

AMENDED IN SENATE MAY 9, 2000

SENATE BILL

No. 2052

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 amended, 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 *30 days, or, if granted an extension by the court*, 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 *30 days, or, if granted an extension by the court,* 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.



(F) Any other person related by consanguinity or affinity within the second degree.

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

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the

1 firearm or other deadly weapon shall be made available
2 to the owner or person who was in lawful possession 48
3 hours after the seizure or as soon thereafter as possible,
4 but no later than 72 hours after the seizure. In any civil
5 action or proceeding for the return of firearms or
6 ammunition or other deadly weapon seized by any state
7 or local law enforcement agency and not returned within
8 72 hours following the initial seizure, except as provided
9 in subdivision (c), the court shall allow reasonable
10 attorney's fees to the prevailing party.

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

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

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



1 does not order the return of the firearm or other deadly
2 weapon to the owner.

3 (f) In those cases where a law enforcement agency has
4 reasonable cause to believe that the return of a firearm
5 or other deadly weapon would be likely to result in
6 endangering the victim or the person reporting the
7 assault or threat, the agency shall advise the owner of the
8 firearm or other deadly weapon, and within ~~60~~ 30 days of
9 the seizure, initiate a petition in superior court to
10 determine if the firearm or other deadly weapon should
11 be returned. *The law enforcement agency may make an*
12 *ex parte application stating good cause for an order*
13 *extending the time to file a petition. Including any*
14 *extension of time granted in response to an ex parte*
15 *request, a petition must be filed within 60 days of the date*
16 *of seizure of the firearm.*

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

35 (h) If the person requests a hearing, the court clerk
36 shall set a hearing no later than 30 days from receipt of
37 that request. The court clerk shall notify the person, the
38 law enforcement agency involved, and the district
39 attorney of the date, time, and place of the hearing.
40 Unless it is shown by clear and convincing evidence that

1 the return of the firearm or other deadly weapon would
2 result in endangering the victim or the person reporting
3 the assault or threat, the court shall order the return of the
4 firearm or other deadly weapon and shall award
5 reasonable attorney's fees to the prevailing party.

6 (i) If the person does not request a hearing or does not
7 otherwise respond within 30 days of the receipt of the
8 notice, the law enforcement agency may file a petition for
9 an order of default and may dispose of the firearm or
10 other deadly weapon as provided in Section 12028.

11 (j) If, at the hearing, the court does not order the
12 return of the firearm or other deadly weapon to the
13 owner or person who had lawful possession, that person
14 may petition the court for a second hearing within 12
15 months from the date of the initial hearing. If the owner
16 or person who had lawful possession does not petition the
17 court within this 12-month period for a second hearing or
18 is unsuccessful at the second hearing in gaining return of
19 the firearm or other deadly weapon, the firearm or other
20 deadly weapon may be disposed of as provided in Section
21 12028.

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

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

27 8102. (a) Whenever a person, who has been detained
28 or apprehended for examination of his or her mental
29 condition or who is a person described in Section 8100 or
30 8103, is found to own, have in his or her possession or
31 under his or her control, any firearm whatsoever, or any
32 other deadly weapon, the firearm or other deadly weapon
33 shall be confiscated by any law enforcement agency or
34 peace officer, who shall retain custody of the firearm or
35 other deadly weapon.

36 "Deadly weapon," as used in this section, has the
37 meaning prescribed by Section 8100.

38 (b) Upon confiscation of any firearm or other deadly
39 weapon from a person who has been detained or
40 apprehended for examination of his or her mental

1 condition, the peace officer or law enforcement agency
2 shall notify the person of the procedure for the return of
3 any firearm or other deadly weapon which has been
4 confiscated.

5 Where the person is released, the professional person
6 in charge of the facility, or his or her designee, shall notify
7 the person of the procedure for the return of any firearm
8 or other deadly weapon which may have been
9 confiscated.

10 Health facility personnel shall notify the confiscating
11 law enforcement agency upon release of the detained
12 person, and shall make a notation to the effect that the
13 facility provided the required notice to the person
14 regarding the procedure to obtain return of any
15 confiscated firearm.

16 (c) Upon the release of a person as described in
17 subdivision (b), the confiscating law enforcement agency
18 shall have ~~60 days, unless good cause is shown,~~ 30 days to
19 initiate a petition in the superior court for a hearing to
20 determine whether the return of a firearm or other
21 deadly weapon would be likely to result in endangering
22 the person or others, and to send a notice advising the
23 person of his or her right to a hearing on this issue. *The*
24 *law enforcement agency may make an ex parte*
25 *application stating good cause for an order extending the*
26 *time to file a petition. Including any extension of time*
27 *granted in response to an ex parte request, a petition must*
28 *be filed within 60 days of the release of the person from*
29 *a health facility.*

30 (d) *If the law enforcement agency does not initiate*
31 *proceedings within the 30-day period, or the period of*
32 *time authorized by the court in an ex parte order issues*
33 *pursuant to subdivision (c), it shall make the weapon*
34 *available for return.*

35 (e) The law enforcement agency shall inform the
36 person that he or she has 30 days to respond to the court
37 clerk to confirm his or her desire for a hearing, and that
38 the failure to respond will result in a default order
39 forfeiting the confiscated firearm or weapon. For the
40 purpose of this subdivision, the person's last known

1 address shall be the address provided to the law
2 enforcement officer by the person at the time of the
3 person's detention or apprehension.

4 ~~(e)~~

5 (f) If the person responds and requests a hearing, the
6 court clerk shall set a hearing, no later than 30 days from
7 receipt of the request. The court clerk shall notify the
8 person and the district attorney of the date, time, and
9 place of the hearing.

10 ~~(f)~~

11 (g) If the person does not respond within 30 days of the
12 notice, the law enforcement agency may file a petition for
13 order of default.

14 ~~(g) If the law enforcement agency does not initiate~~
15 ~~proceedings within the 30-day period, it shall make the~~
16 ~~weapon available for return.~~

