

ASSEMBLY BILL

No. 1989

Introduced by Assembly Member Dickerson

February 18, 2000

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1989, as introduced, Dickerson. Firearms: restrictions on possession and ownership.

(1) Under existing law, any person who has been convicted of specified misdemeanor violations 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 that is punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill would include in this provision misdemeanor violations involving a person who willfully and maliciously communicates to a witness to, or a victim of, the crime for which the person was convicted, a credible threat to use force or violence upon that person or that person's immediate family or any person who willfully threatens to commit a crime that will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat.

Because this bill would expand the scope of an existing crime, it would impose a state-mandated local program.

(2) 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, 139, or 140, subdivision (d) of Section 148,
27 Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5,
28 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2,
29 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or



1 (d) of Section 12034, Section 12040, subdivision (b) of
2 Section 12072, subdivision (a) of former Section 12100,
3 Section 12220, 12320, or 12590, or Section 8100, 8101, or
4 8103 of the Welfare and Institutions Code, any
5 firearm-related offense pursuant to Sections 871.5 and
6 1001.5 of the Welfare and Institutions Code, or of the
7 conduct punished in paragraph (3) of subdivision (g) of
8 Section 12072, and who, within 10 years of the conviction,
9 owns, or has in his or her possession or under his or her
10 custody or control, any firearm is guilty of a public
11 offense, which shall be punishable by imprisonment in a
12 county jail not exceeding one year or in the state prison,
13 by a fine not exceeding one thousand dollars (\$1,000), or
14 by both that imprisonment and fine. The court, on forms
15 prescribed by the Department of Justice, shall notify the
16 department of persons subject to this subdivision.
17 However, the prohibition in this paragraph may be
18 reduced, eliminated, or conditioned as provided in
19 paragraph (2) or (3).

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

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

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

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

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

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

1 or otherwise grant relief from the prohibition as the court
2 deems appropriate:

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

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

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

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

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

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

1 by a fine not exceeding one thousand dollars (\$1,000), or
2 by both that imprisonment and fine. The court, on forms
3 provided by the Department of Justice, shall notify the
4 department of persons subject to this subdivision. The
5 notice shall include a copy of the order of probation and
6 a copy of any minute order or abstract reflecting the
7 order and conditions of probation.

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

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

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

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

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

21 (2) Every person who owns or possesses a firearm
22 knowing that he or she is prohibited from owning or
23 possessing a firearm by the provisions of a protective
24 order as defined in Section 6218 of the Family Code,
25 Section 136.2 of the Penal Code, or a temporary
26 restraining order or injunction issued pursuant to Section
27 527.6 or 527.8 of the Code of Civil Procedure, is guilty of
28 a public offense, which shall be punishable by
29 imprisonment in a county jail not exceeding one year, by
30 a fine not exceeding one thousand dollars (\$1,000), or by
31 both that imprisonment and fine. This subdivision does
32 not apply unless a copy of the restraining order personally
33 served on the person against whom the restraining order
34 is issued contains a notice in bold print stating (1) that the
35 person is prohibited from owning or possessing or
36 attempting to own or possess a firearm and (2) specifying
37 the penalties for violating this subdivision, or a court has
38 provided actual verbal notice of the firearm prohibition
39 and penalty as provided in Section 6304 of the Family
40 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.

1 SEC. 2. No reimbursement is required by this act
2 pursuant to Section 6 of Article XIII B of the California
3 Constitution because the only costs that may be incurred
4 by a local agency or school district will be incurred
5 because this act creates a new crime or infraction,
6 eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section
8 17556 of the Government Code, or changes the definition
9 of a crime within the meaning of Section 6 of Article
10 XIII B of the California Constitution.

