

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE THIRD APPELLATE DISTRICT

DAVID GENTRY; JAMES PARKER;  
MARK MIDLAM; JAMES BASS; AND  
CALGUNS SHOOTING SPORTS  
ASSOCIATION,

Case No. C089655

PLAINTIFFS AND APPELLANTS,

v.

XAVIER BECERRA, IN HIS OFFICIAL  
CAPACITY AS ATTORNEY GENERAL FOR  
THE STATE OF CALIFORNIA; STEPHEN  
LINDLEY, IN HIS OFFICIAL CAPACITY AS  
ACTING CHIEF OF THE CALIFORNIA  
DEPARTMENT OF JUSTICE; BETTY T.  
YEE, IN HER OFFICIAL CAPACITY AS  
STATE CONTROLLER; AND DOES 1-10,

DEFENDANTS AND RESPONDENTS.

**APPELLANTS' APPENDIX  
VOLUME VI OF XVI  
(Pages 1393 to 1637 of 4059)**

Superior Court of California, County of Sacramento  
Case No. 34-2013-80001667  
Honorable Judge Richard K. Sueyoshi

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 COUNTY OF SACRAMENTO

13 **DAVID GENTRY, JAMES PARKER,**  
**MARK MID LAM, JAMES BASS, and**  
**CALGUNS SHOOTING SPORTS**  
**ASSOCIATION,**  
 14  
 15 Plaintiffs and Petitioners,  
 16  
 17 v.  
 18 **XAVIER BECERRA, in his official capacity**  
**as Attorney General for the State of**  
**California; MARTHA SUPERNOR, in her**  
**official capacity as Acting Director of the**  
**California Department of Justice Bureau of**  
**Firearms; BETTY T. YEE, in her official**  
**capacity as State Controller, and DOES 1-**  
**10,**  
 21  
 22 Defendants and Respondents.<sup>1</sup>

Case No. 34-2013-80001667

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 DEFENDANTS' MOTION FOR  
 SUMMARY ADJUDICATION AS TO  
 THE FIFTH AND NINTH CAUSES OF  
 ACTION**

Date: August 4, 2017  
 Time: 9:00 a.m.  
 Dept: 31  
 Judge: The Honorable Michael P.  
 Kenny  
 Trial Date: None set  
 Action Filed: October 16, 2013

26 <sup>1</sup> Defendants respectfully request that Martha Supenor, in her official capacity as Acting  
 27 Director of the California Department of Justice Bureau of Firearms, be substituted in the place of  
 28 her predecessor Stephen Lindley, who is now the Acting Chief of the Division of Law  
 Enforcement. (See Code Civ. Proc., § 368.5.)

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## INTRODUCTION

Plaintiffs are a firearms advocacy group and four individuals challenging the Dealer’s Record of Sale (“DROS”) transaction fee, a \$19.00 fee collected by the California Department of Justice (“the Department” or “DOJ”) from potential firearms purchasers. At the suggestion of the Court, and as agreed to by the parties, this motion by defendants the Attorney General and the Acting Director of the Department’s Bureau of Firearms and the expected cross-motion by plaintiffs are limited to the merits of the fifth and ninth causes of action of the first amended complaint and petition for writ of mandate.

The fifth cause of action seeks a writ of mandate directing the Department to set the DROS fee at an amount that is no more than necessary to fund authorized activities. Such relief is unwarranted because (1) plaintiffs’ request is untimely, (2) the Department has no ministerial duty to act in the particular manner plaintiffs contend, and (3) the Department has already satisfied its obligations in setting the DROS fee. About 13 years ago, after a required regulatory process and review, the Department appropriately raised the fee to \$19.00, where it has remained despite the growing number of regulatory and enforcement responsibilities of the Department.

The ninth cause of action seeks declaratory and injunctive relief prohibiting the Department from expending DROS fee revenues on what plaintiffs claim are unauthorized activities. Yet the Department does not expend DROS fee revenues on any unauthorized activities, and plaintiffs’ argument to the contrary asks this Court to define “possession” (as used in the statute) in a way that is wholly unsupported by its dictionary definition and thwarts the public safety purposes of the statute.

Accordingly, and for the reasons detailed below, the Court should grant this motion and dismiss plaintiffs’ fifth and ninth causes of action in their entirety.

## FACTUAL AND LEGAL BACKGROUND

### I. SUMMARY OF RELEVANT CALIFORNIA FIREARMS LAWS

#### A. Dealer’s Record of Sale Transactions and Related Fees In General

When an individual purchases a firearm in California, state law generally requires that the individual make the purchase through a licensed California firearms dealer. (Penal

1 Code, § 26500.)<sup>2</sup> State law also requires that the purchaser provide certain personal information  
2 on a Dealer’s Record of Sale document that the firearms dealer submits to the California  
3 Department of Justice. (See §§ 28100, 28155, 28160 & 28205; see also *Bauer v. Becerra* (9th  
4 Cir. June 1, 2017, No. 15-15428) \_\_\_ F.3d \_\_\_ [2017 WL 2367988, \*1].)<sup>3</sup>

5 California law requires a mandatory 10-day waiting period before the firearms dealer can  
6 deliver the firearm to the purchaser. (§ 26815.) During the waiting period, DOJ conducts a  
7 firearms eligibility background check to ensure the purchaser is not legally prohibited from  
8 possessing firearms. (§ 28220; see *Bauer*, 2017 WL 2367988, \*1.) DOJ retains information  
9 regarding the sale or transfer of the firearm in the Automated Firearms System (AFS), a database  
10 maintained by DOJ. (§ 11106.) Generally speaking, AFS contains information about registered  
11 firearms, such as information regarding the person who owns a particular firearm and whether the  
12 firearm is lost, stolen, found, under observation, destroyed, retained for official use, or held in  
13 evidence while a case is pending. (*Ibid.*)

14 In general, an individual purchasing a firearm from a licensed dealer must pay fees,  
15 including a statutory \$19 DROS fee intended to reimburse DOJ for a variety of specified costs, as  
16 discussed further below. (See § 28225; Cal. Code. Regs. Tit. 11, § 4001; see also §§ 28230,  
17 28235 & 28240; *Bauer*, 2017 WL 2367988, \*1.) This \$19 fee is at the heart of this case.

18 **B. Relevant History of the Amount of the DROS Fee**

19 **1. In 1982 the Department set the DROS Fee at \$2.25.**

20 The Legislature first authorized DOJ to charge a DROS fee in 1982, and it generally limited  
21 use of the DROS fee to covering the cost of background checks. The relevant statute stated that

22 <sup>2</sup> All further statutory citations are to the California Penal Code unless otherwise  
23 indicated.

24 <sup>3</sup> *Bauer* is the related federal case where a similar group of plaintiffs, represented by the  
25 same counsel as in this case, sued the Attorney General and the Chief of the Bureau of Firearms,  
26 arguing that the Second Amendment prohibits them from expending the revenues of the \$19.00  
27 DROS fee on the Armed Prohibited Persons System (“APPS”) program. The district court  
28 rejected all of plaintiffs’ federal constitutional claims on the merits, granting defendants’ motion  
for summary judgment in its entirety. (See *Bauer, et al. vs. Harris, et al.*, Case No. 1:11-cv-  
01440-LJO-MJS (E.D. Cal.) [Memo. Decision & Order filed March 2, 2015].) In a published  
opinion, the Ninth Circuit recently affirmed, concluding that “California’s use of the DROS fee to  
fund the APPS program” survives constitutional scrutiny. (*Bauer*, 2017 WL 2367988, \*8.)

1 “[t]he Department of Justice may charge the dealer a fee which it determines to be sufficient to  
2 reimburse the department for the cost of furnishing this information” (i.e., the personal  
3 information provided by the purchaser of a firearm to DOJ so that it may perform the background  
4 check). (Stats. 1982, ch. 327, § 129, p. 1473; see Decl. of Anthony R. Hakl in Supp. of Defs.’  
5 Mot. for Summ. Adjud. (“Hakl Decl.”), Ex. A.) The Legislature further directed that “[a]ll  
6 money received by the department pursuant to this section shall be deposited in the Dealers’  
7 Record of Sale Special Account of the General Fund, which is hereby created, to be available,  
8 upon appropriation by the Legislature, for expenditure by the department to offset the costs  
9 incurred pursuant to this section.” (*Ibid.*) In 1982, DOJ first set the DROS fee at \$2.25. (See  
10 Hakl Decl., Ex. B [Bates no. AGIC007].)

11 **2. In 1991 the Department set the DROS fee at \$14.00.**

12 Over the next nine years, the Department periodically increased the fee. (See Hakl Decl.,  
13 Ex. B [Bates no. AGIC007].) As of December 1991, the fee was \$14.00. (*Ibid.*) By that time,  
14 the Legislature had expanded use of the DROS fee to cover the costs of complying with  
15 additional laws, not just the cost of background checks. Specifically, the statute authorized DOJ  
16 to charge a fee “sufficient to reimburse” DOJ for the cost of background check as well as to  
17 reimburse local mental health facilities, the State Department of Mental Health, and local public  
18 mental hospitals, sanitariums, and institutions for the costs resulting from certain reporting  
19 requirements imposed by the Welfare and Institutions Code. (Stats. 1990, ch. 1090, § 2, p. 4551;  
20 see Hakl Decl. Ex. C.)

21 Additionally, by this time the Legislature had directed that the amount of the fee “shall not  
22 exceed” the sum of processing costs of DOJ related to the background check along with “the  
23 estimated reasonable costs of the local mental health facilities,” “the costs of the State  
24 Department of Mental Health,” and “the estimated reasonable costs of local public mental  
25 hospitals, sanitariums, and institutions” in complying with the reporting requirements. (Stats.  
26 1990, ch. 1090, § 2, p. 4551.)

