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

LEGISLATIVE COUNSEL’S DIGEST


(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.


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

1  SECTION 1. Section 8104 of the Welfare and Institutions Code is amended to read:
2 8104. The State Department of State Hospitals shall maintain in a convenient central location and shall make available to the Department of Justice those records that the State Department of State Hospitals has in its possession that are necessary to identify persons who come within Section 8100 or 8103. These records shall be made available to the Department of Justice electronically, within 24 hours, in a manner prescribed by the Department of Justice, upon request. The Department of Justice shall make these
requests only with respect to its duties with regard to applications
for permits for, or to carry, or the possession, purchase, or transfer
of, explosives as defined in Section 12000 of the Health and Safety
Code, devices defined in Section 16250, 16530, or 16640 of the
Penal Code, in subdivisions (a) to (d), inclusive, of Section 16520
of the Penal Code, or in subdivision (a) of Section 16840 of the
Penal Code, machineguns as defined in Section 16880 of the Penal
Code, short-barreled shotguns or short-barreled rifles as defined
in Sections 17170 and 17180 of the Penal Code, assault weapons
as defined in Section 30510 of the Penal Code, and destructive
devices as defined in Section 16460 of the Penal Code, or to
determine the eligibility of a person to acquire, carry, or possess
a firearm, explosive, or destructive device by a person who is
subject to a criminal investigation, a part of which involves the
acquisition, carrying, or possession of a firearm by that person.
These records shall not be furnished or made available to any
person unless the department determines that disclosure of any
information in the records is necessary to carry out its duties with
respect to applications for permits for, or to carry, or the possession,
purchase, or transfer of, explosives, destructive devices, devices
as defined in Section 16250, 16530, or 16640 of the Penal Code,
in subdivisions (a) to (d), inclusive, of Section 16520 of the Penal
Code, or in subdivision (a) of Section 16840 of the Penal Code,
short-barreled shotguns, short-barreled rifles, assault weapons,
and machineguns, or to determine the eligibility of a person to
acquire, carry, or possess a firearm, explosive, or destructive device
by a person who is subject to a criminal investigation, a part of
which involves the acquisition, carrying, or possession of a firearm
by that person.

SEC. 2. Section 8105 of the Welfare and Institutions Code is
amended to read:
8105. (a) The Department of Justice shall request each public
and private mental hospital, sanitarium, and institution to submit
to the department that information that the department deems
necessary to identify those persons who are within subdivision (a)
of Section 8100, in order to carry out its duties in relation to
firearms, destructive devices, and explosives.
(b) Upon request of the Department of Justice pursuant to
subdivision (a), each public and private mental hospital, sanitarium,
and institution shall submit to the department that information
which the department deems necessary to identify those persons
who are within subdivision (a) of Section 8100, in order to carry
out its duties in relation to firearms, destructive devices, and
explosives.

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

(d) All information provided to the Department of Justice
pursuant to this section shall be kept confidential, separate and
apart from all other records maintained by the department. The
information provided to the Department of Justice pursuant to this
section shall be used only for any of the following purposes:
(1) By the department to determine eligibility of a person to
acquire, carry, or possess firearms, destructive devices, or
explosives.
(2) For the purposes of the court proceedings described in
subdivision (b) of Section 8100 to determine the eligibility of the
person who is bringing the petition pursuant to paragraph (3) of
subdivision (b) of Section 8100.
(3) To determine the eligibility of a person to acquire, carry, or
possess firearms, destructive devices, or explosives who is the
subject of a criminal investigation, if a part of the criminal
investigation involves the acquisition, carrying, or possession of
firearms, explosives, or destructive devices by that person.
(e) Reports shall not be required or requested under this section
where the same person has been previously reported pursuant to
Section 8103 or 8104.

