

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE JUNE 24, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1131

Introduced by Assembly Member Skinner

February 22, 2013

An act to amend Sections 8100, 8102, 8103, 8104, and 8105 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1131, as amended, Skinner. Firearms.

(1) Existing law prohibits a person from possessing a firearm or deadly weapon for a period of 6 months whenever he or she communicates to a licensed psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims. Under existing law, a violation of this provision is a crime. Existing law allows a person subject to these provisions to petition the superior court of his or her county for an order that he or she may possess a firearm, as provided.

This bill would increase the prohibitory period from 6 months to 5 years. By increasing the scope of an existing crime, this bill would impose a state-mandated local program. This bill would revise the provisions allowing a person to petition the court for an order that would allow him or her to possess a firearm to conform with other provisions of existing law.

(2) Existing law requires that if a person who has been detained or apprehended for examination of his or her mental condition, or who is

a mentally ill individual prohibited from possessing firearms, is found to own or possess a firearm, a law enforcement agency or peace officer is required to confiscate the firearm. Existing law requires the peace officer or law enforcement agency, upon confiscation of that firearm from a person who has been detained or apprehended for examination of his or her mental condition, to notify the person of the procedure for the return of the firearm.

Existing law prescribes specified requirements that govern the return of confiscated firearms in the custody or control of a court or law enforcement agency. Under these provisions of law, a person who wishes to have the firearm returned is required to submit a specified application and fee to the Department of Justice, and to meet specified criteria.

This bill would apply these requirements to persons who have been detained or apprehended for examination and mentally ill individuals who are prohibited from possessing firearms who have had their firearms confiscated. *The bill would provide additional procedures for the disposition of a firearm that is not returned to the person, as specified.* By creating new notification duties for peace officers and law enforcement agencies, this bill would impose a state-mandated local program.

(3) Existing law requires reports to be submitted immediately to the Department of Justice in connection with mentally ill individuals who are prohibited from possessing firearms and dangerous weapons.

This bill would ~~specify that, for these purposes, “immediately” means a period of time not exceeding~~ *revise those provisions to require a court to provide specified notices to the department as soon as possible, but not exceeding 2 court days, and would require submission of reports by specified facilities to the department within 24 hours.* The bill would require notices and reports submitted to the Department of Justice in connection with these provisions to be submitted in an electronic format, in a manner prescribed by the Department of Justice.

(4) Existing law prohibits a person from possessing a firearm or deadly weapon for a period of 6 months when the person has communicated a serious threat of physical violence against a reasonably identifiable victim or victims to a licensed psychotherapist. Existing law requires the licensed psychotherapist to immediately report the identity of the person to a local law enforcement agency, and requires the local law enforcement agency to immediately notify the Department of Justice.

This bill would instead require the licensed psychotherapist to make the report to local law enforcement within 24 hours, in a manner prescribed by the department. The bill would require the local law enforcement agency receiving the report to notify the department electronically within 24 hours, in a manner prescribed by the department.

(5) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 8100 of the Welfare and Institutions Code
2 is amended to read:

3 8100. (a) A person shall not have in his or her possession or
4 under his or her custody or control, or purchase or receive, or
5 attempt to purchase or receive, any firearms whatsoever or any
6 other deadly weapon, if on or after January 1, 1992, he or she has
7 been admitted to a facility and is receiving inpatient treatment and,
8 in the opinion of the attending health professional who is primarily
9 responsible for the patient’s treatment of a mental disorder, is a
10 danger to self or others, as specified by Section 5150, 5250, or
11 5300, even though the patient has consented to that treatment. A
12 person is not subject to the prohibition in this subdivision after he
13 or she is discharged from the facility.

14 (b) (1) A person shall not have in his or her possession or under
15 his or her custody or control, or purchase or receive, or attempt to
16 purchase or receive, any firearms whatsoever or any other deadly
17 weapon for a period of five years if, on or after January 1, 2014,
18 he or she communicates to a licensed psychotherapist, as defined
19 in subdivisions (a) to (e), inclusive, of Section 1010 of the Evidence
20 Code, a serious threat of physical violence against a reasonably
21 identifiable victim or victims. The five-year period shall commence

1 from the date that the licensed psychotherapist reports to the local
2 law enforcement agency the identity of the person making the
3 communication. The prohibition provided for in this subdivision
4 shall not apply unless the licensed psychotherapist notifies a local
5 law enforcement agency of the threat by that person. The person,
6 however, may own, possess, have custody or control over, or
7 receive or purchase any firearm if a superior court, pursuant to
8 paragraph (3) and upon petition of the person, has found, by a
9 preponderance of the evidence, that the person is likely to use
10 firearms or other deadly weapons in a safe and lawful manner.

