

AMENDED IN ASSEMBLY MARCH 18, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2186

Introduced by Assembly Member De Leon

February 18, 2010

An act to amend Section ~~12094~~ 12021 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2186, as amended, De Leon. ~~Firearms.~~ *Firearms: prohibited possession: prior convictions.*

Existing law provides that any person who has been convicted of certain misdemeanors 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 punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill would provide that any person who has been convicted of a misdemeanor violation of carrying a concealed firearm, carrying a loaded firearm in public, or carrying a loaded firearm in a vehicle, as specified, 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 misdemeanor punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$1,000, or by both that fine and imprisonment.

By creating a new 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.

~~Existing law makes it an offense for any person, with knowledge of any change, alteration, removal, or obliteration, to buy, receive, dispose of, sell, offer for sale, or to have in his or her possession any pistol, revolver, or other firearm which has had the name of the maker, model, or the manufacturer's number or other mark of identification including any distinguishing number or mark assigned by the Department of Justice changed, altered, removed, or obliterated.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (5) *Any person who has been convicted of a misdemeanor*
24 *violation of Section 12025, 12031, or subdivision (a) of Section*
25 *12034, and who, within 10 years of the conviction, owns,*
26 *purchases, receives, or has in his or her possession or under his*
27 *or her custody or control, any firearm is guilty of a misdemeanor,*
28 *which shall be punishable by imprisonment in a county jail not*
29 *exceeding one year, or by a fine not exceeding one thousand dollars*
30 *(\$1,000), or by both that fine and imprisonment. The court, on*
31 *forms prescribed by the Department of Justice, shall notify the*
32 *department of persons subject to this requirement.*

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

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

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

15 (e) Any person who (1) is alleged to have committed an offense
16 listed in subdivision (b) of Section 707 of the Welfare and
17 Institutions Code, an offense described in subdivision (b) of Section
18 1203.073, any offense enumerated in paragraph (1) of subdivision
19 (c), or any offense described in subdivision (a) of Section 12025,
20 subdivision (a) of Section 12031, or subdivision (a) of Section
21 12034, and (2) is subsequently adjudged a ward of the juvenile
22 court within the meaning of Section 602 of the Welfare and
23 Institutions Code because the person committed an offense listed
24 in subdivision (b) of Section 707 of the Welfare and Institutions
25 Code, an offense described in subdivision (b) of Section 1203.073,
26 any offense enumerated in paragraph (1) of subdivision (c), or any
27 offense described in subdivision (a) of Section 12025, subdivision
28 (a) of Section 12031, or subdivision (a) of Section 12034, shall
29 not own, or have in his or her possession or under his or her
30 custody or control, any firearm until the age of 30 years. A
31 violation of this subdivision shall be punishable by imprisonment
32 in a county jail not exceeding one year or in the state prison, by a
33 fine not exceeding one thousand dollars (\$1,000), or by both that
34 imprisonment and fine. The juvenile court, on forms prescribed
35 by the Department of Justice, shall notify the department of persons
36 subject to this subdivision. Notwithstanding any other law, the
37 forms required to be submitted to the department pursuant to this
38 subdivision may be used to determine eligibility to acquire a
39 firearm.

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

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

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

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

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

32 (3) The Judicial Council shall provide notice on all protective
33 orders that the respondent is prohibited from owning, possessing,
34 purchasing, receiving, or attempting to purchase or receive a
35 firearm while the protective order is in effect. The order shall also
36 state that the firearm shall be relinquished to the local law
37 enforcement agency for that jurisdiction or sold to a licensed gun
38 dealer, and that proof of surrender or sale shall be filed within a
39 specified time of receipt of the order. The order shall state the

1 penalties for a violation of the prohibition. The order shall also
2 state on its face the expiration date for relinquishment.

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

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

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

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

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

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

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

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

28 (i) Subject to available funding, the Attorney General, working
29 with the Judicial Council, the California Alliance Against Domestic
30 Violence, prosecutors, and law enforcement, probation, and parole
31 officers, shall develop a protocol for the implementation of the
32 provisions of this section. The protocol shall be designed to
33 facilitate the enforcement of restrictions on firearm ownership,
34 including provisions for giving notice to defendants who are
35 restricted, provisions for informing those defendants of the
36 procedures by which defendants shall dispose of firearms when
37 required to do so, provisions explaining how defendants shall
38 provide proof of the lawful disposition of firearms, and provisions
39 explaining how defendants may obtain possession of seized
40 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.

~~SECTION 1. Section 12094 of the Penal Code is amended to read:~~

~~12094. (a) Every person with knowledge of any change, alteration, removal, or obliteration described herein, who buys, receives, disposes of, sells, offers for sale, or has in his or her possession any pistol, revolver, or other firearm that has had the name of the maker, model, or the manufacturer's number or other mark of identification including any distinguishing number or mark assigned by the Department of Justice changed, altered, removed, or obliterated is guilty of a misdemeanor.~~

~~(b) Subdivision (a) does not apply to any of the following:~~

~~(1) The acquisition or possession of a firearm described in subdivision (a) by any member of the military forces of this state or of the United States, while on duty and acting within the scope and course of his or her employment.~~

~~(2) The acquisition or possession of a firearm described in subdivision (a) by any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, while on duty and acting within the scope and course of his or her employment.~~

~~(3) The acquisition or possession of a firearm described in subdivision (a) by any employee of a forensic laboratory, while on duty and acting within the scope and course of his or her employment.~~

~~(4) The possession and disposition of a firearm described in subdivision (a) by a person who meets all of the following:~~

~~(A) He or she is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.~~

1 ~~(B) The person possessed the firearm no longer than was~~
2 ~~necessary to deliver the same to a law enforcement agency for that~~
3 ~~agency's disposition according to law.~~

4 ~~(C) If the person is transporting the firearm, he or she is~~
5 ~~transporting the firearm to a law enforcement agency in order to~~
6 ~~deliver the firearm to the law enforcement agency for the agency's~~
7 ~~disposition according to law.~~

8 ~~(D) If the person is transporting the firearm to a law enforcement~~
9 ~~agency, he or she has given prior notice to the law enforcement~~
10 ~~agency that he or she is transporting the firearm to that law~~
11 ~~enforcement agency for that agency's disposition according to~~
12 ~~law.~~

13 ~~(E) The firearm is transported in a locked container as defined~~
14 ~~in subdivision (d) of Section 12026.2.~~