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Firearms Possession Prohibition

Under what circumstances may my right to own and possess a firearm be restricted?

Mental Health Holds

If you are placed on a 72-hour Hold as a **danger to yourself or others** and are admitted to an acute inpatient psychiatric facility based on that hold, then your right to own and possess firearms will be taken away. If you have been placed on a 14-day certification in an acute inpatient psychiatric facility **for any reason**, your right to own and possess firearms will be taken away. These restrictions last for five years from the date you are released from the facility.

If your firearms rights are restricted because of a mental health hold you will be given notification of this restriction prior to exiting the psychiatric facility. The facility must also inform you of your right to request a hearing (if you were placed on a 72-hour hold) or to file a petition and request a hearing (if you were placed on a 14-day certification) in the Superior Court to obtain an order that your firearms rights be reinstated. The law mandates that the facility submit a report to the California Department of Justice (DOJ) containing information regarding your identity and the legal grounds on which you were placed on the 72-hour hold or 14-day certification. The DOJ must keep this information confidential and separate from all other records it keeps, and it can use this information only to determine eligibility to purchase or possess firearms or other deadly weapons.

Conservatorship

If you have been placed under a conservatorship by a court because you are gravely disabled resulting from a mental disorder or impairment by chronic alcoholism the court may order that your right to own and possess firearms be taken away. The court may restore your right by determining that you can safely possess a firearm. Otherwise, the restriction will last for as long as you are under a conservatorship.

Criminal Court Determinations

Your rights to own and possess firearms may also be taken away if you have been determined by a court of any state to be a danger to others resulting from a mental disorder or illness or if you have been determined by a court to be a **mentally disordered sex offender**. In these cases, your rights regarding firearms may be restricted until the court issues you a certificate saying that you may possess a firearm without endangering others.

Your rights to own and possess firearms will be permanently taken away if you have been found **not guilty by reason of insanity** of murder, mayhem, carjacking or robbery in which the victim suffered great bodily injury, assault with intent to commit murder, or a felony involving death, or great bodily injury. If you have been found not guilty by reason of insanity of any other crime you may not own or possess a firearm until the court finds that you have recovered your sanity.

Your rights to own and possess firearms may also be taken away if you have been found by a court to be **mentally incompetent to stand trial**. In this case, your firearms rights may be restricted until the court finds that you are restored to competence to stand trial.

A mental health professional determines you have made a viable threat of physical violence

Your right to own and possess firearms may also be taken away if you have communicated to a licensed mental health professional a serious threat of physical violence against a reasonable identifiable victim or victims, and the mental health professional has notified a local law enforcement agency of your threat. Restrictions of this type last for a period of six months from the date the mental health professional notified the law enforcement agency of the threat. If such a notification is made by a mental health professional, the law enforcement agency will mail you a notice that your firearms rights are restricted. The notice will explain how you can petition the court to have your rights restored earlier.

What exactly does it mean for my firearms rights to be restricted?

If your right to firearms has been restricted, this means you cannot own a firearm, purchase a firearm, possess a firearm, be in control of a firearm, receive a firearm, or attempt to possess, control, receive or purchase any firearms. The term firearm includes any guns or other deadly weapons. Attempting to do so can result in imprisonment of up to one year.

How do I ask the court to reinstate my right to own and possess firearms?

If you were placed on a 72-Hour Hold for dangerousness to self or others but were not placed on a 14-Day Certification, you may request a hearing in Superior Court by filling out the form that should be given to you before you leave the hospital. If you did not receive the form, or misplaced the form, you can request a new form from the DOJ by calling (916) 227-3664.

If you were also placed on a 14-Day Certification, the procedure for requesting a hearing is slightly different. In that case, you may request a hearing by filing the same form or by filing a petition requesting an order that you may own, possess, control, receive or purchase firearms, in the Superior Court in the county in which you reside.

Whether you request a hearing by means of the DOJ form or by filing a petition, the court clerk will set a hearing date and notify you, the DOJ, and the District Attorney of the date of the hearing. At that time, the District Attorney or the Superior Court may transfer the hearing to a court in the county in which you were detained, evaluated, or treated. If this happens, you will receive notification in the mail. Within seven days after it receives notice of your request for a hearing, the DOJ must file the reports it received from the certifying facility with the court. You may request copies of the documents from the court. The District Attorney may also file information about your detention with the court, and you have the right to this information as well.

You can ask the court to conduct your hearing in private, if you believe that confidential information is likely to be discussed. The court must conduct the hearing in private unless it finds that the public interest would be better served by conducting the hearing in public.

What do I have to show the court in order to get my firearms right reinstated?

If you were placed only on a 72-Hour Hold, the District Attorney has the burden of proving by a preponderance of the evidence, that you would not be likely to use firearms in a safe and lawful manner. If the court finds that the District Attorney has not met this burden, it must order that your firearms rights be reinstated. A preponderance of the evidence means that when all the evidence is looked at it is more probable, or more likely, than not.

If you were placed on a 14-Day Certification, the burden is on you to show to the court, by a preponderance of the evidence, that you are likely to use firearms in a safe and lawful manner. If you can do this, the court will order that your firearms rights be reinstated.

If your firearms rights were restricted due to a report by a mental health professional, you will have the burden of proving to the court, by a preponderance of the evidence, that you are likely to use firearms in a safe and lawful manner.

When can the police confiscate my firearms, and how do I get them back?

A law enforcement agency or peace officer must confiscate your firearm(s) if you are detained for examination of your mental condition, for instance if you are placed on a 72-Hour Hold. The officer must obtain your permission, or a warrant, before going into your home to look for firearms. Both the officer who detains you and the staff at the facility where you are detained must tell you what the procedure is for getting your firearm(s) back. After you are released from the facility, the law enforcement agency has 30 days to initiate a petition in the Superior Court for a hearing if it wants to retain the firearm(s). If a petition is made you will receive notification in the mail, and information on how to request a hearing. If not, the law enforcement agency must make your firearms(s) available to be picked up.

DISCLAIMER: This fact sheet is intended to provide accurate, general information regarding legal rights. It does not constitute legal advice. Because laws and legal procedures are subject to frequent change and differing interpretations, Mental Health Advocacy Project cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights for your particular case.