to, all of the following: omission of any sentence enhancement provision, inclusion of any obsolete sentence enhancement provision, or inaccurate reference or summary of a sentence enhancement provision.

It is the intent of the Legislature to amend this section as necessary to accurately reflect current sentence enhancement provisions, including the addition of new provisions and the deletion of obsolete provisions.

For the purposes of this section, the term "sentence enhancement" means an additional term of imprisonment in the state prison added to the base term for the underlying offense. A sentence enhancement is imposed because of the nature of the offense at the time the offense was committed or because the defendant suffered a qualifying prior conviction before committing the current offense.

(a) The provisions listed in this subdivision imposing a sentence enhancement of one year imprisonment in the state prison may be referenced as Schedule A.

(1) Money laundering when the value of transactions exceeds fifty thousand dollars (\$50,000), but is less than one hundred fifty thousand dollars (\$150,000) (subpara. (A), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Commission of two or more related felonies, a material element of which is fraud or embezzlement, which involve a



pattern of related felony conduct, involving the taking of more than one hundred thousand dollars (\$100,000) (para. (3), subd. (a), Sec. 186.11, Pen. C.).

(3) Felony conviction of willful harm or injury to a child, involving female genital mutilation (subd. (a), Sec. 273.4, Pen. C.).

(4) Prior conviction of felony hate crime with a current conviction of felony hate crime (subd. (e), Sec. 422.75, Pen. C.).

(5) Harming, obstructing, or interfering with any horse or dog being used by any peace officer in the discharge or attempted discharge of his or her duties and, with the intent to so harm, obstruct, or interfere, personally causing the death, destruction, or serious physical injury of any horse or dog (subd. (c), Sec. 600, Pen. C.).

(6) Prior prison term with current felony conviction (subd. (b), Sec. 667.5, Pen. C.).

(7) Commission of any specified offense against a person who is 65 years of age or older, blind, a paraplegic or quadriplegic, or under 14 years of age (subd. (a), Sec. 667.9, Pen. C.).

(8) Showing child pornography to a minor prior to or during the commission or attempted commission of any lewd or lascivious act with the minor (subd. (a), Sec. 667.15, Pen. C.).

(9) Felony conviction of forgery, grand theft, or false pretenses as part of plan or scheme to defraud an owner in connection with repairs to a structure damaged by a natural disaster (subd. (a), Sec. 667.16, Pen. C.).

(10) Impersonating a peace officer during the commission of a felony (Sec. 667.17, Pen. C.).

(11) Felony conviction of any specified offense, including, but not limited to, forgery, grand theft, and false pretenses, as part of plan or scheme to defraud an owner in connection with repairs to a structure damaged by natural disaster with a prior felony conviction of any of those offenses (subd. (c), Sec. 670, Pen. C.).

(12) Commission or attempted commission of a felony while armed with a firearm (para. (1), subd. (a), Sec. 12022, Pen. C.).

(13) Personally using a deadly or dangerous weapon in the commission or attempted commission of a felony (para. (1), subd. (b), Sec. 12022, Pen. C.).

(14) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent



to cause that taking, damage, or destruction when the loss exceeds fifty thousand dollars (\$50,000) (para. (1), subd. (a), Sec. 12022.6, Pen. C.).

(15) Transferring, lending, selling, or giving any assault weapon to a minor (para. (2), subd. (a), Sec. 12280, Pen. C.).

(16) Manufacturing, causing to be manufactured, distributing, transporting, importing, keeping for sale, offering or exposing for sale, giving, or lending any assault weapon while committing another crime (subd. (d), Sec. 12280, Pen. C.).

(17) Inducing, employing, or using a minor to commit a drug offense involving heroin, cocaine, or cocaine base, or unlawfully furnishing one of these controlled substances to a minor, upon the grounds of, or within, a church, playground, youth center, child day care facility, or public swimming pool during business hours or whenever minors are using the facility (para. (1), subd. (a), Sec. 11353.1, H.& S.C.).

(18) Inducing another person to commit a drug offense as part of the drug transaction for which the defendant is convicted when the value of the controlled substance involved exceeds five hundred thousand dollars (\$500,000) (para. (1), subd. (a), Sec. 11356.5, H.& S.C.).

(19) Manufacturing, compounding, converting, producing, deriving, processing, or preparing methamphetamine or phencyclidine (PCP), or attempting to commit any of those acts, or possessing specified combinations of substances with the intent to manufacture either methamphetamine or phencyclidine (PCP), when the commission or attempted commission of the offense causes the death or great bodily injury of another person other than an accomplice (subd. (a), Sec. 11379.9, H.& S.C.).

(20) Using a minor to commit a drug offense involving phencyclidine (PCP), methamphetamine, or lysergic acid diethylamide (LSD), or unlawfully furnishing one of these controlled substances to a minor, when the commission of the offense occurs upon the grounds of, or within, a church, playground, youth center, child day care facility, or public swimming pool during business hours or whenever minors are using the facility (para. (1), subd. (a), Sec. 11380.1, H.& S.C.).

(21) Possessing for sale, or selling, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), when the commission of the offense occurs upon the grounds of a public



park, public library, or oceanfront beach (para. (1), subd. (a), Sec. 11380.5, H.& S.C.).

(22) Causing bodily injury or death to more than one victim in any one instance of driving under the influence of any alcoholic beverage or drug (Sec. 23558, Veh. C.).

(23) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding fifty thousand dollars (\$50,000), but less than one hundred fifty thousand dollars (\$150,000) (subpara. (A), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(b) The provisions listed in this subdivision imposing a sentence enhancement of one, two, or three years' imprisonment in the state prison may be referenced as Schedule B.

(1) Commission or attempted commission of a felony hate crime (subd. (a), Sec. 422.75, Pen. C.).

(2) Commission or attempted commission of a felony against the property of a public or private institution because the property is associated with a person or group of identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation (subd. (b), Sec. 422.75, Pen. C.).

(3) Felony conviction of unlawfully causing a fire of any structure, forest land, or property when the defendant has been previously convicted of arson or unlawfully causing a fire, or when a firefighter, peace officer, or emergency personnel suffered great bodily injury, or when the defendant proximately caused great bodily injury to more than one victim, or caused multiple structures to burn (subd. (a), Sec. 452.1, Pen. C.).

