

AMENDED IN ASSEMBLY APRIL 4, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2243**

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**Introduced by Assembly Member Maldonado**

February 24, 2000

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An act to amend ~~Sections 12021 and~~ *Section* 12021.1 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2243, as amended, Maldonado. Firearms: felons.

Existing law makes it an offense punishable as a felony for any person convicted of a ~~felony~~ or violent offense, as specified, to own, possess, or have in their custody or control, any firearm.

This bill additionally would make it an offense punishable as a felony for any person convicted of a ~~felony~~ or violent offense, as specified, to attempt to purchase or receive any firearm. By expanding the scope of an existing crime, this bill 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:*

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, or attempts to~~  
10 ~~purchase or receive any firearm is guilty 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 control,~~  
22 ~~or attempts to purchase or receive any firearm is guilty~~  
23 ~~of a felony.~~  
24     ~~(c) (1) Except as provided in subdivision (a) or~~  
25 ~~paragraph (2) of this subdivision, any person who has~~  
26 ~~been convicted of a misdemeanor violation of Section 71,~~  
27 ~~76, 136.5, or 140, subdivision (d) of Section 148, Section~~  
28 ~~171b, 171e, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,~~  
29 ~~246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9,~~  
30 ~~646.9, 12023, or 12024, subdivision (b) or (d) of Section~~  
31 ~~12034, Section 12040, subdivision (b) of Section 12072,~~  
32 ~~subdivision (a) of former Section 12100, Section 12220,~~  
33 ~~12320, or 12590, or Section 8100, 8101, or 8103 of the~~  
34 ~~Welfare and Institutions Code, any firearm-related~~  
35 ~~offense pursuant to Sections 871.5 and 1001.5 of the~~  
36 ~~Welfare and Institutions Code, or of the conduct~~  
37 ~~punished in paragraph (3) of subdivision (g) of Section~~  
38 ~~12072, and who, within 10 years of the conviction, owns,~~



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

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

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

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



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

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

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

37 ~~(A) Finds by a preponderance of the evidence that the~~  
38 ~~petitioner is likely to use a firearm in a safe and lawful~~  
39 ~~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 may consider the~~  
11 ~~interest of justice, any relevant evidence, and the totality~~  
12 ~~of the circumstances. It is the intent of the Legislature~~  
13 ~~that courts exercise broad discretion in fashioning~~  
14 ~~appropriate relief under this paragraph in cases in which~~  
15 ~~relief is warranted. However, nothing in this paragraph~~  
16 ~~shall be construed to require courts to grant relief to any~~  
17 ~~particular petitioner.~~

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

28 ~~(d) Any person who, as an express condition of~~  
29 ~~probation, is prohibited or restricted from owning,~~  
30 ~~possessing, controlling, receiving, or purchasing a firearm~~  
31 ~~and who owns, or has in his or her possession or under his~~  
32 ~~or her custody or control, any firearm but who is not~~  
33 ~~subject to subdivision (a) or (e) is guilty of a public~~  
34 ~~offense, which shall be punishable by imprisonment in a~~  
35 ~~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 court, on forms~~  
38 ~~provided by the Department of Justice, shall notify the~~  
39 ~~department of persons subject to this subdivision. The~~  
40 ~~notice shall include a copy of the order of probation and~~



1 a copy of any minute order or abstract reflecting the  
2 order and conditions of probation.

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

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

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

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

36 (g) (1) Every person who purchases or receives, or  
37 attempts to purchase or receive, a firearm knowing that  
38 he or she is subject to a protective order as defined in  
39 Section 6218 of the Family Code, Section 136.2, or a  
40 temporary restraining order or injunction issued



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

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

36 ~~(3) Judicial Council shall provide notice on all~~  
37 ~~protective orders that the respondent is prohibited from~~  
38 ~~owning, possessing, purchasing, or receiving a firearm~~  
39 ~~while the protective order is in effect and that the firearm~~  
40 ~~shall be relinquished to the local law enforcement agency~~



1 for that jurisdiction or sold to a licensed gun dealer, and  
2 that proof of surrender or sale shall be filed within a  
3 specified time of receipt of the order. The order shall also  
4 state on its face the expiration date for relinquishment.

5 (4) If probation is granted upon conviction of a  
6 violation of this subdivision, the court shall impose  
7 probation consistent with the provisions of Section  
8 1203.097.