1                   **3. In 1995 the Legislature capped the DROS fee at \$14.00 subject to**  
2                   **increases to account for inflation.**

3                   The Legislature first specified the amount of the DROS fee in 1995 when it capped the fee  
4                   at \$14.00 (i.e., the amount it had been since 1991), except that it allowed the Department to  
5                   increase the fee by regulation to account for inflation. In particular, as a result of Senate Bill 670  
6                   the relevant statute more closely resembled how it reads today, providing: “The Department of  
7                   Justice may charge the dealer a fee not to exceed fourteen dollars (\$14), except that the fee may  
8                   be increased at a rate not to exceed any increase in the California Consumer Price Index as  
9                   compiled and reported by the California Department of Industrial Relations.” (Stats. 1995,  
10                  ch. 901, § 1, pp. 6883-6884; see Haskl Decl. Ex. D.)

11                  The statute continued to provide that “[t]he fee shall be no more than is sufficient to  
12                  reimburse” certain entities for specified costs, although that list continued to grow. (Stats. 1995,  
13                  ch. 901, § 1, p. 6884.) In 1995, the list included the entities and costs identified in 1991 (i.e.,  
14                  those mentioned above) in addition to several new ones, including DOJ “for the cost of meeting  
15                  its obligations” under the Welfare and Institutions Code and “local law enforcements agencies”  
16                  for costs resulting from the Family Code and Welfare and Institutions Code notification  
17                  requirements. (*Ibid.*) And the statute provided that the fee “shall not exceed” the sum of the  
18                  costs identified in 1991 and these newer costs, which included the processing costs of DOJ in  
19                  meeting its Welfare and Institution Code obligations and “the estimated reasonable costs” of local  
20                  law enforcement agencies for complying with the notification requirements. (*Ibid.*)

21                   **4. In 2004 DOJ raised the DROS fee to \$19.00 – its current amount – to**  
22                   **account for inflation.**

23                  The DROS fee remained \$14.00 for about a decade. About 13 years ago, in 2004, DOJ  
24                  adopted regulations adjusting the fee to its current amount of \$19.00, based on the California  
25                  Consumer Price Index and as permitted by the relevant statute. (See § 28225, subd. (a); *Bauer*,  
26                  2017 WL 2367988, \*1.) The current \$19 fee is reflected in a regulation that reads as follows: “As  
27                  authorized pursuant to sections 28225, 28230 and subdivisions (a) and (b) of section 28240 of the  
28                  Penal Code, the [DROS] fee is \$19 for one or more firearms (handguns, rifles, shotguns)

1 transferred at the same time to the same transferee.” (Cal. Code. Regs. tit. 11, § 4001.) Without  
2 the 2004 fee adjustment, the Dealer’s Record of Sale Special Account was projected to run out of  
3 cash to support the former Division of Firearms’ (now Bureau) regulatory and enforcement  
4 programs. (See Hakl Decl., Ex. E [Bauer Bates no. AG-00250].)

5 **C. California’s Armed Prohibited Persons System (“APPS”) and Its**  
6 **Relationship to the DROS Fee**

7 **1. The APPS Program**

8 The Legislature established the Armed Prohibited Persons System in 2001. (§ 30000; see  
9 *Bauer*, 2017 WL 2367988, \*2.)<sup>4</sup> That legislation established an electronic system within DOJ  
10 that produces a list of armed prohibited persons<sup>5</sup> by cross-referencing firearms information  
11 databases with other databases containing records regarding persons prohibited from owning  
12 firearms. (§ 30000.) More specifically, on a daily basis the APPS system reconciles AFS – the  
13 database containing sales information retained by DOJ as a result of the DROS process – against  
14 databases housing California’s criminal history, domestic violence restraining orders, wanted  
15 persons, and the On-Line Mental Health Firearms Prohibition Reporting System. (See § 30000,  
16 subd. (a).) Law enforcement officers throughout California can access the APPS list 24 hours a  
17 day, 7 days a week, through the California Law Enforcement Telecommunications System  
18 (CLETS). (See § 30000, subd. (b); see also § 30010 (“The Attorney General shall provide  
19 investigative assistance to local law enforcement agencies to better ensure the investigation of  
20 individuals who are armed and prohibited from possessing a firearm.”) The Department uses this  
21 process to investigate, disarm, apprehend, and ensure the prosecution of persons who have  
22 become prohibited from firearm possession. (*Bauer*, 2017 WL 2367988, \*2.)

23  
24  
25 <sup>4</sup> Section 30000 was formerly codified as § 12010 (Added by Stats. 2001, c. 944  
26 (S.B.950), § 2. Amended by Stats. 2004, c. 593 (S.B.1797), § 4).

27 <sup>5</sup> In general, prohibited persons are those who have been convicted of a felony or a violent  
28 misdemeanor, are subject to a domestic violence restraining order, or have been involuntarily  
committed for mental health care. (§ 30005.)

1                   **2.     Senate Bill 819**

2                   The APPS program went into effect around 2006, at which time APPS was funded through  
3 moneys appropriated from the General Fund. But with the passage of Senate Bill 819 in 2011,  
4 the Legislature clarified that the APPS program could be funded with the DROS fees deposited  
5 into the Dealer’s Record of Sale Special Account. (See Assem. Com. on Appropriations,  
6 Analysis of Senate Bill No. 819 (2011–2012 Reg. Sess.) July 6, 2011; Sen. Com. on Public  
7 Safety, Analysis of Senate Bill No. 819 (2011–2012 Reg. Sess.) April 26, 2011.<sup>6</sup>) As the  
8 Legislative Counsel’s digest explained at the time:

9                   Existing law authorizes the Department of Justice to require a firearms dealer to  
10 charge each firearm purchaser a fee, as specified, to fund various specified costs in  
11 connection with, among other things, a background check of the purchaser, and to  
12 fund the costs associated with the department’s firearms-related regulatory and  
13 enforcement activities related to the sale, purchase, loan, or transfer of firearms. The  
14 bill would make related legislative findings and declarations.

15                   This bill would also authorize using those charges to fund the department’s firearms-  
16 related regulatory and enforcement activities related to the possession of firearms, as  
17 specified.

18 (Senate Bill 819 (Leno), Stats. 2011, 743 (Leg. Counsel’s digest).)<sup>7</sup>

19                   Thus, with SB 819 the Legislature amended the DROS fee statute to include the costs of  
20 enforcement activities related to firearms possession. To explain further, prior to SB 819 the  
21 relevant provision of section 28225 provided that the DROS fee could be set at a rate to fund,  
22 among other things:

23                   [T]he costs associated with funding Department of Justice firearms-related  
24 regulatory and enforcement activities related to the sale, purchase, loan, or transfer  
25 of firearms pursuant to any provision listed in Section 16580.

26                   <sup>6</sup> These analyses appear as Exhibits F and G to the Hakl Declaration. Legislative  
27 committee reports and analyses, including statements pertaining to a bill’s purpose, are properly  
28 the subject of judicial notice. (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d  
456, 465, fn. 7.)

<sup>7</sup> This Legislative Counsel’s digest appears as Exhibit H to the Hakl Declaration.  
“Although the Legislative Counsel’s summary digests are not binding, they are entitled to great  
weight.” (*Van Horn v. Watson* (2008) 45 Cal.4th 322, 332 fn. 11; *accord Jones v. Lodge at  
Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1170.) The Legislative Counsel’s digest  
“constitutes the official summary of the legal effect of the bill and is relied upon by the  
Legislature throughout the legislative process,” and thus “is recognized as a primary indication of  
legislative intent.” (*Souvannarath v. Hadden* (2002) 95 Cal.App.4th 1115, 1126 fn. 9.)

1 (§ 28225, subd. (b)(11).) As a result of SB 819, that provision now states:

2 [T]he costs associated with funding Department of Justice firearms-related  
3 regulatory and enforcement activities related to the sale, purchase, *possession*,  
4 loan, or transfer of firearms pursuant to any provision listed in Section 16580.

4 (§ 28225, subd. (b)(11), italics added.)

5 Section 28225 has not been substantively amended since SB 819. Currently,  
6 subdivision (a) continues to allow the Department to require firearms dealers to charge each  
7 firearm purchaser “a fee not to exceed fourteen dollars (\$14),” subject to increases to account for  
8 inflation. (§ 28225, subd. (a).) Subdivision (b) continues to read that “[t]he fee under  
9 subdivision (a) shall be no more than is necessary to fund the following,” and it goes on to list  
10 eleven different cost categories. (*Id.*, subd. (b).) Subdivision (c) states that the DROS fee “shall  
11 not exceed the sum of” those costs. (*Id.*, subd. (c).) And with respect to all but one of those  
12 categories the statute specifies those costs as “estimated reasonable costs.”<sup>8</sup> (*Ibid.*)

### 13 3. Senate Bill 140

14 In 2013, the Legislature passed Senate Bill 140, a bill making a one-time appropriation of  
15 \$24 million from the DROS Special Account to DOJ to address a growing backlog in APPS  
16 cases. (Senate Bill 140 (Leno), Stats. 2013, Ch. 2; see Haki Decl., Ex. I.) The Legislature added  
17 to the Penal Code section 30015, which provides, in relevant part:

18 The sum of twenty-four million dollars (\$24,000,000) is hereby appropriated from the  
19 Dealers’ Record of Sale Special Account of the General Fund to the Department of  
20 Justice to address the backlog in the Armed Prohibited Persons System (APPS) and  
21 the illegal possession of firearms by those prohibited persons.

21 (§ 30015, subd. (a).)

## 22 II. THE CLAIMS CURRENTLY AT ISSUE

### 23 A. The Fifth Cause of Action for a Writ of Mandate

24 The fifth cause of action is styled “Writ of Mandate – Review Proper Amount of ‘DROS  
25 Fee’.” (Compl. at p. 18.) In relevant part, plaintiffs allege that defendants have “a clear, present,  
26 and ministerial duty” under section 28225, subdivisions (a) and (b), “to determine ‘the amount

27 <sup>8</sup> For convenience, a copy of the complete text of section 28225 is attached as Appendix A  
28 to this brief.

1 necessary to fund' the activities enumerated at Penal Code section 28225(b)(1)-(11)” and “to only  
2 charge the DROS Fee at that amount.” (Compl. ¶ 90.) Plaintiffs claim that defendants “have  
3 been charging the DROS Fee at the maximum amount statutorily allowed, without first  
4 determining whether that amount is ‘no more than is necessary to fund’ the regulatory and  
5 enforcement activities for which they are statutorily permitted to use DROS Fee revenues.”  
6 (Compl. ¶ 91.)

