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AB-455 Firearms: prohibited persons. (2023-2024)

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Assembly Bill No. 455

CHAPTER 236

An act to amend, repeal, and add Section 1001.36 of the Penal Code, and to amend Section 8103 of the Welfare and Institutions Code, relating to firearms.

[Approved by Governor September 26, 2023. Filed with Secretary of State September 26, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 455, Quirk-Silva. Firearms: prohibited persons.

Existing law prohibits a person who has been convicted of a felony offense or a specified misdemeanor domestic violence offense from possessing or receiving a firearm. Existing law prohibits a person who has been convicted of specified misdemeanor offenses within the previous 10 years from possessing or receiving a firearm. Existing law prohibits a person who has been taken into custody because that person is a danger to themselves or others, or has been certified for intensive treatment due to a mental disorder or mental illness, from possessing or receiving a firearm, as specified. Existing law prohibits a person who has been placed under conservatorship by a court, has been found mentally incompetent to stand trial, has been found not guilty of specified crimes due to reason of insanity, has been adjudicated by a court 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 from possessing or receiving a firearm, as specified. A violation of any of the prohibitions is punishable as a crime.

Existing law authorizes a court to grant pretrial diversion, for a period no longer than 2 years, to a defendant suffering from a mental disorder, on an accusatory pleading alleging the commission of a misdemeanor or felony offense, in order to allow the defendant to undergo mental health treatment.

This bill would, on July 1, 2024, authorize the prosecution to request an order from the court, as specified, to prohibit a defendant subject to pretrial diversion from owning or possessing a firearm because they are a danger to themselves or others until they successfully complete diversion or their firearm rights are restored, as specified.

By expanding the application of an existing crime, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 1001.36 of the Penal Code proposed by AB 1412 to be operative only if this bill and AB 1412 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1001.36 of the Penal Code is amended to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense not set forth in subdivision (d), the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant satisfies the eligibility requirements for pretrial diversion set forth in subdivision (b) and the court determines that the defendant is suitable for that diversion under the factors set forth in subdivision (c).

(b) A defendant is eligible for pretrial diversion pursuant to this section if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. A court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) For any defendant who satisfies the eligibility requirements in subdivision (b), the court must consider whether the defendant is suitable for pretrial diversion. A defendant is suitable for pretrial diversion if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion, unless the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.

(4) The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(iii) If the court refers the defendant to a county mental health agency pursuant to this section and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. That declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(l) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

(m) This section shall remain in effect until July 1, 2024, and as of that date is repealed.

SEC. 1.1. Section 1001.36 of the Penal Code is amended to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense not set forth in subdivision (d), the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant satisfies the eligibility requirements for pretrial diversion set forth in subdivision (b) and the court determines that the defendant is suitable for that diversion under the factors set forth in subdivision (c).

(b) A defendant is eligible for pretrial diversion pursuant to this section if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. A court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) For any defendant who satisfies the eligibility requirements in subdivision (b), the court must consider whether the defendant is suitable for pretrial diversion. A defendant is suitable for pretrial diversion if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion, unless the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.

(4) The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the

defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(iii) If the court refers the defendant to a county mental health agency pursuant to this section and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. That declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(l) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

(m) This section shall remain in effect until July 1, 2024, and as of that date is repealed.

SEC. 2. Section 1001.36 is added to the Penal Code, to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense not set forth in subdivision (d), the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant satisfies the eligibility requirements for pretrial diversion set forth in subdivision (b) and the court determines that the defendant is suitable for that diversion under the factors set forth in subdivision (c).

(b) A defendant is eligible for pretrial diversion pursuant to this section if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. A court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) For any defendant who satisfies the eligibility requirements in subdivision (b), the court must consider whether the defendant is suitable for pretrial diversion. A defendant is suitable for pretrial diversion if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion, unless the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.

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(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

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(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(iii) If the court refers the defendant to a county mental health agency pursuant to this section and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. That declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, including, but not limited to, any finding that the defendant be prohibited from owning or controlling a firearm because they are a danger to themselves or others pursuant to subdivision (m), or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28

of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(l) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

(m) (1) The prosecution may request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion because they are a danger to themselves or others pursuant to subdivision (i) of Section 8103 of the Welfare and Institutions Code.

