

Introduced by Senator GainesJanuary 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 127, as introduced, Gaines. Firearms: mentally disordered persons: possession.

Existing law prohibits a person who has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, after October 1, 1955, from receiving or possessing any firearm or any other deadly weapon unless the person has been issued a certificate by the court of adjudication stating that the person may possess a firearm or any other deadly weapon. A person who violates or attempts to violate this provision is guilty of a felony or a misdemeanor.

This bill would prohibit persons adjudicated to be a danger pursuant to the above provisions after January 1, 2014, from receiving or possessing any firearm or any other deadly weapon and remove the authority of a court to issue a certificate for that person to possess a firearm or any other deadly weapon. Because a violation of above prohibition would be a 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 8103 of the Welfare and Institutions Code
 2 is amended to read:
 3 8103. (a) (1) ~~No~~ *Except as provided in paragraph (2), no*
 4 *person who, after October 1, 1955, has been adjudicated by a court*
 5 *of any state to be a danger to others as a result of a mental disorder*
 6 *or mental illness, or who has been adjudicated to be a mentally*
 7 *disordered sex offender, shall purchase or receive, or attempt to*
 8 *purchase or receive, or have in his or her possession, custody, or*
 9 *control any firearm or any other deadly weapon unless there has*
 10 *been issued to the person a certificate by the court of adjudication*
 11 *upon release from treatment or at a later date stating that the person*
 12 *may possess a firearm or any other deadly weapon without*
 13 *endangering others, and the person has not, subsequent to the*
 14 *issuance of the certificate, again been adjudicated by a court to be*
 15 *a danger to others as a result of a mental disorder or mental illness.*
 16 *(2) No person who, after January 1, 2014, has been adjudicated*
 17 *by a court of any state to be a danger to others as a result of a*
 18 *mental disorder or mental illness, or who has been adjudicated to*
 19 *be a mentally disordered sex offender, shall purchase or receive,*
 20 *or attempt to purchase or receive, or have in his or her possession,*
 21 *custody, or control, any firearm or any other deadly weapon.*
 22 ~~(2)~~
 23 (3) The court shall immediately notify the Department of Justice
 24 of the court order finding the individual to be a person described
 25 in paragraph (1) *or* (2). The court shall also notify the Department
 26 of Justice of any certificate issued as described in paragraph (1).
 27 (b) (1) No person who has been found, pursuant to Section
 28 1026 of the Penal Code or the law of any other state or the United
 29 States, not guilty by reason of insanity of murder, mayhem, a
 30 violation of Section 207, 209, or 209.5 of the Penal Code in which
 31 the victim suffers intentionally inflicted great bodily injury,
 32 carjacking or robbery in which the victim suffers great bodily
 33 injury, a violation of Section 451 or 452 of the Penal Code
 34 involving a trailer coach, as defined in Section 635 of the Vehicle
 35 Code, or any dwelling house, a violation of paragraph (1) or (2)

1 of subdivision (a) of Section 262 or paragraph (2) or (3) of
2 subdivision (a) of Section 261 of the Penal Code, a violation of
3 Section 459 of the Penal Code in the first degree, assault with
4 intent to commit murder, a violation of Section 220 of the Penal
5 Code in which the victim suffers great bodily injury, a violation
6 of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the
7 Penal Code, or of a felony involving death, great bodily injury, or
8 an act which poses a serious threat of bodily harm to another
9 person, or a violation of the law of any other state or the United
10 States that includes all the elements of any of the above felonies
11 as defined under California law, shall purchase or receive, or
12 attempt to purchase or receive, or have in his or her possession or
13 under his or her custody or control any firearm or any other deadly
14 weapon.

15 (2) The court shall immediately notify the Department of Justice
16 of the court order finding the person to be a person described in
17 paragraph (1).

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

27 (2) The court shall immediately notify the Department of Justice
28 of the court order finding the person to be a person described in
29 paragraph (1). The court shall also notify the Department of Justice
30 when it finds that the person has recovered his or her sanity.

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

1 (2) The court shall immediately notify the Department of Justice
2 of the court order finding the person to be mentally incompetent
3 as described in paragraph (1). The court shall also notify the
4 Department of Justice when it finds that the person has recovered
5 his or her competence.

