

Introduced by Senator Gaines

January 22, 2013

An act to amend ~~Section 8103~~ *Sections 8104 and 8105* of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 127, as amended, Gaines. Firearms: mentally disordered persons: ~~possession~~; report to Department of Justice.

(1) Existing law prohibits mentally ill persons who meet specified criteria from possessing firearms or deadly weapons. Existing law requires the State Department of State Hospitals to maintain records in its possession that are necessary to identify persons who come within this prohibition and to make these records available to the Department of Justice upon request.

This bill would require the State Department of State Hospitals to make these records available to the Department of Justice electronically, within 24 hours, in a manner prescribed by the Department of Justice.

(2) 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 electronically, within 24 hours, in

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

~~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-no*.

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

1 SECTION 1. Section 8104 of the Welfare and Institutions Code
2 is amended to read:
3 8104. The State Department of State Hospitals shall maintain
4 in a convenient central location and shall make available to the
5 Department of Justice those records that the State Department of
6 State Hospitals has in its possession that are necessary to identify
7 persons who come within Section 8100 or 8103. These records
8 shall be made available to the Department of Justice *electronically*,
9 *within 24 hours, in a manner prescribed by the Department of*
10 *Justice*, upon request. The Department of Justice shall make these

1 requests only with respect to its duties with regard to applications
2 for permits for, or to carry, or the possession, purchase, or transfer
3 of, explosives as defined in Section 12000 of the Health and Safety
4 Code, devices defined in Section 16250, 16530, or 16640 of the
5 Penal Code, in subdivisions (a) to (d), inclusive, of Section 16520
6 of the Penal Code, or in subdivision (a) of Section 16840 of the
7 Penal Code, machineguns as defined in Section 16880 of the Penal
8 Code, short-barreled shotguns or short-barreled rifles as defined
9 in Sections 17170 and 17180 of the Penal Code, assault weapons
10 as defined in Section 30510 of the Penal Code, and destructive
11 devices as defined in Section 16460 of the Penal Code, or to
12 determine the eligibility of a person to acquire, carry, or possess
13 a firearm, explosive, or destructive device by a person who is
14 subject to a criminal investigation, a part of which involves the
15 acquisition, carrying, or possession of a firearm by that person.
16 These records shall not be furnished or made available to any
17 person unless the department determines that disclosure of any
18 information in the records is necessary to carry out its duties with
19 respect to applications for permits for, or to carry, or the possession,
20 purchase, or transfer of, explosives, destructive devices, devices
21 as defined in Section 16250, 16530, or 16640 of the Penal Code,
22 in subdivisions (a) to (d), inclusive, of Section 16520 of the Penal
23 Code, or in subdivision (a) of Section 16840 of the Penal Code,
24 short-barreled shotguns, short-barreled rifles, assault weapons,
25 and machineguns, or to determine the eligibility of a person to
26 acquire, carry, or possess a firearm, explosive, or destructive device
27 by a person who is subject to a criminal investigation, a part of
28 which involves the acquisition, carrying, or possession of a firearm
29 by that person.

30 *SEC. 2. Section 8105 of the Welfare and Institutions Code is*
31 *amended to read:*

32 8105. (a) The Department of Justice shall request each public
33 and private mental hospital, sanitarium, and institution to submit
34 to the department that information that the department deems
35 necessary to identify those persons who are within subdivision (a)
36 of Section 8100, in order to carry out its duties in relation to
37 firearms, destructive devices, and explosives.

38 (b) Upon request of the Department of Justice pursuant to
39 subdivision (a), each public and private mental hospital, sanitarium,
40 and institution shall submit to the department that information

1 which the department deems necessary to identify those persons
2 who are within subdivision (a) of Section 8100, in order to carry
3 out its duties in relation to firearms, destructive devices, and
4 explosives.