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

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

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

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

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

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

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

35 **SEC. 2.—**

36 *SECTION 1.* Section 12021.1 of the Penal Code is  
37 amended to read:

38 12021.1. (a) Notwithstanding subdivision (a) of  
39 Section 12021, any person who has been previously  
40 convicted of any of the offenses listed in subdivision (b)



1 and who owns or has in his or her possession or under his  
2 or her custody or control, or attempts to purchase or  
3 receive any firearm is guilty of a felony. A dismissal of an  
4 accusatory pleading pursuant to Section 1203.4a involving  
5 an offense set forth in subdivision (b) does not affect the  
6 finding of a previous conviction. If probation is granted,  
7 or if the imposition or execution of sentence is suspended,  
8 it shall be a condition of the probation or suspension that  
9 the defendant serve at least six months in a county jail.

10 (b) As used in this section, a violent offense includes  
11 any of the following:

- 12 (1) Murder or voluntary manslaughter.
- 13 (2) Mayhem.
- 14 (3) Rape.
- 15 (4) Sodomy by force, violence, duress, menace, or  
16 threat of great bodily harm.
- 17 (5) Oral copulation by force, violence, duress, menace,  
18 or threat of great bodily harm.
- 19 (6) Lewd acts on a child under the age of 14 years.
- 20 (7) Any felony punishable by death or imprisonment  
21 in the state prison for life.
- 22 (8) Any other felony in which the defendant inflicts  
23 great bodily injury on any person, other than an  
24 accomplice, that has been charged and proven, or any  
25 felony in which the defendant uses a firearm which use  
26 has been charged and proven.
- 27 (9) Attempted murder.
- 28 (10) Assault with intent to commit rape or robbery.
- 29 (11) Assault with a deadly weapon or instrument on a  
30 peace officer.
- 31 (12) Assault by a life prisoner on a noninmate.
- 32 (13) Assault with a deadly weapon by an inmate.
- 33 (14) Arson.
- 34 (15) Exploding a destructive device or any explosive  
35 with intent to injure.
- 36 (16) Exploding a destructive device or any explosive  
37 causing great bodily injury.
- 38 (17) Exploding a destructive device or any explosive  
39 with intent to murder.
- 40 (18) Robbery.

- 1 (19) Kidnapping.
- 2 (20) Taking of a hostage by an inmate of a state prison.
- 3 (21) Attempt to commit a felony punishable by death
- 4 or imprisonment in the state prison for life.
- 5 (22) Any felony in which the defendant personally
- 6 used a dangerous or deadly weapon.
- 7 (23) Escape from a state prison by use of force or
- 8 violence.
- 9 (24) Assault with a deadly weapon or force likely to
- 10 produce great bodily injury.
- 11 (25) Any felony violation of Section 186.22.
- 12 (26) Any attempt to commit a crime listed in this
- 13 subdivision other than an assault.
- 14 (27) Any offense enumerated in subdivision (a), (b),
- 15 or (d) of Section 12001.6.
- 16 (28) Carjacking.
- 17 (29) Any offense enumerated in subdivision (c) of
- 18 Section 12001.6 if the person has two or more convictions
- 19 for violating paragraph (2) of subdivision (a) of Section
- 20 417.
- 21 (c) Any person previously convicted of any of the
- 22 offenses listed in subdivision (b) which conviction results
- 23 from certification by the juvenile court for prosecution as
- 24 an adult in adult court under the provisions of Section 707
- 25 of the Welfare and Institutions Code, who owns or has in
- 26 his or her possession or under his or her custody or
- 27 control, attempts to purchase or receive any firearm is
- 28 guilty of a felony. If probation is granted, or if the
- 29 imposition or execution of sentence is suspended, it shall
- 30 be a condition of the probation or suspension that the
- 31 defendant serve at least six months in a county jail.
- 32 (d) The court shall apply the minimum sentence as
- 33 specified in subdivisions (a) and (c) except in unusual
- 34 cases where the interests of justice would best be served
- 35 by granting probation or suspending the imposition or
- 36 execution of sentence without the imprisonment
- 37 required by subdivisions (a) and (c), or by granting
- 38 probation or suspending the imposition or execution of
- 39 sentence with conditions other than those set forth in
- 40 subdivisions (a) and (c), in which case the court shall



1 specify on the record and shall enter on the minutes the  
2 circumstances indicating that the interests of justice  
3 would best be served by the disposition.

4 ~~SEC. 3.—~~

5 *SEC. 2.* No reimbursement is required by this act  
6 pursuant to Section 6 of Article XIII B of the California  
7 Constitution because the only costs that may be incurred  
8 by a local agency or school district will be incurred  
9 because this act creates a new crime or infraction,  
10 eliminates a crime or infraction, or changes the penalty  
11 for a crime or infraction, within the meaning of Section  
12 17556 of the Government Code, or changes the definition  
13 of a crime within the meaning of Section 6 of Article  
14 XIII B of the California Constitution.

