

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY AUGUST 21, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 3, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 755**

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**Introduced by Senator Wolk**

(Principal coauthor: Assembly Member Alejo)

**(Coauthors: Senators De León, DeSaulnier, Hancock, and Yee)**

February 22, 2013

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An act to amend ~~Section~~ *Sections 29805 and 30305* of the Penal Code, and to amend Section 8103 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 755, as amended, Wolk. Firearms: prohibited persons.

(1) Existing law, subject to exceptions, provides that any person who has been convicted of certain misdemeanors may not, within 10 years of the conviction, own, purchase, receive, possess, or have under his or her custody or control, any firearm. Under existing law, a violation of this prohibition is punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine. *Existing law makes it a misdemeanor or a felony for a person who is prohibited from owning or possessing a firearm pursuant to these provisions to own, possess,*

*or have under custody or control, any ammunition or reloaded ammunition.*

This bill would add to the list of misdemeanors, the conviction for which is subject to those prohibitions, misdemeanor offenses of violating the above provisions as well as threatening a peace officer, removing a weapon from the person of a peace officer, hazing, transferring a firearm without completing the transaction through a licensed firearms dealer, furnishing ammunition to a minor, possession of ammunition by a person prohibited from having a firearm, furnishing ammunition to a person prohibited from possessing ammunition, carrying ammunition onto school grounds, carrying a loaded or concealed weapon if the person has been previously convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, or if the firearm is not registered, participation in any criminal street gang, and a public offense committed for the benefit of a criminal street gang *10 year prohibition on possessing a firearm specified above.*

The bill would also apply the above 10-year prohibition to a person who has been convicted of 2 or more specified misdemeanors, or 2 or more convictions of a single specified misdemeanor, in a 3-year period involving intoxication or possession of certain controlled substances for sale and would make a violation punishable as an infraction. The bill would impose a new 10-year prohibition to a person who commits another of those misdemeanors during the initial 10-year prohibition period, and would make a violation punishable ~~by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine~~ *as an infraction. The bill would also make it an infraction for a person prohibited from owning or possessing a firearm pursuant to these provisions to own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.* By changing the definition of a crime, *and by creating new crimes*, this bill would impose a state-mandated local program.

(2) Existing law prohibits certain specified individuals, including a person who has been adjudicated a danger to others as a result of a mental disorder or mental illness, a person who has been adjudicated a mentally disordered sex offender, a person who has been found not guilty by reason of insanity, or a person who has been placed under conservatorship by a court, among others, from possessing firearms or deadly weapons.

Existing law authorizes a court to order a person to obtain assisted outpatient treatment if certain criteria are met, including that the person is suffering from a mental illness and is unlikely to survive safely in the community without supervision.

This bill would prohibit a person who has been ordered by a court to obtain assisted outpatient treatment from purchasing or possessing any firearm or other deadly weapon while subject to assisted outpatient treatment. The bill would require the court to notify the Department of Justice of the order prohibiting the person from possessing a firearm or other deadly weapon within 2 days of the order, and to notify the Department of Justice when the person is no longer subject to assisted outpatient treatment. Because a violation of this provision would be a crime, this bill would impose a state-mandated local program.

(3) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.

This bill would make a legislative finding and declaration relating to the necessity of treating reports to the Department of Justice as confidential in order to protect the privacy of individuals ordered to obtain assisted outpatient treatment.

*(4) This bill would incorporate changes to Section 8103 of the Welfare and Institutions Code proposed by AB 1131, that would become operative on the date this bill becomes operative only if AB 1131 and this bill are both chaptered and become effective on or before January 1, 2014, and this bill is chaptered last.*

~~(4)~~

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that 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. The Legislature finds and declares that in order  
2 to protect the privacy of individuals ordered to obtain assisted

1 outpatient treatment, it is necessary that reports made by a court  
2 to the Department of Justice pursuant to Section 3 of this act be  
3 confidential, except as provided in this act.