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

20 (2) The court shall immediately notify the Department of Justice
21 of the court order placing the person under conservatorship and
22 prohibiting firearm or any other deadly weapon possession by the
23 person as described in paragraph (1). The notice shall include the
24 date the conservatorship was imposed and the date the
25 conservatorship is to be terminated. If the conservatorship is
26 subsequently terminated before the date listed in the notice to the
27 Department of Justice or the court subsequently finds that
28 possession of a firearm or any other deadly weapon by the person
29 would no longer present a danger to the safety of the person or
30 others, the court shall immediately notify the Department of Justice.

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

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

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

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

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

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

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

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

1 history information, and any other material and relevant evidence
2 that is not excluded under Section 352 of the Evidence Code shall
3 be admissible at the hearing under this section.

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

7 (7) If the court finds at the hearing set forth in paragraph (5)
8 that the people have not met their burden as set forth in paragraph
9 (6), the court shall order that the person shall not be subject to the
10 five-year prohibition in this section on the ownership, control,
11 receipt, possession, or purchase of firearms. A copy of the order
12 shall be submitted to the Department of Justice. Upon receipt of
13 the order, the Department of Justice shall delete any reference to
14 the prohibition against firearms from the person's state mental
15 health firearms prohibition system information.

16 (8) Where the district attorney declines or fails to go forward
17 in the hearing, the court shall order that the person shall not be
18 subject to the five-year prohibition required by this subdivision
19 on the ownership, control, receipt, possession, or purchase of
20 firearms. A copy of the order shall be submitted to the Department
21 of Justice. Upon receipt of the order, the Department of Justice
22 shall, within 15 days, delete any reference to the prohibition against
23 firearms from the person's state mental health firearms prohibition
24 system information.

25 (9) Nothing in this subdivision shall prohibit the use of reports
26 filed pursuant to this section to determine the eligibility of persons
27 to own, possess, control, receive, or purchase a firearm if the person
28 is the subject of a criminal investigation, a part of which involves
29 the ownership, possession, control, receipt, or purchase of a
30 firearm.

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

35 Any person who meets the criteria contained in subdivision (e)
36 or (f) who is released from intensive treatment shall nevertheless,
37 if applicable, remain subject to the prohibition contained in
38 subdivision (e) or (f).

39 (2) (A) For each person certified for intensive treatment under
40 paragraph (1), the facility shall immediately submit a report to the

1 Department of Justice, on a form prescribed by the department,
2 containing information regarding the person, including, but not
3 limited to, the legal identity of the person and the legal grounds
4 upon which the person was certified. Any report submitted pursuant
5 to this paragraph shall only be used for the purposes specified in
6 paragraph (2) of subdivision (f).

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

10 (3) Prior to, or concurrent with, the discharge of each person
11 certified for intensive treatment under paragraph (1), the facility
12 shall inform the person of that information specified in paragraph
13 (3) of subdivision (f).

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

1 only the relevant parties present, unless the court finds that the
2 public interest would be better served by conducting the hearing
3 in public. Notwithstanding any other provision of law, any
4 declaration, police reports, including criminal history information,
5 and any other material and relevant evidence that is not excluded
6 under Section 352 of the Evidence Code, shall be admissible at
7 the hearing under this section. If the court finds by a preponderance
8 of the evidence that the person would be likely to use firearms in
9 a safe and lawful manner, the court may order that the person may
10 own, control, receive, possess, or purchase firearms. A copy of
11 the order shall be submitted to the Department of Justice. Upon
12 receipt of the order, the Department of Justice shall delete any
13 reference to the prohibition against firearms from the person's
14 state mental health firearms prohibition system information.

15 (h) For all persons identified in subdivisions (f) and (g), facilities
16 shall report to the Department of Justice as specified in those
17 subdivisions, except facilities shall not report persons under
18 subdivision (g) if the same persons previously have been reported
19 under subdivision (f).

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

25 (i) Every person who owns or possesses or has under his or her
26 custody or control, or purchases or receives, or attempts to purchase
27 or receive, any firearm or any other deadly weapon in violation of
28 this section shall be punished by imprisonment pursuant to
29 subdivision (h) of Section 1170 of the Penal Code or in a county
30 jail for not more than one year.

31 (j) "Deadly weapon," as used in this section, has the meaning
32 prescribed by Section 8100.

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

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