

**No. 20-55437**

IN THE

United States Court of Appeals

for the Ninth Circuit

KIM RHODE, et al.,

*Plaintiffs-Appellees,*

v.

XAVIER BECERRA, in his official capacity as Attorney General  
of the State of California,

*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Southern District of California  
No. 3:18-cv-00802 BEN JLB (Benitez, J.)

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**BRIEF OF AMICUS CURIAE GUN OWNERS OF CALIFORNIA IN  
SUPPORT OF APPELLEES KIM RHODE, ET AL. AND  
AFFIRMANCE**

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August 7, 2020

**CORPORATE DICLOSURE STATEMENT**

Gun Owners of California has no parent corporations and no stock.  
Thus, no publicly held company owns 10% or more of its stock.

s / Jason Davis

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THE DAVIS LAW FIRM

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Gun Owners of California

August 7, 2020

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## INTEREST OF AMICUS

Gun Owners of California, Inc. (“GOC”) ([www.gunownersca.com](http://www.gunownersca.com)) was incorporated in California in 1982 and is one of the oldest pro-gun political action committees in the United States of America. GOC is a nonprofit organization, exempt from federal taxation under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code, and is dedicated, among other things, to the correct construction, interpretation, and application of the law, with particular emphasis on constitutional guarantees related to firearm ownership and use. Affiliated with Gun Owners of America, GOC lobbies on firearms legislation in Sacramento and was active in the successful legal battle to overturn the San Francisco handgun ban referendum. GOC has filed amicus briefs in other federal litigation involving such issues, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). GOC operates exclusively from membership contributions and donations, using our funds to actively educate on firearm related issues. GOC files this brief as amicus in support of Appellees Kim Rhode, et al., and in support of upholding the lower court ruling.<sup>1</sup>

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<sup>1</sup> Counsel of Record (Jason Davis) for amicus is also listed as “of counsel” to the firm representing Plaintiff-Appellees Kim Rhode, et al. Other than amicus counsel’s “of counsel” status with Michel and Associates, P.C., no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than amicus or its counsel contributed money that was intended to fund preparing or submitting this brief. Moreover, Counsel of Record Jason Davis has not represented Appellees in the underlying matter.

GOC has a substantial interest in ensuring that the Second Amendment and the negative implications of the Commerce Clause are interpreted and applied in ways that support the right of self-defense, the right to acquire the means of self-defense, and the right to engage in commerce intended to support the right of self-defense. Recent headlines have been filled with anecdotal stories of innocent shopkeepers and counter-protesters having immediate and urgent need to exercise their right of self-defense because of retreating or ineffective police departments. The preliminary injunction issued below should remain in effect while this case is litigated to judgment or settled by the parties.

## **ARGUMENT**

### **I. Introduction**

Appellant boasts that he stopped more than 750 “prohibited persons” in the first seven months of California’s ammunition scheme being in effect. Even if that were something to boast about in light of the scheme barring over 100,000 legitimate transactions during the same time to achieve those alleged 750 plus stops, there is ample reason to question the veracity of the State’s figure. Indeed, Amicus will show that the figure is likely completely unreliable because the underlying data source for those determinations is incomplete or inaccurate in nearly half of the criminal disposition records and may include non-statutory denials by the Department that are not otherwise authorized by law.

Passed in 2016, Proposition 63 expanded the background checks performed on firearm transferees to apply to the transfer of ammunition as well. Before that, federal and state law collectively prohibited certain groups of people from possessing firearms **and ammunition**, including felons, certain persons who have suffer mental illness, and those who have committed certain misdemeanors, among other prohibited categories. 18 U.S.C. § 922(g); Cal. Penal Code §§ 29800, 29805; Cal. Welf. & Inst. Code § 8103.

The background check system for firearm purchases was adapted, poorly as the evidence will show, to ammunition sales. Appellant asserts that “[t]he new laws work” and claims that over the first seven months, these laws stopped “more than 750 prohibited people from purchasing ammunition, and likely deterred countless others from trying.” A.O.B. 1. Whether the “new laws work” is a dubious proposition. It hinges on the old laws (which seemingly still allowed prohibited persons to obtain firearms thereby requiring an alleged need for the new laws) to implement a redundant background check on transferring ammunition. Even so, the bald claim that the “new laws work” because Appellant barred the transfer of ammunition to more than 750 persons assumes that the Appellant was correct in its determinations.

Affirmance is required because the lower court did not abuse its discretion in concluding that the State’s figures were unconvincing to carry its burden. Amicus herein argues that even those figures are dubious, at



best. During the first seven months, California's ammunition laws stopped more than 750 people from purchasing ammunition who the Appellant *claims* were ineligible to possess ammunition. Whether those persons are actually "prohibited people" because they fall within the statutory definition of persons prohibited from possessing firearms, or were wrongly identified as such because the system is flawed, has yet to be determined.

A closer look at the Appellant's background check system information system, which is integral to the Department's determination processes and practices, undermines Appellant's reliance on background checks, and thus renders it likely that Appellees will prevail at trial. When challenging government action that affects the exercise of constitutional rights, "[t]he balance of equities and public interest . . . tip sharply in favor of enjoining the" law. *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). After all, neither the public nor the Appellant can "suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); see *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Moreover, even assuming public safety concerns could override the public interest in enforcing the Constitution, the district court did not abuse its discretion in concluding that the equities warrant preliminarily enjoining a law that, by Appellants' own admission, denied over 100,000 ammunition transactions by non-prohibited people, thus denying/delaying the exercise of their constitutional rights. The false

denials constituted more than 99% of the total persons denied. The impact on the rights of the non-prohibited class is made worse when, as discussed below, the 0.12% of transactions attempted by persons that the Department deemed to be statutorily “prohibited persons” are based on information that is admittedly flawed, outdated, inaccurate.

The position of Amicus GOC is that the Parties will have ample opportunity to vet the specific fine points of these figures during formal discovery and at trial. The point at this stage of the litigation is that the number of constitutional violations is so egregious, that suspending enforcement of this law while the finer points are fleshed out is well within the discretion of the district court. The district court justifiably determined that the number of non-prohibited persons denied their right to purchase ammunition should not be increasing while this case progresses and properly paused the Appellant’s practices in the interim.

## **II. California’s “Background Check System” Is Broken**

### **A. The Initial Denial Data Proffered by Appellants Reveals a Denial of Prohibited to Non-Prohibited Ratio of 1/100**

Appellant states that Proposition 63 was passed to “stop both firearms and ammunition” from getting in the hands of dangerous individuals.” A.O.B. 5. But the data shows that far more non-prohibited persons are being denied ammunition purchases than those who are deemed “prohibited persons” by the Department.

### *Basic Check Denial Data Analysis*

A review of the Appellant's data reveals that, of all the Basic Check denials, only 54% of those denied were (allegedly) "prohibited persons." The Appellant states that during the period from July 2019 to July 2020, the California Department of Justice received 19,753 Basic Checks and approved 18,685, meaning that 1,068 Basic Checks were denied. Of those 1,068 denied Basic Checks, only 572 were denied because the recipient was a "prohibited person" (whether accurate or not). And, the remaining 514 persons were rejected because of other issues. A.O.B. 11. In other words, 54% percent of those denied Basic Checks were allegedly prohibited persons and the remaining 46% of the denials were not the intended "prohibited person" target of Proposition 63.

