

AMENDED IN SENATE AUGUST 17, 1999

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, *or the district attorney declines or fails to go forward at the hearing*, the court would be required to order that the person ~~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

1 possess a firearm or any other deadly weapon without
2 endangering others, and the person has not, subsequent
3 to the issuance of the certificate, again been adjudicated
4 by a court to be a danger to others as a result of a mental
5 disorder or mental illness.

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

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

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

39 (c) (1) No person who has been found, pursuant to
40 Section 1026 of the Penal Code or the law of any other

1 state or the United States, not guilty by reason of insanity
2 of any crime other than those described in subdivision (b)
3 shall purchase or receive, or attempt to purchase or
4 receive, or shall have in his or her possession, custody, or
5 control any firearm or any other deadly weapon unless
6 the court of commitment has found the person to have
7 recovered sanity, pursuant to Section 1026.2 of the Penal
8 Code or the law of any other state or the United States.

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

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

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

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

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

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

22 (3) All information provided to the Department of
23 Justice pursuant to paragraph (2) shall be kept
24 confidential, separate, and apart from all other records
25 maintained by the ~~department~~ *Department of Justice*,
26 and shall be used only to determine eligibility to purchase
27 or possess firearms or other deadly weapons. Any person
28 who knowingly furnishes that information for any other
29 purpose is guilty of a misdemeanor. All the information
30 concerning any person shall be destroyed upon receipt by
31 the Department of Justice of notice of the termination of
32 conservatorship as to that person pursuant to paragraph
33 (2).

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

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

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

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

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

37 (4) *The Department of Justice shall provide the form*
38 *upon request to any person described in paragraph (1).*
39 *The Department of Justice shall also provide the form to*
40 *the superior court in each county. A person described in*

1 *paragraph (1) may make a single request for a hearing at*
2 *any time during the five-year period. The request for*
3 *hearing shall be made on the form prescribed by the*
4 *department or in a document that includes equivalent*
5 *language.*

6 ~~(4)–~~

7 (5) Any person who is subject to paragraph (1) who
8 has requested a hearing from the superior court of his or
9 her county of residence for an order that he or she may
10 own, possess, control, receive, or purchase firearms shall
11 be given a hearing. The clerk of the court shall set a
12 hearing date and notify the person, the Department of
13 Justice, and the district attorney. The People of the State
14 of California shall be the plaintiff in the proceeding and
15 shall be represented by the district attorney. Upon
16 motion of the district attorney, or on its own motion, the
17 superior court may transfer the hearing to the county in
18 which the person resided at the time of his or her
19 detention, the county in which the person was detained,
20 or the county in which the person was evaluated or
21 treated. Within seven days after the request for a hearing,
22 the Department of Justice shall file copies of the reports
23 described in this section with the superior court. The
24 reports shall be disclosed upon request to the person and
25 to the district attorney. The district attorney shall be
26 entitled to a continuance of the hearing to a date of not
27 less than 14 days after the district attorney was notified of
28 the hearing date by the clerk of the court. The district
29 attorney may notify the county mental health director of
30 the hearing who shall provide information about the
31 detention of the person that may be relevant to the court
32 and shall file that information with the superior court.
33 That information shall be disclosed to the person and to
34 the district attorney. The court, upon motion of the
35 person subject to paragraph (1) establishing that
36 confidential information is likely to be discussed during
37 the hearing that would cause harm to the person, shall
38 conduct the hearing in camera with only the relevant
39 parties present, unless the court finds that the public
40 interest would be better served by conducting the

1 hearing in public. Notwithstanding any other law,
2 declarations, police reports, including criminal history
3 information, and any other material and relevant
4 evidence that is not excluded under Section 352 of the
5 Evidence Code, shall be admissible at the hearing under
6 this section.

7 ~~(5)–~~

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

11 ~~(6)–~~

12 (7) If the court finds at the hearing set forth in
13 paragraph (4) that the people have not met their burden
14 as set forth in paragraph (5), the court shall order that the
15 person shall not be subject to the five-year prohibition in
16 this section on the ownership, control, receipt, possession
17 or purchase of firearms. A copy of the order shall be
18 submitted to the Department of Justice. Upon receipt of
19 the order, the Department of Justice shall delete any
20 reference to the prohibition against firearms from the
21 person's state summary criminal history information.

22 ~~(7)–~~

23 (8) *Where the district attorney declines or fails to go*
24 *forward in the hearing, the court shall order that the*
25 *person shall not be subject to the five-year prohibition*
26 *required by this subdivision on the ownership, control,*
27 *receipt, possession, or purchase of firearms. A copy of the*
28 *order shall be submitted to the Department of Justice.*
29 *Upon receipt of the order, the Department of Justice*
30 *shall, within 15 days, delete any reference to the*
31 *prohibition against firearms from the person's state*
32 *summary criminal history administration.*

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

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

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

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

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

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court.

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

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

38 Additionally, all facilities shall report to the
39 Department of Justice upon the discharge of persons
40 from whom reports have been submitted pursuant to

1 subdivision (f) or (g). However, a report shall not be filed
2 for persons who are discharged within 31 days after the
3 date of admission.

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

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

12 SEC. 2. This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or
14 safety within the meaning of Article IV of the
15 Constitution and shall go into immediate effect. The facts
16 constituting the necessity are:

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

