

## CHAPTER 18: Firearms Restrictions

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At times, advocates may encounter questions raised by recipients or providers of mental health services about how a person's diagnosis with and/or treatment for their mental illness affects their right to bear arms.

This chapter will provide you with an overview of the current state laws in place that apply firearm restrictions on certain people receiving mental health services. This chapter does not include any overlapping restrictions that may be set by federal laws. Since the laws in this area are actively changing, it is recommended to check current laws that are in place prior to any advocacy services surrounding this area. Advocates are welcome to contact California Office of Patients' Rights (COPR) to find out about any updates or changes to the information in this chapter.

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### **FIREARMS RESTRICTIONS**

When a recipient of mental health services is subjected to firearms restrictions, these restrictions prevent the person from all of the following;

- Having possession of a firearm or deadly weapon,
- Having custody or control of a firearm or deadly weapon,
- Purchasing or receiving a firearm or deadly weapon,
- Attempting to purchase or receive a firearm or deadly weapon.

For the purposes of these restrictions, the term "deadly weapon" includes any weapon considered a "generally prohibited weapon" by Penal Code (PC) 16590. This includes, but it not limited to, various types of knives, guns, and explosives. (Welfare and Institutions Code (WIC) 8100(e))

### **FIREARMS RESTRICTIONS WHILE IN FACILITY**

A person is subject to firearm restrictions when all of the following have taken place;

- The person has been admitted to a facility and is receiving inpatient treatment, and;
- In the opinion of the attending health professional who is primarily responsible for the patient's treatment of a mental disorder, is a danger to self or others, as specified by Section 5150, 5250, or 5300.

This restriction exists regardless of whether the patient has consented to treatment at the facility. (WIC 8100(a))

The Department of Justice (DOJ) shall request each public and private mental hospital, sanitarium, and institution to submit to the department information the department deems necessary to identify those persons who are subject to firearms restrictions while admitted to and receiving treatment at a facility pursuant to WIC 5150, 5250, or 5300. Each public and private mental hospital, sanitarium, and institution is required to provide DOJ with this information upon request. (WIC 8105(a-b))

While this set of restrictions only applies while a person is admitted to and receiving treatment in a facility, there are additional restrictions that may apply after discharge from a mental health facility.

### **ADDITIONAL FIREARMS RESTRICTIONS**

The restrictions placed on a person's ability to access firearms outside of a facility depends on the legal status of the person while they were receiving mental health services. Restrictions can also be placed on a person who makes a serious threat of violence while receiving services.

#### **Threat of Physical Violence**

A person who communicates to a psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims is subject to firearms restrictions for five (5) years. The five-year period begins the date the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. This restriction does not apply unless the licensed psychotherapist notifies a local law enforcement agency of the threat by that person. It also does not apply if the person has successfully petitioned the court for an order permitting the person to own, possess, control, receive, or purchase a firearm. (WIC 8100(b)(1))

Upon receiving the report from the local law enforcement agency, the Department of Justice (DOJ) is to notify the person that they are subject to firearms restrictions. The notice is to be done by certified mail. The notice needs to state the date when the firearms restrictions start and when they end. The notice also needs to inform the person of their right to petition the court for an order permitting the person to own, possess, control, receive, or purchase a firearm. (WIC 8100(b)(2))

Any person subject to these restrictions may petition the court for an order saying the person may own, possess, control, receive, or purchase firearms. The people, represented by the District Attorney, bear the burden of showing the person would not be likely to use firearms in a safe and lawful manner. If the court finds the people have not met their burden, or if the district attorney declines or files to go forward in

the hearing, the court shall order that the person is not subject to firearms restrictions. A copy of the order is sent to the DOJ, and any reference to the person's firearms restrictions will be deleted. (WIC 8100(b)(3))

### **Danger to Self or Others (WIC 5150/ 5250/ 5260/ 5270.15)**

A person is subject to firearms restrictions for five (5) years following discharge from the facility under the following circumstances;

- A person has been taken into custody pursuant to WIC 5150 for danger to self or danger to others, and has been assessed and admitted to an LPS-designated facility because that person is a danger to self or danger to others.
- A person has been certified for intensive treatment under WIC 5250, 5260, or 5270.15.

