

AMENDED IN SENATE JUNE 23, 1999
AMENDED IN ASSEMBLY MAY 24, 1999
AMENDED IN ASSEMBLY APRIL 22, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1587

Introduced by Assembly Member Scott *Members Scott and Aroner*
(Coauthors: Assembly Members Jackson, Knox, Kuehl, and Machado)
(Coauthors: Senators Ortiz, Schiff, and Solis)

February 26, 1999

~~An act to add Article 10.4 (commencing with Section 35294.10) to Chapter 2 of Part 21 of the Education Code, relating to school violence, making an appropriation therefor, An act to amend Section 8103 of the Welfare and Institutions Code, relating to firearms, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1587, as amended, Scott. ~~School violence~~ *Firearms.*

(1) Existing law provides that no person who has been taken into custody or admitted to a designated facility 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 5 years after the person is released from the facility unless, upon petition to the superior court, the person is found by a

preponderance of the evidence likely to use firearms in a safe and lawful manner.

This bill instead would provide that the person may request a hearing from the court and provide that the People of the State of California 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. If the court at the hearing finds that the people have not met their burden, the court would be required to order that the person may own, control, receive, possess, or purchase firearms.

(2) Existing law provides that no person who has been certified for intensive treatment related to mental disorder or impairment by chronic alcoholism may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of 5 years unless upon petition to the superior court the person is found by a preponderance of the evidence likely to use firearms in a safe and lawful manner, as described above.

This bill would permit the person to petition the superior court of his or her county of residence that he or she may own, possess, control, receive, or purchase a firearm and would prescribe the procedures for a hearing on the petition.

~~Existing law declares the intent of the Legislature that all California public schools in kindergarten and grades 1 to 12, inclusive, operated by a school district develop, in cooperation with law enforcement agencies and others, a comprehensive school safety plan and authorizes a governing board of a school district to apply to the Superintendent of Public Instruction for a grant not to exceed \$15,000 per school to implement a plan meeting prescribed criteria.~~

~~This bill would establish the School Emergency Response to Violent Events program to require the State Department of Education to provide assistance to schools and school districts in responding to a violent event, including, but not limited to, the establishment of regional training programs and the development of a crisis response handbook. The bill would appropriate \$138,000 from the General Fund to the State Department of Education for these purposes.~~

This bill would declare that it is to take effect immediately, as an urgency measure.

Vote: $\frac{2}{3}$. Appropriation: ~~yes~~ no. Fiscal committee: yes.
State-mandated local program: no.

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

~~SECTION 1.—The Legislature finds and declares all of~~

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

8103. (a) (1) 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) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). 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,

1 a violation of Section 459 of the Penal Code in the first
2 degree, assault with intent to commit murder, a violation
3 of Section 220 of the Penal Code in which the victim
4 suffers great bodily injury, a violation of Section 12303.1,
5 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code,
6 or of a felony involving death, great bodily injury, or an
7 act which poses a serious threat of bodily harm to another
8 person, or a violation of the law of any other state or the
9 United States that includes all the elements of any of the
10 above felonies as defined under California law, shall
11 purchase or receive, or attempt to purchase or receive, or
12 have in his or her possession or under his or her custody
13 or control any firearm or any other deadly weapon.

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

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

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

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

1 Penal Code or the law of any other state or the United
2 States.

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

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

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

1 (3) All information provided to the Department of
2 Justice pursuant to paragraph (2) shall be kept
3 confidential, separate, and apart from all other records
4 maintained by the department, and shall be used only to
5 determine eligibility to purchase or possess firearms or
6 other deadly weapons. Any person who knowingly
7 furnishes that information for any other purpose is guilty
8 of a misdemeanor. All the information concerning any
9 person shall be destroyed upon receipt by the
10 Department of Justice of notice of the termination of
11 conservatorship as to that person pursuant to paragraph
12 (2).

13 (f) (1) No person who has been (A) taken into
14 custody as provided in Section 5150 because that person
15 is a danger to himself, herself, or to others, (B) assessed
16 within the meaning of Section 5151, and (C) admitted to
17 a designated facility within the meaning of Sections 5151
18 and 5152 because that person is a danger to himself,
19 herself, or others, shall own, possess, control, receive, or
20 purchase, or attempt to own, possess, control, receive, or
21 purchase any firearm for a period of five years after the
22 person is released from the facility. A person described in
23 the preceding sentence, however, may own, possess,
24 control, receive, or purchase, or attempt to own, possess,
25 control, receive, or purchase any firearm if the superior
26 court has, pursuant to paragraph (4), ~~upon petition of the~~
27 ~~person, found, by a preponderance of the evidence, that~~
28 ~~the person is likely to use firearms in a safe and lawful~~
29 ~~manner~~ *People of the State of California have not met*
30 *their burden pursuant to paragraph (5).*

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

38 Any report prescribed by this subdivision shall be
39 confidential, except for purposes of the court proceedings
40 described in this subdivision and for determining the

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

3 (3) Prior to, or concurrent with, the discharge, the
4 facility shall inform a person subject to this subdivision
5 that he or she is prohibited from owning, possessing,
6 controlling, receiving, or purchasing any firearm for a
7 period of five years. Simultaneously, the facility shall
8 inform the person that he or she may ~~petition~~ *request a*
9 *hearing from* a court, as provided in this subdivision, for
10 an order permitting the person to own, possess, control,
11 receive, or purchase a firearm.