11 (2) Upon receipt of the report from the local law enforcement
12 agency pursuant to subdivision (c) of Section 8105, the Department
13 of Justice shall notify by certified mail, return receipt requested,
14 a person subject to this subdivision of the following:

15 (A) That he or she is prohibited from possessing, having custody
16 or control over, receiving, or purchasing any firearm or other
17 deadly weapon for a period of five years commencing from the
18 date that the licensed psychotherapist reports to the local law
19 enforcement agency the identity of the person making the
20 communication. The notice shall state the date when the prohibition
21 commences and ends.

22 (B) That he or she may petition a court, as provided in this
23 subdivision, for an order permitting the person to own, possess,
24 control, receive, or purchase a firearm.

25 (3) (A) Any person who is subject to paragraph (1) may petition
26 the superior court of his or her county of residence for an order
27 that he or she may own, possess, have custody or control over,
28 receive, or purchase firearms. At the time the petition is filed, the
29 clerk of the court shall set a hearing date and notify the person,
30 the Department of Justice, and the district attorney. The people of
31 the State of California shall be the respondent in the proceeding
32 and shall be represented by the district attorney. Upon motion of
33 the district attorney, or upon its own motion, the superior court
34 may transfer the petition to the county in which the person resided
35 at the time of the statements, or the county in which the person
36 made the statements. Within seven days after receiving notice of
37 the petition, the Department of Justice shall file copies of the
38 reports described in Section 8105 with the superior court. The
39 reports shall be disclosed upon request to the person and to the
40 district attorney. The district attorney shall be entitled to a

1 continuance of the hearing to a date of not less than 14 days after
2 the district attorney is notified of the hearing date by the clerk of
3 the court. The court, upon motion of the petitioner establishing
4 that confidential information is likely to be discussed during the
5 hearing that would cause harm to the person, shall conduct the
6 hearing in camera with only the relevant parties present, unless
7 the court finds that the public interest would be better served by
8 conducting the hearing in public. Notwithstanding any other
9 provision of law, declarations, police reports, including criminal
10 history information, and any other material and relevant evidence
11 that is not excluded under Section 352 of the Evidence Code, shall
12 be admissible at the hearing under this paragraph.

13 (B) The people shall bear the burden of showing by a
14 preponderance of the evidence that the person would not be likely
15 to use firearms in a safe and lawful manner.

16 (C) If the court finds at the hearing that the people have not met
17 their burden as set forth in subparagraph (B), the court shall order
18 that the person shall not be subject to the five-year prohibition in
19 this section on the ownership, control, receipt, possession, or
20 purchase of firearms, and that person shall comply with the
21 procedure described in Chapter 2 (commencing with Section
22 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for
23 the return of any firearms. A copy of the order shall be submitted
24 to the Department of Justice. Upon receipt of the order, the
25 Department of Justice shall delete any reference to the prohibition
26 against firearms from the person's state mental health firearms
27 prohibition system information.

28 (D) If the district attorney declines or fails to go forward in the
29 hearing, the court shall order that the person shall not be subject
30 to the five-year prohibition required by this subdivision on the
31 ownership, control, receipt, possession, or purchase of firearms,
32 and that person shall comply with the procedure described in
33 Chapter 2 (commencing with Section 33850) of Division 11 of
34 Title 4 of Part 6 of the Penal Code for the return of any firearms.
35 A copy of the order shall be submitted to the Department of Justice.
36 Upon receipt of the order, the Department of Justice shall, within
37 15 days, delete any reference to the prohibition against firearms
38 from the person's state mental health firearms prohibition system
39 information.

1 (E) Nothing in this subdivision shall prohibit the use of reports
 2 filed pursuant to this section to determine the eligibility of a person
 3 to own, possess, control, receive, or purchase a firearm if the person
 4 is the subject of a criminal investigation, a part of which involves
 5 the ownership, possession, control, receipt, or purchase of a
 6 firearm.

7 (c) “Discharge,” for the purposes of this section, does not include
 8 a leave of absence from a facility.

9 (d) “Attending health care professional,” as used in this section,
 10 means the licensed health care professional primarily responsible
 11 for the person’s treatment who is qualified to make the decision
 12 that the person has a mental disorder and has probable cause to
 13 believe that the person is a danger to self or others.

14 (e) “Deadly weapon,” as used in this section and in Sections
 15 8101, 8102, and 8103, means any weapon, the possession or
 16 concealed carrying of which is prohibited by any provision listed
 17 in Section 16590 of the Penal Code.

18 (f) “Danger to self,” as used in subdivision (a), means a
 19 voluntary person who has made a serious threat of, or attempted,
 20 suicide with the use of a firearm or other deadly weapon.

