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DEPARTMENT OF  
POLICE

CITY OF SACRAMENTO  
CALIFORNIA

January 7, 1988

HALL OF JUSTICE  
813 SIXTH STREET  
SACRAMENTO, CA  
95814-2495

916-449-5121

JOHN P. KEARNS  
CHIEF OF POLICE

Law and Legislation Committee  
Council Chambers

Honorable Members in Session:

SUBJECT: Legislation Amending the 8100 Series, Welfare and  
Institutions Code and the 12070 series of the Penal  
Code relating to the retention and sale of firearms

SUMMARY

Attached are changes I am proposing to Section 8100, 8102, 8103 and 8104 of the Welfare and Institutions Code and 12071 and 12072 of the California Penal Code. These changes are proposed to prohibit a mentally disordered person from obtaining or retaining possession of any firearm.

BACKGROUND

Currently, there is no law prohibiting persons detained or apprehended for examination of his or her mental condition under 5150 of the Health and Safety Code from possessing or purchasing firearms. Further, there is no requirement that notification be made to the California Department of Justice of subjects detained or apprehended under 5150 of the Health and Safety Code. The Department of Justice does not receive notification regarding the seizure of a firearm in the possession or control of a person detained or apprehended for examination of his or her mental condition or who is a mental patient in any hospital or institution or who is on leave of absence therefrom. As a result, the information is not available throughout the state for use by law enforcement.

Prohibiting persons apprehended or detained for examination under the provisions of Section 5150 WIC from possessing or controlling firearms absent court approval, will help to protect residents of the state, and prevent others because of their mental condition, from obtaining firearms.

Also under current law (Section 12071 and 12072 of the Penal Code) there is a fifteen day waiting period for DOJ record examinations on persons attempting to purchase pistols or revolvers. This does not

pertain to other firearms thus a mentally ill person may purchase other firearms without a fifteen day waiting period for the appropriate record examination by the Department of Justice.

The proposed legislative charges will require a record examination and a fifteen day waiting period for delivery to all persons attempting to purchase a firearm from any source.

#### RECOMMENDATION

That the City obtain sponsorship through our local elected representatives for legislation to broaden notification and record-keeping procedures regarding detention and/or apprehension of those with mental disorders, and to prohibit the possession, ownership or control of firearms by such person(s). The legislation will require a fifteen day waiting period for sale of all firearms in order to allow the appropriate record examination by the Department of Justice, prior to delivery of such firearms. The staff recommends Law and Legislation support and forward to Council for approval.

#### Proposed Text of Legislation

Section 8100 of the Welfare and Institutions Code is amended to read:

**8100. Prohibition by mental patient of firearms or other deadly weapons; deadly weapon defined**

No person described in Section 8103 or who has been detained or apprehended for examination of his or her mental condition under 5150 of the Health and Safety Code or who is a mental patient in any hospital or institution or on leave of absence from any hospital or institution shall own or have in his or her possession or under his or her custody or control any firearms whatsoever or any other deadly weapon.

"Deadly Weapon," as used in this section and Sections 8101, 8102, and 8103 means any weapon, the possession or concealed carrying of which is prohibited by Section 12020 of the Penal Code.

Section 8102 of the Welfare and Institutions Code is amended to read:

**8102 Confiscation and custody of firearms and other deadly weapons; release from custody; deadly weapon definition; Disposition**

Any law enforcement agency detaining or apprehending a person for examination of his or her mental condition under 5150 of the Health and Safety Code shall immediately notify the California Department of Justice of the fact, together with sufficient information so that appropriate records may be kept relating to the prohibition against purchasing, possession, custody, or control of any firearm by the person.

Whenever a person who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own, have in his or her possession or under his or her control, any firearm whatsoever,

or any other deadly weapon, the firearm or any other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon.

The firearm or other deadly weapon shall not be released from the custody of the law enforcement agency or peace officer except upon an order of the superior court based upon a finding that the person may possess the firearm without endangering the person or others. Unless the law enforcement agency is directed otherwise by a court order, said confiscated weapon may be disposed of as per Penal Code Section 12028.

"Deadly Weapon" as used in this section, has the meaning prescribed by Section 8100.

8103. Certificate for possession required for specified classes of people; prohibition against possession for specified persons; violation is felony;

(a)(1) No person who after October 1, 1955, has been detained or apprehended for examination of his or her mental condition under Section 5150 of the Health and Safety Code or has been adjudicated by a court of any state to be a danger to the person or others as a result of mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication or a physician upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering the person or others, and the person has not, subsequent to the issuance of the certificate, again been detained, apprehended or adjudicated by a court to be a danger to the person or others as a result of a mental disorder or mental illness.

