

Date of Hearing: March 21, 2023

Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 455 (Quirk-Silva) – As Introduced February 6, 2023

SUMMARY: Prohibits individuals who complete pretrial mental health diversion from having a firearm. Specifically, **this bill:**

- 1) Prohibits individuals who were charged with any felony or a misdemeanor domestic violence offense, and who have completed mental health diversion, from purchasing, receiving, or having in their custody or control any firearm or deadly weapon for the remainder of their life.
- 2) Prohibits individuals who were charged with specified misdemeanors, including but not limited to assault, battery, and criminal threats, and who have completed mental health diversion, from purchasing, receiving, or having in their custody or control any firearm or deadly weapon for a period of 10 years.

EXISTING FEDERAL LAW:

- 1) States that the right of the people to keep and bear arms shall not be infringed. (U.S. Const., 2nd Amend.)
- 2) Provides that no state shall deprive any person of life, liberty, or property, without due process of law. (U.S. Const., 14th Amend.)

EXISTING STATE LAW:

- 1) States that a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. (Cal. Const. art. I, § 7.)
- 2) Permits, on an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court, in its discretion, to grant pretrial mental health diversion to a defendant if the defendant satisfies the eligibility requirements and the court determines that the defendant is suitable for that diversion. (Pen. Code, § 1001.36, subd. (a).)
- 3) Defines “Pretrial diversion” as 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. (Pen. Code, § 1001.36, subd. (f).)
- 4) Provides that a defendant is eligible for pretrial mental health diversion if both of the following criteria are met:

- a) 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 (DSM), 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; and,
 - b) The defendant's mental disorder was a significant factor in the commission of the charged offense. (Pen. Code, § 1001.36, subd. (b).)
- 5) Provides that a defendant is suitable for pretrial mental health diversion if all of the following criteria are met:
- a) 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;
 - b) The defendant consents to diversion and waives the defendant's right to a speedy trial;
 - c) The defendant agrees to comply with treatment as a condition of diversion; and,
 - d) The defendant will not pose an unreasonable risk of danger to public safety, if treated in the community. (Pen. Code, § 1001.36, subd. (c).)
- 6) States that a defendant may not be placed into a pretrial mental health diversion program for the following offenses:
- a) Murder or voluntary manslaughter;
 - b) An offense for which a person, if convicted, would be required to register as a sex offender;
 - c) Rape;
 - d) Lewd or lascivious act on a child under 14 years of age;
 - e) Assault with intent to commit rape, sodomy, or oral copulation;
 - f) Commission of rape or sexual penetration in concert with another person;
 - g) Continuous sexual abuse of a child; or,
 - h) Using a weapon of mass destruction, as specified. (Pen. Code, § 1001.36, subd. (d).)
- 7) Provides that, at any stage of the proceedings, the court may require the defendant to make a prima facie showing that they will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. (Pen. Code, § 1001.36, subd. (e).)

- 8) States that the period during which criminal proceedings against the defendant may be diverted is limited as follows:
 - a) If the defendant is charged with a felony, the period shall be no longer than two years.
 - b) If the defendant is charged with a misdemeanor, the period shall be no longer than one year. (Pen. Code, § 1001.36, subd. (f).)
- 9) Provides that, if any of the following circumstances exists, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated, the treatment should be modified, or the defendant should be referred to the conservatorship investigator of the county:
 - a) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence;
 - b) The defendant is charged with an additional felony allegedly committed during the pretrial diversion;
 - c) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion; or,
 - d) Based on the opinion of a qualified mental health expert, the defendant is performing unsatisfactorily in the assigned program or the defendant is gravely disabled. (Pen. Code, § 1001.36, subd. (g).)
- 10) Provides that, 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. (Pen. Code, § 1001.36, subd. (h).)
- 11) States that, 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, except as specified. 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. (Pen. Code, § 1001.36, subd. (h).)
- 12) States that 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. (Pen. Code, § 1001.36, subd. (i).)
- 13) Requires that the defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:
 - a) The arrest upon which the diversion was based may be disclosed by the Department of Justice (DOJ) to any peace officer application request and the defendant is not relieved