21 (g) A violation of subdivision (a) of, or paragraph (1) of
 22 subdivision (b) of, this section shall be a public offense, punishable
 23 by imprisonment pursuant to subdivision (h) of Section 1170 of
 24 the Penal Code, or in a county jail for not more than one year, by
 25 a fine not exceeding one thousand dollars (\$1,000), or by both that
 26 imprisonment and fine.

27 (h) The prohibitions set forth in this section shall be in addition
 28 to those set forth in Section 8103.

29 (i) Any person admitted and receiving treatment prior to January
 30 1, 1992, shall be governed by this section, as amended by Chapter
 31 1090 of the Statutes of 1990, until discharged from the facility.

32 SEC. 2. Section 8102 of the Welfare and Institutions Code is
 33 amended to read:

34 8102. (a) Whenever a person, who has been detained or
 35 apprehended for examination of his or her mental condition or
 36 who is a person described in Section 8100 or 8103, is found to
 37 own, have in his or her possession or under his or her control, any
 38 firearm whatsoever, or any other deadly weapon, the firearm or
 39 other deadly weapon shall be confiscated by any law enforcement

1 agency or peace officer, who shall retain custody of the firearm
2 or other deadly weapon.

3 “Deadly weapon,” as used in this section, has the meaning
4 prescribed by Section 8100.

5 (b) (1) Upon confiscation of any firearm or other deadly weapon
6 from a person who has been detained or apprehended for
7 examination of his or her mental condition, the peace officer or
8 law enforcement agency *shall issue a receipt describing the deadly*
9 *weapon or any firearm and listing any serial number or other*
10 *identification on the firearm and shall notify the person of the*
11 *procedure for the return, sale, transfer, or destruction of any*
12 *firearm or other deadly weapon which has been confiscated. A*
13 *peace officer or law enforcement agency that provides the receipt*
14 *and notification described in Section 33800 of the Penal Code*
15 *satisfies the receipt and notice requirements.*

16 (2) If the person is released, the professional person in charge
17 of the facility, or his or her designee, shall notify the person of the
18 procedure for the return of any firearm or other deadly weapon
19 which may have been confiscated.

20 (3) Health facility personnel shall notify the confiscating law
21 enforcement agency upon release of the detained person, and shall
22 make a notation to the effect that the facility provided the required
23 notice to the person regarding the procedure to obtain return of
24 any confiscated firearm.

25 (4) For purposes of this subdivision, the procedure for the return,
26 *sale, or transfer* of confiscated firearms includes the procedures
27 described in this section and the procedures described in Chapter
28 2 (commencing with Section 33850) of Division 11 of Title 4 of
29 Part 6 of the Penal Code.

30 (5) *In lieu of destroying a firearm that has been confiscated*
31 *pursuant to this section that is a nuisance, unclaimed, abandoned,*
32 *or otherwise subject to destruction, a law enforcement agency may*
33 *retain or transfer the firearm as provided in Section 34005 of the*
34 *Penal Code.*

35 (c) Upon the release of a person as described in subdivision (b),
36 the confiscating law enforcement agency shall have 30 days to
37 initiate a petition in the superior court for a hearing to determine
38 whether the return of a firearm or other deadly weapon would be
39 likely to result in endangering the person or others, and to send a
40 notice advising the person of his or her right to a hearing on this

1 issue. The law enforcement agency may make an ex parte
2 application stating good cause for an order extending the time to
3 file a petition. Including any extension of time granted in response
4 to an ex parte request, a petition shall be filed within 60 days of
5 the release of the person from a health facility.

6 (d) If the law enforcement agency does not initiate proceedings
7 within the 30-day period, or the period of time authorized by the
8 court in an ex parte order issued pursuant to subdivision (c), it
9 shall make the weapon available for return upon compliance with
10 all applicable requirements, including the requirements specified
11 in Chapter 2 (commencing with Section 33850) of Division 11 of
12 Title 4 of Part 6 of the Penal Code.

13 (e) The law enforcement agency shall inform the person that he
14 or she has 30 days to respond to the court clerk to confirm his or
15 her desire for a hearing, and that the failure to respond will result
16 in a default order forfeiting the confiscated firearm or weapon. For
17 a confiscated firearm, the period of forfeiture is 180 days pursuant
18 to Section 33875 of the Penal Code, unless the person contacts the
19 law enforcement agency to facilitate the sale or transfer of the
20 firearm to a licensed dealer pursuant to Section 33870 of the Penal
21 Code. For the purpose of this subdivision, the person's last known
22 address shall be the address provided to the law enforcement officer
23 by the person at the time of the person's detention or apprehension.