7 The complaint seeks a peremptory writ of mandate directing defendants “to review the  
8 DROS Fee as currently imposed to determine whether the amount is ‘no more than is necessary’  
9 to cover its costs for the DROS program.” (Compl. at p. 26.) It also seeks an injunction  
10 prohibiting defendants “from imposing the ‘DROS Fee’ as currently imposed, at least until the  
11 required review is conducted by DOJ and the appropriate amount for the DROS Fee is  
12 established.” (*Ibid.*)

### 13 **B. The Ninth Cause of Action for Declaratory and Injunctive Relief**

14 The ninth cause of action, as plaintiffs describe it, concerns the “scope of Senate  
15 Bill 1819’s ‘possession’ provision as applied to funds collected under the guise of the DROS  
16 Fee.” (Compl. at p. 24.) Plaintiffs allege that SB 819, assuming it is valid in the first place,<sup>9</sup>  
17 “only authorized ‘the DOJ to utilize the Dealer Record of Sale Account for the additional, limited  
18 purpose of funding enforcement of the Armed Prohibited Persons System.” (Compl. ¶ 138.) In  
19 contrast, plaintiffs allege that “SB 819 did not authorize DOJ to use DROS Special Account  
20 Funds to address the costs of APPS itself (as opposed to the costs of enforcement activities based  
21 on data created via APPS).” (Compl. ¶ 139.) Thus, plaintiffs seek “a declaration that SB 819  
22 does not authorize the appropriation of DROS Special Account funds for some use other than  
23 APPS-based law enforcement activities.” (Compl. ¶ 141.) Plaintiffs also seek “an injunction  
24 prohibiting DOJ Defendants from utilizing DROS Fee revenues for purposes unrelated to the  
25 DROS background check process or APPS-based law enforcement activities.” (Compl. ¶ 143.)  
26

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27 <sup>9</sup> The validity of SB 819 in the first instance is challenged by way of the sixth, seventh,  
28 and eighth causes of action, which are not at issue at this stage of the proceedings.



1 **ARGUMENT**

2 **I. LEGAL STANDARDS APPLICABLE TO A MOTION FOR SUMMARY ADJUDICATION**

3 This motion for summary adjudication is aimed at the fifth and ninth causes of action of the  
4 first amended complaint and petition. (See Code Civ. Proc., § 437c, subd. (f).) “A summary  
5 adjudication motion is subject to the same rules and procedures as a summary judgment motion.”  
6 (*Lunardi v. Great–West Life Assurance Co.* (1995) 37 Cal.App.4th 807.) The motion must  
7 demonstrate that the material facts are undisputed and that the moving party is entitled to  
8 judgment as a matter of law. (Code Civ. Proc., § 437c, subds. (b)(1) & (c); see *Adams v. Paul*  
9 (1995) 11 Cal.4th 583, 592; *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998)  
10 18 Cal.4th 739, 751.)

11 The pleadings serve as the “outer measure of materiality” in a summary judgment motion,  
12 and the motion may not be granted or denied on issues not raised by the pleadings. (*Laabs v. City*  
13 *of Victorville* (2008) 163 Cal.App.4th 1242, 1258; see *Nieto v. Blue Shield of Calif. Life & Health*  
14 *Ins. Co.* (2010) 181 Cal.App.4th 60, 74 [“the pleadings determine the scope of relevant issues on  
15 a summary judgment motion”].)

16 **II. THE FIFTH CAUSE OF ACTION IS UNTIMELY.**

17 **A. The Fifth Cause of Action is Barred by the Statute of Limitations.**

18 Mandamus proceedings under Code of Civil Procedure section 1085 are subject to statutes  
19 of limitations that are determined “depend[ing] on the right or obligation sought to be  
20 enforced[.]” (*Howard Jarvis Taxpayers Ass’n v. City of La Habra* (2001) 25 Cal.4th 809, 821; see  
21 *Branciforte Heights, LLC v. City of Santa Cruz* (2006) 138 Cal.App.4th 914, 926.) Under this  
22 principle and because plaintiffs seek to enforce an alleged right under section 28225, the three-  
23 year period of Code of Civil Procedure section 338 determines the timeliness of the fifth cause of  
24 action. (Code. Civ. Proc., § 338, subd. (a)(1) [three-year limitations period for “[a]n action upon  
25 a liability created by statute”]; see *Green v. Obledo* (1981) 29 Cal.3d 126, 141, fn. 10; *Ragan v.*  
26 *City of Hawthorne* (1989) 212 Cal.App.3d 1361, 1366-1367.)

27 As laid out above, the Legislature first authorized the DROS fee in 1982, at which time the  
28 Department set it at \$2.25. By 1991 the fee was \$14.00. In 1995 the Legislature capped the fee

1 at \$14.00, except it authorized the Department to increase the fee to account for inflation. The  
2 Department did that on one occasion, in 2004 when it raised the fee to \$19.00. Plaintiffs did not  
3 file this action to enforce their alleged rights under section 28225 until approximately nine years  
4 later in 2013, well beyond the applicable limitations period. Defendants' motion for summary  
5 adjudication as to the fifth cause of action should be granted for this reason alone.

6 **B. The Fifth Cause of Action is Barred by the Doctrine of Laches.**

7 Laches is an alternative basis for granting defendants' motion. The equitable defense of  
8 laches may be raised to deny a petition for a writ of mandate, even if the applicable statute of  
9 limitations has been satisfied. (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d  
10 351, 357, fn. 3; *Hadley v. Superior Court* (1972) 29 Cal.App.3d 389, 395.)

11 The timeline just discussed demonstrates that plaintiffs unreasonably delayed  
12 approximately nine years to assert their alleged rights under section 28225. Additionally, taking  
13 into account the considerable amount of time, money, and other resources defendants  
14 undoubtedly will have to expend if they are directed to "review" the amount of the DROS fee –  
15 effectively at a time and in a manner of plaintiffs' choosing – defendants will suffer prejudice if  
16 the desired writ issues. (See *Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624–  
17 626 [laches requires unreasonable delay and prejudice to defendants resulting from delay or  
18 acquiescence by plaintiffs]). Chief Lindley even testified at deposition that if the DROS fee were  
19 to be calculated at the intervals and in the manner plaintiffs apparently contend, "it would cost a  
20 whole lot more money in order to operate that program which would be passed along to the  
21 DROS fee." (Depo. of Stephen Lindley ("Lindley Depo.") at 64:22-25; see Haki Decl., Ex. M.)

22 For this alternative reason, the Court should grant defendants' motion as to the fifth cause  
23 of action.

24 **III. THE COURT SHOULD DISMISS THE FIFTH CAUSE OF ACTION BECAUSE**  
25 **SECTION 28225 DOES NOT IMPOSE A MINISTERIAL DUTY ON DEFENDANTS.**

26 Petitioners seeking the issuance of a traditional writ of mandate must show a "clear, present  
27 and usually ministerial duty on the part of the respondent." (*California Ass'n for Health Services*  
28 *at Home* (2007) 148 Cal.App.4th 696, 704; see Code Civ. Proc., § 1085, subd. (a) ["[a] writ of

1 mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to  
2 compel the performance of an act which the law specially enjoins, as a duty resulting from an  
3 office, trust, or station . . .”].) “A ministerial act is an act that a public officer is required to  
4 perform in a *prescribed manner* in obedience to the mandate of legal authority and without regard  
5 to his own judgment or opinion concerning such act’s propriety or impropriety, when a given  
6 state of facts exists.” (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29  
7 Cal.4th 911, 916, citation omitted, italics added; see *Cty. of San Diego v. State* (2008) 164 Cal.  
8 App. 4th 580, 593 [“A ministerial duty is one that is required to be performed in a prescribed  
9 manner under the mandate of legal authority without the exercise of discretion or judgment”].)  
10 “Discretion, on the other hand, is the power conferred on public functionaries to act officially  
11 according to the dictates of their own judgment.” (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495,  
12 501–02.)<sup>10</sup>

13 Section 28225 does not impose a ministerial duty on defendants, and plaintiffs misconstrue  
14 the statute in contending the contrary. For example, plaintiffs varyingly allege that section 28225  
15 imposes “a duty to tailor the amount of the DROS Fee to DOJ’s actual costs in administering the  
16 DROS program” (Compl. ¶ 96); that SB 819 was “a major change in circumstance” that required  
17 defendants “to reassess the amount being charged for the DROS Fee” (*id.* ¶ 99); and that  
18 defendants’ “review of the relevant costs necessarily must include a determination of whether the  
19 use of DROS Fee funds for APPS-based law enforcement activities constitutes a tax.”  
20 (*Id.* ¶ 100.) None of these statements is accurate. Section 28225 plainly authorizes the DROS fee  
21 to fund costs of numerous types and of numerous entities, as specified in a long list laid out by the  
22 Legislature, not solely the Department’s costs in administering one program. (See § 28225,

23 <sup>10</sup> To be precise, plaintiffs must show (1) that defendants have a clear, present and  
24 ministerial duty to act *and* (2) that plaintiffs have a clear, present and beneficial right to  
25 performance of that duty. (*Kavanaugh, supra*, 29 Cal.4th at p. 916; *Loder v. Municipal Court*  
26 (1976) 17 Cal.1.3d 859, 863.) Defendants’ do not concede that plaintiffs have the required  
27 beneficial interest to seek mandamus relief. “‘Beneficially interested’ generally means the  
28 petitioner has ‘some special interest to be served or some particular right to be preserved or  
protected over and above the interest held in common with the public at large.’” (*Sacramento  
County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd. II* (1999) 75  
Cal.App.4th 327, 331, citation omitted.) The complaint and petition fail to even allege such an  
interest.

1 subd. (b)(1)-(11).) Nor does the statute speak in terms of any “reassessment” being required upon  
2 any kind of change in circumstances, or a “review” of whether the use of DROS fee revenues on  
3 an authorized program amounts to a “tax.”