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; and

- b) An order to seal records pertaining to an arrest has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests. (Pen. Code, § 1001.36, subd. (j).)
- 14) Provides that 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 may not be used in any other proceeding without the defendant's consent, except as specified. (Pen. Code, § 1001.36, subd. (k).)
- 15) Permits specified individuals to request that a court, after notice and a hearing, issue a gun violence restraining order (GVRO) enjoining a person from having a firearm, for a period of time between one to five years, upon a finding that the person poses a significant danger of causing personal injury to themselves or another by having a firearm. (Pen. Code, §§ 18170 et seq.)
- 16) Provides that any person subject to a domestic violence restraining order (DVRO) shall not own, possess, purchase, or receive a firearm or ammunition while that order is in effect. (Fam. Code, § 6389, subd. (a).)
- 17) Provides that the following individuals shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control a firearm or any other deadly weapon:
- a) Any person who 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;
 - b) Any person who has been found not guilty by reason of insanity;
 - c) Any person found by a court to be mentally incompetent to stand trial;
 - d) Any person who has been placed under conservatorship by a court because they are gravely disabled as a result of a mental disorder or impairment by chronic alcoholism;
 - e) Any person who has been taken into custody, assessed and admitted into a facility, as provided in Section 5150 of the Welfare and Institutions Code because that person is a danger to themselves or to others; and,
 - f) Any person who has been certified for intensive treatment as a result of mental disorder or impairment by chronic alcoholism because that person is a danger to themselves or to others. (Welf. & Inst. Code, § 8103, subds. (a)-(g).)
- 18) States that whenever a person listed above, is found to own, have in their possession or under their control, any firearm whatsoever, or any other deadly weapon, the firearm or 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. (Welf. & Inst. Code, § 8102, subd. (a).)

- 19) Provides that every person who owns or possesses or has under their custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of these provisions shall be punished by imprisonment in the county jail for 16 months, two, or three years pursuant to realignment or in a county jail for not more than one year. (Welf. & Inst. Code, § 8103 subd. (i).)
- 20) Provides that any person who knowingly supplies, sells, gives, or allows possession or control of a deadly weapon to any of the persons listed above shall be punishable by imprisonment pursuant to realignment, or in a county jail for a period of not exceeding one year, by a fine of not exceeding one thousand dollars (\$1,000), or by both. (Welf. & Inst. Code, § 8101, subd. (a).)
- 21) Provides that any person who knowingly supplies, sells, gives, or allows possession or control of a firearm to any person listed above shall be punished by imprisonment pursuant to realignment of the Penal Code for two, three, or four years. (Welf. & Inst. Code, § 8101, subd. (b).)
- 22) Provides that any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony. (Pen. Code, § 29800, subd. (a)(1).)
- 23) Punishes specified acts of domestic violence as a wobbler (alternatively as a misdemeanor or a felony). (Pen. Code, § 273.5.)
- 24) Prohibits any person convicted of a specified misdemeanor domestic violence offense from owning, purchasing, receiving, or having in their possession or under custody or control, any firearm. (Pen. Code, § 29805 subd. (b).)
- 25) Requires the Attorney General to establish and maintain an online database, the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm, and who, after the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code, § 30000.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The vast number of people who suffer from mental illness do not act out violently or commit crimes. However, individuals who have been charged with specified criminal offenses who choose to participate in a mental health diversion program, should also adhere to post-conviction gun restrictions to the same extent as those convicted of the same crime."

- 2) **Mental Health Diversion:** Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

In order to be eligible for pretrial mental health diversion, the defendant must suffer from a mental disorder, that played a significant role in the commission of the charged offense, and in the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment. The defendant must consent to diversion, waive their right to a speedy trial, and must agree to comply with treatment as a condition of diversion. The court must be satisfied that the defendant will not pose an unreasonable risk of danger to public safety if treated in the community. (Pen. Code, § 1001.36, subd. (b)(1).) A defendant can participate in mental health diversion for felony and misdemeanor offenses; but the defendant may not be charged with specified crimes, including murder and offenses requiring sex offender registration. (Pen. Code, § 1001.36, subd. (b)(2).)