24 (f) If the person responds and requests a hearing, the court clerk
25 shall set a hearing, no later than 30 days from receipt of the request.
26 The court clerk shall notify the person and the district attorney of
27 the date, time, and place of the hearing.

28 (g) If the person does not respond within 30 days of the notice,
29 the law enforcement agency may file a petition for order of default,
30 allowing the law enforcement agency to destroy the firearm in 180
31 days from the date the court enters default unless the person
32 contacts the law enforcement agency to facilitate the sale or transfer
33 of the firearm to a licensed dealer pursuant to Section 33870 of
34 the Penal Code.

35 (h) *If, after a hearing, the court determines that the return of*
36 *the firearm or other deadly weapon would likely endanger the*
37 *person or others, the law enforcement agency may destroy the*
38 *firearm within 180 days from the date that the court makes that*
39 *determination, unless the person contacts the law enforcement*

1 *agency to facilitate the sale or transfer of the firearm to a licensed*
2 *dealer pursuant to Section 33870 of the Penal Code.*

3 SEC. 3. Section 8103 of the Welfare and Institutions Code is
4 amended to read:

5 8103. (a) (1) No person who after October 1, 1955, has been
6 adjudicated by a court of any state to be a danger to others as a
7 result of a mental disorder or mental illness, or who has been
8 adjudicated to be a mentally disordered sex offender, shall purchase
9 or receive, or attempt to purchase or receive, or have in his or her
10 possession, custody, or control any firearm or any other deadly
11 weapon unless there has been issued to the person a certificate by
12 the court of adjudication upon release from treatment or at a later
13 date stating that the person may possess a firearm or any other
14 deadly weapon without endangering others, and the person has
15 not, subsequent to the issuance of the certificate, again been
16 adjudicated by a court to be a danger to others as a result of a
17 mental disorder or mental illness.

18 (2) The court shall ~~immediately~~ notify the Department of Justice
19 of the court order finding the individual to be a person described
20 in paragraph (1) *as soon as possible, but not later than two court*
21 *days after issuing the order.* The court shall also ~~immediately~~
22 notify the Department of Justice of any certificate issued as
23 described in paragraph (1) *as soon as possible, but not later than*
24 *two court days after issuing the certificate.*

25 (b) (1) No person who has been found, pursuant to Section
26 1026 of the Penal Code or the law of any other state or the United
27 States, not guilty by reason of insanity of murder, mayhem, a
28 violation of Section 207, 209, or 209.5 of the Penal Code in which
29 the victim suffers intentionally inflicted great bodily injury,
30 carjacking or robbery in which the victim suffers great bodily
31 injury, a violation of Section 451 or 452 of the Penal Code
32 involving a trailer coach, as defined in Section 635 of the Vehicle
33 Code, or any dwelling house, a violation of paragraph (1) or (2)
34 of subdivision (a) of Section 262 or paragraph (2) or (3) of
35 subdivision (a) of Section 261 of the Penal Code, a violation of
36 Section 459 of the Penal Code in the first degree, assault with
37 intent to commit murder, a violation of Section 220 of the Penal
38 Code in which the victim suffers great bodily injury, a violation
39 of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the
40 Penal Code, or of a felony involving death, great bodily injury, or

1 an act which poses a serious threat of bodily harm to another
2 person, or a violation of the law of any other state or the United
3 States that includes all the elements of any of the above felonies
4 as defined under California law, shall purchase or receive, or
5 attempt to purchase or receive, or have in his or her possession or
6 under his or her custody or control any firearm or any other deadly
7 weapon.

8 (2) The court shall ~~immediately~~ notify the Department of Justice
9 of the court order finding the person to be a person described in
10 paragraph (1) *as soon as possible, but not later than two court*
11 *days after issuing the order.*

12 (c) (1) No person who has been found, pursuant to Section 1026
13 of the Penal Code or the law of any other state or the United States,
14 not guilty by reason of insanity of any crime other than those
15 described in subdivision (b) shall purchase or receive, or attempt
16 to purchase or receive, or shall have in his or her possession,
17 custody, or control any firearm or any other deadly weapon unless
18 the court of commitment has found the person to have recovered
19 sanity, pursuant to Section 1026.2 of the Penal Code or the law of
20 any other state or the United States.

21 (2) The court shall ~~immediately~~ notify the Department of Justice
22 of the court order finding the person to be a person described in
23 paragraph (1) *as soon as possible, but not later than two court*
24 *days after issuing the order.* The court shall also notify the
25 Department of Justice when it finds that the person has recovered
26 his or her sanity *as soon as possible, but not later than two court*
27 *days after making the finding.*

28 (d) (1) No person found by a court to be mentally incompetent
29 to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code
30 or the law of any other state or the United States, shall purchase
31 or receive, or attempt to purchase or receive, or shall have in his
32 or her possession, custody, or control, any firearm or any other
33 deadly weapon, unless there has been a finding with respect to the
34 person of restoration to competence to stand trial by the committing
35 court, pursuant to Section 1372 of the Penal Code or the law of
36 any other state or the United States.