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

1 and to the district attorney. The court, upon motion of the
2 person subject to paragraph (1) establishing that
3 confidential information is likely to be discussed during
4 the hearing that would cause harm to the person, shall
5 conduct the hearing in camera with only the relevant
6 parties present, unless the court finds that the public
7 interest would be better served by conducting the
8 hearing in public. Notwithstanding any other law,
9 declarations, police reports, including criminal history
10 information, and any other material and relevant
11 evidence that is not excluded under Section 352 of the
12 Evidence Code, shall be admissible at the hearing under
13 this section. ~~If~~

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

17 ~~(6) If the court finds by a preponderance of the~~
18 ~~evidence that the person would be likely to use firearms~~
19 ~~in a safe and lawful manner finds at the hearing set forth~~
20 ~~in paragraph (4) that the people have not met their~~
21 ~~burden as set forth in paragraph (5), the court may shall~~
22 order that the person may own, control, receive, possess,
23 or purchase firearms. A copy of the order shall be
24 submitted to the Department of Justice. Upon receipt of
25 the order, the Department of Justice shall delete any
26 reference to the prohibition against firearms from the
27 person's state summary criminal history information.

28 ~~(5)~~

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

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

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

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

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

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

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

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

34 Additionally, all facilities shall report to the
35 Department of Justice upon the discharge of persons
36 from whom reports have been submitted pursuant to
37 subdivision (f) or (g). However, a report shall not be filed
38 for persons who are discharged within 31 days after the
39 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 in the state prison 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. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the public safety by ensuring that firearms are kept out of the hands of mentally and emotionally disturbed persons, it is necessary that this act take effect immediately.

the following:

~~(a) In response to recent homicides on school campuses, there is need to reduce the aftermath trauma created by violent events and to restore a safe learning environment for pupil learning.~~

~~(b) A single event that results in death can leave a school campus in crisis and disrupt the school climate sufficiently to interfere with pupil learning.~~

~~(c) Youth between 12 and 17 years of age are crime victims five times more often than adults over 35 years of age.~~

~~(d) Homicides of youth between 12 and 17 years of age have increased 95 percent between 1980 and 1994.~~

~~(e) Mental health practitioners can provide valuable services in response to the aftermath of violent events on school campuses in which death has left survivors traumatized and unable to fully participate in or benefit from school educational and other activities.~~

~~(f) A coordinated response team of school psychologists, school counselors, other mental health professionals, and law enforcement representatives who have received specialized training should be available to~~

~~schools and districts when a violent event occurs on campus or in the adjacent school community.~~

~~(g) Statewide training and resources are needed to assist schools and school districts to anticipate specific processes and steps to follow if and when a violent event, such as a suicide or homicide, impacts a schoolsite.~~

~~SEC. 2. Article 10.4 (commencing with Section 35294.10) is added, immediately preceding Section 35295, to Chapter 2 of Part 21 of the Education Code, to read:~~

~~Article 10.4. School Emergency Response to Violent Events~~

~~35294.10. (a) The School Emergency Response to Violent Events (SERVE) program is hereby established. Pursuant to this article, the State Department of Education shall do all of the following:~~

~~(1) Establish and operate regional training programs to assist schools and school districts to develop plans to anticipate their initial steps in the event of a violent event and to incorporate those plans within school and school district emergency response plans.~~

~~(2) Establish and train a cadre of mental health professionals and law enforcement officials to be on call for those school districts that must address the aftermath of a violent event.~~

~~(3) Develop a crisis response handbook for distribution to every school and school district.~~

~~(4) Identify services and resources available to schools and school districts to help them anticipate and respond to violent, disruptive situations.~~

~~(b) An evaluation of the effectiveness of training shall be conducted by the State Department of Education and reported to the Legislature by March 1, 2002.~~

~~SEC. 3. The sum of one hundred thirty-eight thousand dollars (\$138,000) is hereby appropriated from the General Fund to the State Department of Education for the School Emergency Response to Violent Events (SERVE) program for the purposes of Article 10.4~~

1 ~~(commencing with Section 35294.10) of Chapter 2 of Part~~
2 ~~21 of the Education Code.~~

3 ~~SEC. 4. This act is an urgency statute necessary for the~~
4 ~~immediate preservation of the public peace, health, or~~
5 ~~safety within the meaning of Article IV of the~~
6 ~~Constitution and shall go into immediate effect. The facts~~
7 ~~constituting the necessity are:~~

8 ~~In order for training and assistance to be provided to~~
9 ~~schools and school districts, at the earliest possible time,~~
10 ~~for preparing crisis response plans, as well as identifying~~
11 ~~services and resources available to schools and school~~
12 ~~districts to help them anticipate and respond to violent,~~
13 ~~disruptive situations, it is necessary that this act take~~
14 ~~effect immediately.~~