4 Section 28225 does not even require the imposition of a fee in the first instance; the statute  
5 is permissive: “The Department of Justice *may* require the dealer to charge each firearm  
6 purchaser a fee not to exceed fourteen dollars (\$14)[.]” (§ 28225, subd. (a), italics added.) And if  
7 a fee is charged, it need only be “no more than is necessary” to fund the list of entities and costs  
8 identified by the Legislature (i.e., it need only fall within the range of \$0.01 up to and including  
9 \$14.00). The precise manner in which the amount of the DROS fee is settled upon is not stated;  
10 on the contrary, the Legislature left that to the discretion of the Department, working with the  
11 other agencies mentioned in the statute (e.g., the State Department of State Hospitals and the  
12 Department of Food and Agriculture). (§ 28225, subd. (b)(4) & (9).) Additionally,  
13 subdivision (c) of section 28225 states that “[t]he fee established pursuant to this section shall not  
14 exceed the sum” of the eleven enumerated costs listed in subdivision (b), with nearly all of those  
15 costs to be quantified as “*estimated* reasonable costs.” (§ 28225, subd. (c), italics added.) Such  
16 language unambiguously calls for an exercise of judgment.

17 Requiring the exercise of judgment in setting the DROS fee makes sense, given the  
18 necessary expertise and knowledge of day-to-day regulatory and enforcement activities related to  
19 the sale, purchase, possession, loan, and transfer of firearms in California. (See, e.g., *Watson v.*  
20 *County of Merced* (1969) 274 Cal.App.2d 263, 268 [“the municipality need only apply sound  
21 judgment and consider ‘probabilities according to the best honest viewpoint of informed officials’  
22 in determining the amount of the regulatory fee”].) It also makes sense because fee-setting  
23 inherently calls for certain predictive judgments. Calculations based on revenues and  
24 expenditures, ongoing budget planning, and the like necessarily involve working with past,  
25 present, and *projected* future data, and therefore, by nature, require judgment. (See, e.g., *Urban v.*  
26 *Riley* (1942) 21 Cal.2d 232, 236 [license fee may be fixed at sum “sufficient to cover all expenses  
27 which may be reasonably anticipated and ‘is not limited to the exact amount of the expense, as it  
28 may subsequently develop”].)

1 Section 28225 does not impose a ministerial duty to calculate, review, or reassess the  
2 amount of the DROS fee at the time, in the manner, or under the circumstances that plaintiffs  
3 contend. On the contrary, the Legislature left those particulars to the discretion of the Department  
4 and other public agencies mentioned in the statute. (See *Women Organized for Employment v.*  
5 *Stein* (1980) 114 Cal.App.3d 133, 140 [“The Legislature’s silence as to method necessarily  
6 imports that each of these officers is invested with discretion in selecting and taking  
7 administrative action pursuant to the statutes reaching him.”]; *Brandt v. Board of Supervisors*  
8 (1978) 84 Cal.App.3d 598, 601 [“the writ will not be issued to compel the performance of a duty  
9 in a particular way”].) The Court should therefore grant defendants’ motion for summary  
10 adjudication as to the fifth cause of action.

11 **IV. EVEN IF SECTION 28225 IMPOSES A MINISTERIAL DUTY, THE DEPARTMENT HAS**  
12 **COMPLIED WITH THAT DUTY.**

13 Even assuming section 28225 gives rise to a ministerial duty of the Department to set the  
14 DROS fee, the record demonstrates that defendants have discharged that duty.

15 The Department appropriately determined the current DROS fee amount of \$19.00. In  
16 2004, the Department engaged in a lengthy rulemaking process, as required by the law, resulting  
17 in the regulation setting the DROS fee at \$19.00, where it remains today. That entire rulemaking  
18 file is in the record, but in relevant part it shows that without the 2004 cost of living adjustment  
19 the Dealer’s Record of Sale Special Account was projected to run out of the cash needed to  
20 support the firearms regulatory and enforcement programs mandated by law. (See Hakl Decl.,  
21 Ex. E [Bauer Bates no. AG-00250].) Also in the record are a series of 2004 reports (and draft  
22 reports) prepared by the Department’s Budget Office. Those reports reflect further analysis by  
23 the Department supporting the increase of the DROS fee to \$19.00. (See Hakl Decl., Ex. B.)  
24 Additionally, it is undisputed that the number of programs funded from DROS fee revenues (i.e.,  
25 the costs specified in the statute) had grown before the Department revised the DROS fee rate in  
26 2004 and has grown further since then. (*Compare* Stats. 1995, ch. 901, § 1, pp. 6883-6884 [the  
27 law in 1995] *with* former § 12076, as amended (Stats. 2003, ch. 754, § 2 [the law in effect as of  
28 the 2004 fee setting] *and with* § 28225 [effective today].)

1 Not only was the 2004 rulemaking process thorough, it built on a prior rate setting review  
2 in 1995 in which the Legislature enacted Senate Bill 670 and codified the \$14.00 figure that was  
3 adjusted to \$19 in 2004. At that time the Legislature recognized the Department's explanation  
4 that \$14.00 was "sufficient to fund the existing authorized programs." (See Assem. Com. on  
5 Appropriations, Analysis of Senate Bill No. 670 (1995–1996 Reg. Sess.) Aug. 23, 1995; Sen.  
6 Third Reading, Analysis of Senate Bill No. 670 (1995–1996 Reg. Sess.) Aug. 29, 1995.)<sup>11</sup>

7 Finally, although the Department has not adjusted the DROS fee since 2004, it nevertheless  
8 expends considerable resources regularly monitoring, for example: the number of firearms  
9 transactions in California; the amount of DROS fee revenues being generated; the condition of  
10 the Dealer's Record of Sale Special Account; the annual state budget process, particularly as it  
11 impacts the Department, and the resulting appropriations by the Legislature; each and every  
12 expenditure by the Department to ensure that it is authorized by law; and the anticipated future  
13 needs of the Department based on myriad policy and legal considerations. (See, e.g., Lindley  
14 Depo. at pp. 64:9-65:65-10; 72:3-73:15; 74:2-79:25 [Hakl Decl., Ex M]; Depo. of David Harper  
15 at pp. 54:14-55:17; 58:24-59:20; 60:6-61:24; 63:5-64:8; 65:2-67:23 [Hakl Decl., Ex N].)

16 For these reasons, there is no merit to plaintiffs' contention that defendants have never  
17 established, after an adequate review, the proper amount of the DROS fee. Defendants have done  
18 so at all appropriate times, and therefore have complied with any duty imposed by section 28225.

19 **V. THE NINTH CAUSE OF ACTION HAS NO MERIT.**

20 The ninth cause of action seeks a declaration and accompanying injunction preventing  
21 defendants from expending DROS fee revenues on anything other than two categories of costs,  
22 which plaintiffs describe as "the DROS background check" and "APPS-based law enforcement  
23 activities," respectively. (Compl. ¶ 143.) Yet such relief is foreclosed by the plain language of  
24 section 28225, which authorizes the DROS fee to cover the costs of eleven distinct entities and  
25 corresponding programs, not just the costs of the DROS program and APPS. (See §§ 28225,  
26 subd. (b)(1)-(11).) Indeed, section 28225 does not even mention APPS by name; it broadly

27 \_\_\_\_\_  
28 <sup>11</sup> These analyses are attached as Exhibits J and K to the Hakl Declaration.

1 speaks in terms of “costs associated with funding Department of Justice firearms-related  
2 regulatory and enforcement activities related to the sale, purchase, *possession*, loan, or transfer of  
3 firearms.” (§ 28225, subd. (b)(11), italics added.)

4 While the allegations of plaintiffs’ complaint and petition are somewhat unclear on the  
5 issue, plaintiffs claim that the word “possession” in section 28225, subdivision (b)(11), has a  
6 special meaning. Plaintiffs contend, in the language of the ninth cause of action, that  
7 “possession” only means “APPS-based law enforcement activities,” or “enforcement of the  
8 Armed Prohibited Persons System,” or “enforcement activities based on data created via APPS.”  
9 (Compl. ¶¶ 137, 138, & 139.) In other words, in plaintiffs’ view, if the Department were to use  
10 DROS fee revenues to fund any regulatory or enforcement efforts with respect to the possession  
11 of firearms that did *not* result from the ordinary operation of APPS proper (i.e., efforts that were  
12 *not* specifically based on the electronic cross-referencing of AFS with criminal databases, the  
13 creation of a physical list of armed and prohibited persons, and actions by law enforcement  
14 officers directly tied to that list), then the Department would be acting unlawfully. Plaintiffs’  
15 position is untenable.

16 Chief Lindley has testified regarding APPS that “95% of the of the cases that we work  
17 would be system-generated cases,” meaning that “[t]he APPS system generated the hit  
18 . . . identifying the person as being armed prohibited. Analysts confirm that, agents confirm that,  
19 and they go out into the field and investigate that individual.” (Lindley Depo. at pp. 26:23-  
20 27:10.) In other words, the “vast majority” of APPS enforcement efforts by the Department fall  
21 within a category of enforcement with which plaintiffs take no issue. (*Id.* at p. 17:25.) Thus, the  
22 relief sought by the ninth cause of action is essentially a solution in search of a problem.

23 Next, section 28225, subdivision (b)(11), speaks in terms of “possession,” a discreet word  
24 with a specific meaning. (See *Garcia v. McCutchen* (1997) 16 Cal. 4th 469, 476 [“As in any case  
25 involving statutory interpretation, ‘[o]ur first step is to scrutinize the actual words of the statute,  
26 giving them a plain and commonsense meaning’”].) “Possession” is “[t]he fact of having or  
27 holding property in one’s power; the exercise of dominion over property.” (Possession, Black’s  
28 Law Dictionary (10th ed. 2014).) By definition, “possession” does not mean “APPS” alone.