37 (2) The court shall ~~immediately~~ notify the Department of Justice
38 of the court order finding the person to be mentally incompetent
39 as described in paragraph (1) *as soon as possible, but not later*
40 *than two court days after issuing the order.* The court shall also

1 notify the Department of Justice when it finds that the person has
2 recovered his or her competence *as soon as possible, but not later*
3 *than two court days after making the finding.*

4 (e) (1) No person who has been placed under conservatorship
5 by a court, pursuant to Section 5350 or the law of any other state
6 or the United States, because the person is gravely disabled as a
7 result of a mental disorder or impairment by chronic alcoholism,
8 shall purchase or receive, or attempt to purchase or receive, or
9 shall have in his or her possession, custody, or control, any firearm
10 or any other deadly weapon while under the conservatorship if, at
11 the time the conservatorship was ordered or thereafter, the court
12 which imposed the conservatorship found that possession of a
13 firearm or any other deadly weapon by the person would present
14 a danger to the safety of the person or to others. Upon placing any
15 person under conservatorship, and prohibiting firearm or any other
16 deadly weapon possession by the person, the court shall notify the
17 person of this prohibition.

18 (2) The court shall ~~immediately~~ notify the Department of Justice
19 of the court order placing the person under conservatorship and
20 prohibiting firearm or any other deadly weapon possession by the
21 person as described in paragraph (1) *as soon as possible, but not*
22 *later than two court days after placing the person under*
23 *conservatorship.* The notice shall include the date the
24 conservatorship was imposed and the date the conservatorship is
25 to be terminated. If the conservatorship is subsequently terminated
26 before the date listed in the notice to the Department of Justice or
27 the court subsequently finds that possession of a firearm or any
28 other deadly weapon by the person would no longer present a
29 danger to the safety of the person or others, the court shall
30 ~~immediately~~ notify the Department of Justice *as soon as possible,*
31 *but not later than two court days after terminating the*
32 *conservatorship.*

33 (3) All information provided to the Department of Justice
34 pursuant to paragraph (2) shall be kept confidential, separate, and
35 apart from all other records maintained by the Department of
36 Justice, and shall be used only to determine eligibility to purchase
37 or possess firearms or other deadly weapons. Any person who
38 knowingly furnishes that information for any other purpose is
39 guilty of a misdemeanor. All the information concerning any person
40 shall be destroyed upon receipt by the Department of Justice of

1 notice of the termination of conservatorship as to that person
2 pursuant to paragraph (2).

3 (f) (1) No person who has been (A) taken into custody as
4 provided in Section 5150 because that person is a danger to himself,
5 herself, or to others, (B) assessed within the meaning of Section
6 5151, and (C) admitted to a designated facility within the meaning
7 of Sections 5151 and 5152 because that person is a danger to
8 himself, herself, or others, shall own, possess, control, receive, or
9 purchase, or attempt to own, possess, control, receive, or purchase
10 any firearm for a period of five years after the person is released
11 from the facility. A person described in the preceding sentence,
12 however, may own, possess, control, receive, or purchase, or
13 attempt to own, possess, control, receive, or purchase any firearm
14 if the superior court has, pursuant to paragraph (5), found that the
15 people of the State of California have not met their burden pursuant
16 to paragraph (6).

17 (2) (A) For each person subject to this subdivision, the facility
18 shall ~~immediately, on the date,~~ *within 24 hours of the time of*
19 admission, submit a report to the Department of Justice, on a form
20 prescribed by the Department of Justice, containing information
21 that includes, but is not limited to, the identity of the person and
22 the legal grounds upon which the person was admitted to the
23 facility.

24 Any report submitted pursuant to this paragraph shall be
25 confidential, except for purposes of the court proceedings described
26 in this subdivision and for determining the eligibility of the person
27 to own, possess, control, receive, or purchase a firearm.

28 (B) Commencing July 1, 2012, facilities shall submit reports
29 pursuant to this paragraph exclusively by electronic means, in a
30 manner prescribed by the Department of Justice.

31 (3) Prior to, or concurrent with, the discharge, the facility shall
32 inform a person subject to this subdivision that he or she is
33 prohibited from owning, possessing, controlling, receiving, or
34 purchasing any firearm for a period of five years. Simultaneously,
35 the facility shall inform the person that he or she may request a
36 hearing from a court, as provided in this subdivision, for an order
37 permitting the person to own, possess, control, receive, or purchase
38 a firearm. The facility shall provide the person with a form for a
39 request for a hearing. The Department of Justice shall prescribe
40 the form. Where the person requests a hearing at the time of

1 discharge, the facility shall forward the form to the superior court
2 unless the person states that he or she will submit the form to the
3 superior court.

