

AMENDED IN SENATE JULY 8, 1999
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 Members Scott and Aroner

February 26, 1999

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. 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~~ *shall not be subject to the 5-year prohibition on the ownership, control, receipt, possession, or purchase of 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.

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

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

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

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

1 to the issuance of the certificate, again been adjudicated
2 by a court to be a danger to others as a result of a mental
3 disorder or mental illness.

4 (2) The court shall immediately notify the
5 Department of Justice of the court order finding the
6 individual to be a person described in paragraph (1). The
7 court shall also notify the Department of Justice of any
8 certificate issued as described in paragraph (1).

9 (b) (1) No person who has been found, pursuant to
10 Section 1026 of the Penal Code or the law of any other
11 state or the United States, not guilty by reason of insanity
12 of murder, mayhem, a violation of Section 207, 209, or
13 209.5 of the Penal Code in which the victim suffers
14 intentionally inflicted great bodily injury, carjacking or
15 robbery in which the victim suffers great bodily injury, a
16 violation of Section 451 or 452 of the Penal Code involving
17 a trailer coach, as defined in Section 635 of the Vehicle
18 Code, or any dwelling house, a violation of paragraph (1)
19 or (2) of subdivision (a) of Section 262 or paragraph (2)
20 or (3) of subdivision (a) of Section 261 of the Penal Code,
21 a violation of Section 459 of the Penal Code in the first
22 degree, assault with intent to commit murder, a violation
23 of Section 220 of the Penal Code in which the victim
24 suffers great bodily injury, a violation of Section 12303.1,
25 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code,
26 or of a felony involving death, great bodily injury, or an
27 act which poses a serious threat of bodily harm to another
28 person, or a violation of the law of any other state or the
29 United States that includes all the elements of any of the
30 above felonies as defined under California law, shall
31 purchase or receive, or attempt to purchase or receive, or
32 have in his or her possession or under his or her custody
33 or control any firearm or any other deadly weapon.

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

37 (c) (1) No person who has been found, pursuant to
38 Section 1026 of the Penal Code or the law of any other
39 state or the United States, not guilty by reason of insanity
40 of any crime other than those described in subdivision (b)

1 shall purchase or receive, or attempt to purchase or
2 receive, or shall have in his or her possession, custody, or
3 control any firearm or any other deadly weapon unless
4 the court of commitment has found the person to have
5 recovered sanity, pursuant to Section 1026.2 of the Penal
6 Code or the law of any other state or the United States.

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

12 (d) (1) No person found by a court to be mentally
13 incompetent to stand trial, pursuant to Section 1370 or
14 1370.1 of the Penal Code or the law of any other state or
15 the United States, shall purchase or receive, or attempt to
16 purchase or receive, or shall have in his or her possession,
17 custody, or control any firearm or any other deadly
18 weapon, unless there has been a finding with respect to
19 the person of restoration to competence to stand trial by
20 the committing court, pursuant to Section 1372 of the
21 Penal Code or the law of any other state or the United
22 States.

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

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

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

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

20 (3) All information provided to the Department of
21 Justice pursuant to paragraph (2) shall be kept
22 confidential, separate, and apart from all other records
23 maintained by the department, and shall be used only to
24 determine eligibility to purchase or possess firearms or
25 other deadly weapons. Any person who knowingly
26 furnishes that information for any other purpose is guilty
27 of a misdemeanor. All the information concerning any
28 person shall be destroyed upon receipt by the
29 Department of Justice of notice of the termination of
30 conservatorship as to that person pursuant to paragraph
31 (2).

32 (f) (1) No person who has been (A) taken into
33 custody as provided in Section 5150 because that person
34 is a danger to himself, herself, or to others, (B) assessed
35 within the meaning of Section 5151, and (C) admitted to
36 a designated facility within the meaning of Sections 5151
37 and 5152 because that person is a danger to himself,
38 herself, or others, shall own, possess, control, receive, or
39 purchase, or attempt to own, possess, control, receive, or
40 purchase any firearm for a period of five years after the

1 person is released from the facility. A person described in
2 the preceding sentence, however, may own, possess,
3 control, receive, or purchase, or attempt to own, possess,
4 control, receive, or purchase any firearm if the superior
5 court has, pursuant to paragraph (4), found that the
6 People of the State of California have not met their
7 burden pursuant to paragraph (5).

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

15 Any report prescribed by this subdivision shall be
16 confidential, except for purposes of the court proceedings
17 described in this subdivision and for determining the
18 eligibility of the person to own, possess, control, receive,
19 or purchase a firearm.

20 (3) Prior to, or concurrent with, the discharge, the
21 facility shall inform a person subject to this subdivision
22 that he or she is prohibited from owning, possessing,
23 controlling, receiving, or purchasing any firearm for a
24 period of five years. Simultaneously, the facility shall
25 inform the person that he or she may request a hearing
26 from a court, as provided in this subdivision, for an order
27 permitting the person to own, possess, control, receive, or
28 purchase a firearm.

29 (4) Any person who is subject to paragraph (1) who
30 has requested a hearing from the superior court of his or
31 her county of residence for an order that he or she may
32 own, possess, control, receive, or purchase firearms shall
33 be given a hearing. The clerk of the court shall set a
34 hearing date and notify the person, the Department of
35 Justice, and the district attorney. The People of the State
36 of California shall be the plaintiff in the proceeding and
37 shall be represented by the district attorney. Upon
38 motion of the district attorney, or on its own motion, the
39 superior court may transfer the hearing to the county in
40 which the person resided at the time of his or her

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

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

32 (6) If the court finds at the hearing set forth in
 33 paragraph (4) that the people have not met their burden
 34 as set forth in paragraph (5), the court shall ~~order that the~~
 35 ~~person may own, control, receive, possess, or purchase~~
 36 *order that the person shall not be subject to the five-year*
 37 *prohibition in this section on the ownership, control,*
 38 *receipt, possession or purchase of firearms.* A copy of the
 39 order shall be submitted to the Department of Justice.
 40 Upon receipt of the order, the Department of Justice shall

1 delete any reference to the prohibition against firearms
2 from the person's state summary criminal history
3 information.

4 (7) Nothing in this subdivision shall prohibit the use of
5 reports filed pursuant to this section to determine the
6 eligibility of persons to own, possess, control, receive, or
7 purchase a firearm if the person is the subject of a
8 criminal investigation, a part of which involves the
9 ownership, possession, control, receipt, or purchase of a
10 firearm.

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

16 Any person who meets the criteria contained in
17 subdivision (e) or (f) who is released from intensive
18 treatment shall nevertheless, if applicable, remain
19 subject to the prohibition contained in subdivision (e) or
20 (f).

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

30 (3) Prior to, or concurrent with, the discharge of each
31 person certified for intensive treatment under paragraph
32 (1), the facility shall inform the person of that
33 information specified in paragraph (3) of subdivision (f).

34 (4) Any person who is subject to paragraph (1) may
35 petition the superior court of his or her county of
36 residence for an order that he or she may own, possess,
37 control, receive, or purchase firearms. At the time the
38 petition is filed, the clerk of the court shall set a hearing
39 date and notify the person, the Department of Justice,
40 and the district attorney. The People of the State of

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

1 from the person's state summary criminal history
2 information.

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

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

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

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

22 SEC. 2. This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or
24 safety within the meaning of Article IV of the
25 Constitution and shall go into immediate effect. The facts
26 constituting the necessity are:

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