Courts have discretion to refuse to grant diversion even though the defendant meets all of the requirements. (J. Couzens, *Memorandum RE: Mental Health Diversion (Penal Code §§ 1001.35-1001.36) (AB 1810 & SB 215) [revised]* (Nov. 14, 2018), p. 4.) If the defendant performs unsatisfactorily on diversion, because the defendant fails to participate in treatment or engages in criminal conduct, the court may reinstate criminal proceedings. If criminal proceedings are reinstated, the case would be resolved through the criminal system in the ordinary course of business. (Pen. Code, § 1001.36.)

If the defendant has performed satisfactorily on 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. (Pen. Code, § 1001.36.)

- 3) **Unjust Stigmatization of Mental Illness:** In 2020, an estimated 52.9 million adults in the United States had some form of mental illness. (National Institute of Mental Health (NIH), *Mental Illness* <<https://www.nimh.nih.gov/health/statistics/mental-illness>> [as of March 8, 2023].) Blanket prohibitions such as the one in this bill have the potential to unjustly stigmatize individuals based solely on their mental illness. Media coverage often and increasingly links mass shootings with serious mental illness, however, there is a lack of evidence connecting mental health conditions to violent acts and argues that mental illness gun bans do nothing more than reinforce the harmful trope that people living with a mental health condition are intrinsically dangerous. (McMahon S., *Gun Laws and Mental Illness: Ridding the Statutes of Stigma* (2020) 5 J. L. & Public Affairs 2.) Laws which "prohibit people with certain indicia of mental health conditions from purchasing or possessing firearms, fail at their supposed goal of preventing guns from getting into the hands of dangerous people. They define the prohibited group in ways that both include many

individuals who will never be violent and exclude many individuals who pose a risk. Moreover, this focus on mental illness distracts lawmakers from traits that better predict violence, such as past violent acts and substance abuse.” (*Ibid*)

- 4) **The Individuals Affected by This Bill Do Not Necessarily Pose a Danger by Virtue of Possessing a Firearm:** In order to participate in mental health diversion the court must find that the defendant suffers from a mental disorder as identified in the most recent edition of the DSM. Attention Deficit Hyperactivity, communication disorder, sleep-wake disorder, obsessive compulsive disorder, are all mental disorders under the DSM. However, the fact that a defendant suffers from such a mental disorder does not mean they are a danger to the public or a danger to themselves. To be eligible for mental health diversion, the court must find that the person is *not a risk to public safety*, will respond to treatment, and could not have been charged with offenses such as murder or specified sex offenses. (Pen. Code, § 1001.36, subd. (b)(1).) And, mental health providers must submit regular reports to the court and counsel regarding the defendant’s progress in treatment. (Pen. Code, § 1001.36, subd. (c)(1).) Further, if the defendant fails to participate in treatment or engages in criminal conduct, the court may reinstate criminal proceedings. (Pen. Code, § 1001.36.)

This bill would require any person who is charged with a felony or misdemeanor domestic violence and granted mental health diversion be prohibited from owning or possessing a firearm or deadly weapon upon completion of diversion. This bill would not require the court to make a finding that the individual should be prohibited because they would be a danger to themselves or others if they possess a firearm or other weapon. The defendant would not be entitled to a hearing, have no right to request a hearing on the matter. Further, the prohibition would exist for the person’s entire lifetime, if the offense was a felony or misdemeanor domestic violence, or a period of 10 years for a misdemeanor after the successful completion of diversion. An individual would not be entitled to petition the court to remove the prohibition. This bill would result in a firearm prohibition even if the defendant was ultimately acquitted of the underlying charges. These issues raise due process concerns related to a right established by the Constitution.