4 (4) The Department of Justice shall provide the form upon
5 request to any person described in paragraph (1). The Department
6 of Justice shall also provide the form to the superior court in each
7 county. A person described in paragraph (1) may make a single
8 request for a hearing at any time during the five-year period. The
9 request for hearing shall be made on the form prescribed by the
10 department or in a document that includes equivalent language.

11 (5) Any person who is subject to paragraph (1) who has
12 requested a hearing from the superior court of his or her county
13 of residence for an order that he or she may own, possess, control,
14 receive, or purchase firearms shall be given a hearing. The clerk
15 of the court shall set a hearing date and notify the person, the
16 Department of Justice, and the district attorney. The people of the
17 State of California shall be the plaintiff in the proceeding and shall
18 be represented by the district attorney. Upon motion of the district
19 attorney, or on its own motion, the superior court may transfer the
20 hearing to the county in which the person resided at the time of
21 his or her detention, the county in which the person was detained,
22 or the county in which the person was evaluated or treated. Within
23 seven days after the request for a hearing, the Department of Justice
24 shall file copies of the reports described in this section with the
25 superior court. The reports shall be disclosed upon request to the
26 person and to the district attorney. The court shall set the hearing
27 within 30 days of receipt of the request for a hearing. Upon
28 showing good cause, the district attorney shall be entitled to a
29 continuance not to exceed 14 days after the district attorney was
30 notified of the hearing date by the clerk of the court. If additional
31 continuances are granted, the total length of time for continuances
32 shall not exceed 60 days. The district attorney may notify the
33 county mental health director of the hearing who shall provide
34 information about the detention of the person that may be relevant
35 to the court and shall file that information with the superior court.
36 That information shall be disclosed to the person and to the district
37 attorney. The court, upon motion of the person subject to paragraph
38 (1) establishing that confidential information is likely to be
39 discussed during the hearing that would cause harm to the person,
40 shall conduct the hearing in camera with only the relevant parties

1 present, unless the court finds that the public interest would be
2 better served by conducting the hearing in public. Notwithstanding
3 any other law, declarations, police reports, including criminal
4 history information, and any other material and relevant evidence
5 that is not excluded under Section 352 of the Evidence Code shall
6 be admissible at the hearing under this section.

7 (6) The people shall bear the burden of showing by a
8 preponderance of the evidence that the person would not be likely
9 to use firearms in a safe and lawful manner.

10 (7) If the court finds at the hearing set forth in paragraph (5)
11 that the people have not met their burden as set forth in paragraph
12 (6), the court shall order that the person shall not be subject to the
13 five-year prohibition in this section on the ownership, control,
14 receipt, possession, or purchase of firearms, and that person shall
15 comply with the procedure described in Chapter 2 (commencing
16 with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal
17 Code for the return of any firearms. A copy of the order shall be
18 submitted to the Department of Justice. Upon receipt of the order,
19 the Department of Justice shall delete any reference to the
20 prohibition against firearms from the person's state mental health
21 firearms prohibition system information.

22 (8) Where the district attorney declines or fails to go forward
23 in the hearing, the court shall order that the person shall not be
24 subject to the five-year prohibition required by this subdivision
25 on the ownership, control, receipt, possession, or purchase of
26 firearms. A copy of the order shall be submitted to the Department
27 of Justice. Upon receipt of the order, the Department of Justice
28 shall, within 15 days, delete any reference to the prohibition against
29 firearms from the person's state mental health firearms prohibition
30 system information, and that person shall comply with the
31 procedure described in Chapter 2 (commencing with Section
32 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for
33 the return of any firearms.

34 (9) Nothing in this subdivision shall prohibit the use of reports
35 filed pursuant to this section to determine the eligibility of persons
36 to own, possess, control, receive, or purchase a firearm if the person
37 is the subject of a criminal investigation, a part of which involves
38 the ownership, possession, control, receipt, or purchase of a
39 firearm.

1 (g) (1) No person who has been certified for intensive treatment
2 under Section 5250, 5260, or 5270.15 shall own, possess, control,
3 receive, or purchase, or attempt to own, possess, control, receive,
4 or purchase, any firearm for a period of five years.

5 Any person who meets the criteria contained in subdivision (e)
6 or (f) who is released from intensive treatment shall nevertheless,
7 if applicable, remain subject to the prohibition contained in
8 subdivision (e) or (f).