Effective January 1, 2020, a person who has been taken into custody, assessed, and admitted pursuant to WIC 5150-5152 more than once within a year for danger to self or danger to others is subjected to firearms restrictions for the remainder of their life. (WIC 8103(f)(1)(B))

The facility is to inform the person they are subjected to firearms restrictions for either five years or the remainder of their life. This can be done upon discharge or prior to discharge. The facility also needs to inform the person of their ability to request a court hearing for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility also needs to provide the person with the form prescribed by DOJ for requesting such a hearing. (WIC 8103(f)(3))

A person who is subject to these restrictions can make a single request for a hearing at any time during the five-year or lifetime restriction. The request for a hearing needs to be made on the form prescribed by DOJ or in a document that includes equivalent language. The people, represented by the District Attorney, bear the burden of showing the person would not be likely to use firearms in a safe and lawful manner. If the court finds the people have not met their burden, or if the district attorney declines or files to go forward in the hearing, the court shall order that the person is not subject to firearms restrictions. A copy of the order is sent to the DOJ, and any reference to the person's firearms restrictions will be deleted. (WIC 8103(f)(4-8))

If someone subject to a lifetime restriction has requested a hearing and the court finds the person would not be likely to use firearms in a safe and lawful manner, the court will inform the person of their right to file another petition after five years from the date of the hearing. The person subject to a lifetime firearms restriction is not

entitled to file another petition and have another hearing until after five years have passed since the last determination. All further hearings will be held in the same manner as the first, except the burden is now on the person subject to the lifetime restriction to show they can use a firearm in a safe and lawful manner. (WIC 8103(f)(10-11))

### **LPS Conservatorship (WIC 5350)**

If a person is placed under a conservatorship pursuant to WIC 5350 because they are gravely disabled due to a mental disorder or chronic alcoholism, they are subject to firearms restrictions if the court that imposed the conservatorship also found the possession of a firearm or deadly weapon would present a danger to that person or others. This restriction would last the length of the conservatorship. This restriction also applies for a person who has been placed under a conservatorship in another US state. The court is to notify the person of these restrictions upon placing a person under conservatorship and firearms restrictions. (WIC 8103(e)(1))

The court is to notify the Department of Justice (DOJ) of the court order placing the person under conservatorship and firearms restrictions as soon as possible, but no later than one court day after placing the person under conservatorship. The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is ended before the date given to DOJ, or the court lifts the firearms restrictions, the court shall notify DOJ as soon as possible but no later than one court day after the order. (WIC 8103(e)(2))

All related information provided to DOJ is to be kept confidential, separate, and apart from all other records maintained by DOJ. The information is only to be used to determine eligibility to purchase or possess firearms or other deadly weapons. A person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by DOJ of notice of the termination of conservatorship. (WIC 8103(e)(3))

### **Adjudicated as Danger to Others or Mentally Disordered Sex Offender**

A person adjudicated by a court to be a danger to others because of a mental illness, or to be a mentally disordered sex offender, is subject to firearms restrictions unless the same court issues a certificate upon, or after, release from treatment saying the person may have firearms or deadly weapons without endangering others. A previous certificate saying a person may have firearms or deadly weapons does not apply if the person has again been adjudicated to be a danger to others because of a mental illness. (WIC 8103(a)(1))

The court shall notify the Department of Justice (DOJ) of the court order finding a person to be a danger to others because of a mental illness, or to be a mentally

disordered sex offender, as soon as possible and no later than one court day after issuing the order. The court shall also notify DOJ of any certificate issued saying a person may have firearms or deadly weapons without endangering others as soon as possible, but no later than one court day after issuing the certificate. (WIC 8103(a)(2))

### **Not Guilty by Reason of Insanity (Penal Code 1026)**

A person found not guilty by reason of insanity pursuant to Penal Code 1026 is subject to firearm restrictions if they were charged with a crime specified in WIC 8103(b)(1). This includes violent crimes and crimes that involved death, great bodily injury, or arson. If a person is found not guilty by reason of insanity for any other crime, they are subject to firearms restrictions unless the court of commitment has found the person has recovered sanity. (WIC 8103(b-c))

The court is to notify the Department of Justice (DOJ) of the court order finding the person to be not guilty by reason of insanity as soon as possible, but no later than one court day after issuing the order. For a person who is no longer subject to firearms restrictions once found to have recovered sanity, the court is to also notify DOJ when it finds that the person has recovered sanity as soon as possible, but no later than one court day after making the finding. (WIC 8103(b-c))

