
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2629 **Hearing Date:** June 25, 2024
Author: Haney
Version: May 16, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: prohibited persons*

HISTORY

Source: Department of Justice

Prior Legislation: AB 455 (Quirk-Silva, Ch. 236, Stats. of 2023)
SB 317 (Stern, Ch. 599, Stats. of 2021)
AB 1968 (Low, Ch. 861, Stats. of 2018)
SB 755 (Wolk, 2013), vetoed by the Governor

Support: Unknown

Opposition: ACLU California Action (unless amended)

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to, commencing September 1, 2025, prohibit any person who is determined to be incompetent to stand trial (IST) on a misdemeanor offense, in a post-release community supervision (PRCS) proceeding, or in a parole revocation hearing from possessing or owning a firearm, as specified.

Existing federal law provides that person who has been adjudicated a “mental defective” or committed to a mental institution is prohibited from shipping, transporting, receiving or possessing any firearm or ammunition, a violation of which is punishable by a fine of \$250,000 and/or imprisonment of up to ten years. (18 U.S.C. §§ 922(g)(4), 924(a)(2).)

Existing law authorizes diversion programs for specified offenses, including diversion specifically for offenders who suffer from mental disorders. (Pen. Code, §§ 1000 et seq. for drug abuse; Pen. Code, §§ 1001.12 et seq. for child abuse; Pen. Code, §§ 1001.70 et seq. for contributing to the delinquency of another; Pen. Code, §§ 1001.60 et seq. for writing bad checks, and for specific types of offenders; Pen. Code, §§ 1001.80 et seq. for veterans; Pen. Code, §§ 1001.83 for caregivers; Pen. Code, §§ 1001.35 et seq. for persons with mental disorders).

Existing law authorizes a court to, after considering the positions of the defense and prosecution, grant pretrial mental health diversion to defendant charged with a misdemeanor or a felony if the defendant meets specified eligibility and suitability requirements. (Pen. Code, § 1001.36, subs. (a)-(c).)

Existing law excludes defendants from mental health diversion eligibility if they are charged with murder, voluntary manslaughter, a sex-registerable offense except for indecent exposure, or offenses involving weapons of mass destruction. (Pen. Code, § 1001.36, subd. (d).)

Existing law provides that if any of several specified circumstances exist, 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. (Pen. Code, § 1001.36, subd. (g).)

Existing law 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, as specified. (Pen. Code, § 1001.36, subd. (h).)

Existing law states that a person cannot be tried or adjudged to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code § 1367, subd. (a).)

Existing law requires, when counsel has declared a doubt as to the defendant's competence, the court to hold a hearing determine whether the defendant is incompetent to stand trial (IST). (Pen. Code § 1368, subd. (b).)

Existing law provides that, except as provided, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of whether the defendant is IST is determined. (Pen. Code § 1368, subd. (c).)

Existing law provides that if the defendant is found mentally competent to stand trial for a felony, the criminal process shall resume. If the defendant has been found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent. (Pen. Code § 1370, subd. (a).)

Existing law states that upon a filing of a certificate of restoration to competence, the court shall order the defendant to be returned to court in accordance with Penal Code section 1372. (Pen. Code § 1370, subd. (a)(1)(C).)

Existing law provides that if the defendant is found mentally competent to stand trial for a misdemeanor, the criminal process shall resume. If the defendant has been found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended and the court may either conduct a hearing to determine whether the defendant is eligible for mental health diversion or dismiss the charge. (Pen. Code § 1370.01, subs. (a), (b).)

Existing law provides that if the defendant is found mentally incompetent and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may modify the terms and conditions of supervision to include appropriate mental health treatment. (Pen. Code § 1370.01, subd. (c).)

Existing law provides that if the defendant is found mentally competent during a postrelease community supervision or parole revocation hearing, the revocation proceedings shall resume, and the formal hearing on the revocation shall occur within a reasonable time after the resumption of proceedings, but in no event may the defendant be detained in custody for over 180 days from the date of arrest. (Pen. Code § 1370.02, subd. (a).)

Existing law provides that if the defendant has been found mentally incompetent in the above proceedings, the court shall dismiss the pending revocation matter and return the defendant to supervision. If the revocation matter is dismissed, the court may also modify the terms and conditions of supervision to include mental health treatment, refer the matter to any local mental health, reentry, or collaborative court, or refer the matter to the public guardian of the county of commitment to initiate conservatorship proceedings. (Pen. Code § 1370.02, subd. (b).)