(4) Carrying a loaded or unloaded firearm during the commission or attempted commission of any felony street gang crime (subd. (a), Sec. 12021.5, Pen. C.).

(5) Personally using a deadly or dangerous weapon in the commission of carjacking or attempted carjacking (para. (2), subd. (b), Sec. 12022, Pen. C.).

(6) Being a principal in the commission or attempted commission of any specified drug offense, knowing that another



principal is personally armed with a firearm (subd. (d), Sec. 12022, Pen. C.).

(7) Furnishing or offering to furnish a firearm to another for the purpose of aiding, abetting, or enabling that person or any other person to commit a felony (Sec. 12022.4, Pen. C.).

(8) Selling, supplying, delivering, or giving possession or control of a firearm to any person within a prohibited class or to a minor when the firearm is used in the subsequent commission of a felony (para. (4), subd. (g), Sec. 12072, Pen. C.).

(9) Inducing, employing, or using a minor who is at least four years younger than the defendant to commit a drug offense involving any specified controlled substance, including, but not limited to, heroin, cocaine, and cocaine base, or unlawfully providing one of these controlled substances to a minor (para. (3), subd. (a), Sec. 11353.1, H.& S.C.).

(10) Prior conviction of inducing, employing, or using a minor to commit a drug offense involving cocaine base, or unlawfully providing cocaine base to a minor that resulted in a prison sentence with a current conviction of the same offense (subd. (a), Sec. 11353.4, H.& S.C.).

(11) Prior conviction of inducing, employing, or using a minor to commit a drug offense involving cocaine base, or unlawfully providing cocaine base to a minor with a current conviction of the same offense involving a minor who is 14 years of age or younger (subd. (b), Sec. 11353.4, H.& S.C.).

(12) Inducing, employing, or using a minor who is at least four years younger than the defendant to commit a drug offense involving any specified controlled substance, including, but not limited to, phencyclidine (PCP), methamphetamine, and lysergic acid diethylamide (LSD), or unlawfully providing one of these controlled substances to a minor (para. (3), subd. (a), Sec. 11380.1, H.& S.C.).

(13) Causing great bodily injury or a substantial probability that death could result by the knowing disposal, transport, treatment, storage, burning, or incineration of any hazardous waste at a facility without permits or at an unauthorized point (subd. (e), Sec. 25189.5, and subd. (c), Sec. 25189.7, H.& S.C.).

(c) The provisions listed in this subdivision imposing a sentence enhancement of one, two, or five years' imprisonment in the state prison may be referenced as Schedule C.



(1) Wearing a bullet-resistant body vest in the commission or attempted commission of a violent offense (subd. (b), Sec. 12022.2, Pen. C.).

(2) Commission or attempted commission of any specified sex offense while armed with a firearm or deadly weapon (subd. (b), Sec. 12022.3, Pen. C.).

(d) The provisions listed in this subdivision imposing a sentence enhancement of 16 months, or two or three years' imprisonment in the state prison may be referenced as Schedule D.

(1) Knowing failure to register pursuant to Section 186.30 and subsequent conviction or violation of Section 186.30, as specified (para. (1), subd. (b), Sec. 186.33, Pen. C.).

(e) The provisions listed in this subdivision imposing a sentence enhancement of two years' imprisonment in the state prison may be referenced as Schedule E.

(1) Money laundering when the value of the transactions exceeds one hundred fifty thousand dollars (\$150,000), but is less than one million dollars (\$1,000,000) (subpara. (B), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Commission of two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, involving the taking of more than one hundred fifty thousand dollars (\$150,000) (para. (3), subd. (a), Sec. 186.11, Pen. C.).

(3) Conviction of any specified felony sex offense that is committed after fleeing to this state under specified circumstances (subd. (d), Sec. 289.5, Pen. C.).

(4) Prior conviction of any specified insurance fraud offense with current conviction of willfully injuring, destroying, secreting, abandoning, or disposing of any property insured against loss or damage by theft, embezzlement, or any casualty with the intent to defraud or prejudice the insurer (subd. (b), Sec. 548, Pen. C.).

(5) Prior conviction of any specified insurance fraud offense with current conviction of knowingly presenting any false or fraudulent insurance claim or multiple claims for the same loss or injury, or knowingly causing or participating in a vehicular collision for the purpose of presenting any false or fraudulent claim, or providing false or misleading information or concealing



information for purpose of insurance fraud (subd. (e), Sec. 550, Pen. C.).

(6) Causing serious bodily injury as a result of knowingly causing or participating in a vehicular collision or accident for the purpose of presenting any false or fraudulent claim (subd. (g), Sec. 550, Pen. C.).

(7) Harming, obstructing, or interfering with any horse or dog being used by any peace officer in the discharge or attempted discharge of his or her duties and, with the intent to cause great bodily injury, personally causing great bodily injury to any person other than an accomplice (subd. (d), Sec. 600, Pen. C.).

(8) Prior conviction of any specified offense with current conviction of any of those offenses committed against a person who is 65 years of age or older, blind, a paraplegic or quadriplegic, or under 14 years of age (subd. (b), Sec. 667.9, Pen. C.).

(9) Prior conviction for sexual penetration with current conviction of the same offense committed against a person who is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic or quadriplegic, or under 14 years of age (subd. (a), Sec. 667.10, Pen. C.).

(10) Showing child pornography to a minor prior to or during the commission or attempted commission of continuous sexual abuse of the minor (subd. (b), Sec. 667.15, Pen. C.).

(11) Primary care provider in a day care facility committing any specified felony sex offense against a minor entrusted to his or her care (subd. (a), Sec. 674, Pen. C.).

(12) Commission of a felony offense while released from custody on bail or own recognizance (subd. (b), Sec. 12022.1, Pen. C.).

(13) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds one hundred fifty thousand dollars (\$150,000) (para. (2), subd. (a), Sec. 12022.6, Pen. C.).

(14) Inducing, employing, or using a minor to commit a drug offense involving heroin, cocaine, or cocaine base, or unlawfully furnishing one of these controlled substances to a minor, upon, or within 1,000 feet of, the grounds of a school during school hours or whenever minors are using the facility (para. (2), subd. (a), Sec. 11353.1, H.& S.C.).



(15) Inducing another person to commit a drug offense as part of the drug transaction for which the defendant is convicted when the value of the controlled substance involved exceeds two million dollars (\$2,000,000) (para. (2), subd. (a), Sec. 11356.5, H.& S.C.).