4 SEC. 2. Section 29805 of the Penal Code is amended to read:

5 29805. (a) Except as provided in Section 29855 or subdivision  
6 (a) of Section 29800, any person who has been convicted of a  
7 misdemeanor violation of this ~~section~~ *subdivision*, Section ~~69~~, 71,  
8 76, 136.1, 136.5, or 140, subdivision ~~(b)~~ or (d) of Section 148,  
9 Section 171b, paragraph (1) of subdivision (a) of Section 171c,  
10 Section 171d, ~~subdivision (a) or (d) of Section 186.22~~, Section  
11 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, ~~245.6~~, 246.3,  
12 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95,  
13 subdivision (a) of former Section 12100, as that section read at  
14 any time from when it was enacted by Section 3 of Chapter 1386  
15 of the Statutes of 1988 to when it was repealed by Section 18 of  
16 Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300,  
17 25800, ~~26500~~, ~~30300~~, ~~30305~~, ~~30306~~, ~~30310~~, 30315, or 32625,  
18 subdivision (b) or (d) of Section 26100, or Section 27510, or  
19 Section 8100, 8101, or 8103 of the Welfare and Institutions Code,  
20 any firearm-related offense pursuant to Sections 871.5 and 1001.5  
21 of the Welfare and Institutions Code, ~~Section 25400 that is~~  
22 ~~punishable pursuant to paragraph (5) or (6) of subdivision (c) of~~  
23 ~~Section 25400~~, ~~Section 25850 that is punishable pursuant to~~  
24 ~~paragraph (5) or (6) of subdivision (c) of Section 25850~~, or of the  
25 conduct punished in subdivision (c) of Section 27590, and who,  
26 within 10 years of the conviction, owns, purchases, receives, or  
27 has in possession or under custody or control, any firearm is guilty  
28 of a public offense, which shall be punishable by imprisonment  
29 in a county jail not exceeding one year or in the state prison, by a  
30 fine not exceeding one thousand dollars (\$1,000), or by both that  
31 imprisonment and fine.

32 (b) Except as provided in Section 29855, any person who has  
33 been convicted of misdemeanor violations of two or more of any  
34 of the following offenses, or two or more misdemeanor violations  
35 of any one of the following offenses, within a three-year period  
36 and who, within 10 years of the second conviction, owns,  
37 purchases, receives, or has in possession or under custody or  
38 control, any firearm is guilty of an infraction, *punishable by a fine*  
39 *not exceeding two hundred fifty dollars (\$250).*

1 (1) Possession of a controlled substance with intent to sell in  
2 violation of Section 11357.5 of the Health and Safety Code.

3 (2) Possession of a controlled substance with intent to sell in  
4 violation of paragraph (1) of subdivision (b) of Section 11375 of  
5 the Health and Safety Code.

6 (3) Possession of a controlled substance with intent to sell in  
7 violation of Section 11379.2 of the Health and Safety Code.

8 (4) Section 11550 of the Health and Safety Code.

9 (5) Section 191.5.

10 (6) Subdivision (f) of Section 647.

11 (7) Section 23152 of the Vehicle Code.

12 (8) Section 23153 of the Vehicle Code.

13 (9) Section 23154 of the Vehicle Code.

14 (c) Except as provided in Section 29855, any person who is  
15 prohibited pursuant to subdivision (b) from owning, purchasing,  
16 receiving, or having in his or her custody or control any firearm,  
17 who is subsequently convicted of a misdemeanor violation of any  
18 offense specified in paragraphs (1) to (9), inclusive, of subdivision  
19 (b) during the prohibitory period specified in subdivision (b), and  
20 who, within 10 years of the subsequent conviction, owns,  
21 purchases, receives, or has in possession or under custody or  
22 control any firearm is guilty of a public offense, which shall be  
23 punishable by imprisonment in a county jail not exceeding one  
24 year or in the state prison, by a fine not exceeding one thousand  
25 dollars (\$1,000), or by both that imprisonment and fine *an*  
26 *infraction, punishable by a fine not exceeding two hundred fifty*  
27 *dollars (\$250).*

28 (d) The court, on forms prescribed by the Department of Justice,  
29 shall notify the department of persons subject to this section.  
30 However, the prohibition in this section may be reduced,  
31 eliminated, or conditioned as provided in Section 29855 or 29860.

32 *SEC. 3. Section 30305 of the Penal Code is amended to read:*

33 30305. (a) (1) No person prohibited from owning or  
34 possessing a firearm under Chapter 2 (commencing with Section  
35 29800) or Chapter 3 (commencing with Section 29900) of Division  
36 9 of this title, or Section 8100 or 8103 of the Welfare and  
37 Institutions Code, shall own, possess, or have under custody or  
38 control, any ammunition or reloaded ammunition.