1 Plaintiffs contend that their limited definition of the word “possession” is supported by  
2 certain uncodified language of SB 819, specifically one of the Legislature’s findings and  
3 declarations that the purpose of the measure was “to allow the DOJ to utilize the Dealer Record of  
4 Sale Account for the additional, limited purpose of funding enforcement of the Armed Prohibited  
5 Persons System.” (Senate Bill 819 (Leno), Stats. 2010, ch. 743, § 1(g).) When viewed in  
6 context, though, this language does not advance plaintiffs’ argument. The other findings and  
7 declarations demonstrate that the Legislature’s overarching concern was not solely the  
8 functioning of APPS, but more broadly the growing number of “armed prohibited persons in  
9 California” and their possession of “over 34,000 handguns and 1,590 assault weapons.”  
10 (*Id.*, § 1(d).) As the Legislature explained, “[t]he *illegal possession* of these firearms presents a  
11 substantial danger to public safety.” (*Ibid.*, italics added.) And the statute needed to be amended  
12 to expressly provide for “enforcement activities related to *possession.*” (*Id.*, § 1(f), italics added.)

13 The legislative history of SB 819 also reflects that the Legislature was concerned with the  
14 illegal possession of firearms in general, not just APPS. (See, e.g., *Dominguez v. Superior Court*  
15 (1990) 226 Cal.App.3d 524, 532 [examining legislative history after finding conflict in language  
16 with uncodified portion of statute and codified sections susceptible of more than one  
17 construction].) In its analysis of SB 819, the Assembly Committee on Public Safety explained  
18 that the bill generally “[a]uthorizes the [sic] using the DOJ purchaser fee to fund the DOJ’s  
19 firearms-related regulatory and enforcement activities *related to the possession of firearms.*” (See  
20 Assem. Com. on Public Safety, Analysis of Senate Bill No. 819 (2010–2011 Reg. Sess.) June 20,  
21 2011, italics added; Haki Decl., Ex. L.) In enacting SB 140, the APPS appropriation statute  
22 mentioned above, the Legislature also explained that it was their intent “to allow the Department  
23 of Justice to utilize additional Dealers’ Record of Sale Special Account funds for the limited  
24 purpose of addressing the current APPS backlog *and the illegal possession of these firearms,*  
25 *which presents a substantial danger to public safety.*” (Senate Bill 140 (Leno), Stats. 2013, ch. 2,  
26 § 1, italics added; see Haki Decl., Ex. I.)

27 Finally, adhering to plaintiffs’ reading of the word “possession” defeats the general purpose  
28 of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [if statutory language



1 ambiguous, courts must select construction that “comports most closely with the apparent intent  
2 of the Legislature, with a view to promoting rather than defeating the general purpose of the  
3 statute”].) With respect to the five percent of APPS cases plaintiffs challenge (i.e., cases that are  
4 not “true” APPS-list cases), Chief Lindley testified about a typical example. He explained that on  
5 occasion the Department might “get a call from a citizen, an ex-wife, sometimes, you know,  
6 family members about an individual who is now prohibited for one reason or another and that  
7 they have firearms that the department might not necessarily know about.” (Lindley Depo. at p.  
8 18:9-18.) And, not surprisingly, in that instance the Department has “a duty for public safety” to  
9 follow up on that call. (*Ibid.*) If plaintiffs had their way, they would deprive the Department of  
10 the necessary resources to take those critical next steps simply because the Department became  
11 aware of the armed prohibited person through a phone call instead of through the APPS list. That  
12 would thwart the public safety purpose of the statute.

13 For these reasons, there is no reason for this Court to award any declaratory and injunctive  
14 relief limiting the Department’s expenditure of DROS fee revenues.

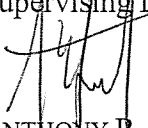
15 **CONCLUSION**

16 The Court should grant defendants’ motion and dismiss the fifth and ninth causes of action.

17 Dated: June 13, 2017

Respectfully Submitted,

18 XAVIER BECERRA  
19 Attorney General of California  
20 STEPAN A. HAYTAYAN  
Supervising Deputy Attorney General

21   
22 ANTHONY R. HAKL  
23 Deputy Attorney General  
Attorneys for Defendants

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# **APPENDIX A**

West's Annotated California Codes  
Penal Code (Refs & Annos)  
Part 6. Control of Deadly Weapons (Refs & Annos)  
Title 4. Firearms (Refs & Annos)  
Division 6. Sale, Lease, or Transfer of Firearms (Refs & Annos)  
Chapter 6. Recordkeeping, Background Checks, and Fees Relating to Sale, Lease, or Transfer of  
Firearms (Refs & Annos)  
Article 3. Submission of Fees and Firearm Purchaser Information to the Department of Justice  
(Refs & Annos)

West's Ann.Cal.Penal Code § 28225

§ 28225. Fee charged to firearm purchaser for processing information; maximum rate

Effective: June 27, 2012

Currentness

(a) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

(b) The fee under subdivision (a) shall be no more than is necessary to fund the following:

(1) The department for the cost of furnishing this information.

(2) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(3) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(4) The State Department of State Hospitals for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(5) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(7) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(8) For the actual costs associated with the electronic or telephonic transfer of information pursuant to Section 28215.

(9) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(10) The department for the costs associated with subdivisions (d) and (e) of Section 27560.

(11) The department for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(c) The fee established pursuant to this section shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (3) of subdivision (b), the costs of the State Department of State Hospitals for complying with the requirements imposed by paragraph (4) of subdivision (b), the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (5) of subdivision (b), the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (7) of subdivision (b), the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, the estimated reasonable costs of the department for the costs associated with subdivisions (d) and (e) of Section 27560, and the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(d) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in this section to the department.

#### Credits

(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012. Amended by Stats.2011, c. 743 (S.B.819), § 2; Stats.2012, c. 24 (A.B.1470), § 57, eff. June 27, 2012.)

West's Ann. Cal. Penal Code § 28225, CA PENAL § 28225

Current with urgency legislation through Ch. 9 of 2017 Reg.Sess

**DECLARATION OF SERVICE BY E-MAIL and U.S. Mail**

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**  
No.: **34-2013-80001667**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 13, 2017, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION AS TO THE FIFTH AND NINTH CAUSES OF ACTION** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

C.D. Michel  
Scott Franklin  
Sean A. Brady  
Michel & Associates, P.C.  
180 E. Ocean Boulevard, Suite 200  
Long Beach, CA 90802  
**E-mail:** [cmichel@michellawyers.com](mailto:cmichel@michellawyers.com)  
[SFranklin@michellawyers.com](mailto:SFranklin@michellawyers.com)  
[SBrady@michellawyers.com](mailto:SBrady@michellawyers.com)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 13, 2017, at Sacramento, California.

Eileen A. Ennis  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature

1 XAVIER BECERRA  
 Attorney General of California  
 2 STEPAN A. HAYTAYAN  
 Supervising Deputy Attorney General  
 3 ANTHONY R. HAKL  
 Deputy Attorney General  
 4 State Bar No. 197335  
 1300 I Street, Suite 125  
 5 P.O. Box 944255  
 Sacramento, CA 94244-2550  
 6 Telephone: (916) 322-9041  
 Fax: (916) 324-8835  
 7 E-mail: Anthony.Hakl@doj.ca.gov  
*Attorneys for Defendants and Respondents*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 COUNTY OF SACRAMENTO

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**DAVID GENTRY, JAMES PARKER,  
 MARK MID LAM, JAMES BASS, and  
 CALGUNS SHOOTING SPORTS  
 ASSOCIATION,**

Plaintiffs and Petitioners,

v.

**XAVIER BECERRA, in his official capacity  
 as Attorney General for the State of  
 California; MARTHA SUPERNOR, in her  
 official capacity as Acting Director of the  
 California Department of Justice Bureau of  
 Firearms; BETTY T. YEE, in her official  
 capacity as State Controller, and DOES 1-  
 10,**

Defendants and Respondents.

Case No. 34-2013-80001667

**SEPARATE STATEMENT OF  
 UNDISPUTED MATERIAL FACTS IN  
 SUPPORT OF DEFENDANTS' MOTION  
 FOR SUMMARY ADJUDICATION AS  
 TO THE FIFTH AND NINTH CAUSES  
 OF ACTION**

Date: August 4, 2017  
 Time: 9:00 a.m.  
 Dept: 31  
 Judge: The Honorable Michael P.  
 Kenny  
 Trial Date: None set  
 Action Filed: October 16, 2013

1 Defendants the Attorney General and the Acting Director of the Department's Bureau of  
 2 Firearms submit this Separate Statement of Undisputed Material Facts in Support of Defendants'  
 3 Motion for Summary Adjudication:  
 4

5 <b>Moving Party's Undisputed Material Facts 6 and Supporting Evidence</b>	7 <b>Opposing Party's Responses</b>
7 <b>No. 1:</b> The Legislature first authorized DOJ to 8 charge a DROS fee in 1982 and DOJ first set the DROS fee at \$2.25. 9 <b>Evidence:</b> Stats. 1982, ch. 327, § 129, p. 1473; 10 Haki Decl., Ex. B [Bates no. AGIC007].	
11 <b>No. 2:</b> In 1991 the Department set the DROS 12 fee at \$14.00. 13 <b>Evidence:</b> Haki Decl., Ex. B [Bates no. 14 AGIC007].	
15 <b>No. 3:</b> In 1995 the Legislature capped the 16 DROS fee at \$14.00 subject to increases to account for inflation. 17 <b>Evidence:</b> Stats. 1995, ch. 901, § 1, pp. 6883- 18 6884.	
19 <b>No. 4:</b> In 2004 DOJ raised the DROS fee to 20 \$19.00 – its current amount – to account for inflation. 21 <b>Evidence:</b> Cal. Code. Regs. tit. 11, § 4001; 22 Haki Decl., Ex. E [ <i>Bauer</i> Bates no. AG-00250].	
23 <b>No. 5:</b> Plaintiffs filed this suit on October, 16, 24 2013. 25 <b>Evidence:</b> Complaint for Declaratory and 26 Injunctive Relief and Petition 27 for Writ of Mandamus. 28	