5 (c) A licensed psychotherapist shall ~~immediately~~ report to a
6 local law enforcement agency *electronically, within 24 hours, in*
7 *a manner prescribed by the Department of Justice*, the identity of
8 a person subject to subdivision (b) of Section 8100. Upon receipt
9 of the report, the local law enforcement agency, on a form
10 prescribed by the Department of Justice, shall ~~immediately~~ notify
11 the department *electronically, within 24 hours, in a manner*
12 *prescribed by the department*, of the person who is subject to
13 subdivision (b) of Section 8100.

14 (d) All information provided to the Department of Justice
15 pursuant to this section shall be kept confidential, separate and
16 apart from all other records maintained by the department. The
17 information provided to the Department of Justice pursuant to this
18 section shall be used only for any of the following purposes:

19 (1) By the department to determine eligibility of a person to
20 acquire, carry, or possess firearms, destructive devices, or
21 explosives.

22 (2) For the purposes of the court proceedings described in
23 subdivision (b) of Section 8100 to determine the eligibility of the
24 person who is bringing the petition pursuant to paragraph (3) of
25 subdivision (b) of Section 8100.

26 (3) To determine the eligibility of a person to acquire, carry, or
27 possess firearms, destructive devices, or explosives who is the
28 subject of a criminal investigation, if a part of the criminal
29 investigation involves the acquisition, carrying, or possession of
30 firearms, explosives, or destructive devices by that person.

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

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

36 ~~8103. (a) (1) Except as provided in paragraph (2), no person~~
37 ~~who, after October 1, 1955, has been adjudicated by a court of any~~
38 ~~state to be a danger to others as a result of a mental disorder or~~
39 ~~mental illness, or who has been adjudicated to be a mentally~~
40 ~~disordered sex offender, shall purchase or receive, or attempt to~~

1 purchase or receive, or have in his or her possession, custody, or
2 control any firearm or any other deadly weapon unless there has
3 been issued to the person a certificate by the court of adjudication
4 upon release from treatment or at a later date stating that the person
5 may possess a firearm or any other deadly weapon without
6 endangering others, and the person has not, subsequent to the
7 issuance of the certificate, again been adjudicated by a court to be
8 a danger to others as a result of a mental disorder or mental illness.

9 (2) No person who, after January 1, 2014, has been adjudicated
10 by a court of any state to be a danger to others as a result of a
11 mental disorder or mental illness, or who has been adjudicated to
12 be a mentally disordered sex offender, shall purchase or receive,
13 or attempt to purchase or receive, or have in his or her possession,
14 custody, or control, any firearm or any other deadly weapon.

15 (3) The court shall immediately notify the Department of Justice
16 of the court order finding the individual to be a person described
17 in paragraph (1) or (2). The court shall also notify the Department
18 of Justice of any certificate issued as described in paragraph (1).

19 (b) (1) No person who has been found, pursuant to Section
20 1026 of the Penal Code or the law of any other state or the United
21 States, not guilty by reason of insanity of murder, mayhem, a
22 violation of Section 207, 209, or 209.5 of the Penal Code in which
23 the victim suffers intentionally inflicted great bodily injury,
24 earjacking or robbery in which the victim suffers great bodily
25 injury, a violation of Section 451 or 452 of the Penal Code
26 involving a trailer coach, as defined in Section 635 of the Vehicle
27 Code, or any dwelling house, a violation of paragraph (1) or (2)
28 of subdivision (a) of Section 262 or paragraph (2) or (3) of
29 subdivision (a) of Section 261 of the Penal Code, a violation of
30 Section 459 of the Penal Code in the first degree, assault with
31 intent to commit murder, a violation of Section 220 of the Penal
32 Code in which the victim suffers great bodily injury, a violation
33 of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the
34 Penal Code, or of a felony involving death, great bodily injury, or
35 an act which poses a serious threat of bodily harm to another
36 person, or a violation of the law of any other state or the United
37 States that includes all the elements of any of the above felonies
38 as defined under California law, shall purchase or receive, or
39 attempt to purchase or receive, or have in his or her possession or

1 under his or her custody or control any firearm or any other deadly
2 weapon.

