

Introduced by Senator Schiff

February 25, 2000

An act to amend Section 12028.5 of the Penal Code, and to amend Section 8102 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 2052, as introduced, Schiff. Firearms: retention after seizure.

Existing law provides that where a firearm is seized at the scene of a domestic violence incident, as specified, and the law enforcement agency has reasonable cause to believe that the return of the firearm would be likely to result in endangering specified persons, the agency may, within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

This bill would provide that the law enforcement agency would have 60 days to initiate the petition to determine if the firearm should be returned.

Existing law provides that where a firearm has been seized by law enforcement in connection with a person who has been detained or apprehended for examination of his or her mental condition, the law enforcement agency may, within 30 days, initiate a petition in the superior court for a hearing to determine whether the return of the firearm would be likely to result in endangering the person or others.

This bill would provide that the law enforcement agency would have 60 days to initiate the petition to determine if the firearm should be returned.



Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 12028.5 of the Penal Code is
2 amended to read:
3 12028.5. (a) As used in this section, the following
4 definitions shall apply:
5 (1) “Abuse” means any of the following:
6 (A) Intentionally or recklessly to cause or attempt to
7 cause bodily injury
8 (B) Sexual assault
9 (C) To place a person in reasonable apprehension of
10 imminent serious bodily injury to that person or to
11 another.
12 (D) To molest, attack, strike, stalk, destroy personal
13 property, or violate the terms of a domestic violence
14 protective order issued pursuant to Part 4 (commencing
15 with Section 6300) of Division 10 of the Family Code.
16 (2) “Domestic violence” means abuse perpetrated
17 against any of the following persons:
18 (A) A spouse or former spouse.
19 (B) A cohabitant or former cohabitant, as defined in
20 Section 6209 of the Family Code.
21 (C) A person with whom the respondent is having or
22 has had a dating or engagement relationship.
23 (D) A person with whom the respondent has had a
24 child, where the presumption applies that the male
25 parent is the father of the child of the female parent
26 under the Uniform Parentage Act (Part 3 (commencing
27 with Section 7600) of Division 12 of the Family Code).
28 (E) A child of a party or a child who is the subject of
29 an action under the Uniform Parentage Act, where the
30 presumption applies that the male parent is the father of
31 the child to be protected.
32 (F) Any other person related by consanguinity or
33 affinity within the second degree.

1 (3) “Deadly weapon” means any weapon, the
2 possession or concealed carrying of which is prohibited by
3 Section 12020.

4 (b) A sheriff, undersheriff, deputy sheriff, marshal,
5 deputy marshal, or police officer of a city, as defined in
6 subdivision (a) of Section 830.1, a peace officer of the
7 Department of the California Highway Patrol, as defined
8 in subdivision (a) of Section 830.2, a member of the
9 University of California Police Department, as defined in
10 subdivision (b) of Section 830.2, an officer listed in Section
11 830.6 while acting in the course and scope of his or her
12 employment as a peace officer, a member of a California
13 State University Police Department, as defined in
14 subdivision (c) of Section 830.2, a peace officer of the
15 Department of Parks and Recreation, as defined in
16 subdivision (f) of Section 830.2, a peace officer, as defined
17 in subdivision (d) of Section 830.31, a peace officer as
18 defined in subdivisions (a) and (b) of Section 830.32, and
19 a peace officer, as defined in Section 830.5, who is at the
20 scene of a domestic violence incident involving a threat
21 to human life or a physical assault, shall take temporary
22 custody of any firearm or other deadly weapon in plain
23 sight or discovered pursuant to a consensual search as
24 necessary for the protection of the peace officer or other
25 persons present. Upon taking custody of a firearm or
26 other deadly weapon, the officer shall give the owner or
27 person who possessed the firearm a receipt. The receipt
28 shall describe the firearm or other deadly weapon and list
29 any identification or serial number on the firearm. The
30 receipt shall indicate where the firearm or other deadly
31 weapon can be recovered and the date after which the
32 owner or possessor can recover the firearm or other
33 deadly weapon. No firearm or other deadly weapon shall
34 be held less than 48 hours. Except as provided in
35 subdivision (e), if a firearm or other deadly weapon is not
36 retained for use as evidence related to criminal charges
37 brought as a result of the domestic violence incident or is
38 not retained because it was illegally possessed, the
39 firearm or other deadly weapon shall be made available
40 to the owner or person who was in lawful possession 48

