

AMENDED IN SENATE AUGUST 18, 1999

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, *making an appropriation therefor*, 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 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.

(3) *The bill would appropriate \$145,000 from the General Fund to the Department of Justice for the purposes of implementing the bill, including the payment of funds to local entities pursuant to the provisions of the bill.*

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

Vote: $\frac{2}{3}$. Appropriation: ~~no~~—yes. 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

1 to others as a result of a mental disorder or mental illness,
2 or who has been adjudicated to be a mentally disordered
3 sex offender, shall purchase or receive, or attempt to
4 purchase or receive, or have in his or her possession,
5 custody, or control any firearm or any other deadly
6 weapon unless there has been issued to the person a
7 certificate by the court of adjudication upon release from
8 treatment or at a later date stating that the person may
9 possess a firearm or any other deadly weapon without
10 endangering others, and the person has not, subsequent
11 to the issuance of the certificate, again been adjudicated
12 by a court to be a danger to others as a result of a mental
13 disorder or mental illness.

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

19 (b) (1) No person who has been found, pursuant to
20 Section 1026 of the Penal Code or the law of any other
21 state or the United States, not guilty by reason of insanity
22 of murder, mayhem, a violation of Section 207, 209, or
23 209.5 of the Penal Code in which the victim suffers
24 intentionally inflicted great bodily injury, carjacking or
25 robbery in which the victim suffers great bodily injury, a
26 violation of Section 451 or 452 of the Penal Code involving
27 a trailer coach, as defined in Section 635 of the Vehicle
28 Code, or any dwelling house, a violation of paragraph (1)
29 or (2) of subdivision (a) of Section 262 or paragraph (2)
30 or (3) of subdivision (a) of Section 261 of the Penal Code,
31 a violation of Section 459 of the Penal Code in the first
32 degree, assault with intent to commit murder, a violation
33 of Section 220 of the Penal Code in which the victim
34 suffers great bodily injury, a violation of Section 12303.1,
35 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code,
36 or of a felony involving death, great bodily injury, or an
37 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
39 United States that includes all the elements of any of the
40 above felonies as defined under California law, shall

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

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

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

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

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

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

39 (e) (1) No person who has been placed under
40 conservatorship by a court, pursuant to Section 5350 or

1 the law of any other state or the United States, because
2 the person is gravely disabled as a result of a mental
3 disorder or impairment by chronic alcoholism shall
4 purchase or receive, or attempt to purchase or receive, or
5 shall have in his or her possession, custody, or control any
6 firearm or any other deadly weapon while under the
7 conservatorship if, at the time the conservatorship was
8 ordered or thereafter, the court which imposed the
9 conservatorship found that possession of a firearm or any
10 other deadly weapon by the person would present a
11 danger to the safety of the person or to others. Upon
12 placing any person under conservatorship, and
13 prohibiting firearm or any other deadly weapon
14 possession by the person, the court shall notify the person
15 of this prohibition.

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

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

1 conservatorship as to that person pursuant to paragraph
2 (2).

3 (f) (1) No person who has been (A) taken into
4 custody as provided in Section 5150 because that person
5 is a danger to himself, herself, or to others, (B) assessed
6 within the meaning of Section 5151, and (C) admitted to
7 a designated facility within the meaning of Sections 5151
8 and 5152 because that person is a danger to himself,
9 herself, or others, shall own, possess, control, receive, or
10 purchase, or attempt to own, possess, control, receive, or
11 purchase any firearm for a period of five years after the
12 person is released from the facility. A person described in
13 the preceding sentence, however, may own, possess,
14 control, receive, or purchase, or attempt to own, possess,
15 control, receive, or purchase any firearm if the superior
16 court has, pursuant to paragraph (4), found that the
17 People of the State of California have not met their
18 burden pursuant to paragraph (5).

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

26 Any report prescribed by this subdivision shall be
27 confidential, except for purposes of the court proceedings
28 described in this subdivision and for determining the
29 eligibility of the person to own, possess, control, receive,
30 or purchase a firearm.

31 (3) Prior to, or concurrent with, the discharge, the
32 facility shall inform a person subject to this subdivision
33 that he or she is prohibited from owning, possessing,
34 controlling, receiving, or purchasing any firearm for a
35 period of five years. Simultaneously, the facility shall
36 inform the person that he or she may request a hearing
37 from a court, as provided in this subdivision, for an order
38 permitting the person to own, possess, control, receive, or
39 purchase a firearm. The facility shall provide the person
40 with a form for a request for a hearing. The Department

1 of Justice shall prescribe the form. Where the person
2 requests a hearing at the time of discharge, the facility
3 shall forward the form to the superior court unless the
4 person states that he or she will submit the form to the
5 superior court.