### *Standard Check Denial Data Analysis*

As for Standard Checks, a review of the Appellant's data reveals of all the Standard Check denials, only 0.12% of those denied were allegedly "prohibited persons." During the first seven months, Appellants processed 616,257 Standard Checks. Of those, the Department of Justice approved 515,022 and denied 101,253. The Appellant then states that of those 101,253 denials (which consisted of 81,300 individual applicants), only 188, or 0.18% applications (or 0.23% of the total individual applicants when excluding duplicate applications), were denied "because the Standard Check revealed that the purchaser was a prohibited person."

The remaining 101,047 (or 99.7%) of the Standard Check denials consisted of 81,112 applicants who were not “prohibited persons” but were denied on other grounds. A.O.B. 14.

Examining the difference between the total number of applicants and the total number of applications, this means that the difference, 19,935, were repeat applications by some of the non-prohibited 81,112 applicants that were denied. In other words, more than 20% of the Standard Checks were duplicates in which individuals who are not “prohibited persons” faced multiple Standard Check processes, paying duplicate fees, repeatedly filling out the same forms, and waiting (again) for the Appellant to process their Standard checks.

#### *Collective Analysis of Denials*

In sum, according to Appellants’ own data, 83,368 individuals’ Basic Check and Standard Checks were denied, and only 760 individuals (or 0.9% of the total persons) were ultimately deemed to be prohibited by the Department. Which means that 99.1% of individuals denied Basic Checks or Standard Checks were not deemed to be “prohibited persons” by the Department of Justice.

#### *Adjusted Collective Analysis of Denials*

Appellees state in their Answering Brief that “even those figures are generous to the State, as so far at least 16 individuals . . . were found to have been wrongly deemed prohibited upon closer examination.” A.A.B. 14.

Adjusting for these additional 16 persons, there would be 744 individuals

deemed to have been prohibited by the Department out of the total 83,368 total persons denied – or 0.8 percent of the total persons denied. Thus, 99.2% of all denials for both Basic Checks and Standard Checks were not deemed to be “prohibited persons” by the Department of Justice.

Stated another way, less than one out of every hundred persons denied by the Department during this period was a person deemed to be a statutorily “prohibited person” by the Department.

**B. The Databases Are Systemically Incomplete and Inaccurate – and Beyond Repair**

The validity of the prohibitions for the remaining 744 individuals who were denied is also questionable when one examines the information from which these determinations are made. Appellant states in its Opening Brief that the source of information for determining whether a person is a statutorily “prohibited person” are four databases:

Once the vendor enters the required information into the DES, the system compares it against four state databases to determine whether the purchase is a prohibited person: (1) the Automated Criminal History Record System; (2) the Mental Health Firearms Prohibited System; (3) the California Restraining and Protective Order System; and (4) the Wanted Persons System. ER 395. If the database search yields no hits, then the transaction is approved, and the vendor may proceed with the sale. Cal. Penal Code § 30370(a)(3); Cal. Code Regs., tit. 11, § 4303(a); ER 395.

If, however, the purchaser’s information results in a hit in one of the databases, a Department analyst will manually review the information submitted by the vendor to check whether the purchaser is in fact a prohibited person. ER 395. Purchasers who are not prohibited are approved and may take possession of the ammunition;

but purchasers who are prohibited are denied, and the vendor cannot transfer the ammunition to them. Cal. § 30370.

A.O.B. 10.

Thus, since these databases are the sources used for the determination of whether a person is a “prohibited person,” then the ultimate determination can only be as good as the data within those databases. As Justice Neil Gorsuch ruled in his opinion for the Tenth Circuit in *United States v. Esquivel-Rios* (10th Cir. 2013) 725 F.3d 1231, 1234:

Garbage in, garbage out. Everyone knows that much about computers: you give them bad data, they give you bad results. There was a time when the enforcement of traffic laws depended on officers lying in wait behind billboards watching cars flow past. Today, officers nearly as often rely on distant computer databases accessed remotely from their dashboards, stopping passersby when the computer instructs. But what if the computer turns out to be a good deal less reliable than the officer’s eagle eye? What if the computer suggests you’ve broken the law only because of bad data — garbage in, garbage out? Today’s case requires us to wrestle with these questions for the first time, bringing the Fourth Amendment face-to-face with Charles Babbage.

Similarly, here, we must wrestle with these questions, bringing the Second Amendment and the Commerce Clause face-to-face with Charles Babbage.

*Criminal History Records in Shambles*

In April of 2019, Stanford Criminal Justice Center within the Stanford School of Law published findings that called into question the validity of

the accuracy of the data within the control of the Department of Justice, making the following findings:

CADOJ in particular has a well-established statutory responsibility for both collecting and sharing these data. This responsibility notwithstanding, many criminal justice researchers and practitioners express concern about the implementation of these mandates and about the comprehensiveness, and accuracy of the data that are collected. Interviews with some former CADOJ employees corroborate those concerns. Such imperfections are detrimental to other state and local agencies, to outside researchers, **and to many individuals who have ever been labeled as offenders. For example, more than half of arrest records are missing disposition information, thus hampering law enforcement agencies from accurately identifying individuals who have been convicted of serious and violent offenses. On the other extreme, individual who have been cleared of criminal charges often do not have dismissals or acquittals recorded, leading to potentially dire implications for employment, etc.** At the same time, limitations on the circumstances in which researchers and county practitioners can access these – admittedly imperfect – data creates an information vacuum, with no clear mechanism to assess the implications of the various policies that have dramatically changed the state’s criminal justice landscape.

See Mikaela Ravinowitz, et al., *The California Criminal Justice Data Gap* 8 (Stanford Crim. Just. Ctr.2019), available at <https://law.stanford.edu/publications/the-california-criminal-justice-data-gap/> (emphasis added).

This “data gap” has rendered the accuracy and completeness of background checks a matter of chance rather than one of statistical accuracy. California has been on notice that its criminal justice records

have long been in shambles. In 2011, the *Los Angeles Times* reported that the outcome (i.e., guilty, not guilty, case dismissed) was missing from about 7.7 million of the 16.4 million arrest records entered into state computers. See Jack Dolan, *California Criminal Database Poorly Maintained*, L.A. Times (July 17, 2011), available at <http://articles.latimes.com/2011/jul/17/local/la-me-crime-data-20110717>. Thus, about 47% of the records within California's criminal history databases are incomplete or inaccurate as to each matter's final disposition. *Id.* This "data gap" means that the odds that a determination by the Department is based upon a complete and accurate criminal history record is close to the equivalent to a flip of a coin.