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<b>Moving Party's Undisputed Material Facts and Supporting Evidence</b>	<b>Opposing Party's Responses</b>
<p><b>No. 6:</b> If the DROS fee were to be calculated in the manner plaintiffs contend, “it would cost a whole lot more money in order to operate that program which would be passed along to the DROS fee.”</p> <p><b>Evidence:</b> Depo. of Stephen Lindley (“Lindley Depo.”) at 64:22-25.</p>	
<p><b>No. 7:</b> In 2004, the Department engaged in a lengthy rulemaking process, as required by the law, resulting in the regulation setting the DROS fee at \$19.00, where it remains today.</p> <p><b>Evidence:</b> Hakl Decl., Ex. E.</p>	
<p><b>No. 8:</b> Without the 2004 cost of living adjustment the Dealer’s Record of Sale Special Account was projected to run out of the cash needed to support the firearms regulatory and enforcement programs mandated by law.</p> <p><b>Evidence:</b> Hakl Decl., Ex. E [<i>Bauer Bates</i> no. AG-00250].)</p>	
<p><b>No. 9:</b> A series of 2004 reports (and draft reports) prepared by the Department’s Budget Office reflect further analysis by the Department supporting the increase of the DROS fee to \$19.00.</p> <p><b>Evidence:</b> Hakl Decl., Ex. B.</p>	
<p><b>No. 10:</b> The number of programs funded from DROS fee revenues (i.e., the costs specified in the statute) had grown before the Department revised the DROS fee rate in 2004 and has grown further since then.</p> <p><b>Evidence:</b> <i>Compare</i> Stats. 1995, ch. 901, § 1, pp. 6883-6884 [the law in 1995] <i>with</i> former § 12076, as amended (Stats. 2003, ch. 754, § 2 [the law in effect as of the 2004 fee setting] <i>and with</i> § 28225 [effective today].</p>	



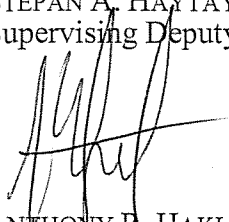
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<b>Moving Party's Undisputed Material Facts and Supporting Evidence</b>	<b>Opposing Party's Responses</b>
<p><b>No. 11:</b> In 1995 the Legislature enacted Senate Bill 670 and codified the \$14.00 figure that was later adjusted to \$19 in 2004. At that time (i.e., in 1995) the Legislature recognized the Department's explanation that \$14.00 was "sufficient to fund the existing authorized programs."</p> <p><b>Evidence:</b> Assem. Com. on Appropriations, Analysis of Senate Bill No. 670 (1995-1996 Reg. Sess.) Aug. 23, 1995; Sen. Third Reading, Analysis of Senate Bill No. 670 (1995-1996 Reg. Sess.) Aug. 29, 1995.</p>	
<p><b>No. 12:</b> The Department regularly monitors the number of firearms transactions in California; the amount of DROS fee revenues being generated; the condition of the Dealer's Record of Sale Special Account; the annual state budget process, particularly as it impacts the Department, and the resulting appropriations by the Legislature; each and every expenditure by the Department to ensure that it is authorized by law; and the anticipated future needs of the Department based on myriad policy and legal considerations.</p> <p><b>Evidence:</b> See, e.g., Lindley Depo. at pp. 64:9-65:65-10; 72:3-73:15; 74:2-79:25 [Hakl Decl., Ex M]; Depo. of David Harper at pp. 54:14-55:17; 58:24-59:20; 60:6-61:24; 63:5-64:8; 65:2-67:23 [Hakl Decl., Ex N].</p>	
<p><b>No. 13:</b> Chief Lindley has testified regarding APPS that "95% of the of the cases that we work would be system-generated cases," meaning that "[t]he APPS system generated the hit . . . identifying the person as being armed prohibited. Analysts confirm that, agents confirm that, and they go out into the field and investigate that individual."</p> <p><b>Evidence:</b> Lindley Depo. at pp. 26:23-27:10.</p>	

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<b>Moving Party's Undisputed Material Facts and Supporting Evidence</b>	<b>Opposing Party's Responses</b>
<p><b>No. 14:</b> The “vast majority” of APPS enforcement efforts by the Department fall within a category of enforcement with which plaintiffs take no issue.</p> <p><b>Evidence:</b> Lindley Depo. at p. 17:25.</p>	
<p><b>No. 15:</b> With respect to the five percent of APPS cases plaintiffs challenge (i.e., cases that are not “true” APPS-list cases), Chief Lindley testified about a typical example. He explained that on occasion the Department might “get a call from a citizen, an ex-wife, sometimes, you know, family members about an individual who is now prohibited for one reason or another and that they have firearms that the department might not necessarily know about.” In that instance the Department has “a duty for public safety” to follow up on that call.</p> <p><b>Evidence:</b> Lindley Depo. at p. 18:9-18.</p>	

Dated: June 13, 2017

Respectfully Submitted,  
  
XAVIER BECERRA  
Attorney General of California  
STEPAN A. HAYTAYAN  
Supervising Deputy Attorney General  
  
  
  
ANTHONY R. HAKL  
Deputy Attorney General  
*Attorneys for Defendants and Respondents*

SA2013113332  
12719598.doc

**DECLARATION OF SERVICE BY E-MAIL and U.S. Mail**

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**  
No.: **34-2013-80001667**

I declare:


I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 13, 2017, I served the attached **SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION AS TO THE FIFTH AND NINTH CAUSES OF ACTION** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

C.D. Michel  
Scott Franklin  
Sean A. Brady  
Michel & Associates, P.C.  
180 E. Ocean Boulevard, Suite 200  
Long Beach, CA 90802  
E-mail: [cmichel@michellawyers.com](mailto:cmichel@michellawyers.com)  
[SFranklin@michellawyers.com](mailto:SFranklin@michellawyers.com)  
[SBrady@michellawyers.com](mailto:SBrady@michellawyers.com)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 13, 2017, at Sacramento, California.

Eileen A. Ennis  
Declarant

  
Signature

1 XAVIER BECERRA  
 Attorney General of California  
 2 STEPAN A. HAYTAYAN  
 Supervising Deputy Attorney General  
 3 ANTHONY R. HAKL  
 Deputy Attorney General  
 4 State Bar No. 197335  
 1300 I Street, Suite 125  
 5 P.O. Box 944255  
 Sacramento, CA 94244-2550  
 6 Telephone: (916) 322-9041  
 Fax: (916) 324-8835  
 7 E-mail: Anthony.Hakl@doj.ca.gov  
*Attorneys for Defendants and Respondents*

8  
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 COUNTY OF SACRAMENTO  
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 12

13 **DAVID GENTRY, JAMES PARKER,**  
**MARK MID LAM, JAMES BASS, and**  
 14 **CALGUNS SHOOTING SPORTS**  
**ASSOCIATION,**

15 Plaintiffs and Petitioners,  
 16

17 v.

18 **XAVIER BECERRA, in his official capacity**  
**as Attorney General for the State of**  
 19 **California; MARTHA SUPERNOR, in her**  
**official capacity as Acting Director of the**  
 20 **California Department of Justice Bureau of**  
**Firearms; BETTY T. YEE, in her official**  
 21 **capacity as State Controller, and DOES 1-**  
 22 **10,**

23 Defendants and Respondents.  
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Case No. 34-2013-80001667

**DECLARATION OF ANTHONY R.  
 HAKL IN SUPPORT OF MOTION FOR  
 SUMMARY ADJUDICATION AS TO  
 THE FIFTH AND NINTH CAUSES OF  
 ACTION**

Date: August 4, 2017  
 Time: 9:00 a.m.  
 Dept: 31  
 Judge: The Honorable Michael P.  
 Kenny  
 Trial Date: None set  
 Action Filed: October 16, 2013

1 **DECLARATION OF ANTHONY R. HAKL**

2 1. I am a Deputy Attorney General for the Office of the Attorney General in the  
3 California Department of Justice located in Sacramento, California. I am the attorney of record  
4 for defendants in this action. I make this declaration in support of defendants' motion for  
5 summary adjudication as to the fifth and ninth causes of action. I have personal knowledge of the  
6 facts stated in this declaration, and if called as a witness, I could and would competently testify to  
7 them.

8 2. Attached as Exhibit A is a true and correct copy of Stats. 1982, ch. 327, § 129, p.  
9 1473. This document is also publically available at the following Internet site:  
10 [http://clerk.assembly.ca.gov/archive-list?archive\\_type=statutes](http://clerk.assembly.ca.gov/archive-list?archive_type=statutes).

11 3. Attached as Exhibit B is a true and correct copy of the 2004 Budget Office  
12 analyses produced by defendants to plaintiffs earlier in this litigation, following an in camera  
13 review and resulting order of the Court.

14 4. Attached as Exhibit C is a true and correct copy of Stats. 1990, ch. 1090, § 2, p.  
15 4551. This document is also publically available at the following Internet site:  
16 [http://clerk.assembly.ca.gov/archive-list?archive\\_type=statutes](http://clerk.assembly.ca.gov/archive-list?archive_type=statutes).

17 5. Attached as Exhibit D is a true and correct copy of Stats. 1995, ch. 901, § 1, pp.  
18 6883-6884. This document is also publically available at the following Internet site:  
19 [http://clerk.assembly.ca.gov/archive-list?archive\\_type=statutes](http://clerk.assembly.ca.gov/archive-list?archive_type=statutes).

20 6. Attached as Exhibit E is a true and correct copy of Firearms Division Fees  
21 Rulemaking File dated February, 2005, and concern the rulemaking that resulted in the current  
22 DROS fee of \$19.00.

23 7. Attached as Exhibit F is a true and correct copy of Assem. Com. on  
24 Appropriations, Analysis of Senate Bill No. 819 (2011–2012 Reg. Sess.) July 6, 2011. This  
25 document is also publically available at the following Internet site: <http://www.leginfo.ca.gov/>.

26 8. Attached as Exhibit G is a true and correct copy of Sen. Com. on Public Safety,  
27 Analysis of Senate Bill No. 819 (2011–2012 Reg. Sess.) April 26, 2011. This document is also  
28 publically available at the following Internet site: <http://www.leginfo.ca.gov/>.

1           9.           Attached as Exhibit H is a true and correct copy of Senate Bill 819 (Leno), Stats.  
2 2011, 743. This document is also publically available at the following Internet site:  
3 <http://www.leginfo.ca.gov/>.

