

AMENDED IN ASSEMBLY APRIL 22, 2010

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 12021 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2186, as amended, De Leon. 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.

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 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.

21 (c) (1) Except as provided in subdivision (a) or paragraph (2)
22 of this subdivision, any person who has been convicted of a
23 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
24 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
25 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5,
26 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision
27 (b) or (d) of Section 12034, Section 12040, subdivision (b) of
28 Section 12072, subdivision (a) of former Section 12100, Section

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

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

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

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

37 (C) (i) Finds that the petitioner does not have a previous
38 conviction under this subdivision no matter when the prior
39 conviction occurred.

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

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) or *paragraph (5)* 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 that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and 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.

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

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

(ii) In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the

1 circumstances. It is the intent of the Legislature that courts exercise
2 broad discretion in fashioning appropriate relief under this
3 paragraph in cases in which relief is warranted. However, nothing
4 in this paragraph shall be construed to require courts to grant relief
5 to any particular petitioner.

6 (4) Law enforcement officials who enforce the prohibition
7 specified in this subdivision against a person who has been granted
8 relief pursuant to paragraph (2) or (3) shall be immune from any
9 liability for false arrest arising from the enforcement of this
10 subdivision unless the person has in his or her possession a certified
11 copy of the court order that granted the person relief from the
12 prohibition. This immunity from liability shall not relieve any
13 person or entity from any other liability that might otherwise be
14 imposed.

15 (5) Any person who has been convicted of a misdemeanor
16 violation of Section 12025, 12031, or subdivision (a) of Section
17 12034, and who, within 10 years of the conviction, owns,
18 purchases, receives, or has in his or her possession or under his or
19 her custody or control, any firearm is guilty of a misdemeanor,
20 which shall be punishable by imprisonment in a county jail not
21 exceeding one year, or by a fine not exceeding one thousand dollars
22 (\$1,000), or by both that fine and imprisonment. The court, on
23 forms prescribed by the Department of Justice, shall notify the
24 department of persons subject to this requirement.

25 (d) (1) Any person who, as an express condition of probation,
26 is prohibited or restricted from owning, possessing, controlling,
27 receiving, or purchasing a firearm and who owns, purchases,
28 receives, or has in his or her possession or under his or her custody
29 or control, any firearm but who is not subject to subdivision (a) or
30 (c) is guilty of a public offense, which shall be punishable by
31 imprisonment in a county jail not exceeding one year or in the
32 state prison, by a fine not exceeding one thousand dollars (\$1,000),
33 or by both that imprisonment and fine. The court, on forms
34 provided by the Department of Justice, shall notify the department
35 of persons subject to this subdivision. The notice shall include a
36 copy of the order of probation and a copy of any minute order or
37 abstract reflecting the order and conditions of probation.

38 (2) For any person who is subject to subdivision (a), (b), or (c),
39 the court shall, at the time judgment is imposed, provide on a form
40 supplied by the Department of Justice, a notice to the defendant

1 prohibited by this section from owning, purchasing, receiving,
2 possessing or having under his or her custody or control, any
3 firearm. The notice shall inform the defendant of the prohibition
4 regarding firearms and include a form to facilitate the transfer of
5 firearms. Failure to provide the notice shall not be a defense to a
6 violation of this section.

7 (e) Any person who (1) is alleged to have committed an offense
8 listed in subdivision (b) of Section 707 of the Welfare and
9 Institutions Code, an offense described in subdivision (b) of Section
10 1203.073, any offense enumerated in paragraph (1) of subdivision
11 (c), or any offense described in subdivision (a) of Section 12025,
12 subdivision (a) of Section 12031, or subdivision (a) of Section
13 12034, and (2) is subsequently adjudged a ward of the juvenile
14 court within the meaning of Section 602 of the Welfare and
15 Institutions Code because the person committed an offense listed
16 in subdivision (b) of Section 707 of the Welfare and Institutions
17 Code, an offense described in subdivision (b) of Section 1203.073,
18 any offense enumerated in paragraph (1) of subdivision (c), or any
19 offense described in subdivision (a) of Section 12025, subdivision
20 (a) of Section 12031, or subdivision (a) of Section 12034, shall
21 not own, or have in his or her possession or under his or her
22 custody or control, any firearm until the age of 30 years. A
23 violation of this subdivision shall be punishable by imprisonment
24 in a county jail not exceeding one year or in the state prison, by a
25 fine not exceeding one thousand dollars (\$1,000), or by both that
26 imprisonment and fine. The juvenile court, on forms prescribed
27 by the Department of Justice, shall notify the department of persons
28 subject to this subdivision. Notwithstanding any other law, the
29 forms required to be submitted to the department pursuant to this
30 subdivision may be used to determine eligibility to acquire a
31 firearm.

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

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

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

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, 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.

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

(3) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state 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 state the penalties for a violation of the prohibition. 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 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.

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

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

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

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

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

19 (i) Subject to available funding, the Attorney General, working
20 with the Judicial Council, the California Alliance Against Domestic
21 Violence, prosecutors, and law enforcement, probation, and parole
22 officers, shall develop a protocol for the implementation of the
23 provisions of this section. The protocol shall be designed to
24 facilitate the enforcement of restrictions on firearm ownership,
25 including provisions for giving notice to defendants who are
26 restricted, provisions for informing those defendants of the
27 procedures by which defendants shall dispose of firearms when
28 required to do so, provisions explaining how defendants shall
29 provide proof of the lawful disposition of firearms, and provisions
30 explaining how defendants may obtain possession of seized
31 firearms when legally permitted to do so pursuant to this section
32 or any other provision of law. The protocol shall be completed on
33 or before January 1, 2005.

34 SEC. 2. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

O