



# California Mental Health Firearms Prohibition

California Welfare and Institutions Code, sections 8100 – 8108

There are a number of circumstances under which mental health clients may lose their right to purchase and possess firearms. You should read this entire publication before deciding which, if any, of these circumstances apply to you.

## Persons Receiving Voluntary Inpatient Mental Health Treatment Who Are a Danger to Self or Others

If you are receiving inpatient mental health treatment on a voluntary basis and your treating mental health professional determines that you are a danger to yourself or others, you may not possess, purchase, or attempt to purchase any firearms while you are in the facility or on a temporary pass or leave from the facility. Once you are discharged from the facility, this prohibition no longer applies.

## Persons Receiving Involuntary Inpatient Mental Health Treatment on 72-Hour Holds as a Danger to Self or Others

If you are placed on a 72-hour hold (also known as a "5150"<sup>1</sup>) as a danger to self or others and admitted to a facility for treatment, you are prohibited from purchasing or possessing firearms while you are in the facility and for five years from the date of admission to the facility. When you are admitted to a facility as a danger to self/others, the facility is required to notify the state Department of Justice. The Department of Justice then adds your name to the state mental health firearms prohibition database.

Before discharging you, the facility staff must notify you that you cannot possess or purchase firearms for a period of five years. At the same time, the staff must advise you of your right to go to court and ask a judge to restore your right to possess and purchase firearms. If you request this hearing when you are being discharged from the facility, the staff should provide you with a hearing request form and forward the form to the court

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<sup>1</sup> This is a reference to section 5150 of California's Welfare and Institutions Code.

on your behalf. After you are discharged from the facility, you can request a hearing by calling the California Department of Justice at (916) 227-3664.

The hearing takes place in the superior court of the county in which you live.<sup>2</sup> Because a lot of personal information about you and your mental health treatment will likely be discussed at the hearing, you can ask the judge to close the court room so that the public cannot attend. At the hearing, the state has the burden of showing that you would not be likely to use firearms in a safe and lawful manner. If the state does not meet this burden, the judge will issue an order finding that you are not subject to this five year prohibition and the state Department of Justice will remove your name from the state mental health prohibition firearms data base.

### **Persons Certified for Intensive Treatment On 14-Day Holds**

If you have been placed on a 14-day hold (5250),<sup>3</sup> had a certification hearing (also known as a Gallinot hearing) and were held for additional treatment at the hearing, you are prohibited from purchasing or possessing firearms for five years under California law and for life under federal law.<sup>4</sup> When you are held or certified for additional treatment as a danger to self or others, or gravely disabled, the facility is required to notify the California Department of Justice. The Department of Justice then places your name on the state mental health firearms prohibition database.

You may ask the superior court in the county in which you live for a hearing to restore your right to possess firearms under California law. At this hearing, the burden will be on you to prove that you can safely possess firearms. However, even if you have your right to purchase and possess firearms restored under California law, you may still be subject to the federal life-time prohibition.

### **Persons on Conservatorship**

If you are placed on a mental health or LPS conservatorship by the court, the judge will decide whether or not you should be allowed to purchase or possess firearms. If the

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<sup>2</sup> Upon motion of the District Attorney, or on its own motion, the court may transfer the hearing to the county in which the person resided at the time of his/her detention, the county in which the person was detained, or the county in which the person was evaluated and treated.

<sup>3</sup> Persons certified for intensive treatment under Welfare and Institutions Code, sections 5260 (2<sup>nd</sup> 14-day hold for suicidal persons) and 5270.15 (additional 30-day hold for persons who are gravely disabled).

<sup>4</sup> Code of Federal Regulations, tit 27 §§ 478.11 and 478.32

judge finds that you cannot safely possess firearms, you are prohibited from possessing or purchasing firearms while you are on the conservatorship. At any time however, you can ask the court for a hearing to contest the denial of your right to possess firearms.<sup>5</sup>

### **Persons Making Threats of Physical Violence**

If you communicate to a licensed psychotherapist a serious threat of physical violence against an identifiable victim, you cannot purchase or possess any firearms for a period of six months after the threat is reported to a local law enforcement agency. This prohibition does not apply unless your psychotherapist reports the threat to local law enforcement, which he/she may be compelled to do. If your psychotherapist does notify law enforcement, you will be notified by the California Department of Justice. The notice will tell you the dates between which you are prohibited from purchasing and possessing firearms and that you can petition the superior court in the county in which you live to restore your right to possess firearms. At this hearing, you will have the burden of proving that you can safely possess firearms.

### **Other Mental Health Firearms Prohibitions**

People found by a court of any state to be a danger to others, people who are mentally disordered sex offenders, people found not guilty by reason of insanity of any crime, and people who are incompetent to stand trial are prohibited from purchasing or possessing firearms.

### **What Happens To the Information that is Reported to the California Department of Justice?**

Information about you in the California Department of Justice's mental health firearms prohibition database is confidential and can only be (1) used by the department to determine your eligibility to possess or purchase firearms and (2) provided to the court if you request a hearing to restore your right to possess and purchase firearms.

The California Department of Justice must delete any reference to your firearms prohibition from the state mental health firearms database when either (1) the court issues an order saying that you are not subject to the prohibition or (2) the prohibition period ends.<sup>6</sup> However, you should be aware that, if you were certified for intensive

<sup>5</sup> Welfare and Institutions Code § 5358.3

<sup>6</sup> Deletion of your information from the state mental health firearms prohibition database does not necessarily mean that you are not prohibited from possessing and purchasing firearms. There are several categories of people who are prohibited from possessing and/or purchasing firearms, including people convicted of felonies and some misdemeanors, people subject to retraining orders,

treatment<sup>7</sup> on a 14-day hold or 30 day hold, the California Department of Justice will retain your name in the mental health firearms prohibition database for life in order to enforce the federal life-time firearms prohibition.

### **I'm Not Sure If I am Prohibited from Owning a Firearm. How Can I Find Out?**

When you are subject to a mental health firearms prohibition, it is a crime to possess, purchase or attempt to purchase a firearm. You can find out if you are subject to a firearms prohibition before trying to purchase a firearm by asking the California Department of Justice to conduct a Personal Firearms Eligibility Check (PFEC). You request a PFEC by submitting a PFEC application along with a copy of your California driver's license or Identification Card, and a \$20 fee. The application must be signed and notarized, and include an impression of your right thumb print. The Department will check all relevant state and federal databases to determine if you can lawfully purchase or possess firearms and will notify you of the results of the check.

PFEC applications are available online from the California Department of Justice Website:

<http://caag.state.ca.us/firearms/forms/pdf/pfecapp.pdf>

### **Disability Rights California**

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and people addicted to narcotics. Always review documents related to any criminal conviction because they may contain information about firearms restrictions.

<sup>7</sup> "Certified for intensive treatment" means that you were placed on a 14-day hold or a 30-day involuntary hold, had a certification hearing and were held for additional treatment at the hearing.