4           10.          Attached as Exhibit I is a true and correct copy of Senate Bill 140 (Leno), Stats.  
5 2013, Ch. 2. This document is also publically available at the following Internet site:  
6 <http://www.leginfo.ca.gov/>.

7           11.          Attached as Exhibit J is a true and correct copy of See Assem. Com. on  
8 Appropriations, Analysis of Senate Bill No. 670 (1995–1996 Reg. Sess.) Aug. 23, 1995.

9           12.          Attached as Exhibit K is a true and correct copy of Sen. Third Reading, Analysis  
10 of Senate Bill No. 670 (1995–1996 Reg. Sess.) Aug. 29, 1995.

11          13.          Attached as Exhibit L is a true and correct copy of Assem. Com. on Public Safety,  
12 Analysis of Senate Bill No. 819 (2010–2011 Reg. Sess.) June 20, 2011. This document is also  
13 publically available at the following Internet site: <http://www.leginfo.ca.gov/>.

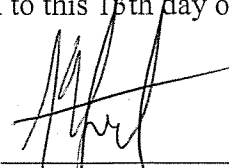
14          14.          Attached as Exhibit M is a true and correct copy of the condensed version of the  
15 deposition testimony of Stephen Lindley in this case.

16          15.          Attached as Exhibit N is a true and correct copy of the condensed version of the  
17 deposition testimony of David Harper in this case.

18          16.          Attached as Exhibit O is a true and correct copy of the condensed version of the  
19 first session of deposition testimony of Jessica Devencenzi.

20          17.          Attached as Exhibit P is a true and correct copy of the condensed version of the  
21 second session of deposition testimony of Jessica Devencenzi.

22           I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct. Signed and sworn to this 13<sup>th</sup> day of June, 2017, at Sacramento,  
24 California.

25   
26 \_\_\_\_\_  
27 ANTHONY R. HAKL

26 SA2013113332  
27 12719524.doc

**DECLARATION OF SERVICE BY E-MAIL and U.S. Mail**

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**  
No.: **34-2013-80001667**

I declare:


I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 13, 2017, I served the attached **DECLARATION OF ANTHONY R. HAKL IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION AS TO THE FIFTH AND NINTH CAUSES OF ACTION** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

C.D. Michel  
Scott Franklin  
Sean A. Brady  
Michel & Associates, P.C.  
180 E. Ocean Boulevard, Suite 200  
Long Beach, CA 90802  
E-mail: [cmichel@michellawyers.com](mailto:cmichel@michellawyers.com)  
[SFranklin@michellawyers.com](mailto:SFranklin@michellawyers.com)  
[SBrady@michellawyers.com](mailto:SBrady@michellawyers.com)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 13, 2017, at Sacramento, California.

\_\_\_\_\_  
Eileen A. Ennis  
Declarant

  
\_\_\_\_\_  
Signature

# **EXHIBIT A**



**Volume 2**

# **STATUTES OF CALIFORNIA**

**AND DIGESTS OF MEASURES**

**1982**

**Constitution of 1879 as Amended**

**Measures Submitted to Vote of Electors,  
Primary Election, June 8, 1982  
and General Election, November 2, 1982**

**General Laws, Amendments to the Codes, Resolutions,  
and Constitutional Amendments passed by the  
California Legislature**

**1981-82 Regular Session  
1981-82 First Extraordinary Session**



*Compiled by*  
**BION M. GREGORY**  
*Legislative Counsel*

## CHAPTER 327

An act to amend Sections 1300 and 6028 of, to add Sections 1300.1, 7011.3, and 23083.5 to, and to repeal Chapter 20.6 (commencing with Section 9891) of Division 3 of, the Business and Professions Code, to amend Sections 48320, 48321, 48322, 48323, 48324, 52616, and 56760 of, and to add Section 89910 to, the Education Code, to add Section 1607 to, and to repeal Sections 3036, 7151, 7154, 7161, 7162, and 7163 of, the Fish and Game Code, to add Section 410 to, and to repeal Article 8 (commencing with Section 6045) of Chapter 9 of Part 1 of Division 4 of, the Food and Agricultural Code, to amend Sections 11044, 11270, 11271, 11346.5, 11346.7, 11347.3, 11349.1, 12016, 14669, 15616, 15640, 15645, 16113, 18976, 19853, 19858.1, 19991.6, 20818, 26820.4, 26823, 26826, 26827, 26827.4, 26828, 26829, 26830, 26833, 26834, 26836, 26838, 26839, 26850, 26851, 26852, 26853, 26854, 26855, 26855.1, 26855.2, 26855.3, 68073.4, 68926, 68927, 72055, and 72056 of, to amend and renumber Sections 11346.51, 15641, 15642, 15643, and 15644 of, to add Sections 8174, 11346.51, 11346.52, 14669.1, 14671.6, 15641, 19859.3, 20603.5, 20819, and 37100.5 to, to add Chapter 8 (commencing with Section 19999) to Part 2.6 of Division 5 of Title 2 of, to add Chapter 12.6 (commencing with Section 54989) to Part 1 of Division 2 of Title 5 of, to add and repeal Sections 20586, 26820.5, 26826.2, 26827.2, 72055.1, and 72056.2 of, to repeal Section 15605.5 of, and to repeal and add Section 11349.11 of, the Government Code, to amend Sections 113, 255, 347, 1356, 1403, 1575.9, 1729, 25345, 25347, and 25354 of, to add Sections 115, 116, 208.3, 289.1, 289.7, 1403.1, 1729.1, 25174.1, 25174.2, 25174.6, 25174.7, and 25356.5 to, to repeal Section 255.3 of, and to repeal and add Sections 1266 and 25356 of, the Health and Safety Code, to amend Sections 226 and 226.4 of the Labor Code, to amend Sections 502 and 1023 of the Military and Veterans Code, to amend Sections 1205 and 12076 of the Penal Code, to add Section 1851.5 to the Probate Code, to amend Sections 4799.08, 4799.10, 25008, 25372, and 25375 of, and to repeal Sections 25376, 25377, and 25378 of, the Public Resources Code, to amend Sections 100.5, 1610.8, 2255, 12202, 12253, 12254, 12255, 12977, 17041, 17052.4, 17052.5, 17064.5, 17241, 17301, 17501, 17530, 17530.1, 18405.5, 25402, and 25954 of, to amend and renumber Section 23186a of, to add Sections 97.7, 98.5, 6471, 6472, 6474, 11005.75, 11005.85, 11005.86, 12253.5, 12983.5, 13304, and 26482 to, to add a chapter heading immediately preceding Section 13301, to add Chapter 2 (commencing with Section 13401), Chapter 3 (commencing with Section 13501), Chapter 4 (commencing with Section 13516), Chapter 5 (commencing with Section 13530), Chapter 6 (commencing with Section 13560), Chapter 7 (commencing with Section 13601), Chapter 8 (commencing with Section 14000), Chapter 9 (commencing with Section 14101), and Chapter 10 (commencing with Section 14301) to Part 8 of Division 2 of, to add and repeal Sections 6471.5, 6472.5, and 6474.5 of, to repeal Sections 1609.2, 1716.1, 6471 (as amended by Chapter 115 of the Statutes of 1982), 6472 (as amended by Chapter 5 of the 1981-82 First

Extraordinary Session), 6474 (as amended by Chapter 115 of the Statutes of 1982), 12252, 17055, 17302, 17303, 17304 of, and to repeal and add Article 1 (commencing with Section 1815) of Chapter 2 of Part 3 of Division 1 of, the Revenue and Taxation Code, to add Section 3016 to the Vehicle Code, to amend Sections 1808, 11201, 11265, 11452, 11453, 12200, 12201, 12201.5, 12303.5, 12303.7, 12304, 14005.9, 14017, 14017.5, 14103.4, 14109.5, 14110.1, 14153, 15200.4, 16702, 16706, 19350, and 19356 of, to add Sections 1812.5, 4638, 4657, 4658, 4677, 11265.1, 11315, 11316, 11318, 11319, 11407.3, 14132.4, and 16705.5 to, to repeal Section 11459 of, and to repeal and add Section 16147 of the Welfare and Institutions Code, to amend Section 2 of Chapter 113 of the Statutes of 1978, relating to fiscal affairs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1982. Filed with Secretary of State June 30, 1982.]

*The people of the State of California do enact as follows:*

SECTION 1. It is the intent of the Legislature in this act to make the changes in the law necessary to implement the Budget Act of 1982.

SEC. 2. Section 1300 of the Business and Professions Code is amended to read:

1300. The amount of application and license fee under this chapter shall be as follows:

(a) The application fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical microbiologist's, or clinical laboratory toxicologist's license is thirty-eight dollars (\$38). This fee shall be sixty-three dollars (\$63) commencing on July 1, 1983.

(b) The annual renewal fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical microbiologist's, or clinical laboratory toxicologist's license is thirty-eight dollars (\$38). This fee shall be sixty-three dollars (\$63) commencing on July 1, 1983.

(c) The application fee for a clinical laboratory technologist's or limited technologist's license is twenty-three dollars (\$23). This fee shall be thirty-eight dollars (\$38) commencing on July 1, 1983.

(d) The annual renewal fee for a clinical laboratory technologist's or limited technologist's license is fifteen dollars (\$15). This fee shall be twenty-five dollars (\$25) commencing on July 1, 1983.

(e) The application fee for a clinical laboratory license is one hundred fifty dollars (\$150); provided, however, that when the applicant is the state or any agency or official thereof, or a district, city, county or city and county, or an official thereof, no fee shall be required. This fee shall be two hundred forty-eight dollars (\$248) commencing on July 1, 1983.

imprisonment begin at and continue after the expiration of any imprisonment imposed as a part of the punishment or of any other imprisonment to which he may theretofore have been sentenced. Each of these judgments shall specify the extent of the imprisonment for nonpayment of the fine, which shall not be more than one day for each thirty dollars (\$30) of the fine, nor exceed in any case the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted. A defendant held in custody for nonpayment of a fine shall be entitled to credit on the fine for each day he is so held in custody, at the rate specified in the judgment. When the defendant has been convicted of a misdemeanor, a judgment that the defendant pay a fine may also direct that he pay the fine within a limited time or in installments on specified dates and that in default of payment as therein stipulated he be imprisoned in the discretion of the court either until the defaulted installment is satisfied or until the fine is satisfied in full; but unless the direction is given in the judgment, the fine shall be payable forthwith.