1 hours after the seizure or as soon thereafter as possible,
2 but no later than 72 hours after the seizure. In any civil
3 action or proceeding for the return of firearms or
4 ammunition or other deadly weapon seized by any state
5 or local law enforcement agency and not returned within
6 72 hours following the initial seizure, except as provided
7 in subdivision (c), the court shall allow reasonable
8 attorney's fees to the prevailing party.

9 (c) Any peace officer, as defined in subdivisions (a)
10 and (b) of Section 830.32, who takes custody of a firearm
11 or deadly weapon pursuant to this section shall deliver the
12 firearm within 24 hours to the city police department or
13 county sheriff's office in the jurisdiction where the
14 college or school is located.

15 (d) Any firearm or other deadly weapon which has
16 been taken into custody that has been stolen shall be
17 restored to the lawful owner, as soon as its use for
18 evidence has been served, upon his or her identification
19 of the firearm or other deadly weapon and proof of
20 ownership.

21 (e) Any firearm or other deadly weapon taken into
22 custody and held by a police, university police, or sheriff's
23 department or by a marshal's office, by a peace officer of
24 the Department of the California Highway Patrol, as
25 defined in subdivision (a) of Section 830.2, by a peace
26 officer of the Department of Parks and Recreation, as
27 defined in subdivision (f) of Section 830.2, by a peace
28 officer, as defined in subdivision (d) of Section 830.31, or
29 by a peace officer, as defined in Section 830.5, for longer
30 than 12 months and not recovered by the owner or person
31 who has lawful possession at the time it was taken into
32 custody, shall be considered a nuisance and sold or
33 destroyed as provided in subdivision (c) of Section 12028.
34 Firearms or other deadly weapons not recovered within
35 12 months due to an extended hearing process as
36 provided in subdivision (j), are not subject to destruction
37 until the court issues a decision, and then only if the court
38 does not order the return of the firearm or other deadly
39 weapon to the owner.

1 (f) In those cases where a law enforcement agency has
2 reasonable cause to believe that the return of a firearm
3 or other deadly weapon would be likely to result in
4 endangering the victim or the person reporting the
5 assault or threat, the agency shall advise the owner of the
6 firearm or other deadly weapon, and within ~~10~~ 60 days of
7 the seizure, initiate a petition in superior court to
8 determine if the firearm or other deadly weapon should
9 be returned.

10 (g) The law enforcement agency shall inform the
11 owner or person who had lawful possession of the firearm
12 or other deadly weapon, at that person's last known
13 address by registered mail, return receipt requested, that
14 he or she has 30 days from the date of receipt of the notice
15 to respond to the court clerk to confirm his or her desire
16 for a hearing, and that the failure to respond shall result
17 in a default order forfeiting the confiscated firearm or
18 other deadly weapon. For the purposes of this
19 subdivision, the person's last known address shall be
20 presumed to be the address provided to the law
21 enforcement officer by that person at the time of the
22 family violence incident. In the event the person whose
23 firearm or other deadly weapon was seized does not
24 reside at the last address provided to the agency, the
25 agency shall make a diligent, good faith effort to learn the
26 whereabouts of the person and to comply with these
27 notification requirements.