(16) Manufacturing, compounding, converting, producing, deriving, processing, or preparing methamphetamine or phencyclidine (PCP), or attempting to commit any of those acts, or possessing specified combinations of substances with the intent to manufacture either methamphetamine or phencyclidine (PCP), when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present (subd. (a), Sec. 11379.7, H.& S.C.).

(17) Using a minor to commit a drug offense involving phencyclidine (PCP), methamphetamine, or lysergic acid diethylamide (LSD), or unlawfully furnishing one of these controlled substances to a minor, upon, or within 1,000 feet of, the grounds of a school during school hours or whenever minors are using the facility (para. (2), subd. (a), Sec. 11380.1, H.& S.C.).

(18) Prior felony conviction of any specified insurance fraud offense with a current conviction of making false or fraudulent statements concerning a workers' compensation claim (subd. (c), Sec. 1871.4, Ins. C.).

(19) Prior felony conviction of making or causing to be made any knowingly false or fraudulent statement of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance for the purpose of reducing the premium, rate, or cost of the insurance with a current conviction of the same offense (subd. (b), Sec. 11760, Ins. C.).

(20) Prior felony conviction of making or causing to be made any knowingly false or fraudulent statement of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance issued or administered by the State Compensation Insurance Fund for the purpose of reducing the premium, rate, or cost of the insurance with a current conviction of the same offense (subd. (b), Sec. 11880, Ins. C.).

(21) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing, any of the same in an unauthorized manner, when the offense is



committed by means of an electronic transfer of benefits in an amount exceeding one hundred fifty thousand dollars (\$150,000), but less than one million dollars (\$1,000,000) (subpara. (B), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(f) The provisions listed in this subdivision imposing a sentence enhancement of two, three, or four years' imprisonment in the state prison may be referenced as Schedule F.

(1) Commission of a felony, other than a serious or violent felony, for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members (subpara. (A), para. (1), subd. (b), Sec. 186.22, Pen. C.).

(2) Acting in concert with another person or aiding or abetting another person in committing or attempting to commit a felony hate crime (subd. (c), Sec. 422.75, Pen. C.).

(3) Carrying a loaded or unloaded firearm together with a detachable shotgun magazine, a detachable pistol magazine, a detachable magazine, or a belt-feeding device during the commission or attempted commission of any felony street gang crime (subd. (b), Sec. 12021.5, Pen. C.).

(g) The provisions listed in this subdivision imposing a sentence enhancement of two, three, or five years' imprisonment in the state prison may be referenced as Schedule G.

(1) Commission of two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, involving the taking of more than five hundred thousand dollars (\$500,000) (para. (2), subd. (a), Sec. 186.11, Pen. C.).

(h) The provisions listed in this subdivision imposing a sentence enhancement of three years' imprisonment in the state prison may be referenced as Schedule H.

(1) Money laundering when the value of transactions exceeds one million dollars (\$1,000,000), but is less than two million five hundred thousand dollars (\$2,500,000) (subpara. (C), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Solicitation, recruitment, or coercion, of a minor to actively participate in a criminal street gang (subd. (d), Sec. 186.26, Pen. C.).

(3) Willfully mingling any poison or harmful substance which may cause death if ingested, or which causes the infliction of great



bodily injury on any person, with any food, drink, medicine, or pharmaceutical product or willfully placing that poison or harmful substance in any spring, well, reservoir, or public water supply (para. (2), subd. (a), Sec. 347, Pen. C.).

(4) Causing great bodily injury by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is under 70 years of age (subpara. (A), para. (2), subd. (b), Sec. 368, Pen. C.).

(5) Maliciously driving or placing, in any tree, saw-log, shingle-bolt, or other wood, any iron, steel, ceramic, or other substance sufficiently hard to injure saws and causing bodily injury to another person other than an accomplice (subd. (b), Sec. 593a, Pen. C.).

(6) Prior prison term for violent felony with current violent felony conviction (subd. (a), Sec. 667.5, Pen. C.).

(7) Commission of any specified felony sex offense by a primary care provider in a day care facility against a minor entrusted to his or her care while voluntarily acting in concert with another (subd. (b), Sec. 674, Pen. C.).

(8) Commission or attempted commission of a felony while armed with an assault weapon or a machinegun (para. (2), subd. (a), Sec. 12022, Pen. C.).

(9) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds one million dollars (\$1,000,000) (para. (3), subd. (a), Sec. 12022.6, Pen. C.).

(10) Personally inflicting great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony (subd. (a), Sec. 12022.7, Pen. C.).

(11) Administering by injection, inhalation, ingestion, or any other means, any specified controlled substance against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person for the purpose of committing a felony (Sec. 12022.75, Pen. C.).

(12) Commission of any specified sex offense with knowledge that the defendant has acquired immune deficiency syndrome (AIDS) or with the knowledge that he or she carries antibodies of



the human immunodeficiency virus at the time of the commission of the offense (subd. (a), Sec. 12022.85, Pen. C.).

(13) Inducing another person to commit a drug offense as part of the drug transaction for which the defendant is convicted when the value of the controlled substance involved exceeds five million dollars (\$5,000,000) (para. (3), subd. (a), Sec. 11356.5, H.& S.C.).

(14) Prior conviction of any specified drug offense with current conviction of any specified drug offense (subs. (a), (b), and (c), Sec. 11370.2, H.& S.C.).

(15) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds one kilogram or 30 liters (para. (1), subd. (a), and para. (1), subd. (b), Sec. 11370.4, H.& S.C.).

(16) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds three gallons or one pound (para. (1), subd. (a), Sec. 11379.8, H.& S.C.).

(17) Four or more prior convictions of specified alcohol-related vehicle offenses with current conviction of driving under the influence and causing great bodily injury (subd. (c), Sec. 23566, Veh. C.).

(18) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing, any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding one million dollars (\$1,000,000), but less than two million five hundred thousand dollars (\$2,500,000) (subpara. (C), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(i) The provisions listed in this subdivision imposing a sentence enhancement of three, four, or five years' imprisonment in the state prison may be referenced as Schedule I.

(1) Commission of felony arson with prior conviction of arson or unlawfully starting a fire, or causing great bodily injury to a firefighter, peace officer, other emergency personnel, or multiple victims, or causing the burning of multiple structures, or using an



accelerator or ignition delay device (subd. (a), Sec. 451.1, Pen. C.).