*Criminal Court Records Are Systematically Destroyed by Statute*

Worse yet, older state court records often lack a final case disposition and adjudication due to court record destruction policies, making it difficult to determine with any certainty a person's statutory eligibility to possess firearms. California Government Code section 68152(c) provides the timeline for destroying court records which has hampered the accuracy of California's criminal history databases, stating in part:

(1) Capital felony in which the defendant is sentenced to death, and any felony resulting in a sentence of life or life without the possibility of parole: retain permanently, including records of the cases of any codefendants and any related cases, regardless of the disposition. For the purpose of this paragraph, "capital felony" means murder with special circumstances when the prosecution seeks the death penalty. Records of the cases of codefendants and related cases required to be retained under this



paragraph shall be limited to those cases that are factually linked or related to the charged offense, that are identified in the courtroom, and that are placed on the record. If a capital felony is disposed of by a sentence less than death, or imprisonment for life or life without the possibility of parole, the judgment shall be retained permanently, and the record shall be retained for 50 years or for 10 years after the official written notification of the death of the defendant. If a capital felony is disposed of by an acquittal, the record shall be retained for 10 years.

(2) Felony, except as otherwise specified, and in any felony or misdemeanor case resulting in a requirement that the defendant register as a sex offender under Section 290 of the Penal Code: retain judgment permanently. For all other documents: retain for 50 years or the maximum term of the sentence, whichever is longer. However, any record other than the judgment may be destroyed 10 years after the death of the defendant. Felony case files that do not include final sentencing or other final disposition because the case was bound over from a former municipal court to the superior court and not already consolidated with the superior court felony case file: retain for 10 years from the disposition of the superior court case.

**(3) Felony reduced to a misdemeanor: retain in accordance with the retention period for the relevant misdemeanor.**

**(4) Felony, if the charge is dismissed, except as provided in paragraph (6): retain for three years.**

**(5) Misdemeanor, if the charge is dismissed, except as provided in paragraph (6): retain for one year.**

**(6) Dismissal under Section 1203.4 or 1203.4a of the Penal Code: retain for the same retention period as for records of the underlying case. If the records in the underlying case have been destroyed, retain for five years after dismissal.**

**(7) Misdemeanor, except as otherwise specified: retain for five years. For misdemeanors alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: retain for 10 years.**

**(8) Misdemeanor alleging a marijuana violation under subdivision (b) or (c) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code: records shall be destroyed, or redacted in accordance with subdivision (c) of Section 11361.5 of the Health and Safety Code, two years from the date of conviction, or from the date of arrest if no conviction,** if the case is no longer subject to review on appeal, all applicable fines and fees have been paid, and the defendant has complied with all terms and conditions of the sentence or grant of probation. As provided in subdivision (a) of Section 11361.5 of the Health and Safety Code and paragraph (5) of subdivision (e) of this section, records of an infraction alleging a marijuana violation under subdivision (d) of Section 11357 of the Health and Safety Code shall be retained until the offender attains 18 years of age, at which time the records shall be destroyed as provided in subdivision (c) of Section 11361.5 of the Health and Safety Code.

As the severity of the crime decreases, so too does the time that the courts must maintain records. Those with less severe criminal convictions are at a greater chance of having their records destroyed. Thus, those with less severe criminal convictions face greater difficulty in being able to correct any criminal history deficits within the California criminal database. This lack of institutional data resulted in individuals, who should not be considered prohibited from possessing firearms, being denied firearm purchases because they had an arrest somewhere long ago.

Thus, because nearly half of the records within the State's criminal record database are lacking final dispositions and many records necessary to fill the gaps have been destroyed, the Appellant has historically been unable to respond accurately to background checks.

*The Legislative Band-Aid for Criminal Records and  
Firearm Background Checks*

This issue of incomplete and inaccurate records led to many who were not prohibited but had arrests without dispositions being indefinitely delayed (in essence denied) firearm purchases. This prompted the California legislature to enact Assembly Bill (AB) 500 (2013) which, in part, allowed firearm dealers to release firearms after 30 days when the Department could not determine whether a transferee was eligible to possess firearms:

**If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm . . . within 30 days** of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and **the dealer may then immediately transfer the firearm to the purchaser**, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

Cal. Penal Code § 28220(f)(4).

Before the enactment of this law, individuals were delayed indefinitely while the Department sought to track down information that never existed or no longer does. Alternatively, the Department insisted that the *transferee* prove to the Department that they were eligible before the

firearm could be transferred. This resulted in individuals, who should not be considered prohibited from possessing firearms, being denied firearm purchases because they had an arrest somewhere long ago.

Unlike firearms, which have the Penal Code section 22820(f)(4) 30-day safeguard, there is no corollary auto-release after 30 days for undetermined ammunition purchases under Proposition 63. Thus, persons who were arrested, but not convicted, or could even be found factually innocent, may ultimately be denied and have no method of correcting their incomplete record with an accurate reflection of the final disposition. Those individuals that have an “undetermined” status because of incomplete criminal history are therefore indefinitely denied ammunition without any recourse; worse than with firearms, where at least a person can find an FFL willing to complete the transfer after 30 days have lapsed.

*Mental Health Hospitals Uninformed By and  
Mental Health Records Are Incomplete*

California has both public and private mental health facilities that provide treatment to individuals for mental health issues. These include psychiatric health facilities and acute psychiatric hospitals that provide inpatient treatment to individuals with mental health needs. State law requires mental health facilities to report to the Department certain individuals who are placed for treatment. Cal. Welf. & Inst. Code § 8105. Specifically, these facilities are required to report individuals placed under involuntary holds at a mental health facility and individuals who, after their

involuntary hold, are found to need further treatment. *Id.* In all cases, state law requires that mental health facilities report these prohibiting events to the Department immediately. *Id.*

A 2013 Report from the California State Auditor found that under Attorney General Kamala Harris, the Department “had not sufficiently reached out to the courts or mental health facilities to remind them to promptly report required information,” which if done would have allowed the Department to determine when dangerously mentally ill persons were in possession of firearms or seeking to purchase them. Cal. State Auditor, *Armed Persons with Mental Illness* 1 (Oct. 2013), available at <http://www.auditor.ca.gov/pdfs/reports/2013-103.pdf>. The report also found that “[key] decisions, such as whether a person is prohibited, are left to staff whose work does not receive supervisory review.” *Id.* And the State Auditor found that in the county courts had also failed to report at least 2,300 mental health determinations to the DOJ between 2010 and 2012.” *See Dolan, supra* p. 11.

**C. Courts Have Consistently Found Against Reliance on Incomplete and Inaccurate Databases**

Courts have consistently found against reliance on incomplete and inaccurate databases as Appellant does here. Databases that are incomplete in a manner that necessarily produces erroneous arrests is not a database that can be reasonably relied on by officers. *See Smith v. Oklahoma City*, 696 F.2d 784, 787 (10th Cir. 1983) (finding a violation of

the Fourth Amendment because an arrest warrant relied on a computer database that did not provide the necessary information to issue such warrants); *see also Morales v. Chadbourne*, 235 F. Supp. 3d 388, 401 (D.R.I. 2017), appeal dismissed, No. 17-1300, 2017 U.S. App. LEXIS 20546, 2017 WL 4574440 (1st Cir. May 24, 2017) (“A database search is only successful and its results are only reliable under a probable cause analysis if the information contained in the database is complete and if the search is thorough and based on available identifiers.”).