- 5) **Constitutional Concerns:** The Second Amendment of the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed. The Second Amendment establishes an individual right for U.S. citizens to possess firearms. (*District of Columbia v. Heller* (2008) 478 F.3d 370.) The Second Amendment applies to the states. (*McDonald v. City of Chicago* (2010) 567 F.3d 856.)

The Fourteenth Amendment of the United States Constitution, prohibits the deprivation of “life, liberty, or property” by state governments without due process of law. This includes the deprivation of rights within a specific prohibition of the Constitution, such as the first 10 Amendments. (*United States v. Carolene Products Co.* (1938) 304 U.S. 144 (1938), fn. 4.) Thus, the State cannot deprive a person of their Second Amendment right to keep and bear arms, without due process of law. (*McDonald v. City of Chicago* (2010) 567 F.3d 856.)

At minimum, due process requires government officials to follow fair procedures before depriving a person of their rights. The state must afford the person, at minimum, notice, an opportunity to be heard, and a decision made by a neutral decisionmaker. (*Goldberg v. Kelly* (1970) 397 U.S. 254, 267.) This bill provides no such protections. Indeed, in every other context where the state can prohibit a person from having a firearm due to their mental

health, the person is afforded at least some due process procedure:

- **Mental disorder, mental illness, or mentally disordered sex offender.** Requires adjudication by a court finding the person to be a danger to others as a result of a mental disorder or mental illness. Permits a certificate by the court, 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. (Welf. & Inst. Code, § 8103, subd. (a).)
- **Not guilty by reason of insanity.** Requires a court finding that the person is not guilty by reason of insanity. Permits, in some circumstances, the court to find the person to have recovered sanity and is no longer prohibited. (Welf. & Inst. Code, § 8103, subds. (b) & (c).)
- **Mentally incompetent to stand trial.** Requires a court finding that the person is mentally incompetent to stand trial. Permits the court to find the person is no longer prohibited due to restoration of their competence to stand trial. (Welf. & Inst. Code, § 8103, subd. (c).)
- **Conservatorship.** Requires a court finding that possession of a firearm by the person would present a danger to the safety of the person or to others. Permits the court to find 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. (Welf. & Inst. Code, § 8103, subd. (e).)
- **Mental health admission pursuant to Welfare and Institutions Code section 5150.** The person must be taken into custody, assessed, and admitted to a mental health facility because they are a danger to themselves or others. The person is entitled to request a court hearing for an order permitting them to have a firearm. The prosecution has 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. (Welf. & Inst. Code, § 8103, subd. (f).)
- **Certified for intensive mental health treatment.** The person must be certified, by a professional mental health provider, that they are a danger to others or themselves and are gravely disabled. The person is entitled to request a court hearing for an order permitting them to have a firearm. The prosecution has 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. (Welf. & Inst. Code, § 8103, subd. (g).)

In comparison, this bill would not require any finding that a person should not own a firearm, and provides no opportunity for a person to challenge the prohibition or restore their right to own a firearm. As such, it could infringe on the Second and Fourteenth Amendment rights of persons who participate in mental health diversion.

The Legislature should consider whether a person who chooses pretrial mental health diversion, and has been adjudicated not to be a risk to public safety, should be automatically

prohibited from owning firearms without any individualized assessment of their potential to hurt themselves or others, and without regard for their constitutional rights.

These constitutional concerns deserve close consideration given that the effected individuals have not been found guilty of an offense and are in mental health treatment.

- 6) **Existing Law Permits Law Enforcement to Seek GVROs:** The process to obtain an emergency GVRO is designed to address situations where a person presents a current danger to themselves or others by virtue of owning or possessing a firearm. An application for an emergency GVRO can be made orally and processed immediately. (Pen. Code, § 18170.) Current law allows an immediate family member of a person or a law enforcement officer to request a court, after notice and a hearing, to issue a GVRO enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of time from one to five years. (*Ibid.*)

Nothing about a person's participation in mental health diversion would prohibit a law enforcement officer from seeking a GVRO against an individual that presents a danger by virtue of owning a firearm.