9 (2) (A) For each person certified for intensive treatment under
10 paragraph (1), the facility shall ~~immediately~~, *within 24 hours of*
11 *the certification*, submit a report to the Department of Justice, on
12 a form prescribed by the department, containing information
13 regarding the person, including, but not limited to, the legal identity
14 of the person and the legal grounds upon which the person was
15 certified. Any report submitted pursuant to this paragraph shall
16 only be used for the purposes specified in paragraph (2) of
17 subdivision (f).

18 (B) Commencing July 1, 2012, facilities shall submit reports
19 pursuant to this paragraph exclusively by electronic means, in a
20 manner prescribed by the Department of Justice.

21 (3) Prior to, or concurrent with, the discharge of each person
22 certified for intensive treatment under paragraph (1), the facility
23 shall inform the person of that information specified in paragraph
24 (3) of subdivision (f).

25 (4) Any person who is subject to paragraph (1) may petition the
26 superior court of his or her county of residence for an order that
27 he or she may own, possess, control, receive, or purchase firearms.
28 At the time the petition is filed, the clerk of the court shall set a
29 hearing date and notify the person, the Department of Justice, and
30 the district attorney. The people of the State of California shall be
31 the respondent in the proceeding and shall be represented by the
32 district attorney. Upon motion of the district attorney, or on its
33 own motion, the superior court may transfer the petition to the
34 county in which the person resided at the time of his or her
35 detention, the county in which the person was detained, or the
36 county in which the person was evaluated or treated. Within seven
37 days after receiving notice of the petition, the Department of Justice
38 shall file copies of the reports described in this section with the
39 superior court. The reports shall be disclosed upon request to the
40 person and to the district attorney. The district attorney shall be

1 entitled to a continuance of the hearing to a date of not less than
2 14 days after the district attorney was notified of the hearing date
3 by the clerk of the court. The district attorney may notify the county
4 mental health director of the petition, and the county mental health
5 director shall provide information about the detention of the person
6 that may be relevant to the court and shall file that information
7 with the superior court. That information shall be disclosed to the
8 person and to the district attorney. The court, upon motion of the
9 person subject to paragraph (1) establishing that confidential
10 information is likely to be discussed during the hearing that would
11 cause harm to the person, shall conduct the hearing in camera with
12 only the relevant parties present, unless the court finds that the
13 public interest would be better served by conducting the hearing
14 in public. Notwithstanding any other provision of law, any
15 declaration, police reports, including criminal history information,
16 and any other material and relevant evidence that is not excluded
17 under Section 352 of the Evidence Code, shall be admissible at
18 the hearing under this section. If the court finds by a preponderance
19 of the evidence that the person would be likely to use firearms in
20 a safe and lawful manner, the court may order that the person may
21 own, control, receive, possess, or purchase firearms, and that person
22 shall comply with the procedure described in Chapter 2
23 (commencing with Section 33850) of Division 11 of Title 4 of Part
24 6 of the Penal Code for the return of any firearms. A copy of the
25 order shall be submitted to the Department of Justice. Upon receipt
26 of the order, the Department of Justice shall delete any reference
27 to the prohibition against firearms from the person's state mental
28 health firearms prohibition system information.

29 (h) (1) For all persons identified in subdivisions (f) and (g),
30 facilities shall report to the Department of Justice as specified in
31 those subdivisions, except facilities shall not report persons under
32 subdivision (g) if the same persons previously have been reported
33 under subdivision (f).

34 (2) Additionally, all facilities shall report to the Department of
35 Justice upon the discharge of persons from whom reports have
36 been submitted pursuant to subdivision (f) or (g). However, a report
37 shall not be filed for persons who are discharged within 31 days
38 after the date of admission.

39 (i) Every person who owns or possesses or has under his or her
40 custody or control, or purchases or receives, or attempts to purchase

1 or receive, any firearm or any other deadly weapon in violation of
2 this section shall be punished by imprisonment pursuant to
3 subdivision (h) of Section 1170 of the Penal Code or in a county
4 jail for not more than one year.

5 (j) “Deadly weapon,” as used in this section, has the meaning
6 prescribed by Section 8100.

7 ~~(k) For purposes of this section, “immediately” means a period~~
8 ~~of time not exceeding 24 hours.~~

9 ~~(t)~~

10 (k) Any notice or report required to be submitted to the
11 Department of Justice pursuant to this section shall be submitted
12 in an electronic format, in a manner prescribed by the Department
13 of Justice.

