

AMENDED IN ASSEMBLY MARCH 14, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

ASSEMBLY BILL

No. 1296

Introduced by Assembly Member Skinner

February 22, 2013

An act to amend Section ~~26800~~ of the Penal Code 8103 of the Welfare and Institutions Code, relating to ~~firearms dealers~~: *firearms*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1296, as amended, Skinner. Firearms: ~~dealers~~: forfeiture of license: *mentally disordered persons*.

Existing law allows a person to be taken into custody and placed in an approved facility for a 72-hour treatment and evaluation if the person is a danger to others, or to himself or herself, or is gravely disabled, as a result of a mental disorder. Existing law prohibits a person who has been taken into custody, assessed, and admitted to a facility pursuant to these provisions from owning, possessing, controlling, receiving, or purchasing a firearm, or from attempting to do the same, for a period of 5 years after the person is released from the facility. Existing law imposes additional penalties for certain crimes involving possession of a firearm by a prohibited person.

This bill would increase the above prohibitory period on having a firearm from 5 years to 10 years. The bill would make conforming changes. By expanding the scope of these crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Under existing law a firearms dealer or licensee means a person who has a valid federal firearms license, has a regulatory or business license, has a valid seller's permit issued by the State Board of Equalization, has a certificate of eligibility issued by the Department of Justice, has a license granted by a duly constituted licensing authority of any city, county, or city and county, and is among those recorded in the centralized list of licensed firearms dealers kept by the Department of Justice. Existing law regulates licensed firearms dealers and provides that a license is subject to forfeiture for a breach of specified prohibitions in existing law.~~

~~This bill would make a technical, nonsubstantive change to these provisions:~~

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

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

1 SECTION 1. Section 8103 of the Welfare and Institutions Code
2 is amended to read:

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

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

20 (b) (1) No person who has been found, pursuant to Section
21 1026 of the Penal Code or the law of any other state or the United

1 States, not guilty by reason of insanity of murder, mayhem, a
2 violation of Section 207, 209, or 209.5 of the Penal Code in which
3 the victim suffers intentionally inflicted great bodily injury,
4 carjacking or robbery in which the victim suffers great bodily
5 injury, a violation of Section 451 or 452 of the Penal Code
6 involving a trailer coach, as defined in Section 635 of the Vehicle
7 Code, or any dwelling house, a violation of paragraph (1) or (2)
8 of subdivision (a) of Section 262 or paragraph (2) or (3) of
9 subdivision (a) of Section 261 of the Penal Code, a violation of
10 Section 459 of the Penal Code in the first degree, assault with
11 intent to commit murder, a violation of Section 220 of the Penal
12 Code in which the victim suffers great bodily injury, a violation
13 of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the
14 Penal Code, or of a felony involving death, great bodily injury, or
15 an act which poses a serious threat of bodily harm to another
16 person, or a violation of the law of any other state or the United
17 States that includes all the elements of any of the above felonies
18 as defined under California law, shall purchase or receive, or
19 attempt to purchase or receive, or have in his or her possession or
20 under his or her custody or control any firearm or any other deadly
21 weapon.

22 (2) The court shall immediately notify the Department of Justice
23 of the court order finding the person to be a person described in
24 paragraph (1).

25 (c) (1) No person who has been found, pursuant to Section 1026
26 of the Penal Code or the law of any other state or the United States,
27 not guilty by reason of insanity of any crime other than those
28 described in subdivision (b) shall purchase or receive, or attempt
29 to purchase or receive, or shall have in his or her possession,
30 custody, or control any firearm or any other deadly weapon unless
31 the court of commitment has found the person to have recovered
32 sanity, pursuant to Section 1026.2 of the Penal Code or the law of
33 any other state or the United States.

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

38 (d) (1) No person found by a court to be mentally incompetent
39 to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code
40 or the law of any other state or the United States, shall purchase

1 or receive, or attempt to purchase or receive, or shall have in his
 2 or her possession, custody, or control, any firearm or any other
 3 deadly weapon, unless there has been a finding with respect to the
 4 person of restoration to competence to stand trial by the committing
 5 court, pursuant to Section 1372 of the Penal Code or the law of
 6 any other state or the United States.

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

12 (e) (1) No person who has been placed under conservatorship
 13 by a court, pursuant to Section 5350 or the law of any other state
 14 or the United States, because the person is gravely disabled as a
 15 result of a mental disorder or impairment by chronic alcoholism,
 16 shall purchase or receive, or attempt to purchase or receive, or
 17 shall have in his or her possession, custody, or control, any firearm
 18 or any other deadly weapon while under the conservatorship if, at
 19 the time the conservatorship was ordered or thereafter, the court
 20 which imposed the conservatorship found that possession of a
 21 firearm or any other deadly weapon by the person would present
 22 a danger to the safety of the person or to others. Upon placing any
 23 person under conservatorship, and prohibiting firearm or any other
 24 deadly weapon possession by the person, the court shall notify the
 25 person of this prohibition.

26 (2) The court shall immediately notify the Department of Justice
 27 of the court order placing the person under conservatorship and
 28 prohibiting firearm or any other deadly weapon possession by the
 29 person as described in paragraph (1). The notice shall include the
 30 date the conservatorship was imposed and the date the
 31 conservatorship is to be terminated. If the conservatorship is
 32 subsequently terminated before the date listed in the notice to the
 33 Department of Justice or the court subsequently finds that
 34 possession of a firearm or any other deadly weapon by the person
 35 would no longer present a danger to the safety of the person or
 36 others, the court shall immediately notify the Department of Justice.