(2) Commission or attempted commission of any specified drug offense while personally armed with a firearm (subd. (c), Sec. 12022, Pen. C.).

(3) Personally inflicting great bodily injury under circumstances involving domestic violence in the commission or attempted commission of a felony (subd. (e), Sec. 12022.7, Pen. C.).

(4) Commission of any specified drug offense involving cocaine base, heroin, or methamphetamine, or a conspiracy to commit any of those offenses, upon the grounds of, or within 1,000 feet of, a school during school hours or when minors are using the facility (subd. (b), Sec. 11353.6, H.& S.C.).

(5) Commission of any specified drug offense involving cocaine base, heroin, or methamphetamine, or a conspiracy to violate any of those offenses, involving a minor who is at least four years younger than the defendant (subd. (c), Sec. 11353.6, H.& S.C.).

(j) The provisions listed in this subdivision imposing a sentence enhancement of 3, 4, or 10 years' imprisonment in the state prison may be referenced as Schedule J.

(1) Commission or attempted commission of any felony while armed with a firearm and in the immediate possession of ammunition for the firearm designed primarily to penetrate metal or armor (subd. (a), Sec. 12022.2, Pen. C.).

(2) Commission or attempted commission of any specified sex offense while using a firearm or deadly weapon (subd. (a), Sec. 12022.3, Pen. C.).

(3) Commission or attempted commission of a felony while personally using a firearm (para. (1), subd. (a), Sec. 12022.5, Pen. C.).

(4) Commission or attempted commission of any specified drug offense while personally using a firearm (subd. (c), Sec. 12022.5, Pen. C.).

(k) The provisions listed in this subdivision imposing a sentence enhancement of four years' imprisonment in the state prison may be referenced as Schedule K.



(1) Money laundering when the value of transactions exceeds two million five hundred thousand dollars (\$2,500,000) (subpara. (D), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Prior conviction of willfully inflicting upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition with current conviction of that offense (subd. (b), Sec. 273d, Pen. C.).

(3) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds two million five hundred thousand dollars (\$2,500,000) (para. (4), subd. (a), Sec. 12022.6, Pen. C.).

(4) Personally, willfully, and maliciously discharging a firearm from a motor vehicle at another person other than an occupant of a motor vehicle and causing a victim to suffer paralysis or paraparesis of a major body part (para. (1), subd. (b), Sec. 12022.9, Pen. C.).

(5) Personally, willfully, and maliciously discharging a firearm from a motor vehicle at another occupied motor vehicle and causing a victim to suffer paralysis or paraparesis of a major body part (para. (2), subd. (b), Sec. 12022.9, Pen. C.).

(6) Willfully causing or permitting any child to suffer, or inflicting on the child unjustifiable physical pain or injury that results in death under circumstances or conditions likely to produce great bodily harm or death, or, having the care or custody of any child, willfully causing or permitting that child to be injured or harmed under circumstances likely to produce great bodily harm or death, when that injury or harm results in death (Sec. 12022.95, Pen. C.).

(7) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing, any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding two million five hundred thousand dollars (\$2,500,000) (subpara. (D), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(8) Execution of a scheme or artifice to defraud the Medi-Cal program or any other health care program administered by the



State Department of Health Services or its agents or contractors, or to obtain under false or fraudulent pretenses, representations, or promises any property owned by or under the custody of the Medi-Cal program or any health care program administered by the department, its agents, or contractors under circumstances likely to cause or that do cause two or more persons great bodily injury (subd. (d), Sec. 14107, W.& I.C.).

(l) The provisions listed in this subdivision imposing a sentence enhancement of four, five, or six years' imprisonment in the state prison may be referenced as Schedule L.

(1) Personally inflicting great bodily injury on a child under the age of five years in the commission or attempted commission of a felony (subd. (d), Sec. 12022.7, Pen. C.).

(m) The provisions listed in this subdivision imposing a sentence enhancement of 4, 5, or 10 years' imprisonment in the state prison may be referenced as Schedule M.

(1) Commission or attempted commission of a felony while personally using a firearm with prior conviction of carjacking or attempted carjacking (para. (2), subd. (a), Sec. 12022.5, Pen. C.).

(n) The provisions listed in this subdivision imposing a sentence enhancement of five years' imprisonment in the state prison may be referenced as Schedule N.

(1) Commission of a serious felony for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members (subpara. (B), para. (1), subd. (b), Sec. 186.22, Pen. C.).

(2) Using sex offender registration information to commit a felony (para. (1), subd. (q), Sec. 290, and para. (1), subd. (b), Sec. 290.4, Pen. C.).

(3) Causing great bodily injury by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is 70 years of age or older (subpara. (B), para. (2), subd. (b), Sec. 368, Pen. C.).

(4) Causing death by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is under 70 years of age (subpara. (A), para. (3), subd. (b), Sec. 368, Pen. C.).



(5) Two prior felony convictions of knowingly causing or participating in a vehicular collision or accident for the purpose of presenting any false or fraudulent claim with current conviction of the same (subd. (f), Sec. 550, Pen. C.).

(6) Prior conviction of a serious felony with current conviction of a serious felony (para. (1), subd. (a), Sec. 667, Pen. C.).

(7) Prior conviction of any specified sex offense with current conviction of lewd and lascivious acts with a child under 14 years of age (subd. (a), Sec. 667.51, Pen. C.).

(8) Prior conviction of any specified sex offense with current conviction of any of those sex offenses (subd. (a), Sec. 667.6, Pen. C.).

(9) Kidnapping or carrying away any child under 14 years of age with the intent to permanently deprive the parent or legal guardian custody of that child (Sec. 667.85, Pen. C.).

(10) Personally inflicting great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony that causes the victim to become comatose due to a brain injury or to suffer paralysis of a permanent nature (subd. (b), Sec. 12022.7, Pen. C.).

(11) Personally inflicting great bodily injury on another person who is 70 years of age or older other than an accomplice in the commission or attempted commission of a felony (subd. (c), Sec. 12022.7, Pen. C.).

(12) Inflicting great bodily injury on any victim in the commission or attempted commission of any specified sex offense (Sec. 12022.8, Pen. C.).