3 ~~(2) The court shall immediately notify the Department of Justice~~
4 ~~of the court order finding the person to be a person described in~~
5 ~~paragraph (1).~~

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

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). The court shall also notify the Department of Justice~~
18 ~~when it finds that the person has recovered his or her sanity.~~

19 ~~(d) (1) No person found by a court to be mentally incompetent~~
20 ~~to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code~~
21 ~~or the law of any other state or the United States, shall purchase~~
22 ~~or receive, or attempt to purchase or receive, or shall have in his~~
23 ~~or her possession, custody, or control, any firearm or any other~~
24 ~~deadly weapon, unless there has been a finding with respect to the~~
25 ~~person of restoration to competence to stand trial by the committing~~
26 ~~court, pursuant to Section 1372 of the Penal Code or the law of~~
27 ~~any other state or the United States.~~

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

33 ~~(e) (1) No person who has been placed under conservatorship~~
34 ~~by a court, pursuant to Section 5350 or the law of any other state~~
35 ~~or the United States, because the person is gravely disabled as a~~
36 ~~result of a mental disorder or impairment by chronic alcoholism,~~
37 ~~shall purchase or receive, or attempt to purchase or receive, or~~
38 ~~shall have in his or her possession, custody, or control, any firearm~~
39 ~~or any other deadly weapon while under the conservatorship if, at~~
40 ~~the time the conservatorship was ordered or thereafter, the court~~

1 ~~which imposed the conservatorship found that possession of a~~
2 ~~firearm or any other deadly weapon by the person would present~~
3 ~~a danger to the safety of the person or to others. Upon placing any~~
4 ~~person under conservatorship, and prohibiting firearm or any other~~
5 ~~deadly weapon possession by the person, the court shall notify the~~
6 ~~person of this prohibition.~~

7 ~~(2) The court shall immediately notify the Department of Justice~~
8 ~~of the court order placing the person under conservatorship and~~
9 ~~prohibiting firearm or any other deadly weapon possession by the~~
10 ~~person as described in paragraph (1). The notice shall include the~~
11 ~~date the conservatorship was imposed and the date the~~
12 ~~conservatorship is to be terminated. If the conservatorship is~~
13 ~~subsequently terminated before the date listed in the notice to the~~
14 ~~Department of Justice or the court subsequently finds that~~
15 ~~possession of a firearm or any other deadly weapon by the person~~
16 ~~would no longer present a danger to the safety of the person or~~
17 ~~others, the court shall immediately notify the Department of Justice.~~

18 ~~(3) All information provided to the Department of Justice~~
19 ~~pursuant to paragraph (2) shall be kept confidential, separate, and~~
20 ~~apart from all other records maintained by the Department of~~
21 ~~Justice, and shall be used only to determine eligibility to purchase~~
22 ~~or possess firearms or other deadly weapons. Any person who~~
23 ~~knowingly furnishes that information for any other purpose is~~
24 ~~guilty of a misdemeanor. All the information concerning any person~~
25 ~~shall be destroyed upon receipt by the Department of Justice of~~
26 ~~notice of the termination of conservatorship as to that person~~
27 ~~pursuant to paragraph (2).~~

28 ~~(f) (1) No person who has been (A) taken into custody as~~
29 ~~provided in Section 5150 because that person is a danger to himself,~~
30 ~~herself, or to others, (B) assessed within the meaning of Section~~
31 ~~5151, and (C) admitted to a designated facility within the meaning~~
32 ~~of Sections 5151 and 5152 because that person is a danger to~~
33 ~~himself, herself, or others, shall own, possess, control, receive, or~~
34 ~~purchase, or attempt to own, possess, control, receive, or purchase~~
35 ~~any firearm for a period of five years after the person is released~~
36 ~~from the facility. A person described in the preceding sentence,~~
37 ~~however, may own, possess, control, receive, or purchase, or~~
38 ~~attempt to own, possess, control, receive, or purchase any firearm~~
39 ~~if the superior court has, pursuant to paragraph (5), found that the~~

1 people of the State of California have not met their burden pursuant
2 to paragraph (6):