39 (2) ~~A~~(A) *Except as provided in subparagraph (B), a violation*  
40 *of this subdivision is punishable by imprisonment in a county jail*

1 not to exceed one year or in the state prison, by a fine not to exceed  
2 one thousand dollars (\$1,000), or by both the fine and  
3 imprisonment.

4 *(B) If the person is prohibited from owning or possessing a*  
5 *firearm pursuant to subdivision (b) or (c) of Section 29805, a*  
6 *violation of this subdivision is an infraction, punishable by a fine*  
7 *not exceeding two hundred fifty dollars (\$250).*

8 (b) (1) A person who is not prohibited by subdivision (a) from  
9 owning, possessing, or having under the person's custody or  
10 control, any ammunition or reloaded ammunition, but who is  
11 enjoined from engaging in activity pursuant to an injunction issued  
12 pursuant to Section 3479 of the Civil Code against that person as  
13 a member of a criminal street gang, as defined in Section 186.22,  
14 may not own, possess, or have under the person's custody or  
15 control, any ammunition or reloaded ammunition.

16 (2) A violation of this subdivision is a misdemeanor.

17 (c) A violation of subdivision (a) or (b) is justifiable where all  
18 of the following conditions are met:

19 (1) The person found the ammunition or reloaded ammunition  
20 or took the ammunition or reloaded ammunition from a person  
21 who was committing a crime against the person who found or took  
22 the ammunition or reloaded ammunition.

23 (2) The person possessed the ammunition or reloaded  
24 ammunition no longer than was necessary to deliver or transport  
25 the ammunition or reloaded ammunition to a law enforcement  
26 agency for that agency's disposition according to law.

27 (3) The person is prohibited from possessing any ammunition  
28 or reloaded ammunition solely because that person is prohibited  
29 from owning or possessing a firearm only by virtue of Chapter 2  
30 (commencing with Section 29800) of Division 9 or ammunition  
31 or reloaded ammunition because of subdivision (b).

32 (d) Upon the trial for violating subdivision (a) or (b), the trier  
33 of fact shall determine whether the defendant is subject to the  
34 exemption created by subdivision (c). The defendant has the burden  
35 of proving by a preponderance of the evidence that the defendant  
36 is subject to the exemption provided by subdivision (c).

37 ~~SEC. 3.~~

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

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

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

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

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

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

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

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

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

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

1 a danger to the safety of the person or to others. Upon placing any  
2 person under conservatorship, and prohibiting firearm or any other  
3 deadly weapon possession by the person, the court shall notify the  
4 person of this prohibition.

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

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

26 (f) (1) No person who has been (A) taken into custody as  
27 provided in Section 5150 because that person is a danger to himself,  
28 herself, or to others, (B) assessed within the meaning of Section  
29 5151, and (C) admitted to a designated facility within the meaning  
30 of Sections 5151 and 5152 because that person is a danger to  
31 himself, herself, or others, shall own, possess, control, receive, or  
32 purchase, or attempt to own, possess, control, receive, or purchase  
33 any firearm for a period of five years after the person is released  
34 from the facility. A person described in the preceding sentence,  
35 however, may own, possess, control, receive, or purchase, or  
36 attempt to own, possess, control, receive, or purchase any firearm  
37 if the superior court has, pursuant to paragraph (5), found that the  
38 people of the State of California have not met their burden pursuant  
39 to paragraph (6).

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

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

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

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

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

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

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

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

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

1 the prohibition against firearms from the person's state mental  
2 health firearms prohibition system information.

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

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

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

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

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

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

37 (3) Prior to, or concurrent with, the discharge of each person  
38 certified for intensive treatment under paragraph (1), the facility  
39 shall inform the person of that information specified in paragraph  
40 (3) of subdivision (f).

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

1 reference to the prohibition against firearms from the person's  
2 state mental health firearms prohibition system information.