SECTION 1. Section 8103 of the Welfare and Institutions Code
is amended to read:
8103. (a) (1) Except as provided in paragraph (2), no person
who, after October 1, 1955, 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, shall purchase or receive, or attempt to
purchase or receive, or have in his or her possession, custody, or
control any firearm or any other deadly weapon unless there has
been issued to the person a certificate by the court of adjudication
upon release from treatment or at a later date stating that the person
may possess a firearm or any other deadly weapon without
endangering others, and the person has not, subsequent to the
issuance of the certificate, again been adjudicated by a court to be
a danger to others as a result of a mental disorder or mental illness.
(2) No person who, after January 1, 2014, 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, shall purchase or receive,
or attempt to purchase or receive, or have in his or her possession,
custody, or control, any firearm or any other deadly weapon.
(3) The court shall immediately notify the Department of Justice
of the court order finding the individual to be a person described
in paragraph (1) or (2). The court shall also notify the Department
of Justice of any certificate issued as described in paragraph (1).
(b) (1) No person who has been found, pursuant to Section
1026 of the Penal Code or the law of any other state or the United
States, not guilty by reason of insanity of murder, mayhem, a
violation of Section 207, 209, or 209.5 of the Penal Code in which
the victim suffers intentionally inflicted great bodily injury,
carjacking or robbery in which the victim suffers great bodily
injury, a violation of Section 451 or 452 of the Penal Code
involving a trailer coach, as defined in Section 635 of the Vehicle
Code, or any dwelling house, a violation of paragraph (1) or (2)
of subdivision (a) of Section 262 or paragraph (2) or (3) of
subdivision (a) of Section 261 of the Penal Code, a violation of
Section 459 of the Penal Code in the first degree, assault with
intent to commit murder, a violation of Section 220 of the Penal
Code in which the victim suffers great bodily injury, a violation
of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the
Penal Code, or of a felony involving death, great bodily injury, or
an act which poses a serious threat of bodily harm to another
person, or a violation of the law of any other state or the United
States that includes all the elements of any of the above felonies
as defined under California law, shall purchase or receive, or
attempt to purchase or receive, or have in his or her possession or
under his or her custody or control any firearm or any other deadly weapon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Any person who is subject to paragraph (1) who has requested a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the
Department of Justice, and the district attorney. The people of the
State of California shall be the plaintiff in the proceeding and shall
be represented by the district attorney. Upon motion of the district
attorney, or on its own motion, the superior court may transfer the
hearing to the county in which the person resided at the time of
his or her detention, the county in which the person was detained;
or the county in which the person was evaluated or treated. Within
seven days after the request for a hearing, the Department of Justice
shall file copies of the reports described in this section with the
superior court. The reports shall be disclosed upon request to the
person and to the district attorney. The court shall set the hearing
within 30 days of receipt of the request for a hearing. Upon
showing good cause, the district attorney shall be entitled to a
continuance not to exceed 14 days after the district attorney was
notified of the hearing date by the clerk of the court. If additional
continuances are granted, the total length of time for continuances
shall not exceed 60 days. The district attorney may notify the
county mental health director of the hearing who shall provide
information about the detention of the person that may be relevant
to the court and shall file that information with the superior court.
That information shall be disclosed to the person and to the district
attorney. The court, upon motion of the person subject to paragraph
(1), establishing that confidential information is likely to be
discussed during the hearing that would cause harm to the person,
shall conduct the hearing in camera with only the relevant parties
present, unless the court finds that the public interest would be
better served by conducting the hearing in public. Notwithstanding
any other law, declarations, police reports, including criminal
history information, and any other material and relevant evidence
that is not excluded under Section 352 of the Evidence Code shall
be admissible at the hearing under this section.

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

(7) If the court finds at the hearing set forth in paragraph (5)
that the people have not met their burden as set forth in paragraph
(6), the court shall order that the person shall not be subject to the
five year prohibition in this section on the ownership, control,
receipt, possession, or purchase of firearms. A copy of the order
shall be submitted to the Department of Justice. Upon receipt of
the order, the Department of Justice shall delete any reference to
the prohibition against firearms from the person's state mental
health firearms prohibition system information.
(8) Where the district attorney declines or fails to go forward
in the hearing, the court shall order that the person shall not be
subject to the five-year prohibition required by this subdivision
on the ownership, control, receipt, possession, or purchase of
firearms. A copy of the order shall be submitted to the Department
of Justice. Upon receipt of the order, the Department of Justice
shall, within 15 days, delete any reference to the prohibition against
firearms from the person's state mental health firearms prohibition
system information.
(9) Nothing in this subdivision shall prohibit the use of reports
filed pursuant to this section to determine the eligibility of persons
to own, possess, control, receive, or purchase a firearm if the person
is the subject of a criminal investigation, a part of which involves
the ownership, possession, control, receipt, or purchase of a
firearm.
(g) (1) No person who has been certified for intensive treatment
under Section 5250, 5260, or 5270.15 shall own, possess, control,
receive, or purchase, or attempt to own, possess, control, receive,
or purchase, any firearm for a period of five years.
Any person who meets the criteria contained in subdivision (e)
or (f) who is released from intensive treatment shall nevertheless;
if applicable, remain subject to the prohibition contained in
subdivision (e) or (f).
(2) (A) For each person certified for intensive treatment under
paragraph (1), the facility shall immediately submit a report to the
Department of Justice, on a form prescribed by the department,
containing information regarding the person, including, but not
limited to, the legal identity of the person and the legal grounds
upon which the person was certified. Any report submitted pursuant
to this paragraph shall only be used for the purposes specified in
paragraph (2) of subdivision (f).
(B) Commencing July 1, 2012, facilities shall submit reports
pursuant to this paragraph exclusively by electronic means, in a
manner prescribed by the Department of Justice.
(3) Prior to, or concurrent with, the discharge of each person
certified for intensive treatment under paragraph (1), the facility
shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition, and the county mental health director shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other provision of law, any declaration, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon
receipt of the order, the Department of Justice shall delete any
reference to the prohibition against firearms from the person’s
state mental health firearms prohibition system information.
(h) For all persons identified in subdivisions (f) and (g), facilities
shall report to the Department of Justice as specified in those
subdivisions, except facilities shall not report persons under
subdivision (g) if the same persons previously have been reported
under subdivision (f).
Additionally, all facilities shall report to the Department of
Justice upon the discharge of persons from whom reports have
been submitted pursuant to subdivision (f) or (g). However, a report
shall not be filed for persons who are discharged within 31 days
after the date of admission.
(i) Every person who owns or possesses or has under his or her
custody or control, or purchases or receives, or attempts to purchase
or receive, any firearm or any other deadly weapon in violation of
this section shall be punished by imprisonment pursuant to
subdivision (h) of Section 1170 of the Penal Code or in a county
jail for not more than one year.
(j) “Deadly weapon,” as used in this section, has the meaning
prescribed by Section 8100.
SEC. 2. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.