Existing law provides that a person found not guilty by reason of insanity 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. (Welf. & Inst. Code §8103, subd. (b), (c).)

Existing law provides that a person found by a court to be mentally incompetent to stand trial on a felony or has a developmental disability, as specified, 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 by the committing court. (Welf. & Inst. Code §8103, subd. (d).)

Existing law provides that a person who has been taken into custody under Welfare and Institutions Code Section 5150 because that person is a danger to themselves or others, and has been assessed and admitted to a designated facility, as specified, 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 by the facility. For a person taken into custody, assessed and admitted and who was previously taken into custody, assessed and admitted one or more times within one year preceding the most recent admittance, the ban on the purchase, possession, receipt and ownership of a firearm shall last the remainder of their life. (Welf. & Inst. Code §8103, subd. (f)(1).)

This bill provides that an IST misdemeanor defendant whose charges have been dismissed by the court as specified may at any subsequent time petition the court for a finding of restoration of competence.

This bill specifies that if the petitioner provides the court with substantial evidence that their psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to their current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the petitioner has regained competence.

This bill provides that if, in the opinion of the psychiatrist or licensed psychologist the petitioner has regained competence, the court shall find that the petitioner has been restored to competence and shall notify the Department of Justice.

This bill provides a person found by a court to be mentally incompetent to stand trial for a misdemeanor, or during a post-release community supervision proceeding or parole revocation hearing, 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.

COMMENTS

1. Need for This Bill

According to the Author:

AB 2629 will close a loophole in existing law that allows people who are deemed criminally insane to purchase and buy guns. Compared to other high-income countries, the United States has stood out as the only country with a persistent problem with gun violence. Since 2014, California has had more than 12,000 deaths caused by guns. Preventing tragedies before they happen by prohibiting gun ownership for individuals who are mentally incompetent is a common sense solution that will improve public safety.

2. Firearms and Mental Illness

For decades, government regulation of firearms has been bound up with public discourse surrounding mental health and mental illness, a trend that has only become more prevalent with the tragic rise in mass shootings. However, while mental health issues are certainly a component, they alone cannot predict or cause gun violence. Some research indicates that despite popular misconceptions reflected in the media and in policy, mental illness is a weak risk factor for gun violence, and that framing psychiatric disease as the driving culprit behind such violence has more to do with political expediency than fidelity to the data, which shows that people with mental illnesses are often more likely to be the victims of gun violence.¹

Other research suggests that suicide risk and homicide risk are in fact elevated among people with certain mental illnesses (e.g. schizophrenia, depression, borderline personality disorder, and others) and co-occurring substance abuse disorders, though these individuals still account for a minority of homicides and acts of mass violence in the United States. This research also suggests that people with mental health conditions appear to be at an increased risk for being victims of interpersonal violence.² Regardless of any inconsistencies in the research regarding how strong mental illness is as a risk factor for gun violence, most experts agree that policymakers should at least be aware of the connection between these issues in the development of firearm regulations.

3. Mental Competency in Criminal Proceedings

The Due Process Clause of the United States Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Existing law provides that if a person has been charged with a crime and is not able to understand the nature of the criminal proceedings

¹ Rozel, John and Edward Mulvey. "The Link Between Mental Illness and Firearm Violence: Implications for Social Policy and Clinical Practice." *Annu Rev Clin Psychol.* 2017 May 8; 13: 445–469. [The Link Between Mental Illness and Firearm Violence: Implications for Social Policy and Clinical Practice - PMC \(nih.gov\)](#); "Mental Health, Gun Violence, and Why American Connects Them." NPR. 21 June 2022. [Mental Health, Gun Violence, And Why America Connects Them : 1A : NPR](#)

² Ramchand, Rajeev and Lynsay Ayer. "Is Mental Illness a Risk Factor for Gun Violence?" RAND Corporation. 15 April 2021. [Is Mental Illness a Risk Factor for Gun Violence? | RAND](#)

and/or is not able to assist counsel in his or her defense, the court may determine that the offender is incompetent to stand trial (IST). When the court issues an order for a hearing into the present mental competence of the defendant, all proceedings in the criminal prosecution are suspended until the question of present mental competence has been determined.³ (Pen. Code, §1368, subd. (c).)