### **Incompetent to Stand Trial (Penal Code 1370)**

A person found incompetent to stand trial pursuant to Penal Code 1370 or 1370.1 is subject to firearms restrictions, unless the committing court has found the person has been restored to competence to stand trial pursuant to Penal Code 1372 or the law of another US state. (WIC 8103(d)(1))

The court is to notify the Department of Justice (DOJ) of the court order finding the person to be incompetent to stand trial as soon as possible, but no later than one court day after issuing the order. The court shall also notify DOJ when it finds that the person has recovered competence as soon as possible, but no later than one court day after making the finding. (WIC 8103(d)(2))

### **CONFISCATION AND RETURN OF FIREARMS**

Whenever a person subject to firearms restrictions is found to own, possess, or control any firearm or deadly weapon, a law enforcement agency or peace officer will confiscate and retain custody of the firearm or deadly weapon. (WIC 8102(a))

Upon confiscating a firearm or deadly weapon from someone who has been taken into custody for mental health treatment, the peace officer or law enforcement agency shall issue a receipt describing the deadly weapon or firearm and listing a

serial number or other identification on the firearm. The peace officer or law enforcement agency shall also notify the person of the procedure for the return, sale, transfer, or destruction of any firearm or deadly weapon which has been confiscated. The person will also be notified of the procedure for return of a firearm or deadly weapon by the facility upon release. The facility shall also notify the confiscating law enforcement agency when the person is released. (WIC 8102(b))

To have any firearm returned that is in the custody or control of law enforcement, a person must apply to DOJ to determine if they are eligible to possess a firearm. This application needs to be submitted electronically using the California Firearms Application Reporting System (CFARS) and needs to include specific information about the person and the firearm. The person can also transfer or sell the firearm to a licensed dealer or third party that is allowed to have the firearm. (WIC 8102, PC 33850)

Upon the release of a person from a treatment facility, the confiscating law enforcement agency can file a petition in court for a hearing to determine if returning a firearm or other deadly weapon would be likely to endanger the person or others. The law enforcement agency has 30 days from the date of release to file the petition and send a notice advising the person of their right to a hearing on this issue. The time to file a petition can be extended, but needs to be filed within 60 days of release. (WIC 8102(d))

The person then has 30 days to respond to the court to confirm their desire for a hearing. If a hearing is requested, it will take place within 30 days. Failure to respond will result in forfeiting their firearm or weapon. If a firearm or weapon is forfeited, or if a hearing finds the return of the firearm or deadly weapon would likely endanger the person or others, the law enforcement agency can destroy the firearm in 180 days. The person can contact the law enforcement agency within that time to arrange the sale or transfer of the firearm. (WIC 8102)

Instead of destroying a firearm that is nuisance, unclaimed, or abandoned, a law enforcement agency may retain or transfer the firearm as outlined in Penal Code 34005. (WIC 8102(b)(5))

If the law enforcement agency does not initiate proceedings within the allotted time, it shall make the weapon available for return. The return of the weapon will be subject to compliance with all other applicable requirements. (WIC 8102)

## **PENALTIES AND LIABILITY**

Any person who knowingly supplies, sells, gives, or allows possession or control of a deadly weapon to any person subject to firearms restrictions shall be punishable

by imprisonment in a county jail for up to one year, by a fine of up to one thousand dollars (\$1,000), or by both the fine and imprisonment. (WIC 8101(a))

Any person who knowingly supplies, sells, gives, or allows possession or control of a firearm to any person subject to firearms restrictions shall be punished by imprisonment for two, three, or four years. (WIC 8101(b))

Every person who owns, possesses, controls, purchases or receives, or attempts to purchase or receive any firearm or deadly weapon in violation of their firearms restrictions shall be punished by imprisonment in a county jail for up to one year. (WIC 8100, 8103)

All information provided to the Department of Justice (DOJ) for the purpose of these firearms restrictions is to be kept confidential, separate, and apart from all other records maintained by DOJ. The information is only to be used to determine eligibility to purchase or possess firearms or other deadly weapons. A person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. This does not prohibit the use of reports to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm. (WIC 8103)

Mental hospitals, health facilities, or other institutions, or treating health professionals or psychotherapists who provide reports subject to this chapter shall be civilly immune for making any report required or authorized by this chapter. (WIC 8108)