14 SEC. 4. Section 8104 of the Welfare and Institutions Code is
15 amended to read:

16 8104. The State Department of State Hospitals shall maintain
17 in a convenient central location and shall make available to the
18 Department of Justice those records that the State Department of
19 State Hospitals has in its possession that are necessary to identify
20 persons who come within Section 8100 or 8103. Upon request of
21 the Department of Justice, the State Department of State Hospitals
22 shall make these records available to the Department of Justice in
23 electronic format within 24 hours of receiving the request. The
24 Department of Justice shall make these requests only with respect
25 to its duties with regard to applications for permits for, or to carry,
26 or the possession, purchase, or transfer of, explosives as defined
27 in Section 12000 of the Health and Safety Code, devices defined
28 in Section 16250, 16530, or 16640 of the Penal Code, in
29 subdivisions (a) to (d), inclusive, of Section 16520 of the Penal
30 Code, or in subdivision (a) of Section 16840 of the Penal Code,
31 machineguns as defined in Section 16880 of the Penal Code,
32 short-barreled shotguns or short-barreled rifles as defined in
33 Sections 17170 and 17180 of the Penal Code, assault weapons as
34 defined in Section 30510 of the Penal Code, and destructive devices
35 as defined in Section 16460 of the Penal Code, or to determine the
36 eligibility of a person to acquire, carry, or possess a firearm,
37 explosive, or destructive device by a person who is subject to a
38 criminal investigation, a part of which involves the acquisition,
39 carrying, or possession of a firearm by that person. These records
40 shall not be furnished or made available to any person unless the

1 department determines that disclosure of any information in the
2 records is necessary to carry out its duties with respect to
3 applications for permits for, or to carry, or the possession, purchase,
4 or transfer of, explosives, destructive devices, devices as defined
5 in Section 16250, 16530, or 16640 of the Penal Code, in
6 subdivisions (a) to (d), inclusive, of Section 16520 of the Penal
7 Code, or in subdivision (a) of Section 16840 of the Penal Code,
8 short-barreled shotguns, short-barreled rifles, assault weapons,
9 and machineguns, or to determine the eligibility of a person to
10 acquire, carry, or possess a firearm, explosive, or destructive device
11 by a person who is subject to a criminal investigation, a part of
12 which involves the acquisition, carrying, or possession of a firearm
13 by that person.

14 SEC. 5. Section 8105 of the Welfare and Institutions Code is
15 amended to read:

16 8105. (a) The Department of Justice shall request each public
17 and private mental hospital, sanitarium, and institution to submit
18 to the department that information that the department deems
19 necessary to identify those persons who are within subdivision (a)
20 of Section 8100, in order to carry out its duties in relation to
21 firearms, destructive devices, and explosives.

22 (b) Upon request of the Department of Justice pursuant to
23 subdivision (a), each public and private mental hospital, sanitarium,
24 and institution shall submit to the department that information
25 which the department deems necessary to identify those persons
26 who are within subdivision (a) of Section 8100, in order to carry
27 out its duties in relation to firearms, destructive devices, and
28 explosives.

29 (c) A licensed psychotherapist shall report to a local law
30 enforcement agency, within 24 hours, in a manner prescribed by
31 the Department of Justice, the identity of a person subject to
32 subdivision (b) of Section 8100. Upon receipt of the report, the
33 local law enforcement agency, on a form prescribed by the
34 Department of Justice, shall notify the department electronically,
35 within 24 hours, in a manner prescribed by the department, of the
36 person who is subject to subdivision (b) of Section 8100.

37 (d) All information provided to the Department of Justice
38 pursuant to this section shall be kept confidential, separate, and
39 apart from all other records maintained by the department. The

1 information provided to the Department of Justice pursuant to this
2 section shall be used only for any of the following purposes:

3 (1) By the department to determine eligibility of a person to
4 acquire, carry, or possess firearms, destructive devices, or
5 explosives.

6 (2) For the purposes of the court proceedings described in
7 subdivision (b) of Section 8100, to determine the eligibility of the
8 person who is bringing the petition pursuant to paragraph (3) of
9 subdivision (b) of Section 8100.

10 (3) To determine the eligibility of a person to acquire, carry, or
11 possess firearms, destructive devices, or explosives who is the
12 subject of a criminal investigation, if a part of the criminal
13 investigation involves the acquisition, carrying, or possession of
14 firearms, explosives, or destructive devices by that person.

15 (e) Reports shall not be required or requested under this section
16 where the same person has been previously reported pursuant to
17 Section 8103 or 8104.

18 SEC. 6. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution for certain
20 costs that may be incurred by a local agency or school district
21 because, in that regard, this act creates a new crime or infraction,
22 eliminates a crime or infraction, or changes the penalty for a crime
23 or infraction, within the meaning of Section 17556 of the
24 Government Code, or changes the definition of a crime within the
25 meaning of Section 6 of Article XIII B of the California
26 Constitution.

27 However, if the Commission on State Mandates determines that
28 this act contains other costs mandated by the state, reimbursement
29 to local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.