In order to determine mental competence, the court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. The examining expert(s) must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate.⁴ Under existing law, both parties have a right to a jury trial to decide competency, and the burden of proof is on the party seeking a finding of incompetence.⁵) In order to be competent to stand trial, "a defendant must have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him or her."⁶

If a defendant is found competent, the criminal process resume, and the trial, hearing or other proceeding moves forward. However, if the defendant is found IST, existing law sets forth different requirements depending on whether the underlying crime is a felony trial, a misdemeanor trial, or a post-release community supervision or parole revocation hearing, or if the defendant has a developmental disability as specified.⁷ If a defendant is found IST in a felony case, the criminal proceedings are suspended and the court shall order the defendant to be referred to DSH, or to any other available public or private treatment facility, including a community-based residential treatment system, as specified. The court may also refer the defendant to mental health diversion if they are found to be an appropriate candidate. In misdemeanor cases, the court may grant mental health diversion (upon a hearing to determine eligibility) or dismiss the charges in the interest of justice.

4. Mental Illness-Related Firearm Restrictions in California and Effect of This Bill

Existing California law prohibits certain persons from owning or possessing firearms, ammunition, other deadly weapons and related devices, including, among other categories, persons subject to a domestic violence restraining order or gun violence restraining order,

persons convicted of a felony and certain misdemeanors, and other categories of persons found to be a danger to themselves or others, including specified individuals found to be suffering from mental illness.⁸ California Welfare and Institutions Code § 8103 contains several mental illness-related firearms prohibitions for individuals that fall within different categories, most of which are lifetime bans on the ownership, possession or purchase of firearms. Individuals subject to this lifetime ban include persons found by a court of any state to be a danger to others as a result of

³ Pen. Code §§ 1367, 1368, subd. (c).

⁴ Pen. Code §1369, subd. (a).

⁵ *Ibid*; *People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460

⁶ *People v. Oglesby* (2008) 158 Cal.App.4th 818, 827, citing *People v. Ramos* (2004) 34 Cal.4th 494, 507

⁷ Pen. Code §§1367, 1370, 1370.01, 1370.02, 1370.1.

⁸ Family Code §6389; Penal Code §§18100, 29800, 29805; Welfare and Institutions Code §8103. Federal law also prohibits persons from possessing firearms who have been "adjudicated as a mental defective or who has been committed to a mental institution." See 18 USC §922(g)(4).

mental illness, persons adjudicated to be mentally disordered sex offenders, persons found not guilty by reason of insanity, persons found mentally incompetent to stand trial, and any person who is placed under a 5150 hold two or more times within one year. Non-lifetime prohibitions include persons receiving in-patient treatment at a mental health facility for a mental disorder and is a danger to self or others (until discharge)⁹, any person placed under a conservatorship because they are gravely disabled from a mental disorder or chronic alcoholism and are a danger to self or others (for the period of the conservatorship), any person who communicates a serious threat of physical violence to a psychotherapist against a reasonably identifiable victim (5 years), any person taken into custody and admitted to a mental health facility under a 5150 hold (5 years).¹⁰

Central to this bill is the lifetime ban on the purchase or possession of firearms or other deadly weapons for individuals who are found IST, which may be lifted if there is a subsequent finding by the committing court that the person has been restored to competence. Existing law requires the court to notify the DOJ of a finding of either competence or incompetence no later than one court day after issuing the order. Critically, this lifetime ban only applies to individuals who are charged with a felony, alleged to have violated the terms of felony probation or mandatory supervision, or are incompetent as a result of a mental health disorder, developmental disability, or both a mental health disorder and developmental disability.

This bill, commencing September 1, 2025, extends the firearm and deadly weapon prohibition for IST individuals to also apply to individuals who are found IST on a misdemeanor charge or during a post-release community supervision or parole revocation hearing. Additionally, for individuals found IST on a misdemeanor charge or charges that have been dismissed by the court in the interest of justice, this bill creates a process by which they may petition the court for a finding of restoration of competence, which also goes into effect September 1, 2025. Under this process, if the petitioner provides the court with substantial evidence that their psychiatric symptoms have sufficiently improved¹¹, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the petitioner has regained competence. If that expert determines that the petitioner has regained competence, the court shall find that the petitioner has been restored to competence and notify the DOJ, which must remove the prohibition against possessing or purchasing a firearm or deadly weapon.