Whether the database lacks historical records, *Orhorhaghe v. INS*, 38 F.3d 488, 498-99 (9th Cir. 1994), categorically excludes certain information, *Esquivel-Rios*, 725 F.3d at 1236, or is outdated or has delays in its updating of information, *Duckett v. United States*, 886 A.2d 548, 552 n.8 (D.C. 2005), databases in such a state cannot be relied on for probable cause determinations. *See Gonzalez v. Immigration & Customs Enforcement*, 416 F. Supp. 3d 995, 1019 (C.D. Cal. 2019).

With both criminal and mental health databases in disarray and nearly half of the criminal records missing final dispositions, any findings based upon information contained within those databases would be indicative at best, and often incurable.

### *Human Interference Is Systemic*

Even if each database relied on by the Department were accurate, purchasers would face the political whims of the Appellant, who not only applies the statutory rules that define who is and who is not prohibited but

implements internal policies that deem certain persons to be prohibited, regardless of whether that individual is prohibited by statute.

Some of the Department's procedures have been incorporated into their written policies. The Department has produced their Background Clearance Unit D[ealer] R[ecord] O[f] S[ale] procedures in response to California Public Records Act requests. *See* Cal. DOJ, *Background Clearance Unit DROS Procedures, Interpreting Criminal Records* 3.

Contained within these written procedures are guidelines for "Interpreting Criminal Records," including two sections with these headings: "Other Denial Categories by Department Policy" and "Persons in the following categories are prohibited from purchasing firearms pursuant to Department Policy." *Id.* Within those headings are certain individuals who are not statutorily prohibited. But Appellant has, whether with good intent and moral judgment or not, categorically and without statutory authorization deemed "prohibited."

Compounding this further is fact that the Department's Non-Statutory Policies are so systemic that they have been integrated into the California State Databases. For example, the California Dealer Record of Sale system includes within the drop-down list choices for denying persons who are prohibited for a "Non-Stat[utory] mental" prohibition. *See* Cal. DOJ, *supra* p. 18, at pp. 13, 17. And the California Dealer Record of Sale system includes non-statutory provisions for delaying a potential purchaser

because a “law enforcement agency requested” the delay, among “other” reasons. *Id.* at p. 17.

No matter if one is in agreeance with the categories listed within the policy, no legislature granted the Department such discretion and no due process is afforded those within that category. The mere existence of written Department Non-Statutory Policy Prohibitions overshadows the credibility and legitimacy of any denial from the Department without substantiation of records supporting a statutory basis for every denial, which as described above has an approximate 50% chance of being accurate. Moreover, such written policies cast doubt on the reliability of the Department to act as the gatekeepers of the fundamental constitutional right to keep and bear arms under the Second Amendment to the United States Constitution.

### **CONCLUSION**

Though the Appellant attempts to cast the denial of tens of thousands of citizens rights to obtain ammunition as justifiable because 750 of these individuals were deemed prohibited persons, an 0.8% purported “accuracy rate” based on incomplete and inaccurate databases does not justify denying tens of thousands of non-prohibited persons access to ammunition, especially now, when there is a greater potential for an immediate and urgent need to exercise their right of self-defense as a consequence of retreating or ineffective police departments. The



preliminary injunction issued below should remain in effect while this case is litigated to judgment or settled by the parties.

s / Jason Davis

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August 7, 2020

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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# **ADDENDUM**

**ADDENDUM TO BRIEF OF AMICUS CURIAE  
GUN OWNERS OF CALIFORNIA**

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## 11 CCR 4303

This document is current through Register 2020, No. 29, July 17, 2020

*CA - Barclays Official California Code of Regulations > TITLE 11. LAW > DIVISION 5. FIREARMS REGULATIONS > CHAPTER 11. AMMUNITION PURCHASES OR TRANSFERS > ARTICLE 2. AMMUNITION ELIGIBILITY CHECKS: STANDARD AND BASIC*

### **§ 4303. Basic Ammunition Eligibility Check (Single Transaction or Purchase)**

(a) A purchaser or transferee is authorized to purchase ammunition if they are not prohibited from purchasing or possessing ammunition, subsequent to affirmation by the Department.

(1) A purchaser or transferee may request, through an ammunition vendor, that the Department conduct a Basic Ammunition Eligibility Check to determine if the purchaser or transferee qualifies for this authorization.

(2) A purchaser or transferee may instead seek authorization by following the procedure set forth by section 4302, 4304, 4305, or 4306, as applicable.

(b) As authorized by Penal Code section 30370, subdivision (c), the fee for a Basic Ammunition Eligibility Check is \$ 19.00.

(c) The ammunition vendor shall collect the ammunition purchaser's or transferee's name, date of birth, current address, gender, hair color, eye color, height, weight, and driver's license or other government identification number in the manner described in Penal Code section 28180, and telephone number, United States citizenship status, federal Alien Registration Number or I-94 (if applicable), place of birth, alias name(s), and race, and enter this information into the DES website.

(d)The ammunition vendor will provide the purchaser or transferee an ATN to monitor the status of the Basic Ammunition Eligibility Check through the Department's CFARS website.

(1)An approved Basic Ammunition Eligibility Check can only be used for one ammunition purchase or transfer, and the approval expires 30 calendar days from when it is issued.

(2)If the Basic Ammunition Eligibility Check is denied, the Department shall notify the purchaser or transferee of the reason for the denial via U.S. Mail.

(e)Upon the Department's completion of a Basic Ammunition Eligibility Check, the Department shall update the purchaser's or transferee's DES record.

## **Statutory Authority**

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### **AUTHORITY:**

Note: Authority cited: Sections 30352 and 30370, Penal Code. Reference: Sections 28180, 30352 and 30370, Penal Code; and Section 922, Title 18, United States Code.

### **History**

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### **HISTORY:**

1. New section filed 6-24-2019; operative 6-24-2019 pursuant to Government Code section 11343.4(b)(3) (Register 2019, No. 26).

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## Cal Gov Code § 68152

Deering's California Codes are current through Chapters 1-10, 14-19, 21-23, 26, and 27 of the 2020 Regular Session, including all legislation effective June 28, 2020 or earlier.

*Deering's California Codes Annotated* > *GOVERNMENT CODE (§§ 1 — 500000–500049)* > *Title 8 The Organization and Government of Courts (Chs. 1 — 14)* > *Chapter 1.4 Management of Trial Court Records (§§ 68150 — 68153)*

### § 68152. Destruction of court records; Time period prior to destruction

The trial court clerk may destroy court records under Section 68153 after notice of destruction, and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after the date of final disposition of the case in the categories listed:

(a) Civil actions and proceedings, as follows:

(1) Except as otherwise specified: retain 10 years.

(2) Civil unlimited cases, limited cases, and small claims cases, including after trial de novo, if any, except as otherwise specified: retain for 10 years.

(3) Civil judgments for unlimited civil cases: retain permanently.

(4) Civil judgments for limited and small claims cases: retain for 10 years, unless judgment is renewed. If judgment is renewed, retain judgment for length of renewal pursuant to Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure.



(5) If a party in a civil case appears by a guardian ad litem: retain for 10 years after termination of the court's jurisdiction.

(6) Civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary school violence, gun violence, and workplace violence cases: retain for the same period of time as the duration of the restraining or other orders and any renewals thereof, then retain the restraining or other orders permanently as a judgment; 60 days after expiration of the temporary restraining or other temporary orders; retain judgments establishing paternity under Section 6323 of the Family Code permanently.

