

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1498

Introduced by Assembly Member De Leon

February 27, 2009

An act to amend Section 12021 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1498, as amended, De Leon. Firearms: possession.

Existing law provides that a person convicted of specified misdemeanor crimes 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 punished as specified.

This bill would additionally include within this provision specified misdemeanor crimes relating to ~~burglary~~, weapons; and to criminal street gang activity. Because this bill would change the punishment of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 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, 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, 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.

(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, 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.

(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, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, ~~459~~, 626.9, 646.9, 12023, or 12024, subdivision (a) of Section 12025, *subdivision (a) of Section 12031*, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, subdivision (b) of Section 12280, Section 12320, or Section 12590 of this code, 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, or of any misdemeanor for which the defendant was punished pursuant to subdivision (d) of Section 186.22, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or

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

9 (2) Any person employed as a peace officer described in Section
10 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
11 or livelihood is dependent on the ability to legally possess a
12 firearm, who is subject to the prohibition imposed by this
13 subdivision because of a conviction under Section 273.5, 273.6,
14 or 646.9, may petition the court only once for relief from this
15 prohibition. The petition shall be filed with the court in which the
16 petitioner was sentenced. If possible, the matter shall be heard
17 before the same judge who sentenced the petitioner. Upon filing
18 the petition, the clerk of the court shall set the hearing date and
19 shall notify the petitioner and the prosecuting attorney of the date
20 of the hearing. Upon making each of the following findings, the
21 court may reduce or eliminate the prohibition, impose conditions
22 on reduction or elimination of the prohibition, or otherwise grant
23 relief from the prohibition as the court deems appropriate:

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

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

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

34 (ii) In making its decision, the court shall consider the
35 petitioner's continued employment, the interest of justice, any
36 relevant evidence, and the totality of the circumstances. The court
37 shall require, as a condition of granting relief from the prohibition
38 under this section, that the petitioner agree to participate in
39 counseling as deemed appropriate by the court. Relief from the
40 prohibition shall not relieve any other person or entity from any

1 liability that might otherwise be imposed. It is the intent of the
2 Legislature that courts exercise broad discretion in fashioning
3 appropriate relief under this paragraph in cases in which relief is
4 warranted. However, nothing in this paragraph shall be construed
5 to require courts to grant relief to any particular petitioner. It is
6 the intent of the Legislature to permit persons who were convicted
7 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
8 relief from the prohibition imposed by this subdivision.

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

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

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

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

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

39 (4) Law enforcement officials who enforce the prohibition
40 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, 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,

1 any offense enumerated in paragraph (1) of subdivision (c), or any
2 offense described in subdivision (a) of Section 12025, subdivision
3 (a) of Section 12031, or subdivision (a) of Section 12034, shall
4 not own, or have in his or her possession or under his or her
5 custody or control, any firearm until the age of 30 years. A
6 violation of this subdivision shall be punishable by imprisonment
7 in a county jail not exceeding one year or in the state prison, by a
8 fine not exceeding one thousand dollars (\$1,000), or by both that
9 imprisonment and fine. The juvenile court, on forms prescribed
10 by the Department of Justice, shall notify the department of persons
11 subject to this subdivision. Notwithstanding any other law, the
12 forms required to be submitted to the department pursuant to this
13 subdivision may be used to determine eligibility to acquire a
14 firearm.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Subject to available funding, the Attorney General, working with the 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. 2. 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.