

AMENDED IN SENATE JUNE 30, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 688

Introduced by Assembly Member Bowler

February 26, 1997

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

LEGISLATIVE COUNSEL'S DIGEST

AB 688, as amended, Bowler. Firearms: juveniles.

Existing law makes it a crime for persons convicted of specified offenses to own or possess a firearm for a specified period. With regard to juvenile offenders, this prohibition applies until the age of 30 years to any person who is alleged to have committed specified offenses, is found to be a fit and proper subject to be dealt with under the juvenile court law, and is subsequently adjudged a ward of the juvenile court for the commission of specified offenses.

This bill would delete the requirement that the person be found to be a fit and proper subject to be dealt with under the juvenile court law. By expanding the scope of an existing crime, 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 78, to be operative if AB 78 and this bill are both enacted and become effective on or before January 1, 1998, 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.

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

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

1 SECTION 1. Section 12021 of the Penal Code is
2 amended to read:

3 12021. (a) (1) Any person who has been convicted
4 of a felony under the laws of the United States, of the State
5 of California, or any other state, government, or country,
6 or of an offense enumerated in subdivision (a), (b), or (d)
7 of Section 12001.6, or who is addicted to the use of any
8 narcotic drug, who owns or has in his or her possession or
9 under his or her custody or control any firearm is guilty
10 of a felony.

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

15 (b) Notwithstanding subdivision (a), any person who
16 has been convicted of a felony or of an offense
17 enumerated in Section 12001.6, when that conviction
18 results from certification by the juvenile court for
19 prosecution as an adult in an adult court under Section
20 707 of the Welfare and Institutions Code, who owns or has
21 in his or her possession or under his or her custody or
22 control any firearm is guilty of a felony.

23 (c) (1) Except as provided in subdivision (a) or
24 paragraph (2) of this subdivision, any person who has
25 been convicted of a misdemeanor violation of Section 71,
26 76, 136.5, or 140, subdivision (d) of Section 148, Section
27 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,
28 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9,
29 646.9, 12023, or 12024, subdivision (b) or (d) of Section
30 12034, Section 12040, subdivision (b) of Section 12072,
31 subdivision (a) of former Section 12100, Section 12220,



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

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

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

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



1 or Section 12021.1, and the court is not presented with any
2 credible evidence that the petitioner is a person
3 described in Section 8100 or 8103 of the Welfare and
4 Institutions Code.

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

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

26 (3) Any person who is subject to the prohibition
27 imposed by this subdivision because of a conviction prior
28 to January 1, 1991, may petition the court only once for
29 relief from this prohibition. The petition shall be filed
30 with the court in which the petitioner was sentenced. If
31 possible, the matter shall be heard before the same judge
32 that sentenced the petitioner. Upon filing the petition,
33 the clerk of the court shall set the hearing date and notify
34 the petitioner and the prosecuting attorney of the date of
35 the hearing. Upon making each of the following findings,
36 the court may reduce or eliminate the prohibition,
37 impose conditions on reduction or elimination of the
38 prohibition, or otherwise grant relief from the prohibition
39 as the court deems appropriate:



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

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

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

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

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

31 (d) Any person who, as an express condition of
32 probation, is prohibited or restricted from owning,
33 possessing, controlling, receiving, or purchasing a firearm
34 and who owns, or has in his or her possession or under his
35 or her custody or control, any firearm but who is not
36 subject to subdivision (a) or (c) is guilty of a public
37 offense, which shall be punishable by imprisonment in a
38 county jail not exceeding one year or in the state prison,
39 by a fine not exceeding one thousand dollars (\$1,000), or
40 by both that imprisonment and fine. The court, on forms



1 provided by the Department of Justice, shall notify the
2 department of persons subject to this subdivision. The
3 notice shall include a copy of the order of probation and
4 a copy of any minute order or abstract reflecting the
5 order and conditions of probation.