3 ~~(2) (A) For each person subject to this subdivision, the facility~~
4 ~~shall immediately, on the date of admission, submit a report to the~~
5 ~~Department of Justice, on a form prescribed by the Department of~~
6 ~~Justice, containing information that includes, but is not limited to,~~
7 ~~the identity of the person and the legal grounds upon which the~~
8 ~~person was admitted to the facility.~~

9 ~~Any report submitted pursuant to this paragraph shall be~~
10 ~~confidential, except for purposes of the court proceedings described~~
11 ~~in this subdivision and for determining the eligibility of the person~~
12 ~~to own, possess, control, receive, or purchase a firearm.~~

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

16 ~~(3) Prior to, or concurrent with, the discharge, the facility shall~~
17 ~~inform a person subject to this subdivision that he or she is~~
18 ~~prohibited from owning, possessing, controlling, receiving, or~~
19 ~~purchasing any firearm for a period of five years. Simultaneously,~~
20 ~~the facility shall inform the person that he or she may request a~~
21 ~~hearing from a court, as provided in this subdivision, for an order~~
22 ~~permitting the person to own, possess, control, receive, or purchase~~
23 ~~a firearm. The facility shall provide the person with a form for a~~
24 ~~request for a hearing. The Department of Justice shall prescribe~~
25 ~~the form. Where the person requests a hearing at the time of~~
26 ~~discharge, the facility shall forward the form to the superior court~~
27 ~~unless the person states that he or she will submit the form to the~~
28 ~~superior court.~~

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

36 ~~(5) Any person who is subject to paragraph (1) who has~~
37 ~~requested a hearing from the superior court of his or her county~~
38 ~~of residence for an order that he or she may own, possess, control,~~
39 ~~receive, or purchase firearms shall be given a hearing. The clerk~~
40 ~~of the court shall set a hearing date and notify the person, the~~

1 Department of Justice, and the district attorney. The people of the
2 State of California shall be the plaintiff in the proceeding and shall
3 be represented by the district attorney. Upon motion of the district
4 attorney, or on its own motion, the superior court may transfer the
5 hearing to the county in which the person resided at the time of
6 his or her detention, the county in which the person was detained,
7 or the county in which the person was evaluated or treated. Within
8 seven days after the request for a hearing, the Department of Justice
9 shall file copies of the reports described in this section with the
10 superior court. The reports shall be disclosed upon request to the
11 person and to the district attorney. The court shall set the hearing
12 within 30 days of receipt of the request for a hearing. Upon
13 showing good cause, the district attorney shall be entitled to a
14 continuance not to exceed 14 days after the district attorney was
15 notified of the hearing date by the clerk of the court. If additional
16 continuances are granted, the total length of time for continuances
17 shall not exceed 60 days. The district attorney may notify the
18 county mental health director of the hearing who shall provide
19 information about the detention of the person that may be relevant
20 to the court and shall file that information with the superior court.
21 That information shall be disclosed to the person and to the district
22 attorney. The court, upon motion of the person subject to paragraph
23 (1) establishing that confidential information is likely to be
24 discussed during the hearing that would cause harm to the person,
25 shall conduct the hearing in camera with only the relevant parties
26 present, unless the court finds that the public interest would be
27 better served by conducting the hearing in public. Notwithstanding
28 any other law, declarations, police reports, including criminal
29 history information, and any other material and relevant evidence
30 that is not excluded under Section 352 of the Evidence Code shall
31 be admissible at the hearing under this section.

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

35 (7) If the court finds at the hearing set forth in paragraph (5)
36 that the people have not met their burden as set forth in paragraph
37 (6), the court shall order that the person shall not be subject to the
38 five-year prohibition in this section on the ownership, control,
39 receipt, possession, or purchase of firearms. A copy of the order
40 shall be submitted to the Department of Justice. Upon receipt of

1 the order, the Department of Justice shall delete any reference to
2 the prohibition against firearms from the person's state mental
3 health firearms prohibition system information.

