

SB 127 (Gaines) – Firearms: Mentally Disordered Persons

Introduced January 24, 2013, Enrolled and Presented to the Governor September 12, 2013

This bill requires that reports by a licensed psychotherapist to a local law enforcement agency regarding the identity of a person who has communicated to that therapist a serious threat of physical violence against a reasonably identifiable victim or victims be made within 24 hours, and requires that local law enforcement agencies, when they receive such reports, to notify the Department of Justice (DOJ) electronically and within 24 hours of receiving that report.

According to the author, "More consistent and timely communications between therapists, local law enforcement and the Department of Justice should lead to fewer prohibited persons purchasing or possessing firearms in California and improve public safety."

Existing Law:

1. Provides that a person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon for a period of six months whenever, on or after January 1, 1992, he or she communicates to a licensed psychotherapist, as defined, a serious threat of physical violence against a reasonably identifiable victim or victims. The six-month period shall commence from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The prohibition provided for in this subdivision shall not apply unless the licensed psychotherapist notifies a local law enforcement agency of the threat by that person. The person, however, may own, possess, have custody or control over, or receive or purchase any firearm if a superior court, upon petition of the person, has found, by a preponderance of the evidence, that the person is likely to use firearms or other deadly weapons in a safe and lawful manner, as specified. A violation shall be a public offense, punishable as a felony by 16 months, 2 or 3 years in county jail, or as a misdemeanor, by imprisonment in a county jail for not more than one year, by a fine of up to \$1,000, or both. (Welfare and Institutions Code §§ 8100(b), 8100(g).)
2. Requires that, upon receipt of a report from the local law enforcement agency regarding a person having made such a threat, the Department of Justice (DOJ) shall notify by certified mail, return receipt requested, a person subject to this subdivision of the following:
 - That he or she is prohibited from possessing, having custody or control over, receiving, or purchasing any firearm or other deadly weapon for a period of six months commencing from the date that the licensed psychotherapist reports to

the local law enforcement agency the identity of the person making the communication. The notice shall state the date when the prohibition commences and ends.

- That he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. (Welfare and Institutions Code §§ 8100(b).)
3. Requires a licensed psychotherapist to immediately report to a local law enforcement agency the identity of a person who has communicated to that therapist a serious threat of physical violence against a reasonably identifiable victim or victims. Upon receipt of the report, the local law enforcement agency, on a form prescribed by DOJ, shall immediately notify the department of the person who made the threat. (Welfare and Institutions Code §§ 8105(c).)
 4. Provides that all information provided to DOJ pursuant to this section shall be kept confidential, separate and apart from all other records maintained by the department. The information provided to DOJ pursuant to this section shall be used only for any of the following purposes:
 - By the department to determine eligibility of a person to acquire, carry, or possess firearms, destructive devices, or explosives.
 - For the purposes of the court proceedings to determine the eligibility of the person who is bringing the petition to possess, purchase or receive any firearms.
 - To determine the eligibility of a person to possess firearms, destructive devices, or explosives who is the subject of a criminal investigation, if a part of the criminal investigation involves the acquisition, carrying, or possession of firearms, explosives, or destructive devices by that person. (Welfare and Institutions Code § 8105(d).)

This bill:

1. Requires that reports by a licensed psychotherapist to a local law enforcement agency regarding the identity of a person who has communicated to that therapist a serious threat of physical violence against a reasonably identifiable victim or victims be made within 24 hours.
2. Requires that local law enforcement agencies, when they receive such reports, notify the DOJ electronically and within 24 hours of that report.

Senate Bill No. 127

Passed the Senate May 20, 2013

Secretary of the Senate

Passed the Assembly September 9, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 8105 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 127, Gaines. Firearms: mentally disordered persons.

Existing law prohibits a person from possessing a firearm or deadly weapon for a period of 6 months when the person has communicated a serious threat of physical violence against a reasonably identifiable victim or victims to a licensed psychotherapist. Existing law requires the licensed psychotherapist to immediately report the identity of the person to a local law enforcement agency, and requires the local law enforcement agency to immediately notify the Department of Justice.

This bill would instead require the licensed psychotherapist to make the report to local law enforcement within 24 hours, in a manner prescribed by the department. The bill would require the local law enforcement agency receiving the report to notify the department electronically within 24 hours, in a manner prescribed by the department.

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

SECTION 1. Section 8105 of the Welfare and Institutions Code is amended to read:

8105. (a) The Department of Justice shall request each public and private mental hospital, sanitarium, and institution to submit to the department that information that the department deems necessary to identify those persons who are within subdivision (a) of Section 8100, in order to carry out its duties in relation to firearms, destructive devices, and explosives.

(b) Upon request of the Department of Justice pursuant to subdivision (a), each public and private mental hospital, sanitarium, and institution shall submit to the department that information which the department deems necessary to identify those persons who are within subdivision (a) of Section 8100, in order to carry

out its duties in relation to firearms, destructive devices, and explosives.

(c) A licensed psychotherapist shall report to a local law enforcement agency, within 24 hours, in a manner prescribed by the Department of Justice, the identity of a person subject to subdivision (b) of Section 8100. Upon receipt of the report, the local law enforcement agency, on a form prescribed by the Department of Justice, shall notify the department electronically, within 24 hours, in a manner prescribed by the department, of the person who is subject to subdivision (b) of Section 8100.

(d) All information provided to the Department of Justice pursuant to this section shall be kept confidential, separate, and apart from all other records maintained by the department. The information provided to the Department of Justice pursuant to this section shall be used only for any of the following purposes:

(1) By the department to determine eligibility of a person to acquire, carry, or possess firearms, destructive devices, or explosives.

(2) For the purposes of the court proceedings described in subdivision (b) of Section 8100, to determine the eligibility of the person who is bringing the petition pursuant to paragraph (3) of subdivision (b) of Section 8100.

(3) To determine the eligibility of a person to acquire, carry, or possess firearms, destructive devices, or explosives who is the subject of a criminal investigation, if a part of the criminal investigation involves the acquisition, carrying, or possession of firearms, explosives, or destructive devices by that person.

(e) Reports shall not be required or requested under this section where the same person has been previously reported pursuant to Section 8103 or 8104.

Approved _____, 2013

Governor