(2) The court or apprehending agency shall immediately notify the Department of Justice of the apprehension or court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b)(1) No 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 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, 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 subdivision 2 or 3 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 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 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 which includes all the elements of any of the above felonies as defined under California law, shall 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 immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c)(1) No 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 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 immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d)(1) No 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 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 such 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 immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e)(1) No 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 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 which 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 any 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 immediately 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). 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 immediately notify the Department of Justice.

(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, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes any such information for any other purpose is guilty of a misdemeanor. All such 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) Every person who possesses or has under his or her custody or control any firearm or any other deadly weapon in violation of this section is guilty of a felony which is punishable by imprisonment in the state prison, or in the county jail for not more than one year, and which is subject to subdivision (b) of Section 17 of the Penal Code.

(g) "Deadly Weapon," as used in this section, has the meaning prescribed by Section 8100.

(h)(1) No person who has been detained or apprehended for examination under the provisions of Section 5150, who was found to own, have in his or her possession or under his or her control any firearm or other deadly weapon which was seized pursuant to Section 8102, shall thereafter have in his or her possession, custody, or control any firearm or any other deadly weapon unless a physician or a court of competent jurisdiction has made a finding that the person may possess any firearm or other deadly weapon without endangering the person or others.

(2) The court shall immediately notify the California Department of Justice of the court findings that the person may possess any firearm or other deadly weapon without endangering others.

8104. Records necessary to identify persons coming within 8100 or 8103, availability to Department of Justice

The State Department of Mental Health shall make available to the Department of Justice those records which the State Department of Mental Health has in its possession which are necessary to identify persons who come within the provisions of Section 8100 or 8103. These records shall be made available to the Department of Justice upon request. ~~The Department of Justice shall make such requests only with respect to its duties with regard to applications for permits for explosives as defined in Section 12000 of the Health and Safety Code, concealable weapons as defined in Section 12001 of the Penal Code, machineguns as defined in Section 12200 of the Penal Code, and destructive devices as defined in Section 12301 of the Penal Code.~~ Such records shall not be furnished or made available to any person unless the department determines that disclosure of any information in such records is necessary to carry out its duties with respect to applications for permits for explosives, destructive devices, concealable weapons, and machineguns and firearms.

Sections 12071 and 12072 of the Penal Code are amended to read:

12071. Retail licenses; business regulations; clear evidence of his or her identity, defined

(a) The duly constituted licensing authorities of any city, county, or city and county shall accept applications for, and may grant licenses permitting the licensee to sell at retail within the city, county, or city and county, ~~pistols, revolvers, and other firearms capable of being concealed upon the person.~~ If a license is granted, it shall be in the form prescribed by the Attorney General, effective for not more than one year from the date of issue, and be subject to the following conditions, for breach of any of which the license shall be subject to forfeiture.

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) ~~No pistol or revolver firearm shall be delivered:~~

(A) Within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of

corrected copies of the register or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped.

(C) Unless the purchaser either is personally known to the seller or shall present clear evidence of his or her identity.

(D) Whenever the dealer is notified by the Department of Justice that a purchaser is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institution Code.

(4) No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(b) As used in this article, "clear evidence of his or her identity" includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the identity of the purchaser.

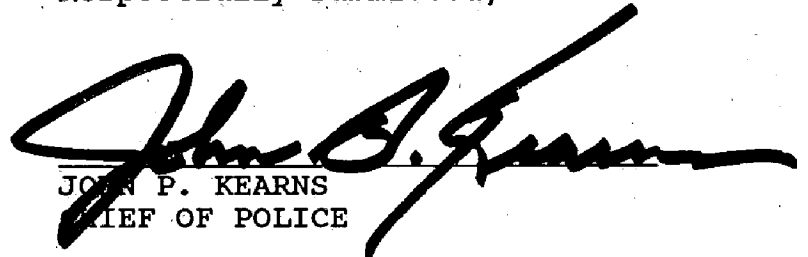
#### 12072. Prohibited sales, deliveries, or transfers

No person, corporation or dealer shall sell, deliver, or otherwise transfer any ~~pistol,--revolver,--or--other~~ firearm capable of being concealed upon the person to any person whom he has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from owning or possessing these firearms, nor shall any dealer sell, deliver or transfer any firearm capable of being concealed upon the person to any person under the age of 21 years. In no event shall any firearm be delivered to the purchaser within 15 days of the application for the purchase thereof, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later and when delivered such firearm shall be securely wrapped and shall be unloaded. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Nor shall he or she transfer any such firearm without first filing an Owner's Record of

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Sale with the Department of Justice. The record of sale will be submitted to the Department of Justice through a registered gun dealer. In no event shall any such weapon be delivered prior to a fifteen day waiting period. Any violation of the provisions of this section is a misdemeanor.

Respectfully submitted,



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