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

15 (5) Any person who is subject to paragraph (1) who
16 has requested a hearing from the superior court of his or
17 her county of residence for an order that he or she may
18 own, possess, control, receive, or purchase firearms shall
19 be given a hearing. The clerk of the court shall set a
20 hearing date and notify the person, the Department of
21 Justice, and the district attorney. The People of the State
22 of California shall be the plaintiff in the proceeding and
23 shall be represented by the district attorney. Upon
24 motion of the district attorney, or on its own motion, the
25 superior court may transfer the hearing to the county in
26 which the person resided at the time of his or her
27 detention, the county in which the person was detained,
28 or the county in which the person was evaluated or
29 treated. Within seven days after the request for a hearing,
30 the Department of Justice shall file copies of the reports
31 described in this section with the superior court. The
32 reports shall be disclosed upon request to the person and
33 to the district attorney. *The court shall set the hearing*
34 *within 30 days of receipt of the request for a hearing.*
35 *Upon showing good cause, the district attorney shall be*
36 *entitled to a continuance of the hearing to a date of not*
37 *less than not to exceed 14 days after the district attorney*
38 *was notified of the hearing date by the clerk of the court.*
39 *If additional continuances are granted, the total length of*
40 *time for continuances shall not exceed 60 days. The*

1 district attorney may notify the county mental health
2 director of the hearing who shall provide information
3 about the detention of the person that may be relevant to
4 the court and shall file that information with the superior
5 court. That information shall be disclosed to the person
6 and to the district attorney. The court, upon motion of the
7 person subject to paragraph (1) establishing that
8 confidential information is likely to be discussed during
9 the hearing that would cause harm to the person, shall
10 conduct the hearing in camera with only the relevant
11 parties present, unless the court finds that the public
12 interest would be better served by conducting the
13 hearing in public. Notwithstanding any other law,
14 declarations, police reports, including criminal history
15 information, and any other material and relevant
16 evidence that is not excluded under Section 352 of the
17 Evidence Code, shall be admissible at the hearing under
18 this section.

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

22 (7) If the court finds at the hearing set forth in
23 paragraph (4) that the people have not met their burden
24 as set forth in paragraph (5), the court shall order that the
25 person shall not be subject to the five-year prohibition in
26 this section on the ownership, control, receipt, possession
27 or purchase of firearms. A copy of the order shall be
28 submitted to the Department of Justice. Upon receipt of
29 the order, the Department of Justice shall delete any
30 reference to the prohibition against firearms from the
31 person's state summary criminal history information.

32 (8) Where the district attorney declines or fails to go
33 forward in the hearing, the court shall order that the
34 person shall not be subject to the five-year prohibition
35 required by this subdivision on the ownership, control,
36 receipt, possession, or purchase of firearms. A copy of the
37 order shall be submitted to the Department of Justice.
38 Upon receipt of the order, the Department of Justice
39 shall, within 15 days, delete any reference to the

1 prohibition against firearms from the person's state
2 summary criminal history administration.

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

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

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

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

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

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

1 shall be represented by the district attorney. Upon
2 motion of the district attorney, or on its own motion, the
3 superior court may transfer the petition to the county in
4 which the person resided at the time of his or her
5 detention, the county in which the person was detained,
6 or the county in which the person was evaluated or
7 treated. Within seven days after receiving notice of the
8 petition, the Department of Justice shall file copies of the
9 reports described in this section with the superior court.
10 The reports shall be disclosed upon request to the person
11 and to the district attorney. The district attorney shall be
12 entitled to a continuance of the hearing to a date of not
13 less than 14 days after the district attorney was notified of
14 the hearing date by the clerk of the court. The district
15 attorney may notify the county mental health director of
16 the petition, and the county mental health director shall
17 provide information about the detention of the person
18 that may be relevant to the court and shall file that
19 information with the superior court. That information
20 shall be disclosed to the person and to the district
21 attorney. The court, upon motion of the person subject to
22 paragraph (1) establishing that confidential information
23 is likely to be discussed during the hearing that would
24 cause harm to the person, shall conduct the hearing in
25 camera with only the relevant parties present, unless the
26 court finds that the public interest would be better served
27 by conducting the hearing in public. Notwithstanding
28 any other provision of law, any declaration, police reports,
29 including criminal history information, and any other
30 material and relevant evidence that is not excluded
31 under Section 352 of the Evidence Code, shall be
32 admissible at the hearing under this section. If the court
33 finds by a preponderance of the evidence that the person
34 would be likely to use firearms in a safe and lawful
35 manner, the court may order that the person may own,
36 control, receive, possess, or purchase firearms. A copy of
37 the order shall be submitted to the Department of Justice.
38 Upon receipt of the order, the Department of Justice shall
39 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. The sum of one hundred forty-five thousand*
23 *dollars (\$145,000) is hereby appropriated from the*
24 *General Fund to the Department of Justice for the*
25 *purposes of implementing this act, including the*
26 *payment of funds to local entities pursuant to the*
27 *provisions of this act.*

28 *SEC. 3. This act is an urgency statute necessary for*
29 *the immediate preservation of the public peace, health,*
30 *or safety within the meaning of Article IV of the*
31 *Constitution and shall go into immediate effect. The facts*
32 *constituting the necessity are:*

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