(13) Personally and intentionally inflicting injury upon a pregnant woman during the commission or attempted commission of a felony that results in the termination of the pregnancy when the defendant knew or reasonably should have known that the victim was pregnant (subd. (a), Sec. 12022.9, Pen. C.).

(14) Using information disclosed to the licensee of a community care facility by a prospective client regarding his or her status as a sex offender to commit a felony (subd. (c), Sec. 1522.01, H.& S.C.).

(15) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when



the substance exceeds 4 kilograms or 100 liters (para. (2), subd. (a), and para. (2), subd. (b), Sec. 11370.4, H.& S.C.).

(16) Manufacturing, compounding, converting, producing, deriving, processing, or preparing methamphetamine or phencyclidine (PCP), or attempting to commit any of those acts, or possessing specified combinations of substances with the intent to manufacture either methamphetamine or phencyclidine (PCP), when the commission of the crime causes any child under 16 years of age to suffer great bodily injury (subd. (b), Sec. 11379.7, H.& S.C.).

(17) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds 10 gallons or three pounds (para. (2), subd. (a), Sec. 11379.8, H.& S.C.).

(18) Fleeing the scene of the crime after commission of vehicular manslaughter (subd. (c), Sec. 20001, Veh. C.).

(o) The provisions listed in this subdivision imposing a sentence enhancement of 5, 6, or 10 years' imprisonment in the state prison may be referenced as Schedule O.

(1) Discharging a firearm at an occupied motor vehicle in the commission or attempted commission of a felony which caused great bodily injury or death to another person (para. (1), subd. (b), Sec. 12022.5, Pen. C.).

(2) Commission or attempted commission of a felony while personally using an assault weapon or a machinegun (para. (2), subd. (b), Sec. 12022.5, Pen. C.).

(3) Discharging a firearm from a motor vehicle in the commission or attempted commission of a felony with the intent to inflict great bodily injury or death and causing great bodily injury or death (Sec. 12022.55, Pen. C.).

(p) The provisions listed in this subdivision imposing a sentence enhancement of seven years' imprisonment in the state prison may be referenced as Schedule P.

(1) Causing death by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is 70 years of age or older (subpara. (B), para. (3), subd. (b), Sec. 368, Pen. C.).



(q) The provisions listed in this subdivision imposing a sentence enhancement of nine years' imprisonment in the state prison may be referenced as Schedule Q.

(1) Kidnapping a victim for the purpose of committing any specified felony sex offense (subd. (a), Sec. 667.8, Pen. C.).

(r) The provisions listed in this subdivision imposing a sentence enhancement of 10 years' imprisonment in the state prison may be referenced as Schedule R.

(1) Commission of a violent felony for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members (subpara. (C), para. (1), subd. (b), Sec. 186.22, Pen. C.).

(2) Two or more prior prison terms for any specified sex offense with current conviction of any of those sex offenses (subd. (b), Sec. 667.6, Pen. C.).

(3) Commission or attempted commission of any specified felony offense while personally using a firearm (subd. (b), Sec. 12022.53, Pen. C.).

(4) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds 10 kilograms or 200 liters (para. (3), subd. (a), and para. (3), subd. (b), Sec. 11370.4, H.& S.C.).

(5) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds 25 gallons or 10 pounds (para. (3), subd. (a), Sec. 11379.8, H.& S.C.).

(s) The provisions listed in this subdivision imposing a sentence enhancement of 15 years' imprisonment in the state prison may be referenced as Schedule S.

(1) Kidnapping a victim under 14 years of age for the purpose of committing any specified felony sex offense (subd. (b), Sec. 667.8, Pen. C.).

(2) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when



the substance exceeds 20 kilograms or 400 liters (para. (4), subd. (a), and para. (4), subd. (b), Sec. 11370.4, H.& S.C.).

(3) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds 105 gallons or 44 pounds (para. (4), subd. (a), Sec. 11379.8, H.& S.C.).

(t) The provisions listed in this subdivision imposing a sentence enhancement of 20 years' imprisonment in the state prison may be referenced as Schedule T.

(1) Intentionally and personally discharging a firearm in the commission or attempted commission of any specified felony offense (subd. (c), Sec. 12022.53, Pen. C.).

(2) Commission of any specified drug offense involving a substance containing heroin, cocaine base, or cocaine, when the substance exceeds 40 kilograms (para. (5), subd. (a), Sec. 11370.4, H.& S.C.).

(u) The provisions listed in this subdivision imposing a sentence enhancement of 25 years' imprisonment in the state prison may be referenced as Schedule U.

(1) Commission of any specified drug offense involving a substance containing heroin, cocaine base, or cocaine, when the substance exceeds 80 kilograms (para. (6), subd. (a), Sec. 11370.4, H.& S.C.).

(v) The provisions listed in this subdivision imposing a sentence enhancement of 25 years to life imprisonment in the state prison may be referenced as Schedule V.

(1) Intentionally and personally discharging a firearm in the commission or attempted commission of any specified felony offense and proximately causing great bodily injury to any person other than an accomplice (subd. (d), Sec. 12022.53, Pen. C.).

SEC. 3. Section 11108.3 of the Penal Code is amended to read:

11108.3. (a) In addition to the requirements of Section 11108 that apply to a local law enforcement agency's duty to report to the Department of Justice the recovery of a firearm, a police or sheriff's department shall, and any other law enforcement agency or agent may, report to the department in a manner determined by the Attorney General in consultation with the Bureau of Alcohol,



Tobacco, and Firearms all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. In addition, any law enforcement agency or agent may report to the Attorney General pursuant to this section all information pertaining to any firearm taken into custody, except where the firearm has been voluntarily placed with the law enforcement agency for safekeeping.

(b) When the department receives information from a local law enforcement agency pursuant to subdivision (a), it shall promptly forward this information to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, and Firearms to the extent practicable.

(c) The Department of Justice shall implement an electronic system by January 1, 2002, to receive comprehensive tracing information from each local law enforcement agency, and to forward this information to the National Tracing Center.

(d) In implementing this section, the Attorney General shall ensure to the maximum extent practical that both of the following apply:

(1) The information he or she provides to the federal Bureau of Alcohol, Tobacco, and Firearms enables that agency to trace the ownership of the firearm described in subdivision (a).

(2) Local law enforcement agencies can report all relevant information without being unduly burdened by this reporting function.

