

ASSEMBLY BILL

No. 1591

**Introduced by Assembly Members Achadjian and Gray
(Principal coauthor: Assembly Member Skinner)**

February 3, 2014

An act to amend Section 8103 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1591, as introduced, Achadjian. Firearms: prohibited persons: notification.

Existing law requires a court to notify the Department of Justice of specified court actions that would result in an individual being prohibited from possessing firearms and deadly weapons or result in the individual no longer being subject to that prohibition. Under existing law, notice to the department is required when, among other instances, a person has been found mentally incompetent to stand trial, a person has been found not guilty of specified crimes by reason of insanity, or a person has been placed under conservatorship and prohibited from possessing firearms or deadly weapons. Existing law requires the court to notify the department as soon as possible, but not later than 2 court days after taking the relevant action. The court is required to submit these notices in an electronic format, as prescribed by the department.

This bill would require a court to provide those electronic notices to the department as soon as possible, but not later than 24 hours after taking the relevant action.

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

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

1 SECTION 1. Section 8103 of the Welfare and Institutions Code
2 is amended to read:

3 8103. (a) (1) No person who after October 1, 1955, has been
4 adjudicated by a court of any state to be a danger to others as a
5 result of a mental disorder or mental illness, or who has been
6 adjudicated to be a mentally disordered sex offender, shall purchase
7 or receive, or attempt to purchase or receive, or have in his or her
8 possession, custody, or control any firearm or any other deadly
9 weapon unless there has been issued to the person a certificate by
10 the court of adjudication upon release from treatment or at a later
11 date stating that the person may possess a firearm or any other
12 deadly weapon without endangering others, and the person has
13 not, subsequent to the issuance of the certificate, again been
14 adjudicated by a court to be a danger to others as a result of a
15 mental disorder or mental illness.

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

23 (b) (1) No person who has been found, pursuant to Section
24 1026 of the Penal Code or the law of any other state or the United
25 States, not guilty by reason of insanity of murder, mayhem, a
26 violation of Section 207, 209, or 209.5 of the Penal Code in which
27 the victim suffers intentionally inflicted great bodily injury,
28 carjacking or robbery in which the victim suffers great bodily
29 injury, a violation of Section 451 or 452 of the Penal Code
30 involving a trailer coach, as defined in Section 635 of the Vehicle
31 Code, or any dwelling house, a violation of paragraph (1) or (2)
32 of subdivision (a) of Section 262 or paragraph (2) or (3) of
33 subdivision (a) of Section 261 of the Penal Code, a violation of
34 Section 459 of the Penal Code in the first degree, assault with
35 intent to commit murder, a violation of Section 220 of the Penal
36 Code in which the victim suffers great bodily injury, a violation
37 of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the
38 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 notify the Department of Justice of the court
9 order finding the person to be a person described in paragraph (1)
10 as soon as possible, but not later than ~~two court days~~ *24 hours* after
11 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 notify the Department of Justice of the court
22 order finding the person to be a person described in paragraph (1)
23 as soon as possible, but not later than ~~two court days~~ *24 hours* after
24 issuing the order. The court shall also notify the Department of
25 Justice when it finds that the person has recovered his or her sanity
26 as soon as possible, but not later than ~~two court days~~ *24 hours* after
27 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 notify the Department of Justice of the court
38 order finding the person to be mentally incompetent as described
39 in paragraph (1) as soon as possible, but not later than ~~two court~~
40 ~~days~~ *24 hours* after issuing the order. The court shall also notify

1 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~~ *24 hours* 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 notify the Department of Justice of the court
19 order placing the person under conservatorship and prohibiting
20 firearm or any other deadly weapon possession by the person as
21 described in paragraph (1) as soon as possible, but not later than
22 ~~two court days~~ *24 hours* 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 notify
30 the Department of Justice as soon as possible, but not later than
31 ~~two court days~~ *24 hours* after terminating the conservatorship.

32 (3) All information provided to the Department of Justice
33 pursuant to paragraph (2) shall be kept confidential, separate, and
34 apart from all other records maintained by the Department of
35 Justice, and shall be used only to determine eligibility to purchase
36 or possess firearms or other deadly weapons. Any person who
37 knowingly furnishes that information for any other purpose is
38 guilty of a misdemeanor. All the information concerning any person
39 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, within 24 hours of the time of admission, submit a report to
19 the Department of Justice, on a form prescribed by the Department
20 of Justice, containing information that includes, but is not limited
21 to, the identity of the person and the legal grounds upon which the
22 person was admitted to the facility.

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

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

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

1 unless the person states that he or she will submit the form to the
2 superior court.

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

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

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

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

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

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

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

39 (g) (1) No person who has been certified for intensive treatment
40 under Section 5250, 5260, or 5270.15 shall own, possess, control,

1 receive, or purchase, or attempt to own, possess, control, receive,
2 or purchase, any firearm for a period of five years.

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

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

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

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

22 (4) Any person who is subject to paragraph (1) may petition the
23 superior court of his or her county of residence for an order that
24 he or she may own, possess, control, receive, or purchase firearms.
25 At the time the petition is filed, the clerk of the court shall set a
26 hearing date and notify the person, the Department of Justice, and
27 the district attorney. The people of the State of California shall be
28 the respondent in the proceeding and shall be represented by the
29 district attorney. Upon motion of the district attorney, or on its
30 own motion, the superior court may transfer the petition to the
31 county in which the person resided at the time of his or her
32 detention, the county in which the person was detained, or the
33 county in which the person was evaluated or treated. Within seven
34 days after receiving notice of the petition, the Department of Justice
35 shall file copies of the reports described in this section with the
36 superior court. The reports shall be disclosed upon request to the
37 person and to the district attorney. The district attorney shall be
38 entitled to a continuance of the hearing to a date of not less than
39 14 days after the district attorney was notified of the hearing date
40 by the clerk of the court. The district attorney may notify the county

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

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

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

36 (i) Every person who owns or possesses or has under his or her
37 custody or control, or purchases or receives, or attempts to purchase
38 or receive, any firearm or any other deadly weapon in violation of
39 this section shall be punished by imprisonment pursuant to

1 subdivision (h) of Section 1170 of the Penal Code or in a county
2 jail for not more than one year.

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

5 (k) Any notice or report required to be submitted to the
6 Department of Justice pursuant to this section shall be submitted
7 in an electronic format, in a manner prescribed by the Department
8 of Justice.

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