- 7) **Existing Law Requires Relinquishment of a Firearm by a Person Subject to a DVRO:** To the extent this bill is aimed at people who commit misdemeanor domestic violence offenses, existing law requires relinquishment of a firearm by a person subject to a DVRO. (Fam. Code, § 6389.) Upon issuance of a restraining order, the court is required to order the respondent to relinquish any firearm in their immediate possession or control. (Fam. Code, § 6389, subd. (c)(1).)

A conviction is not a prerequisite for an issuance of a DVRO and nothing about a person's participation in mental health diversion would prohibit a court from issuing a DVRO against an individual. (See Fam. Code, § 6320 [permitting the issuance of a DVRO at the discretion of the court, upon on a showing of good cause].)

- 8) **Policy Considerations Related to the Armed Prohibited Persons System:** The Armed and Prohibited Persons Systems (APPS) database cross-references firearms purchasers against other records for individuals who are prohibited from owning or possessing firearms. The DOJ Bureau of Firearms (Bureau) utilizes Crime Analysts, Special Agents, and Special Agent Supervisors to locate and seize firearms from prohibited persons identified through the APPS database. (DOJ, *2021 Armed and Prohibited Persons System Annual Report to the Legislature* <<https://oag.ca.gov/system/files/media/2021-apps-report.pdf>> [as of March 2, 2023].)

Prohibitions may be due to a felony conviction, domestic violence conviction, a qualifying misdemeanor conviction, mental health-based event, various types of civil or criminal restraining orders, as well as other prohibitory categories. Between 2013 and 2021, changing laws have introduced new offenses that prohibit firearm ownership and/or possession, placing a growing number of individuals into the Prohibited Armed Persons File. (DOJ, *supra*, *2021 Armed and Prohibited Persons System Annual Report to the Legislature.*) Accordingly, DOJ built up a backlog of prohibited persons DOJ needed to investigate. As of January 1, 2022, the APPS database contained 3,199,394 individuals, of which 24,509 were prohibited from owning or possessing firearms. (*Ibid.*) As of January 1, 2022, there were

10,033 Active cases and 14,476 Pending cases. (*Ibid.*) In 2021, 8,937 armed and prohibited people were removed from the APPS database. At the same time, 9,848 prohibited persons were added to the APPS database. (*Ibid.*)

This bill would add another category of individuals to APPS—notably individuals who do not present an unreasonable public safety risk, are under the court’s jurisdiction, and are receiving treatment. (Pen. Code, § 1001.36, subds. (b)(1) & (c)(1).) Given the current APPS backlog, should the Legislature consider prioritizing relinquishment of firearms from individuals who have been adjudicated to be a public safety risk?

- 9) **Argument in Support:** According to the *California District Attorneys Association (CDAA)*, “Mental health diversion was adopted in 2018 with the express purpose of increasing diversion of individuals with mental disorders while protecting public safety. Since then, counties have seen a significant increase in the number of criminal defendants who suffer from mental illness choosing to be diverted under this statute. However, under current law if a defendant successfully completes diversion, the criminal case is dismissed and no post-conviction firearm restriction applies. AB 455 will prohibit an individual who chooses mental health diversion from possessing a gun for the same amount of time as if they had been convicted of the underlying crime.”
- 10) **Argument in Opposition:** According to the *California Public Defenders Association (CPDA)*, “Under existing section 1001.36, when a person is accused of a crime they may, *even if innocent of that crime*, agree to pause the case, accept mental health services as approved by the court and, if they comply with those services for up to two years, seek dismissal of their case. (§ 1001.36.)

“Section 1001.36 serves a vital role by allowing Californians to accept mental health services without pleading to an offense they did not commit, thereby addressing the root causes of any conduct that brought them to the attention of the court, enhancing public safety, and avoiding the long-term stigmatization associated with mental health treatment and criminal proceedings.

“AB 455 undercuts this vital function by requiring courts to treat any person who accepts mental health services under section 1001.36 as if they have been convicted of committing a crime. Under its auspices, any person who accepts treatment— *innocent or not*—would be forever banned from owning a weapon for the rest of their lives. Worse, any person who violates this restriction, even if they did so without knowing that this restriction existed, would be subject to felony prosecution and a jail or prison sentence of up to three years.