(e) Information collected pursuant to this section shall be maintained by the department for a period of not less than 10 years, and shall be available, under guidelines set forth by the Attorney General, for academic and policy research purposes.

(f) The Attorney General shall have the authority to issue regulations to further the purposes of this section.

SEC. 4. Section 12021 of the Penal Code is amended to read:

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



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

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this



prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

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

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

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

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

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the



petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

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

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

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

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

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

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not



exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

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



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

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

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

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



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

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

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

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

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

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

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

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

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

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to



defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.1. Section 12021 of the Penal Code is amended to read:

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

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

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in



paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

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

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

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

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

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under



this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

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

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

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

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

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing



in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

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

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

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

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



listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

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

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

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

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order



issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

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

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

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

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

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

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

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

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

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



(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.2. Section 12021 of the Penal Code is amended to read:

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

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

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6,



417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

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

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

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



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

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

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

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

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



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

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

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

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

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to



provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

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

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

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

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2, of this code, or a protective order as defined in Section 6218 of the Family Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state



prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

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

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

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



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

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

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

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

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

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

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.3. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an



offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

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

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose



employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

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

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

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

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

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that



offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

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

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

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

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

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

(d) (1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or



her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted



to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

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

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

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

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

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or



possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

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

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

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

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

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

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

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

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

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

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation,



and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.4. Section 12021 of the Penal Code is amended to read:

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

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

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former



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

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

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

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

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



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

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

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

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

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

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the



circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

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

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

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of



subdivision (c), and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

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

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

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

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the



Code of Civil Procedure a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

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

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

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

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

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

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

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

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



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

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.5. Section 12021 of the Penal Code is amended to read:

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

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

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a



misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

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

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

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,



and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

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

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

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

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

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the



petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

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

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

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

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

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and



include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

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

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

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

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a restraining order issued pursuant to Section 136.2, of this code, or a protective order as defined in Section 6218 of the Family



Code, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

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



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

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

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

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

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

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

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

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

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.



SEC. 4.6. Section 12021 of the Penal Code is amended to read:

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

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

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the



department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

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

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

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

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

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of



the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

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

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

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

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

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

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any



person or entity from any other liability that might otherwise be imposed.

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

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state



prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

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

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

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

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a



firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

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

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

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

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

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

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

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

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

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those



defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 4.7. Section 12021 of the Penal Code is amended to read:

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

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

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

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision of Section 12072, and who, within 10



years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

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

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

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

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

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling



as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

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

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

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

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

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



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

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

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c), or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense



listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

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

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

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

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and



Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

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

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

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

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

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

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

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

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

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



(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 5. Section 12028 of the Penal Code is amended to read:

12028. (a) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any explosive substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the unlawful concealed carrying upon the person or within the vehicle of the carrier of any weapons in violation of Section 12025, and the unlawful possession or carrying of any item in violation of Section 653k is a nuisance.

(b) (1) Except as provided in paragraph (2), a firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(2) A firearm is not a nuisance pursuant to this subdivision if the firearm owner disposes of his or her firearm pursuant to paragraph (2) of subdivision (d) of Section 12021.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed



by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol. For purposes of this subdivision, the Commissioner of the California Highway Patrol shall receive only weapons that were confiscated by a member of the California Highway Patrol. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to Section 12071 to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership.

(d) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold pursuant to subdivision (c), the weapon, in the month of July, next succeeding, or sooner, if necessary to conserve local resources including space and utilization of personnel who maintain files and security of those weapons, shall be destroyed so that it can no longer be used as such a weapon except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

(e) This section does not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto, or which is forfeited pursuant to Section 5008.6 of the Public Resources Code.



(f) No stolen weapon shall be sold or destroyed pursuant to subdivision (c) or (d) unless reasonable notice is given to its lawful owner, if his or her identity and address can be reasonably ascertained.

SEC. 6. Section 12201 of the Penal Code is amended to read:

12201. Nothing in this chapter shall affect or apply to any of the following:

(a) The sale to, purchase by, or possession of machineguns by police departments, sheriffs' offices, marshals' offices, district attorneys' offices, the California Highway Patrol, the Department of Justice, the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit, or the military or naval forces of this state or of the United States for use in the discharge of their official duties, provided, however, that any sale to these entities be transacted by a person who is permitted pursuant to Section 12230 and licensed pursuant to Section 12250.

(b) The possession of machineguns by regular, salaried, full-time peace officer members of a police department, sheriff's office, marshal's office, district attorney's office, the California Highway Patrol, the Department of Justice, or the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit when on duty and if the use is within the scope of their duties.

SEC. 6.5. It is the intent of the Legislature in amending Section 12280 of the Penal Code to delete the exemption allowing retired peace officers to obtain an assault weapon from their employing agency upon retirement. These amendments are intended to make Section 12280 of the Penal Code consistent with the holding in *Silveira v. Lockyer* (2003) 312. F.3d 1052 by the Ninth Circuit Court of Appeals, which held that exemption to be unconstitutional. The amendments deleting the exemption are therefore declaratory of existing law.

SEC. 7. Section 12280 of the Penal Code is amended to read:

12280. (a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon



conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Except as provided in Section 12288, and in subdivisions (c) and (d), any person who, within this state, possesses any assault weapon, except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year. However, if the person presents proof that he or she lawfully possessed the assault weapon prior to June 1, 1989, or prior to the date it was specified as an assault weapon, and has since registered any other lawfully obtained firearm specified by Section 12276 or 12276.5 pursuant to Section 12285 or relinquished them pursuant to Section 12288, a first-time violation of this subdivision shall be an infraction punishable by a fine of up to five hundred dollars (\$500), but not less than three hundred fifty dollars (\$350), if the person has otherwise possessed the firearm in compliance with subdivision (c) of Section 12285. In these cases, the assault weapon shall be destroyed pursuant to Section 12028.

(c) A first-time violation of subdivision (b) shall be an infraction punishable by a fine of up to five hundred dollars (\$500), if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(2) The person is not found in possession of a firearm specified as an assault weapon pursuant to Section 12276 or Section 12276.5.

(3) The person has not previously been convicted of violating this section.

(4) The person was found to be in possession of the assault weapons within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.



(5) The person relinquished the firearms pursuant to Section 12288.

(d) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(e) Subdivisions (a) and (b) shall not apply to the sale to, purchase by, or possession of assault weapons by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Youth and Adult Corrections Agency, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States, or any federal law enforcement agency for use in the discharge of their official duties.