28 (h) If the person requests a hearing, the court clerk
29 shall set a hearing no later than 30 days from receipt of
30 that request. The court clerk shall notify the person, the
31 law enforcement agency involved, and the district
32 attorney of the date, time, and place of the hearing.
33 Unless it is shown by clear and convincing evidence that
34 the return of the firearm or other deadly weapon would
35 result in endangering the victim or the person reporting
36 the assault or threat, the court shall order the return of the
37 firearm or other deadly weapon and shall award
38 reasonable attorney's fees to the prevailing party.

39 (i) If the person does not request a hearing or does not
40 otherwise respond within 30 days of the receipt of the

1 notice, the law enforcement agency may file a petition for
2 an order of default and may dispose of the firearm or
3 other deadly weapon as provided in Section 12028.

4 (j) If, at the hearing, the court does not order the
5 return of the firearm or other deadly weapon to the
6 owner or person who had lawful possession, that person
7 may petition the court for a second hearing within 12
8 months from the date of the initial hearing. If the owner
9 or person who had lawful possession does not petition the
10 court within this 12-month period for a second hearing or
11 is unsuccessful at the second hearing in gaining return of
12 the firearm or other deadly weapon, the firearm or other
13 deadly weapon may be disposed of as provided in Section
14 12028.

15 (k) The law enforcement agency, or the individual law
16 enforcement officer, shall not be liable for any act in the
17 good faith exercise of this section.

18 SEC. 2. Section 8102 of the Welfare and Institutions
19 Code is amended to read:

20 8102. (a) Whenever a person, who has been detained
21 or apprehended for examination of his or her mental
22 condition or who is a person described in Section 8100 or
23 8103, is found to own, have in his or her possession or
24 under his or her control, any firearm whatsoever, or any
25 other deadly weapon, the firearm or other deadly weapon
26 shall be confiscated by any law enforcement agency or
27 peace officer, who shall retain custody of the firearm or
28 other deadly weapon.

29 “Deadly weapon,” as used in this section, has the
30 meaning prescribed by Section 8100.

31 (b) Upon confiscation of any firearm or other deadly
32 weapon from a person who has been detained or
33 apprehended for examination of his or her mental
34 condition, the peace officer or law enforcement agency
35 shall notify the person of the procedure for the return of
36 any firearm or other deadly weapon which has been
37 confiscated.

38 Where the person is released, the professional person
39 in charge of the facility, or his or her designee, shall notify
40 the person of the procedure for the return of any firearm

1 or other deadly weapon which may have been
2 confiscated.

3 Health facility personnel shall notify the confiscating
4 law enforcement agency upon release of the detained
5 person, and shall make a notation to the effect that the
6 facility provided the required notice to the person
7 regarding the procedure to obtain return of any
8 confiscated firearm.

9 (c) Upon the release of a person as described in
10 subdivision (b), the confiscating law enforcement agency
11 shall have ~~30~~ 60 days, unless good cause is shown, to
12 initiate a petition in the superior court for a hearing to
13 determine whether the return of a firearm or other
14 deadly weapon would be likely to result in endangering
15 the person or others, and to send a notice advising the
16 person of his or her right to a hearing on this issue.

17 (d) The law enforcement agency shall inform the
18 person that he or she has 30 days to respond to the court
19 clerk to confirm his or her desire for a hearing, and that
20 the failure to respond will result in a default order
21 forfeiting the confiscated firearm or weapon. For the
22 purpose of this subdivision, the person's last known
23 address shall be the address provided to the law
24 enforcement officer by the person at the time of the
25 person's detention or apprehension.

26 (e) If the person responds and requests a hearing, the
27 court clerk shall set a hearing, no later than 30 days from
28 receipt of the request. The court clerk shall notify the
29 person and the district attorney of the date, time, and
30 place of the hearing.

31 (f) If the person does not respond within 30 days of the
32 notice, the law enforcement agency may file a petition for
33 order of default.

34 (g) If the law enforcement agency does not initiate
35 proceedings within the 30-day period, it shall make the
36 weapon available for return.