“In so doing, AB 455 turns the presumption of innocence on its head, and places Californians who accept treatment for conditions like PTSD, battered-woman syndrome, depression, alcohol use, or drug use into a category reserved for those whose guilt has been proven beyond a reasonable doubt to a jury.

“In addition, AB 455:

- *Stigmatizes those who accept treatment* for a mental health condition by treating any person who accepts services as if they are a danger to the public, a claim thoroughly debunked by every study and mental health organization to study the issue. (See, e.g.,

<https://www.ncbi.nlm.nih.gov/books/NBK537064/> [people living with mental illness are more likely to be the victim of crime than the perpetrator].)

- *Discourages the acceptance of treatment* by imposing lifetime self-defense bans against Californians who have not committed any crime or have not been found guilty of committing any crime but will nonetheless be placed in the same category as a convicted criminal or “sex offender” as described in Welfare Institutions Code § 8103.
- *Threatens the livelihood of Californians* whose profession requires them to be armed. A security guard, for example, falsely accused of vandalism may be willing to accept treatment for any underlying mental health condition but cannot do so if by accepting treatment he will lose his employment.
- *Prevents Californians with genuine safety concerns from defending themselves.* Our clients, for example, routinely include battered-women defendants who have every reason to be worried about assault by an ex-partner. Under AB 455, these presumptively innocent clients who have not been convicted of any offense would be barred from possessing a firearm for self-defense, for no reason other than that they agreed to accept treatment.
- *Appears to be unconstitutional.* While no legislative body has previously attempted to impose a life-time weapons ban on a person simply because they were *accused* of a crime and thereafter accepted mental health treatment, it is likely that such a law would be unconstitutional. (See, e.g., *Tyler v. Hillsdale County Sheriff’s Department, et al.* (2016) 837 F.3d 678, 688 [permanent firearm ban based on fact that a person previously struggled with mental illness is likely unconstitutional].)”

11) Related Legislation:

- a) AB 667 (Mainschein), would increase the renewal period to a maximum of 10 years, instead of 5, for GVROs if the subject of the petition poses a significant danger of self-harm or harm to another in the near future by having a firearm. AB 667 is pending hearing in this Committee.
- b) AB 1412 (Hart), would permit individuals with borderline personality disorder to participate in mental health diversion. AB 1412 is pending referral by Rules.

12) Prior Legislation:

- a) AB 1121 (Bauer-Kahan), of the 2019-2020 Legislative Session, would have prohibited a person who is granted pretrial diversion based on a mental health disorder from owning or possessing a firearm, or other dangerous or deadly weapon, and included hearing procedures to reinstate the person’s right to own a firearm. AB 1121 was held on the Assembly Appropriation’s Suspense File.
- b) AB 12 (Irwin), Chapter 724, Statutes of 2019, extended the duration of a gun violence restraining order issued after notice and hearing and renewals to a maximum of five years.

- c) AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, established mental health diversion.
- d) AB 1968 (Low), Chapter 861, Statutes of 2018, required that a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period be prohibited from owning a firearm for the remainder of his or her life, subject to the right to challenge the prohibition at periodic hearings.
- e) AB 3129 (Rubio), Chapter 883, Statutes of 2018, prohibited a person who is convicted of misdemeanors relating to domestic violence against possessing a firearm.
- f) SB 755 (Wolk), of the 2013-2014 Legislative Session, would have prohibited a person who has been ordered by a court to obtain assisted outpatient treatment from purchasing or possessing any firearm or other deadly weapon while subject to assisted outpatient treatment. SB 755 was vetoed by the Governor.
- g) AB 1014 (Skinner), Chapter 872, Statutes of 2014, authorized a law enforcement officer or immediate family member of a person, to seek, and a court to issue, a GVRO as specified, prohibiting a person from having in his/her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition, as specified

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California State Sheriffs' Association
San Mateo County District Attorney's Office

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Dbsa California

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