(7) Family law, except as otherwise specified: retain for 30 years.

(8) Adoption: retain permanently.

(9) Parentage: retain permanently.

(10) Change of name, gender, or name and gender: retain permanently.

(11) Probate:

(A) Decedent estates: retain permanently all orders, judgments, and decrees of the court, all inventories and appraisals, and all wills and codicils of the decedent filed in the case, including those not admitted to probate. All other records: retain for five years after final disposition of the estate proceeding.

(B) Wills and codicils transferred or delivered to the court pursuant to Section 732, 734, or 8203 of the Probate Code: retain permanently. For wills and codicils delivered to the clerk of the court under Section 8200 of the Probate Code, retain the original documents as provided in Section 26810.

**(C)**Substitutes for decedent estate administration:

**(i)**Affidavit procedures for real property of small value under Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code: retain permanently.

**(ii)**Proceedings for determining succession to property under Chapter 4 (commencing with Section 13150) of Part 1 of Division 8 of the Probate Code: retain permanently all inventories and appraisals and court orders. Other records: retain for five years after final disposition of the proceeding.

**(iii)**Proceedings for determination of property passing or belonging to surviving spouse under Chapter 5 (commencing with Section 13650) of Part 2 of Division 8 of the Probate Code: retain permanently all inventories and appraisals and court orders. Other records: retain for five years after final disposition of the proceeding.

**(D)**Conservatorships: retain permanently all court orders. Documents of trusts established under substituted judgment pursuant to Section 2580 of the Probate Code: retain as provided in clause (iii) of subparagraph (G). Other records: retain for five years after the later of either (i) the final disposition of the conservatorship proceeding, or (ii) the date of the conservatee's death, if that date is disclosed in the court's file.

**(E)**Guardianships: retain permanently orders terminating the guardianship, if any, and court orders settling final account and ordering distribution of the estate. Other records: retain for five years after the later of (i) the final disposition of the guardianship proceeding, or (ii) the earlier of the date of

the ward's death, if that date is disclosed in the court's file, or the date the ward reaches 23 years of age.

**(F)**Compromise of minor's or disabled person's claim or action, and disposition of judgment for minors and disabled persons under Section 372 of the Code of Civil Procedure and Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code:

**(i)**Retain permanently judgments in favor of minors or disabled persons, orders approving compromises of claims and actions and disposition of the proceeds of judgments, orders directing payment of expenses, costs, and fees, orders directing deposits into blocked accounts and receipts and acknowledgments of those orders, and orders for the withdrawal of funds from blocked accounts.

**(ii)**Retain other records for the same retention period as for records in the underlying case. If there is no underlying case, retain for five years after the later of either (I) the date the order for payment or delivery of the final balance of the money or property is entered, or (II) the earlier of the date of the minor's death, if that date is disclosed in the court's file, or the date the minor reaches 23 years of age.

**(G)**Trusts:

**(i)**Proceedings under Part 5 (commencing with Section 17000) of Division 9 of the Probate Code: retain permanently.

**(ii)**Trusts created by substituted judgment under Section 2580 of the Probate Code: retain permanently all trust instruments and court orders. Other records: retain as long as the underlying conservatorship file is retained.

**(iii)**Special needs trusts: retain permanently all trust instruments and court orders. Other records: retain until the later of either (I) the retention date of “other records” in the beneficiary’s conservatorship or guardianship file under subparagraph (D) or (E), if any, or (II) five years after the date of the beneficiary’s death, if that date is disclosed in the court’s file.

**(H)**All other proceedings under the Probate Code: retain as provided for civil cases.

**(12)**Mental health:

**(A)**Lanterman Developmental Disabilities Services Act: retain for 10 years.

**(B)**Lanterman-Petris-Short Act: retain for 20 years.

**(C)**Riese (capacity) hearings under Sections 5333 and 5334 of the Welfare and Institutions Code: retain for the later of either (i) 20 years after the date of the capacity determination order, or (ii) the court records retention date of the underlying involuntary treatment or commitment proceeding, if any.

**(D)**Petitions under Chapter 3 (commencing with Section 8100) of Division 8 of the Welfare and Institutions Code for the return of firearms to petitioners who relinquished them to law enforcement while detained in a mental health facility: retain for 10 years.

**(13)**Eminent domain: retain permanently.

**(14)**Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

**(15)**Unlawful detainer: retain for one year if judgment is only for possession of the premises; retain for 10 years if judgment is for money, or money and possession.

**(b)**Notwithstanding subdivision (a), any civil or small claims case in the trial court:

**(1)**Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: retain for one year.

**(2)**Voluntarily dismissed by a party without entry of judgment: retain for one year.

**(c)**Criminal actions and proceedings, as follows:

**(1)**Capital felony in which the defendant is sentenced to death, and any felony resulting in a sentence of life or life without the possibility of parole: retain permanently, including records of the cases of any codefendants and any related cases, regardless of the disposition. For the purpose of this paragraph, “capital felony” means murder with special circumstances when the prosecution seeks the death penalty. Records of the cases of codefendants and related cases required to be retained under this paragraph shall be limited to those cases that are factually linked or related to the charged offense, that are identified in the courtroom, and that are placed on the record. If a capital felony is disposed of by a sentence less than death, or imprisonment for life or life without the possibility of parole, the judgment shall be retained permanently, and the record shall be retained for 50 years or for 10 years after the official written notification of the death of the defendant. If a capital felony is disposed of by an acquittal, the record shall be retained for 10 years.

(2) Felony, except as otherwise specified, and in any felony or misdemeanor case resulting in a requirement that the defendant register as a sex offender under Section 290 of the Penal Code: retain judgment permanently. For all other documents: retain for 50 years or the maximum term of the sentence, whichever is longer. However, any record other than the judgment may be destroyed 10 years after the death of the defendant. Felony case files that do not include final sentencing or other final disposition because the case was bound over from a former municipal court to the superior court and not already consolidated with the superior court felony case file: retain for 10 years from the disposition of the superior court case.

(3) Felony reduced to a misdemeanor: retain in accordance with the retention period for the relevant misdemeanor.

(4) Felony, if the charge is dismissed, except as provided in paragraph (6): retain for three years.

(5) Misdemeanor, if the charge is dismissed, except as provided in paragraph (6): retain for one year.

(6) Dismissal under Section 1203.4 or 1203.4a of the Penal Code: retain for the same retention period as for records of the underlying case. If the records in the underlying case have been destroyed, retain for five years after dismissal.

(7) Misdemeanor, except as otherwise specified: retain for five years. For misdemeanors alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: retain for 10 years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b) or (c) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section

11360 of the Health and Safety Code: records shall be destroyed, or redacted in accordance with subdivision (c) of Section 11361.5 of the Health and Safety Code, two years from the date of conviction, or from the date of arrest if no conviction, if the case is no longer subject to review on appeal, all applicable fines and fees have been paid, and the defendant has complied with all terms and conditions of the sentence or grant of probation. As provided in subdivision (a) of Section 11361.5 of the Health and Safety Code and paragraph (5) of subdivision (e) of this section, records of an infraction alleging a marijuana violation under subdivision (d) of Section 11357 of the Health and Safety Code shall be retained until the offender attains 18 years of age, at which time the records shall be destroyed as provided in subdivision (c) of Section 11361.5 of the Health and Safety Code.