5. Argument in Support

According to the bill's sponsor, the Department of Justice:

The vast majority of people with mental health conditions are not violent. However, some individuals' mental conditions do cause more significant impairments and higher risk of violence, suicidality, or unsafe use of weapons. Accordingly, state and federal gun safety laws generally disqualify individuals from accessing firearms if a civil or criminal court has found they have a severe condition or disability that makes them a danger to self or others or that renders them unable to contract or manage their own affairs. This generally includes circumstances where a court finds that an individual has a severe condition or disability such that they require an appointed

⁹ This prohibition is located in Welfare and Institutions Code § 8100

¹⁰ See Welfare and Institutions Code § 8103(a)-(g).

¹¹ The bill states that the psychiatric symptoms need to have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence.

conservator or guardian or are mentally incompetent to stand trial in a criminal proceeding.

Under existing California law, when an individual is deemed by the court to be mentally incompetent during a felony criminal proceeding or due to a developmental disability, the person becomes prohibited from purchasing or possessing firearms unless they successfully petition a court to remove this prohibition. This firearm prohibition also applies to individuals found mentally incompetent to stand trial during misdemeanor proceedings that occurred in federal court or the courts of any other state. Inexplicably, however, a mental incompetency determination in a misdemeanor case from a court of this state does not result in a firearm prohibition under California law. Unfortunately, this has resulted in dangerous situations where defendants have remained in possession of firearms after they were found mentally incompetent to stand trial for offenses involving violence or misuse of those weapons.

It is important to emphasize that incompetent-to-stand-trial determinations are distinct from determinations about whether an individual qualifies for pre-trial diversion from prosecution. An individual may qualify for diversion if the court finds that a mental illness was a significant factor in their commission of an offense. Recently enacted changes in the law have also given courts discretion to issue orders prohibiting firearm possession by persons granted pre-trial diversion. By comparison, to find that a person is mentally incompetent to stand trial, the court must find that, as a result of a mental health disorder or developmental disability, the person is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational matter. This finding occurs in cases involving especially severe disabilities or impairments that would typically indicate the individual cannot be expected to safely possess firearms or comply with gun safety laws and responsibilities.

AB 2629 will close this loophole in California law to clarify that firearm prohibitions apply in any case where a person is found mentally incompetent to stand trial – regardless of whether the underlying charge is a felony or misdemeanor. Notably, there are provisions allowing affected persons to petition for the return of their firearms rights on an individualized basis. The standard and procedure for determining incompetency to stand trial is the same for both felony and misdemeanor proceedings. As the firearm prohibition for incompetency cases is based on the individual's mental condition and capacities – not the underlying crime – the law should be consistent between felony and misdemeanor incompetency determinations.

6. Argument in Opposition

According to ACLU California Action, which has an oppose unless amended position:

This bill would prohibit any person deemed incompetent to stand trial in a misdemeanor proceeding or in a post release community supervision or parole revocation hearing from purchasing, receiving, attempting to purchase or receive, or have possession, custody, or control of a firearm or any other deadly weapon unless there has been a finding of restoration to competence. While we appreciate the goal of preventing gun and other violence, we are concerned that this bill will expose

vulnerable people with serious mental illness to future criminal penalties for potential violations of the prohibition created by the bill.

Under current law, people charged with felonies and deemed incompetent to stand trial are subject to the firearm and deadly weapon prohibitions described above. (Welfare and Institutions Code, §8103, subd. (d)(1).) While we still have concerns with the possibility of this vulnerable population facing future criminal liability for violations of the existing prohibitions, our concerns are partially mitigated by the fact that the relevant process for restoration to competence is one that occurs during the lifecycle of the case when the person is still represented by an attorney, the charges are in place, and there are resources already allocated for evaluation.

In contrast, the people who would be subject to the prohibitions under AB 2629 would include people charged with misdemeanors whose charges have been dismissed and who are not otherwise under the court's jurisdiction as well as others who have not been restored to competence before the termination of their case and would not otherwise be re-evaluated for competence. While the bill provides a process for a person to seek a finding of restoration, it is unlikely an indigent person will have a meaningful opportunity to avail themselves of such a process given the resources and legal expertise required to navigate the court system for a voluntary process such as this.

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