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

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

13 (i) (1) No person who has been ordered by a court to obtain  
14 assisted outpatient treatment pursuant to Article 9 (commencing  
15 with Section 5345) of Chapter 2 of Part 1 of Division 5 shall  
16 purchase or receive, or attempt to purchase or receive, or shall  
17 have in his or her possession, custody, or control, any firearm or  
18 any other deadly weapon while subject to assisted outpatient  
19 treatment. Upon placing any person under assisted outpatient  
20 treatment, the court shall notify the person of this prohibition.

21 (2) The court shall notify the Department of Justice of the court  
22 order placing the person in assisted outpatient treatment and  
23 prohibiting firearm or any other deadly weapon possession by the  
24 person described in paragraph (1) within two days of the order.  
25 The court shall also notify the Department of Justice when the  
26 person subject to paragraph (1) is no longer subject to assisted  
27 outpatient treatment. Any report submitted pursuant to this  
28 paragraph shall be confidential, except for purposes of the court  
29 proceedings specified in this subdivision and for purposes of  
30 determining the eligibility of the person to own, possess, control,  
31 receive, or purchase a firearm.

32 (j) Every person who owns or possesses or has under his or her  
33 custody or control, or purchases or receives, or attempts to purchase  
34 or receive, any firearm or any other deadly weapon in violation of  
35 this section shall be punished by imprisonment pursuant to  
36 subdivision (h) of Section 1170 of the Penal Code or in a county  
37 jail for not more than one year.

38 (k) "Deadly weapon," as used in this section, has the meaning  
39 prescribed by Section 8100.

1     *SEC. 4.5. 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 immediately notify the Department of Justice  
17    of the court order finding the individual to be a person described  
18    in paragraph (1). The court shall also *immediately* notify the  
19    Department of Justice of any certificate issued as described in  
20    paragraph (1).

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

1 attempt to purchase or receive, or have in his or her possession or  
2 under his or her custody or control any firearm or any other deadly  
3 weapon.

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

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

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

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

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

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

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

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

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

29 (f) (1) No person who has been (A) taken into custody as  
30 provided in Section 5150 because that person is a danger to himself,  
31 herself, or to others, (B) assessed within the meaning of Section  
32 5151, and (C) admitted to a designated facility within the meaning  
33 of Sections 5151 and 5152 because that person is a danger to  
34 himself, herself, or others, shall own, possess, control, receive, or  
35 purchase, or attempt to own, possess, control, receive, or purchase  
36 any firearm for a period of five years after the person is released  
37 from the facility. A person described in the preceding sentence,  
38 however, may own, possess, control, receive, or purchase, or  
39 attempt to own, possess, control, receive, or purchase any firearm  
40 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*, and that person shall  
40 *comply with the procedure described in Chapter 2 (commencing*

1 *with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal*  
2 *Code for the return of any firearms. A copy of the order shall be*  
3 *submitted to the Department of Justice. Upon receipt of the order,*  
4 *the Department of Justice shall delete any reference to the*  
5 *prohibition against firearms from the person's state mental health*  
6 *firearms prohibition system information.*

7 (8) Where the district attorney declines or fails to go forward  
8 in the hearing, the court shall order that the person shall not be  
9 subject to the five-year prohibition required by this subdivision  
10 on the ownership, control, receipt, possession, or purchase of  
11 firearms. A copy of the order shall be submitted to the Department  
12 of Justice. Upon receipt of the order, the Department of Justice  
13 shall, within 15 days, delete any reference to the prohibition against  
14 firearms from the person's state mental health firearms prohibition  
15 system information, *and that person shall comply with the*  
16 *procedure described in Chapter 2 (commencing with Section*  
17 *33850) of Division 11 of Title 4 of Part 6 of the Penal Code for*  
18 *the return of any firearms.*

19 (9) Nothing in this subdivision shall prohibit the use of reports  
20 filed pursuant to this section to determine the eligibility of persons  
21 to own, possess, control, receive, or purchase a firearm if the person  
22 is the subject of a criminal investigation, a part of which involves  
23 the ownership, possession, control, receipt, or purchase of a  
24 firearm.

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

29 Any person who meets the criteria contained in subdivision (e)  
30 or (f) who is released from intensive treatment shall nevertheless,  
31 if applicable, remain subject to the prohibition contained in  
32 subdivision (e) or (f).