(2) The prosecution shall bear the burden of proving, by clear and convincing evidence, both of the following are true:

(A) The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.

(B) The prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.

(3) (A) If the court finds that the prosecution has not met that burden, the court shall not order that the person is prohibited from having, owning, purchasing, possessing, or receiving a firearm.

(B) If the court finds that the prosecution has met the burden, the court shall order that the person is prohibited, and shall inform the person that they are prohibited, from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.

(4) An order imposed pursuant to this subdivision shall be in effect until the defendant has successfully completed diversion or until their firearm rights are restored pursuant to paragraph (4) of subdivision (g) of Section 8103 of the Welfare and Institutions Code.

(n) This section shall become operative on July 1, 2024.

SEC. 2.1. Section 1001.36 is added to the Penal Code, to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense not set forth in subdivision (d), the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant satisfies the eligibility requirements for pretrial diversion set forth in subdivision (b) and the court determines that the defendant is suitable for that diversion under the factors set forth in subdivision (c).

(b) A defendant is eligible for pretrial diversion pursuant to this section if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. A court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) For any defendant who satisfies the eligibility requirements in subdivision (b), the court must consider whether the defendant is suitable for pretrial diversion. A defendant is suitable for pretrial diversion if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion, unless the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.

(4) The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(iii) If the court refers the defendant to a county mental health agency pursuant to this section and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. That declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, including, but not limited to, any finding that the defendant be prohibited from owning or controlling a firearm because they are a

danger to themselves or others pursuant to subdivision (m), or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(l) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

(m) (1) The prosecution may request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion because they are a danger to themselves or others pursuant to subdivision (i) of Section 8103 of the Welfare and Institutions Code.

(2) The prosecution shall bear the burden of proving, by clear and convincing evidence, both of the following are true:

(A) The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.

(B) The prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.

(3) (A) If the court finds that the prosecution has not met that burden, the court shall not order that the person is prohibited from having, owning, purchasing, possessing, or receiving a firearm.

(B) If the court finds that the prosecution has met the burden, the court shall order that the person is prohibited, and shall inform the person that they are prohibited, from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.

(4) An order imposed pursuant to this subdivision shall be in effect until the defendant has successfully completed diversion or until their firearm rights are restored pursuant to paragraph (4) of subdivision (g) of Section 8103 of the Welfare and Institutions Code.

(n) This section shall become operative on July 1, 2024.

SEC. 3. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (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 possession, custody, or control of 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 possession, custody, or control of 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 possession, custody, or control of 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 their 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 possession, custody, or control of 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 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 possession, custody, or control of 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 themselves 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 themselves 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 their 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 they are 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 they were a danger to themselves or to others during the previous one-year period, for life. Simultaneously, the facility shall inform the person that they 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 the county of their residence for an order that they 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 their 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 their 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) (A) 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.

(B) 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 the county of their residence for an order that they 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 their 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) (1) A person, who has been found by a court, on or after July 1, 2024, to be prohibited from owning or controlling a firearm because they are a danger to themselves or others and has been granted pretrial mental health diversion pursuant to subdivision (m) of Section 1001.36 of the Penal Code, shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm until the person successfully completes diversion or their firearm rights are restored pursuant to paragraph (4) of subdivision (g).

(2) The court shall notify the Department of Justice of the court order finding the person to be an individual 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 that the person has successfully completed diversion as soon as possible, but not later than one court day after completion.

(j) Every person who owns or possesses or has custody or control of, 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.

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

(l) 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.

SEC. 4. Sections 1.1 and 2.1 of this bill incorporate amendments to Section 1001.36 of the Penal Code proposed by both this bill and Assembly Bill 1412. These sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2024, (2) each bill amends Section 1001.36 of the Penal Code, and (3) this bill is enacted after Assembly Bill 1412, in which case Sections 1 and 2 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.