37 (3) All information provided to the Department of Justice
 38 pursuant to paragraph (2) shall be kept confidential, separate, and
 39 apart from all other records maintained by the Department of
 40 Justice, and shall be used only to determine eligibility to purchase

1 or possess firearms or other deadly weapons. Any person who
2 knowingly furnishes that information for any other purpose is
3 guilty of a misdemeanor. All the information concerning any person
4 shall be destroyed upon receipt by the Department of Justice of
5 notice of the termination of conservatorship as to that person
6 pursuant to paragraph (2).

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

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

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

31 (B) Commencing July 1, 2012, facilities shall submit reports
32 pursuant to this paragraph exclusively by electronic means, in a
33 manner prescribed by the Department of Justice.

34 (3) Prior to, or concurrent with, the discharge, the facility shall
35 inform a person subject to this subdivision that he or she is
36 prohibited from owning, possessing, controlling, receiving, or
37 purchasing any firearm for a period of ~~five~~ 10 years.
38 Simultaneously, the facility shall inform the person that he or she
39 may request a hearing from a court, as provided in this subdivision,
40 for an order permitting the person to own, possess, control, receive,

1 or purchase a firearm. The facility shall provide the person with a
2 form for a request for a hearing. The Department of Justice shall
3 prescribe the form. Where the person requests a hearing at the time
4 of discharge, the facility shall forward the form to the superior
5 court unless the person states that he or she will submit the form
6 to the superior court.

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

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

1 attorney. The court, upon motion of the person subject to paragraph
2 (1) establishing that confidential information is likely to be
3 discussed during the hearing that would cause harm to the person,
4 shall conduct the hearing in camera with only the relevant parties
5 present, unless the court finds that the public interest would be
6 better served by conducting the hearing in public. Notwithstanding
7 any other law, declarations, police reports, including criminal
8 history information, and any other material and relevant evidence
9 that is not excluded under Section 352 of the Evidence Code shall
10 be admissible at the hearing under this section.

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

14 (7) If the court finds at the hearing set forth in paragraph (5)
15 that the people have not met their burden as set forth in paragraph
16 (6), the court shall order that the person shall not be subject to the
17 ~~five-year~~ *10-year* prohibition in this section on the ownership,
18 control, receipt, possession, or purchase of firearms. A copy of the
19 order shall be submitted to the Department of Justice. Upon receipt
20 of the order, the Department of Justice shall delete any reference
21 to the prohibition against firearms from the person's state mental
22 health firearms prohibition system information.

23 (8) Where the district attorney declines or fails to go forward
24 in the hearing, the court shall order that the person shall not be
25 subject to the ~~five-year~~ *10-year* prohibition required by this
26 subdivision on the ownership, control, receipt, possession, or
27 purchase of firearms. A copy of the order shall be submitted to the
28 Department of Justice. Upon receipt of the order, the Department
29 of Justice shall, within 15 days, delete any reference to the
30 prohibition against firearms from the person's state mental health
31 firearms prohibition system information.

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

38 (g) (1) No person who has been certified for intensive treatment
39 under Section 5250, 5260, or 5270.15 shall own, possess, control,

1 receive, or purchase, or attempt to own, possess, control, receive,
2 or purchase, any firearm for a period of five years.

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

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

15 (B) Commencing July 1, 2012, facilities shall submit reports
16 pursuant to this paragraph exclusively by electronic means, in a
17 manner prescribed by the Department of Justice.

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

22 (4) Any person who is subject to paragraph (1) may petition the
23 superior court of his or her county of residence for an order that
24 he or she may own, possess, control, receive, or purchase firearms.
25 At the time the petition is filed, the clerk of the court shall set a
26 hearing date and notify the person, the Department of Justice, and
27 the district attorney. The people of the State of California shall be
28 the respondent in the proceeding and shall be represented by the
29 district attorney. Upon motion of the district attorney, or on its
30 own motion, the superior court may transfer the petition to the
31 county in which the person resided at the time of his or her
32 detention, the county in which the person was detained, or the
33 county in which the person was evaluated or treated. Within seven
34 days after receiving notice of the petition, the Department of Justice
35 shall file copies of the reports described in this section with the
36 superior court. The reports shall be disclosed upon request to the
37 person and to the district attorney. The district attorney shall be
38 entitled to a continuance of the hearing to a date of not less than
39 14 days after the district attorney was notified of the hearing date
40 by the clerk of the court. The district attorney may notify the county

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

23 (h) For all persons identified in subdivisions (f) and (g), facilities
24 shall report to the Department of Justice as specified in those
25 subdivisions, except facilities shall not report persons under
26 subdivision (g) if the same persons previously have been reported
27 under subdivision (f).

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

33 (i) Every person who owns or possesses or has under his or her
34 custody or control, or purchases or receives, or attempts to purchase
35 or receive, any firearm or any other deadly weapon in violation of
36 this section shall be punished by imprisonment pursuant to
37 subdivision (h) of Section 1170 of the Penal Code or in a county
38 jail for not more than one year.

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

1 *SEC. 2. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 ~~SECTION 1. Section 26800 of the Penal Code is amended to~~
11 ~~read:~~

12 ~~26800. A license under this chapter is subject to forfeiture for~~
13 ~~the breach of any of the prohibitions and requirements of this~~
14 ~~article, except those stated in the following provisions:~~

- 15 ~~(a) Subdivision (e) of Section 26890.~~
- 16 ~~(b) Subdivision (d) of Section 26890.~~
- 17 ~~(c) Subdivision (b) of Section 26900.~~