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

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

4 (3) Prior to, or concurrent with, the discharge of each person  
5 certified for intensive treatment under paragraph (1), the facility  
6 shall inform the person of that information specified in paragraph  
7 (3) of subdivision (f).

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

1 the hearing under this section. If the court finds by a preponderance  
2 of the evidence that the person would be likely to use firearms in  
3 a safe and lawful manner, the court may order that the person may  
4 own, control, receive, possess, or purchase *firearms, and that*  
5 *person shall comply with the procedure described in Chapter 2*  
6 *(commencing with Section 33850) of Division 11 of Title 4 of Part*  
7 *6 of the Penal Code for the return of any firearms.* A copy of the  
8 order shall be submitted to the Department of Justice. Upon receipt  
9 of the order, the Department of Justice shall delete any reference  
10 to the prohibition against firearms from the person's state mental  
11 health firearms prohibition system information.

12 (h) (1) For all persons identified in subdivisions (f) and (g),  
13 facilities shall report to the Department of Justice as specified in  
14 those subdivisions, except facilities shall not report persons under  
15 subdivision (g) if the same persons previously have been reported  
16 under subdivision (f).

17 ~~Additionally,~~

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

23 (i) (1) *No person who has been ordered by a court to obtain*  
24 *assisted outpatient treatment pursuant to Article 9 (commencing*  
25 *with Section 5345) of Chapter 2 of Part 1 of Division 5 shall*  
26 *purchase or receive, or attempt to purchase or receive, or shall*  
27 *have in his or her possession, custody, or control, any firearm or*  
28 *any other deadly weapon while subject to assisted outpatient*  
29 *treatment. Upon placing any person under assisted outpatient*  
30 *treatment, the court shall notify the person of this prohibition.*

31 (2) *The court shall notify the Department of Justice of the court*  
32 *order placing the person in assisted outpatient treatment and*  
33 *prohibiting firearm or any other deadly weapon possession by the*  
34 *person described in paragraph (1) within two days of the order.*  
35 *The court shall also notify the Department of Justice when the*  
36 *person subject to paragraph (1) is no longer subject to assisted*  
37 *outpatient treatment. Any report submitted pursuant to this*  
38 *paragraph shall be confidential, except for purposes of the court*  
39 *proceedings specified in this subdivision and for purposes of*

1 *determining the eligibility of the person to own, possess, control,*  
2 *receive, or purchase a firearm.*

3 ~~(i)~~

4 (j) Every person who owns or possesses or has under his or her  
5 custody or control, or purchases or receives, or attempts to purchase  
6 or receive, any firearm or any other deadly weapon in violation of  
7 this section shall be punished by imprisonment pursuant to  
8 subdivision (h) of Section 1170 of the Penal Code or in a county  
9 jail for not more than one year.

10 ~~(j)~~

11 (k) “Deadly weapon,” as used in this section, has the meaning  
12 prescribed by Section 8100.

13 (l) *For purposes of this section, “immediately” means a period*  
14 *of time not exceeding 24 hours.*

15 (m) *Any notice or report required to be submitted to the*  
16 *Department of Justice pursuant to this section shall be submitted*  
17 *in an electronic format, in a manner prescribed by the Department*  
18 *of Justice.*

19 *SEC. 5. Section 4.5 of this bill incorporates amendments to*  
20 *Section 8103 of the Welfare and Institutions Code proposed by*  
21 *both this bill and Assembly Bill 1131. It shall only become*  
22 *operative if (1) both bills are enacted and become effective on or*  
23 *before January 1, 2014, (2) each bill amends Section 8103 of the*  
24 *Welfare and Institutions Code, and (3) this bill is enacted after*  
25 *Assembly Bill 1131, in which case Section 4 of this bill shall not*  
26 *become operative.*

27 ~~SEC. 4.~~

28 *SEC. 6. No reimbursement is required by this act pursuant to*  
29 *Section 6 of Article XIII B of the California Constitution because*  
30 *the only costs that may be incurred by a local agency or school*  
31 *district will be incurred because this act creates a new crime or*  
32 *infraction, eliminates a crime or infraction, or changes the penalty*  
33 *for a crime or infraction, within the meaning of Section 17556 of*  
34 *the Government Code, or changes the definition of a crime within*  
35 *the meaning of Section 6 of Article XIII B of the California*  
36 *Constitution.*

O