**(9)**Misdemeanor reduced to an infraction: retain in accordance with the retention period for the relevant infraction.

**(10)**Infraction, except as otherwise specified: retain for one year. Vehicle Code infraction: retain for three years. Infraction alleging a marijuana violation under subdivision (a) of Section 11357 of the Health and Safety Code: if records are retained past the one-year minimum retention period, the records shall be destroyed or redacted in accordance with subdivision (c) of Section 11361.5 of the Health and Safety Code two years from the date of conviction, or from the date of arrest if no conviction, if the case is no longer subject to review on appeal, all applicable fines and fees have been paid, and the defendant has complied with all terms and conditions of the sentence or grant of probation.

**(11)**Criminal protective order: retain until the order expires or is terminated.

**(12)** Arrest warrant: retain for the same retention period as for records in the underlying case. If there is no underlying case, retain for one year from the date of issue.

**(13)** Search warrant:

**(A)** If there is no underlying case, retain for five years from the date of issue.

**(B)** If there is any underlying case, retain for 10 years from the date of issue or, if the retention period for records in the underlying case is less than 10 years or if the underlying case is a capital felony described in paragraph (1) of subdivision (c), retain for the same retention period as for records in the underlying case.

**(14)** Probable cause declarations: retain for the same retention period as for records in the underlying case. If there is no underlying case, retain for one year from the date of declaration.

**(15)** Proceedings for revocation of postrelease community supervision or postrelease parole supervision: retain for five years after the period of supervision expires or is terminated.

**(d)** Habeas corpus:

**(1)** Habeas corpus in criminal and family law matters: retain for the same retention period as for records in the underlying case, whether granted or denied.

**(2)** Habeas corpus in mental health matters: retain all records for the same retention period as for records in the underlying case, whether granted or denied. If there is no underlying case, retain records for 20 years.



**(e)Juveniles:**

**(1)**Dependent pursuant to Section 300 of the Welfare and Institutions Code: upon reaching 28 years of age, or on written request, shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

**(2)**Ward pursuant to Section 601 of the Welfare and Institutions Code: upon reaching 21 years of age, or on written request, shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

**(3)**Ward pursuant to Section 602 of the Welfare and Institutions Code: upon reaching 38 years of age under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches 38 years of age under subdivision (d) of Section 781 of the Welfare and Institutions Code.

**(4)**Traffic and some nontraffic misdemeanors and infractions pursuant to Section 601 of the Welfare and Institutions Code: upon reaching 21 years of age, or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. Records may be microfilmed or photocopied.

**(5)** Marijuana infraction under subdivision (d) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching 18 years of age, the records shall be destroyed.

**(f)** Court records of the appellate division of the superior court: retain for five years.

**(g)** Other records:

**(1)** Bench warrant: retain for the same retention period as for records in the underlying case. For a bench warrant issued for a misdemeanor, retain records for the same retention period as for records in the underlying misdemeanor following issuance. If there is no return on the warrant, the court may dismiss on its own motion and immediately destroy the records.

**(2)** Body attachment: retain for same retention period as for records in the underlying case.

**(3)** Bond: retain for three years after exoneration and release.

**(4)** Court reporter notes:

**(A)** Criminal and juvenile proceedings: retain notes for 10 years, except as otherwise specified. Notes reporting proceedings in capital felony cases (murder with special circumstances when the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

**(B)** Civil and all other proceedings: retain notes for five years.

- (5) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court may be destroyed or deleted as follows:
- (A) Any time after final disposition of the case in infraction and misdemeanor proceedings.
  - (B) After 10 years in all other criminal proceedings.
  - (C) After five years in all other proceedings.
- (6) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court may be destroyed at any time at the discretion of the court.
- (7) Fee waiver applications: retain for the same retention period as for records in the underlying case.
- (8) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.
- (9) Judgments in misdemeanor cases, infraction cases, and limited civil cases: retain for the same retention period as for records in the underlying case.
- (10) Juror proceedings, including sanctions: retain for one year.
- (11) Minutes: retain for the same retention period as for records in the underlying case.
- (12) Orders not associated with an underlying case, such as orders for the destruction of court records for telephone taps, orders to destroy drugs, and other miscellaneous court orders: retain for one year.
- (13) Naturalization index: retain permanently.

(14)Index for cases alleging traffic violations: retain for the same retention period as for records in the underlying case.

(15)Index, except as otherwise specified: retain permanently.

(16)Register of actions or docket: retain for the same retention period as for records in the underlying case, but in no event less than 10 years for civil and small claims cases.

(h)Retention of the court records under this section shall be extended by order of the court on its own motion, or on application of a party or an interested member of the public for good cause shown and on those terms as are just. A fee shall not be charged for making the application.

(i)The record retention periods provided in this section, as amended effective January 1, 2014, apply to all court records in existence prior to that date as well as to records created on or after that date.

## History

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Added Stats 2013 ch 274 § 4 (AB 1352), effective January 1, 2014. Amended Stats 2016 ch 74 § 1 (AB 2232), effective January 1, 2017; Stats 2017 ch 172 § 2 (AB 1443), effective January 1, 2018; Stats 2018 ch 423 § 31 (SB 1494), effective January 1, 2019.

Deering's California Codes Annotated

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## Cal Pen Code § 28220

Deering's California Codes are current through Chapters 1-10, 14-19, 21-23, 26, and 27 of the 2020 Regular Session, including all legislation effective June 28, 2020 or earlier.

*Deering's California Codes Annotated > PENAL CODE (§§ 1 — 34370) > Part 6 Control of Deadly Weapons (Titles 1 — 4) > Title 4 Firearms (Divs. 1 — 12) > Division 6 Sale, Lease, or Transfer of Firearms (Chs. 1 — 6) > Chapter 6 Recordkeeping, Background Checks, and Fees Relating to Sale, Lease, or Transfer of Firearms (Arts. 1 — 6) > Article 3 Submission of Fees and Firearm Purchaser Information to the Department of Justice (§§ 28200 — 28255)*

### **§ 28220. Actions of Department of Justice upon receipt of firearm purchaser information**

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(a) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(b) The Department of Justice shall participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to Section 28225, or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of

the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

**(f)**

**(1)**

**(A)**The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:

**(i)**The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

**(ii)**The purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.

**(iii)**The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in

fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

**(B)**The dealer shall provide the purchaser with information about the manner in which he or she may contact the department regarding the delay described in subparagraph (A).

**(2)**The department shall notify the purchaser by mail regarding the delay and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser shall report any inaccuracies or incompleteness to the department on an approved form.

**(3)**If the department ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:

**(A)**If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing



the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

**(B)**If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact in compliance with subdivision (c) of Section 28220.

**(4)**If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

**(g)**Commencing July 1, 2017, upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, the department shall submit the name, date of birth, and physical description of the person to the

National Instant Criminal Background Check System Index, Denied Persons Files. The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.