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

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

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

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

39 (g) Every person who purchases or receives, or
40 attempts to purchase or receive, a firearm knowing that



1 he or she is subject to a protective order as defined in
2 Section 6218 of the Family Code, or a temporary
3 restraining order or injunction issued pursuant to Section
4 527.6 or 527.8 of the Code of Civil Procedure, is guilty of
5 a public offense, which shall be punishable by
6 imprisonment in a county jail not exceeding one year or
7 in the state prison, by a fine not exceeding one thousand
8 dollars (\$1,000), or by both that imprisonment and fine.
9 This subdivision does not apply unless the copy of the
10 restraining order personally served on the person against
11 whom the restraining order is issued contains a notice in
12 bold print stating (1) that the person is prohibited from
13 purchasing or receiving or attempting to purchase or
14 receive a firearm and (2) specifying the penalties for
15 violating this subdivision, or a court has provided actual
16 verbal notice of the firearm prohibition and penalty as
17 provided in Section 6304 of the Family Code. However,
18 this subdivision does not apply if the firearm is received
19 as part of the disposition of community property pursuant
20 to Division 7 (commencing with Section 2500) of the
21 Family Code.

22 SEC. 2. *Section 12021 of the Penal Code is amended*
23 *to read:*

24 12021. (a) (1) Any person who has been convicted
25 of a felony under the laws of the United States, of the State
26 of California, or any other state, government, or country,
27 or of an offense enumerated in subdivision (a), (b), or (d)
28 of Section 12001.6, or who is addicted to the use of any
29 narcotic drug, who owns or has in his or her possession or
30 under his or her custody or control any firearm is guilty
31 of a felony.

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

36 (b) Notwithstanding subdivision (a), any person who
37 has been convicted of a felony or of an offense
38 enumerated in Section 12001.6, when that conviction
39 results from certification by the juvenile court for
40 prosecution as an adult in an adult court under Section



1 707 of the Welfare and Institutions Code, who owns or has
2 in his or her possession or under his or her custody or
3 control any firearm is guilty of a felony.

4 (c) (1) Except as provided in subdivision (a) or
5 paragraph (2) of this subdivision, any person who has
6 been convicted of a misdemeanor violation of Section 71,
7 76, 136.5, or 140, subdivision (d) of Section 148, Section
8 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,
9 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9,
10 646.9, 12023, or 12024, subdivision (b) or (d) of Section
11 12034, Section 12040, subdivision (b) of Section 12072,
12 subdivision (a) of former Section 12100, Section 12220,
13 12320, or 12590, or Section 8100, 8101, or 8103 of the
14 Welfare and Institutions Code, any firearm-related
15 offense pursuant to Sections 871.5 and 1001.5 of the
16 Welfare and Institutions Code, or of the conduct
17 punished in paragraph (3) of subdivision (g) of Section
18 12072, and who, within 10 years of the conviction, owns,
19 or has in his or her possession or under his or her custody
20 or control, any firearm is guilty of a public offense, which
21 shall be punishable by imprisonment in a county jail not
22 exceeding one year or in the state prison, by a fine not
23 exceeding one thousand dollars (\$1,000), or by both that
24 imprisonment and fine. The court, on forms prescribed
25 by the Department of Justice, shall notify the department
26 of persons subject to this subdivision. However, the
27 prohibition in this paragraph may be reduced,
28 eliminated, or conditioned as provided in paragraph (2)
29 or (3).