4 (8) Where the district attorney declines or fails to go forward
5 in the hearing, the court shall order that the person shall not be
6 subject to the five-year prohibition required by this subdivision
7 on the ownership, control, receipt, possession, or purchase of
8 firearms. A copy of the order shall be submitted to the Department
9 of Justice. Upon receipt of the order, the Department of Justice
10 shall, within 15 days, delete any reference to the prohibition against
11 firearms from the person's state mental health firearms prohibition
12 system information.

13 (9) Nothing in this subdivision shall prohibit the use of reports
14 filed pursuant to this section to determine the eligibility of persons
15 to own, possess, control, receive, or purchase a firearm if the person
16 is the subject of a criminal investigation, a part of which involves
17 the ownership, possession, control, receipt, or purchase of a
18 firearm.

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

23 Any person who meets the criteria contained in subdivision (e)
24 or (f) who is released from intensive treatment shall nevertheless,
25 if applicable, remain subject to the prohibition contained in
26 subdivision (e) or (f).

27 (2) (A) For each person certified for intensive treatment under
28 paragraph (1), the facility shall immediately submit a report to the
29 Department of Justice, on a form prescribed by the department,
30 containing information regarding the person, including, but not
31 limited to, the legal identity of the person and the legal grounds
32 upon which the person was certified. Any report submitted pursuant
33 to this paragraph shall only be used for the purposes specified in
34 paragraph (2) of subdivision (f).

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

38 (3) Prior to, or concurrent with, the discharge of each person
39 certified for intensive treatment under paragraph (1), the facility

1 shall inform the person of that information specified in paragraph
2 (3) of subdivision (f).
3 (4) Any person who is subject to paragraph (1) may petition the
4 superior court of his or her county of residence for an order that
5 he or she may own, possess, control, receive, or purchase firearms.
6 At the time the petition is filed, the clerk of the court shall set a
7 hearing date and notify the person, the Department of Justice, and
8 the district attorney. The people of the State of California shall be
9 the respondent in the proceeding and shall be represented by the
10 district attorney. Upon motion of the district attorney, or on its
11 own motion, the superior court may transfer the petition to the
12 county in which the person resided at the time of his or her
13 detention, the county in which the person was detained, or the
14 county in which the person was evaluated or treated. Within seven
15 days after receiving notice of the petition, the Department of Justice
16 shall file copies of the reports described in this section with the
17 superior court. The reports shall be disclosed upon request to the
18 person and to the district attorney. The district attorney shall be
19 entitled to a continuance of the hearing to a date of not less than
20 14 days after the district attorney was notified of the hearing date
21 by the clerk of the court. The district attorney may notify the county
22 mental health director of the petition, and the county mental health
23 director shall provide information about the detention of the person
24 that may be relevant to the court and shall file that information
25 with the superior court. That information shall be disclosed to the
26 person and to the district attorney. The court, upon motion of the
27 person subject to paragraph (1) establishing that confidential
28 information is likely to be discussed during the hearing that would
29 cause harm to the person, shall conduct the hearing in camera with
30 only the relevant parties present, unless the court finds that the
31 public interest would be better served by conducting the hearing
32 in public. Notwithstanding any other provision of law, any
33 declaration, police reports, including criminal history information,
34 and any other material and relevant evidence that is not excluded
35 under Section 352 of the Evidence Code, shall be admissible at
36 the hearing under this section. If the court finds by a preponderance
37 of the evidence that the person would be likely to use firearms in
38 a safe and lawful manner, the court may order that the person may
39 own, control, receive, possess, or purchase firearms. A copy of
40 the order shall be submitted to the Department of Justice. Upon

1 receipt of the order, the Department of Justice shall delete any
2 reference to the prohibition against firearms from the person's
3 state mental health firearms prohibition system information.

4 (h) For all persons identified in subdivisions (f) and (g), facilities
5 shall report to the Department of Justice as specified in those
6 subdivisions, except facilities shall not report persons under
7 subdivision (g) if the same persons previously have been reported
8 under subdivision (f).

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

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

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

22 SEC. 2. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.