## **History**

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Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2011 ch 745 § 55 (AB 809), effective January 1, 2012; Stats 2012 ch 24 § 56 (AB 1470), effective June 27, 2012; Stats 2013 ch 737 § 8.1 (AB 500), effective January 1, 2014; Amendment approved by voters, Prop. 63 § 5.1, effective November 9, 2016.

Deering's California Codes Annotated

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## Cal Pen Code § 29800

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*Deering's California Codes Annotated > PENAL CODE (§§ 1 — 34370) > Part 6 Control of Deadly Weapons (Titles 1 — 4) > Title 4 Firearms (Divs. 1 — 12) > Division 9 Special Firearm Rules Relating to Particular Persons (Chs. 1 — 5) > Chapter 2 Person Convicted of Specified Offense, Addicted to Narcotic, or Subject to Court Order (Arts. 1 — 3) > Article 1 Prohibitions on Firearm Access (§§ 29800 — 29830)*

### **§ 29800. Person convicted of felony owning, purchasing, receiving or possessing firearm**

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(a)

(1) Any person who has been convicted of, or has an outstanding warrant for, a felony under the laws of the United States, the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 23515, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 23515, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under

Section 707 of the Welfare and Institutions Code, and who owns or has in possession or under custody or control any firearm is guilty of a felony.

(c) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

## History

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Added Stats 2010 ch 711 § 6 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amended Stats 2017 ch 17 § 44 (AB 103), effective June 27, 2017.

Deering's California Codes Annotated

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## Cal Pen Code § 29805

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*Deering's California Codes Annotated > PENAL CODE (§§ 1 — 34370) > Part 6 Control of Deadly Weapons (Titles 1 — 4) > Title 4 Firearms (Divs. 1 — 12) > Division 9 Special Firearm Rules Relating to Particular Persons (Chs. 1 — 5) > Chapter 2 Person Convicted of Specified Offense, Addicted to Narcotic, or Subject to Court Order (Arts. 1 — 3) > Article 1 Prohibitions on Firearm Access (§§ 29800 — 29830)*

### **§ 29805. Person convicted of specified misdemeanor owning, purchasing, receiving, or possessing firearm; Notification of Department of Justice of persons subject to section**

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(a) Except as provided in Section 29855, subdivision (a) of Section 29800, or subdivision (b), any person who has been convicted of, or has an outstanding warrant for, a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, subdivision (f) of Section 148.5, Section 171b, paragraph (1) of subdivision (a) of Section 171c, Section 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 422.6, 626.9, 646.9, 830.95, 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 487 if the property taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, or if the individual has an outstanding warrant, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the

state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

**(b)**Any person who is convicted, on or after January 1, 2019, of a misdemeanor violation of Section 273.5, and who subsequently owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

**(c)**Except as provided in Section 29855, any person who is convicted on or after January 1, 2020, of a misdemeanor violation of Section 25100, 25135, or 25200, and who, within 10 years of the conviction owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

**(d)**The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

## **History**

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Added Stats 2010 ch 711 § 6.76 (SB 1080), effective January 1, 2011, operative January 1, 2012. Amendment approved by voters, Prop. 63 § 11.2, effective November 9, 2016; Stats 2017 ch 17 § 45 (AB 103), effective June 27, 2017; Stats 2017 ch 784 § 1 (AB 785), effective January 1, 2018; Stats 2018 ch 883 § 1 (AB 3129), effective January 1, 2019; Stats 2019 ch 256 § 13 (SB 781), effective January 1, 2020; Stats 2019 ch 840 § 13 (SB 172), effective January 1, 2020 (ch 840 prevails).

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## Cal Pen Code § 30370

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*Deering's California Codes Annotated > PENAL CODE (§§ 1 — 34370) > Part 6 Control of Deadly Weapons (Titles 1 — 4) > Title 4 Firearms (Divs. 1 — 12) > Division 10 Special Rules Relating to Particular Types of Firearms or Firearm Equipment (Chs. 1 — 10) > Chapter 1 Ammunition (Arts. 1 — 5) > Article 4 Ammunition Purchase Authorizations (§§ 30370 — 30371)*

### **§ 30370. Determination of eligibility to purchase; Electronic approval; AFS cross-reference; Fee; Exceptions**

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(a) Commencing July 1, 2019, the department shall electronically approve the purchase or transfer of ammunition through a vendor, as defined in Section 16151, except as otherwise specified. This approval shall occur at the time of purchase or transfer, prior to the purchaser or transferee taking possession of the ammunition. Pursuant to the authorization specified in paragraph (1) of subdivision (c) of Section 30352, the following persons are authorized to purchase ammunition:

- (1) A purchaser or transferee whose information matches an entry in the Automated Firearms System (AFS) and who is eligible to possess ammunition as specified in subdivision (b).
- (2) A purchaser or transferee who has a current certificate of eligibility issued by the department pursuant to Section 26710.
- (3) A purchaser or transferee who is not prohibited from purchasing or possessing ammunition in a single ammunition transaction or purchase made pursuant to the procedure developed pursuant to subdivision (c).



**(b)**To determine if the purchaser or transferee is eligible to purchase or possess ammunition pursuant to paragraph (1) of subdivision (a), the department shall cross-reference the ammunition purchaser's or transferee's name, date of birth, current address, and driver's license or other government identification number, as described in Section 28180, with the information maintained in the AFS. If the purchaser's or transferee's information does not match an AFS entry, the transaction shall be denied. If the purchaser's or transferee's information matches an AFS entry, the department shall determine if the purchaser or transferee falls within a class of persons who are prohibited from owning or possessing ammunition by cross-referencing with the Prohibited Armed Persons File. If the purchaser or transferee is prohibited from owning or possessing a firearm, the transaction shall be denied.

**(c)**The department shall develop a procedure in which a person who is not prohibited from purchasing or possessing ammunition may be approved for a single ammunition transaction or purchase. The department shall recover the cost of processing and regulatory and enforcement activities related to this section by charging the ammunition transaction or purchase applicant a fee not to exceed the fee charged for the department's Dealers' Record of Sale (DROS) process, as described in Section 28225 and not to exceed the department's reasonable costs.

**(d)**A vendor is prohibited from providing a purchaser or transferee ammunition without department approval. If a vendor cannot electronically verify a person's eligibility to purchase or possess ammunition via an Internet connection, the department shall provide a telephone line to verify eligibility. This option is available to ammunition vendors who can demonstrate legitimate geographical and telecommunications limitations in submitting the information electronically and who are approved by the department to use the telephone line verification.

(e)The department shall recover the reasonable cost of regulatory and enforcement activities related to this article by charging ammunition purchasers and transferees a per transaction fee not to exceed one dollar (\$1), provided, however, that the fee may be increased at a rate not to exceed any increases in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations, not to exceed the reasonable regulatory and enforcement costs.

(f)A fund to be known as the “Ammunition Safety and Enforcement Special Fund” is hereby created within the State Treasury. All fees received pursuant to this section shall be deposited into the Ammunition Safety and Enforcement Special Fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated for purposes of implementing, operating, and enforcing the ammunition authorization program provided for in this section and Section 30352 and for repaying the start-up loan provided for in Section 30371.

(g)The Department of Justice is authorized to adopt regulations to implement this section.