30 (2) Any person employed as a peace officer described
31 in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5
32 whose employment or livelihood is dependent on the
33 ability to legally possess a firearm, who is subject to the
34 prohibition imposed by this subdivision because of a
35 conviction under Section 273.5, 273.6, or 646.9, may
36 petition the court only once for relief from this
37 prohibition. The petition shall be filed with the court in
38 which the petitioner was sentenced. If possible, the
39 matter shall be heard before the same judge that
40 sentenced the petitioner. Upon filing the petition, the



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

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

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

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

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

38 (3) Any person who is subject to the prohibition
39 imposed by this subdivision because of a conviction ~~prior~~
40 ~~to January 1, 1991~~ of an offense prior to that offense being



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

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

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

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

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

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



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

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

18 (e) Any person who (1) is alleged to have committed
19 an offense listed in subdivision (b) of Section 707 of the
20 Welfare and Institutions Code, an offense described in
21 subdivision (b) of Section 1203.073, or any offense
22 enumerated in paragraph (1) of subdivision (c), *and* (2)
23 ~~is found to be a fit and proper subject to be dealt with~~
24 ~~under the juvenile court law, and (3) is subsequently~~
25 adjudged a ward of the juvenile court within the meaning
26 of Section 602 of the Welfare and Institutions Code
27 because the person committed an offense listed in
28 subdivision (b) of Section 707 of the Welfare and
29 Institutions Code, an offense described in subdivision (b)
30 of Section 1203.073, or any offense enumerated in
31 paragraph (1) of subdivision (c) shall not own, or have in
32 his or her possession or under his or her custody or
33 control, any firearm until the age of 30 years. A violation
34 of this subdivision shall be punishable by imprisonment in
35 a county jail not exceeding one year or in the state prison,
36 by a fine not exceeding one thousand dollars (\$1,000), or
37 by both that imprisonment and fine. The juvenile court,
38 on forms prescribed by the Department of Justice, shall
39 notify the department of persons subject to this
40 subdivision. Notwithstanding any other law, the forms



1 required to be submitted to the department pursuant to
2 this subdivision may be used to determine eligibility to
3 acquire a firearm.

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

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

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

13 (g) Every person who purchases or receives, or
14 attempts to purchase or receive, a firearm knowing that
15 he or she is subject to a protective order as defined in
16 Section 6218 of the Family Code, or a temporary
17 restraining order or injunction issued pursuant to Section
18 527.6 or 527.8 of the Code of Civil Procedure, is guilty of
19 a public offense, which shall be punishable by
20 imprisonment in a county jail not exceeding one year or
21 in the state prison, by a fine not exceeding one thousand
22 dollars (\$1,000), or by both that imprisonment and fine.
23 This subdivision does not apply unless the copy of the
24 restraining order personally served on the person against
25 whom the restraining order is issued contains a notice in
26 bold print stating (1) that the person is prohibited from
27 purchasing or receiving or attempting to purchase or
28 receive a firearm and (2) specifying the penalties for
29 violating this subdivision, or a court has provided actual
30 verbal notice of the firearm prohibition and penalty as
31 provided in Section 6304 of the Family Code. However,
32 this subdivision does not apply if the firearm is received
33 as part of the disposition of community property pursuant
34 to Division 7 (commencing with Section 2500) of the
35 Family Code.

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



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

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

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

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

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

19 *SEC. 3. Section 2 of this bill incorporates amendments*
20 *to Section 12021 of the Penal Code proposed by both this*
21 *bill and AB 78. It shall only become operative if (1) both*
22 *bills are enacted and become effective on or before*
23 *January 1, 1998, (2) each bill amends Section 12021 of the*
24 *Penal Code, and (3) this bill is enacted after AB 78, in*
25 *which case Section 1 of this bill shall not become*
26 *operative.*

27 *SEC. 4. No reimbursement is required by this act*
28 *pursuant to Section 6 of Article XIII B of the California*
29 *Constitution because the only costs that may be incurred*
30 *by a local agency or school district will be incurred*
31 *because this act creates a new crime or infraction,*
32 *eliminates a crime or infraction, or changes the penalty*
33 *for a crime or infraction, within the meaning of Section*
34 *17556 of the Government Code, or changes the definition*
35 *of a crime within the meaning of Section 6 of Article*
36 *XIII B of the California Constitution.*

37 *Notwithstanding Section 17580 of the Government*
38 *Code, unless otherwise specified, the provisions of this act*



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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