(f) (1) Subdivision (b) shall not prohibit the possession or use of assault weapons by sworn peace officer members of those agencies specified in subdivision (e) for law enforcement purposes, whether on or off duty.

(2) Subdivisions (a) and (b) shall not prohibit the delivery, transfer, or sale of an assault weapon to, or the possession of an assault weapon by, a sworn peace officer member of an agency specified in subdivision (e), provided that the peace officer is authorized by his or her employer to possess or receive the assault weapon. Required authorization is defined as verifiable written certification from the head of the agency, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing him or her to receive or possess the specific assault weapon. For this exemption to apply, in the case of a peace officer who possesses or receives the assault weapon prior to January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 on or before April 1, 2002; in the case of a peace officer who possesses or receives the assault weapon on or after January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 not later than 90 days after possession or receipt. The peace officer must include with the registration, a copy of the authorization required pursuant to this paragraph.



(3) Nothing in this section shall be construed to limit or prohibit the delivery, transfer, or sale of an assault weapon to, or the possession of an assault weapon by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess the assault weapon.

(g) Subdivision (b) shall not apply to the possession of an assault weapon, as defined in Section 12276, by any person during the 1990 calendar year, during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault weapon pursuant to Section 12276.1, if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon.

(2) The person lawfully possessed the particular assault weapon described in paragraph (1) prior to June 1, 1989, if the weapon is specified as an assault weapon pursuant to Section 12276, or prior to the date it was specified as an assault weapon pursuant to Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(3) The person is otherwise in compliance with this chapter.

(h) Subdivisions (a) and (b) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons for sale to the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal military and law enforcement agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(i) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (f) which is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.



(j) Subdivision (b) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (f), if the assault weapon is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.

(k) Subdivision (a) shall not apply to:

(1) A person who lawfully possesses and has registered an assault weapon pursuant to this chapter who lends that assault weapon to another if all the following apply:

(A) The person to whom the assault weapon is lent is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person to whom the assault weapon is lent remains in the presence of the registered possessor of the assault weapon.

(C) The assault weapon is possessed at any of the following locations:

(i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(2) The return of an assault weapon to the registered possessor, which is lent by the same pursuant to paragraph (1).

(l) Subdivision (b) shall not apply to the possession of an assault weapon by a person to whom an assault weapon is lent pursuant to subdivision (k).

(m) Subdivisions (a) and (b) shall not apply to the possession and importation of an assault weapon into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon.



(2) The competition or match is conducted on the premises of one of the following:

(i) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(n) Subdivision (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286.

(2) A person who has a permit to possess an assault weapon issued pursuant to Section 12286 when he or she is acting in accordance with Section 12285 or 12286.

(o) Subdivisions (a) and (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286 or 12290.

(p) Subdivision (b) shall not apply to the registered owner of an assault weapon possessing that firearm in accordance with subdivision (c) of Section 12285.

(q) Subdivision (a) shall not apply to the importation into this state of an assault weapon by the registered owner of that assault weapon, if it is in accordance with the provisions of subdivision (c) of Section 12285.

(r) Subdivisions (a) and (b) shall not apply to the sale of assault weapons by persons who are issued permits pursuant to Section 12287 to any of the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.



- (3) Federal military and law enforcement agencies.
- (4) Law enforcement and military agencies of other states.
- (5) Foreign governments and agencies approved by the United States State Department.
- (6) Officers described in subdivision (f) who are authorized to possess assault weapons pursuant to subdivision (f).
- (s) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:
 - (1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.
 - (2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.
 - (3) The operative date of Section 12276.1, as specified in subdivision (d) of that section.

SEC. 8. Section 12285 of the Penal Code is amended to read:

12285. (a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, and any person who lawfully possessed an assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5 shall register the firearm within 90 days with the Department of Justice pursuant to those procedures that the department may establish. Except as provided in subdivision (a) of Section 12280, any person who lawfully possessed an assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1, and which was not specified as an assault weapon under Section 12276 or 12276.5, shall register the firearm within one year of the effective date of Section 12276.1, with the department pursuant to those procedures that the department may establish. The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, and any other information that the department may deem appropriate. The department may charge a fee for registration of up to twenty dollars (\$20) per person but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively



approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(b) (1) Except as provided in paragraph (2), no assault weapon possessed pursuant to this section may be sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun dealer, as defined in subdivision (c) of Section 12290, or as provided in Section 12288. Any person who (A) obtains title to an assault weapon registered under this section or that was possessed pursuant to subdivision (f) of Section 12280 by bequest or intestate succession, or (B) lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to Section 12276.5, or subsequently defined as an assault weapon pursuant to Section 12276.1, shall, within 90 days, render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, or remove the weapon from this state. A person who lawfully possessed a firearm that was subsequently declared to be an assault weapon pursuant to Section 12276.5 may alternatively register the firearm within 90 days of the declaration issued pursuant to subdivision (f) of Section 12276.5.

(2) A person moving into this state, otherwise in lawful possession of an assault weapon, shall do one of the following:

(A) Prior to bringing the assault weapon into this state, that person shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

(B) The person shall cause the assault weapon to be delivered to a licensed gun dealer, as defined in subdivision (c) of Section 12290, in this state in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. If the person obtains a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, the dealer shall redeliver that assault weapon to the person. If the licensed gun dealer, as defined in subdivision (c) of Section 12290, is prohibited from delivering the assault weapon to a person pursuant to this paragraph, the dealer shall possess or dispose of the assault weapon as allowed by this chapter.



(c) A person who has registered an assault weapon under this section may possess it only under any of the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

(1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.

(2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(3) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(4) While on the premises of a shooting club which is licensed pursuant to the Fish and Game Code.

(5) While attending any exhibition, display, or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(6) While on publicly owned land if the possession and use of a firearm described in Section 12276 or 12276.1 is specifically permitted by the managing agency of the land.

(7) While transporting the assault weapon between any of the places mentioned in this subdivision, or to any licensed gun dealer, as defined in subdivision (c) of Section 12290, for servicing or repair pursuant to subdivision (b) of Section 12290, if the assault weapon is transported as required by Section 12026.1.

(d) No person who is under the age of 18 years, no person who is prohibited from possessing a firearm by Section 12021 or 12021.1, and no person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.