## History

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Added Stats 2016 ch 55 § 15 (SB 1235), effective January 1, 2017.

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### Cal Wel & Inst Code § 8103

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*Deering's California Codes Annotated* > *WELFARE AND INSTITUTIONS CODE (§§ 1 — 25200)* >  
*Division 8 Miscellaneous (Chs. 1 — 7)* > *Chapter 3 Firearms (§§ 8100 — 8108)*

#### **§ 8103. Firearms; Mental health**

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(a)

(1) A person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control a firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1) as soon as possible, but not later than one court day after issuing the order. The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1) as soon as possible, but not later than one court day after issuing the certificate.

**(b)**

**(1)**A person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

**(2)**The court shall notify the Department of Justice of the court order finding the person to be a person described in paragraph (1) as soon as possible, but not later than one court day after issuing the order.

**(c)**

**(1)**A person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of

any crime other than those described in subdivision (b) shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control, any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2)The court shall notify the Department of Justice of the court order finding the person to be a person described in paragraph (1) as soon as possible, but not later than one court day after issuing the order. The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity as soon as possible, but not later than one court day after making the finding.

(d)

(1)A person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control, any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2)The court shall notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1) as soon as possible, but not later than one court day after issuing the order. The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence as soon as possible, but not later than one court day after making the finding.

(e)

(1) A person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism, shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control, any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court that imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing a person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

(2) The court shall notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1) as soon as possible, but not 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 subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall notify the Department of Justice as soon as possible, but not later than one court day after terminating the conservatorship.

**(3)**All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the Department of Justice, and shall be used only 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 the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

**(f)**

**(1)**

**(A)**A person who has been (i) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (ii) assessed within the meaning of Section 5151, and (iii) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years after the person is released from the facility.

**(B)**A person who has been taken into custody, assessed, and admitted as specified in subparagraph (A), and who was previously taken into custody, assessed, and admitted as specified in subparagraph (A) one or more times within a period of one year preceding the most recent admittance, shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for the remainder of his or her life.

**(C)**A person described in this paragraph, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase

any firearm if the superior court has, pursuant to paragraph (5), found that the people of the State of California have not met their burden pursuant to paragraph (6).

**(2)**

**(A)**

**(i)**For each person subject to this subdivision, the facility shall, within 24 hours of the time of admission, submit a report to the Department of Justice, on a form prescribed by the Department of Justice, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

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

**(B)**Facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

**(3)**Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years or, if the person was previously taken into custody, assessed, and admitted to custody for a 72-hour hold because he or she was a danger to himself, herself, or to others during the previous one-year period, for life. Simultaneously, the facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a copy



of the most recent “Patient Notification of Firearm Prohibition and Right to Hearing Form” prescribed by the Department of Justice. The Department of Justice shall update this form in accordance with the requirements of this section and distribute the updated form to facilities by January 1, 2020. The form shall include information regarding how the person was referred to the facility. The form shall include an authorization for the release of the person’s mental health records, upon request, to the appropriate court, solely for use in the hearing conducted pursuant to paragraph (5). A request for the records may be made by mail to the custodian of records at the facility, and shall not require personal service. The facility shall not submit the form on behalf of the person subject to this subdivision.

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

**(5)**A person who is subject to paragraph (1) who has requested a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the plaintiff in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the hearing to the county in which the person resided at the time of his or

her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after the request for a hearing, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The court shall set the hearing within 60 days of receipt of the request for a hearing. Upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 30 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. The district attorney may notify the county behavioral health director of the hearing who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public.

Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code shall be admissible at the hearing under this section.

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

(7) If the court finds at the hearing set forth in paragraph (5) that the people have not met their burden as set forth in paragraph (6), the court shall order that the person shall not be subject to the five-year prohibition or lifetime prohibition, as appropriate, in this section on the ownership, control, receipt, possession, or purchase of firearms, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(8) If the district attorney declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five-year prohibition or lifetime prohibition required by this subdivision on the ownership, control, receipt, possession, or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall, within 15 days, delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms.

(9) This subdivision does not prohibit the use of reports filed pursuant to this section 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.

**(10)** If the court finds that the people have met their burden to show by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner and the person is subject to a lifetime firearm prohibition because the person had been admitted as specified in subparagraph (A) of paragraph (1) more than once within the previous one-year period, the court shall inform the person of his or her right to file a subsequent petition no sooner than five years from the date of the hearing.

**(11)** A person subject to a lifetime firearm prohibition is entitled to bring subsequent petitions pursuant to this subdivision. A person shall not be entitled to file a subsequent petition, and shall not be entitled to a subsequent hearing, until five years have passed since the determination on the person's last petition. A hearing on subsequent petitions shall be conducted as described in this subdivision, with the exception that the burden of proof shall be on the petitioner to establish by a preponderance of the evidence that the petitioner can use a firearm in a safe and lawful manner. Subsequent petitions shall be filed in the same court of jurisdiction as the initial petition regarding the lifetime firearm prohibition.

**(g)**

**(1)**

**(i)** A person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years.

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

(2)

(A) For each person certified for intensive treatment under paragraph (1), the facility shall, within 24 hours of the certification, submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. A report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(B) Facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

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

(4) A person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date within 60 days of receipt of the petition and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the

person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 30 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. The district attorney may notify the county behavioral health director of the petition, and the county behavioral health director shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public.

Notwithstanding any other law, any declaration, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms. A copy of the order shall be submitted to the

Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

**(h)**

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

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

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

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

**(k)**Any notice or report required to be submitted to the Department of Justice pursuant to this section shall be submitted in an electronic format, in a manner prescribed by the Department of Justice.

**(l)**This section shall become operative on January 1, 2020.

## **History**

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Cal Wel & Inst Code § 8103

Added Stats 2018 ch 861 § 2 (AB 1968), effective January 1, 2019, operative January 1, 2020.

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## Cal Wel & Inst Code § 8105

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*Deering's California Codes Annotated* > *WELFARE AND INSTITUTIONS CODE (§§ 1 — 25200)* >  
*Division 8 Miscellaneous (Chs. 1 — 7)* > *Chapter 3 Firearms (§§ 8100 — 8108)*

### **§ 8105. Submission of patient's mental health information to Department of Justice**

(a) The Department of Justice 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 the prohibition specified by 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 information the department deems necessary to identify those persons who are subject to the prohibition specified by 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 the prohibition specified by 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 the prohibition specified by 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, or who is the subject of a petition for the issuance of a gun violence restraining order issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6 of the Penal Code, if a part of the 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 if the same person has been previously reported pursuant to Section 8103 or 8104.

**(f)**This section shall become operative on January 1, 2016.

## **History**

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Added Stats 2014 ch 872 § 7 (AB 1014), effective January 1, 2015, operative January 1, 2016.

Deering's California Codes Annotated

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 7, 2020, an electronic PDF of BRIEF OF AMICUS CURIAE GUN OWNERS OF CALIFORNIA IN SUPPORT OF APPELLEES KIM RHODE, ET AL. AND AFFIRMANCE was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

s / Jason Davis

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THE DAVIS LAW FIRM

Jason A. Davis

Counsel for Amicus Curie  
Gun Owners of California

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