(e) The department's registration procedures shall provide the option of joint registration for assault weapons owned by family members residing in the same household.

(f) For 90 days following January 1, 1992, a forgiveness period shall exist to allow persons specified in subdivision (b) of Section 12280 to register with the Department of Justice assault weapons that they lawfully possessed prior to June 1, 1989.



(g) Any person who registered a firearm as an assault weapon pursuant to the provisions of law in effect prior to January 1, 2000, where the assault weapon is thereafter defined as an assault weapon pursuant to Section 12276.1, shall be deemed to have registered the weapon for purposes of this chapter and shall not be required to reregister the weapon pursuant to this section.

(h) Any person who registers his or her assault weapon during the 90-day forgiveness period described in subdivision (f), and any person whose registration form was received by the Department of Justice after January 1, 1991, and who was issued a temporary registration prior to the end of the forgiveness period, shall not be charged with a violation of subdivision (b) of Section 12280, if law enforcement becomes aware of that violation only as a result of the registration of the assault weapon. This subdivision shall have no effect upon persons charged with a violation of subdivision (b) of Section 12280 of the Penal Code prior to January 1, 1992, provided that law enforcement was aware of the violation before the weapon was registered.

SEC. 9. Section 12287 of the Penal Code is amended to read:

12287. (a) The Department of Justice may, upon a finding of good cause, issue permits for the manufacture or sale of assault weapons for the sale to, purchase by, or possession of assault weapons by, any of the following:

(1) The agencies listed in subdivision (e), and the officers described in subdivision (f) of Section 12280.

(2) Entities and persons who have been issued permits pursuant to this section or Section 12286.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal law enforcement and military agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(b) Application for the permits, the keeping and inspection thereof, and the revocation of permits shall be undertaken in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

SEC. 10. Section 12290 of the Penal Code is amended to read:



12290. (a) Any licensed gun dealer, as defined in subdivision (c), who lawfully possesses an assault weapon pursuant to Section 12285, in addition to the uses allowed in Section 12285, may transport the weapon between dealers or out of the state, display it at any gun show licensed by a state or local governmental entity, sell it to a resident outside the state, or sell it to a person who has been issued a permit pursuant to Section 12286. Any transporting allowed by this section must be done as required by Section 12026.1.

(b) (1) Any licensed gun dealer, as defined in subdivision (c), may take possession of any assault weapon for the purposes of servicing or repair from any person to whom it is legally registered or who has been issued a permit to possess it pursuant to this chapter.

(2) Any licensed gun dealer may transfer possession of any assault weapon received pursuant to paragraph (1), to a gunsmith for purposes of accomplishing service or repair of the same. Transfers are permissible only to the following persons:

(A) A gunsmith who is in the dealer's employ.

(B) A gunsmith with whom the dealer has contracted for gunsmithing services. In order for this subparagraph to apply, the gunsmith receiving the assault weapon must hold all of the following:

(i) A dealer's license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(ii) Any business license required by a state or local governmental entity.

(c) The term "licensed gun dealer," as used in this article, means a person who is licensed pursuant to Section 12071, and who has a permit to sell assault weapons issued pursuant to Section 12287.

SEC. 11. Section 12301 of the Penal Code is amended to read:

12301. (a) The term "destructive device," as used in this chapter, shall include any of the following weapons:

(1) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.



(2) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.

(3) Any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore) conforming to the definition of a “destructive device” found in subsection (b) of Section 179.11 of Title 27 of the Code of Federal Regulations, shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon. For purposes of this section, the term “antique cannon” means any cannon manufactured before January 1, 1899, which has been rendered incapable of firing or for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. The term “antique rifle” means a firearm conforming to the definition of an “antique firearm” in Section 179.11 of Title 27 of the Code of Federal Regulations.

(4) Any rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-propelled projectile, or similar device containing any explosive or incendiary material or any other chemical substance, other than the propellant for such device, except such devices as are designed primarily for emergency or distress signaling purposes.

(5) Any breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(6) Any sealed device containing dry ice (CO₂) or other chemically reactive substances assembled for the purpose of causing an explosion by a chemical reaction.

(7) Any device designed or intended to emit or propel a burning stream of combustible or flammable liquid a distance of 10 feet or more.

(b) The term “explosive,” as used in this chapter, shall mean any explosive defined in Section 12000 of the Health and Safety Code.

SEC. 12. (a) Section 4.1 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 1290. It shall only become operative if (1) both bills are



enacted and become effective on or before January 1, 2004, (2) each bill amends Section 12021 of the Penal Code, (3) AB 319 and SB 226 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1290, in which case Sections 4, 4.2, 4.3, 4.4, 4.5, 4.6, and 4.7 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and SB 226. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 12021 of the Penal Code, (3) AB 319 and AB 1290 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 226, in which case Sections 4, 4.1, 4.3, 4.4, 4.5, 4.6, and 4.7 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 319. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 12021 of the Penal Code, (3) AB 1290 and SB 226 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 319, in which case Sections 4, 4.1, 4.2, 4.4, 4.5, 4.6, and 4.7 of this bill shall not become operative.

(d) Section 4.4 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 1290 and SB 226. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 12021 of the Penal Code, (3) AB 319 is not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1290 and SB 226, in which case Sections 4, 4.1, 4.2, 4.3, 4.5, 4.6, and 4.7 of this bill shall not become operative.

(e) Section 4.5 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 319 and SB 226. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 12021 of the Penal Code, (3) AB 1290 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 319 and SB 266, in which case Sections 4, 4.1, 4.2, 4.3, 4.4, 4.6, and 4.7 of this bill shall not become operative.

(f) Section 4.6 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 319 and AB 1290. It shall only become operative if (1) all three bills are enacted



and become effective on or before January 1, 2004, (2) all three bills amend Section 12021 of the Penal Code, (3) SB 226 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 319 and AB 1290, in which case Sections 4, 4.1, 4.2, 4.3, 4.4, 4.5, and 4.7 of this bill shall not become operative.

Section 4.7 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by this bill, AB 319, AB 1290, and SB 226. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2004, (2) all four bills amend Section 12021 of the Penal Code, and (3) this bill is enacted after AB 319, AB 1290, and SB 226, in which case Sections 4, 4.1, 4.2, 4.3, 4.4, 4.5, and 4.6 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2003

Governor