(b) Except as otherwise provided in case of fines imposed as conditions of probation, the defendant must pay the fine to the clerk of the court, or to the judge thereof if there is no clerk, unless the defendant is taken into custody for nonpayment of the fine, in which event payments made while he is in custody shall be made to the officer who holds him in custody and all amounts so paid shall be forthwith paid over by the officer to the court which rendered the judgment. The clerk shall report to the court every default in payment of a fine or any part thereof, of if there is no clerk, the court shall take notice of the default. If time has been given for payment of a fine or it has been made payable in installments, the court shall, upon any default in payment immediately order the arrest of the defendant and order him to show cause why he should not be imprisoned until the fine or installment thereof, as the case may be, is satisfied in full. If the fine, or installment, is payable forthwith and it is not so paid, the court shall without further proceedings, immediately commit the defendant to the custody of the proper officer to be held in custody until the fine or installment thereof, as the case may be, is satisfied in full. The provisions of this section shall apply to any violation of any of the codes or statutes of the State of California punishable by a fine or by a fine and imprisonment.

(c) The defendant shall pay to the clerk of the court or the collecting agency a fee for the processing of installment accounts. This fee shall equal the administrative and clerical costs, as determined by the board of supervisors, except that the fee shall not exceed thirty dollars (\$30).

SEC. 129. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser of any firearm capable of being concealed upon the person shall sign, and the dealer shall require him to sign, his legal name and affix his residence address and date of birth to the register in quadruplicate. The salesman shall affix his

signature in quadruplicate on each sheet as a witness to the signature of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing an incorrect birth date, and any person violating any of the provisions of this section is guilty of a misdemeanor.

(b) Two copies of the original sheet of the register shall, on the date of sale, be placed in the mail, postage prepaid, and properly addressed to the Department of Justice at Sacramento. The third copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the third copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made.

(c) If, on receipt of its two copies of the original sheet, it appears to the department that the purchaser resides in a district other than that to which a copy of the original sheet is required to be mailed, the department shall transmit one of its copies to the head of the municipal police department, if any, in the district in which the purchaser resides or, if none, to the sheriff of the county in which he resides.

(d) If the department determines that the purchaser is a person described in Section 12021 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer of that fact.

(e) The Department of Justice may charge the dealer a fee which it determines to be sufficient to reimburse the department for the cost of furnishing this information. All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section.

SEC. 130. Section 1851.5 is added to the Probate Code, to read:

1851.5. (a) Promptly following the close of each fiscal year, the Controller shall determine the statewide average cost per investigation or review by a court investigator incurred by a county pursuant to Sections 1826, 1850, and 1851 during each fiscal year.

(b) Except as provided in Section 6102 of the Government Code, each county shall annually assess the estate of each ward and each conservatee in the county for any investigation or review conducted by a court investigator at county expense with respect to that person pursuant to Section 1826, 1850, or 1851, at the rate determined by the Controller pursuant to subdivision (a). No assessment may be collected except upon termination of the guardianship of conservatorship by death or court order. A county may waive any or all of an assessment against an estate, on the basis of hardship, where the guardianship or conservatorship is terminated by court order.

(c) Any amount otherwise owing to a county pursuant to Article

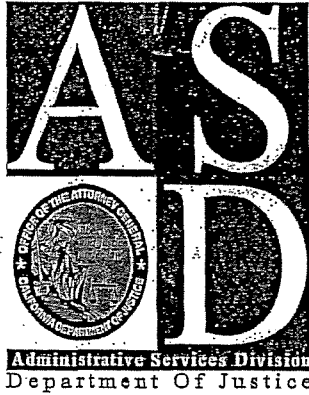
# **EXHIBIT B**

# Document No. 1

11-page Budget Office report (plus appendices) regarding DROS fund

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Building A Foundation For Success



**Budget Office**  
**Dealer Record of Sale (DROS) Fund Shortfall**  
 May 28, 2004.

**Issue**

Currently expenditures exceed revenues in the Dealers Record Of Sale (DROS) Special Fund by \$1,298,000 per year. Unless either revenues go up or expenditures go down the DROS Fund will run out of money by the end of fiscal year 2005-06.

**Background**

The Division of Firearms, though it was not its own division at the time, began processing firearm information in the 1930s. Background checks for firearm purchasers began in 1973. At the time there was no direct charge for the service, the General Fund paid for the program. Then the DROS fee and fund was started in 1982 through Chapter 327, Statutes of 1982. The fee was initially established at \$2.25 for the typical handgun background check. Below is a chart showing the initial DROS fee and the adjustment in every year that it went up. In 1991 the DROS fee went to \$14 and has stayed at that level ever since.

**History of DROS Fee Increase**

1982 = \$2.25	1983 = \$2.50	1984 = \$3.00	1986 = \$3.50	1988 = \$4.00	1989 = \$4.25	1990 = \$7.50	August 1991 = \$10.00	December 1991 = \$14.00
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The other component that affects DROS revenue is handgun sales volume. Handgun sales volume peaked in Fiscal Year (FY) 1999-00 at 470,754 applications requested. This figure declined to 335,908 by FY 2003-04, a 29% drop in three years. This trend is easy to see from the chart below.

**History of handgun application volume**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Dealers' Record of Sale (DROS)	392,948	470,754	365,717	359,110	335,908

The decline in gun sales has substantially impacted the DROS revenues, its balance and its reserves. If this trend was to continue without remedy, the fund will go bankrupt by the end of FY 2004-05 as seen in the following fund condition statement.



0460 Dealer Record of Sale Special Account	2002-03	2003-04	2004-05	2005-06
BEGINNING BALANCE	3,818	2,243	1,113	104
Revenues:	6,747	7,127	7,427	7,427
Transfers In from other Funds:	160	168		
Totals, Resources	10,725	9,538	8,540	7,531
Expenditures	8,482	8,425	8,436	8,436
ENDING BALANCE	2,243	1,113	104	-905

Between un-funded mandated programs, increasing workload per application and inflation, the declining number of applications has not translated to decreased expenditures. The following is a sample of the programs that Firearms has been required to manage without additional funding.

- **Law Enforcement Gun Releases** - law enforcement agencies submit a request to Firearms Division to do firearms eligibility checks on confiscated guns (i.e., stolen, safekeeping, arrest) before they are returned to the owner. This is done to ensure that guns are not being released to prohibited individuals. Firearms Division conducts approximately 7,000 law enforcement gun release eligibility checks annually at no charge. Approx cost to DROS Fund: \$175,000 annually = 2 CIS II, 1 PT II.
- **DROS Enforcement Activities** - began in 1999 when the Firearms Division was established to provide firearms expertise and training to law enforcement agencies and firearms dealers. Approx cost to DROS Fund: \$254,000 annually = 1 Special Agent Supervisor and 1 Special Agent.
- **AB 2080** - would require that any Federal Firearms License holder who transfers firearms within California to also comply with all California requirements relative to gun dealer licensing. Due to DROS Fund condition, this has not yet been implemented. If implemented, approx cost to DROS Fund: \$548,000 one-time for database development and \$50,000 ongoing = 1 CIS II.
- **DAG Legal Support** - began in 1999 when the Firearms Division was established to provide legal counsel in numerous firearms related court cases. The Firearms FASA Fund provides \$60,000 to support this position with the remaining coming from DROS. Approx cost to DROS Fund: \$100,000 annually = 1 DAG III.

See appendix A for a list of all the changes since 1991 that now has to be checked before a firearms background check can be cleared.

The primary program has gone through some changes that are contributing to the inability to reduce costs. Two issues are driving this situation.

- According to the Firearms division, in the last three years, the Criminal Justice Information Systems (CJIS) Division has stopped supporting certain flag fields in the database that allowed FD staff to eliminate many background files as not needing review.

Background checks are performed based on name. So many searches produce many files that may be the person FD staff are trying to check. FD staff then checks all the possible files to make a determination of suitability of gun ownership. Previously, FD staff could identify files entered relative to a fingerprint background check performed for employment reasons versus a file entered for a criminal conviction. The files related to employment would be ignored and all effort focused on the criminal files. Now that the flags have been removed FD staff must review every file returned on every application which is about 90,000 applications per year.

- As the population in California grows, the number of hits on any given search also increases. With the state population approaching 36 Million, there are far more Smiths, Jones and Garcias living in the state than there were 12 years ago when the fee was established. This effect is apparent with respect to less common names as well.

## Discussion

There are three basic ways to solve the DROS Fund deficit problem: reduce expenditures or increase revenue either through a rate increase or an application volume increase. Below is a sensitivity analysis table illustrating a few potential outcomes. The left column shows potential cost cutting goals. The \$0 (a) represents no change in spending, \$351,000 (b) represents positions in CJIS that are paid by DROS but could be moved to the Fingerprint Fees Account (FFA), and the \$1,298,000 (c) would be cutting DROS expenditures to the present revenue level. The top row represents the effect of a fee change. The \$0 column addresses the effect of maintaining the DROS fee at the present level of \$14, the \$3 column reflects the effect of increasing the DROS fee \$3 to \$17 and similarly the \$5 column reflects the effect of increasing the DROS fee \$5 to \$19. Each coordinate box contains two numbers. The top number represents remaining expenditures in excess of revenue given the Cost Cutting and Revenue Increase options chosen. The bottom number represents the required increase in DROS applications to raise revenue to a level then equal to the expenditure expectation. For example, if you assume DOJ will redirect the DROS positions to the FFA, thereby producing a savings of \$351,000 per year, and that DOJ raises the DROS fee to the level of \$17, you could conclude that revenue would rise to exceed the now lowered expenditures by \$58,000 and the required increase in DROS applications would be 0, because revenues now exceed expenses.

$$\text{Formula} = \frac{\text{Remaining Deficit}}{\text{Apps needed to} = 0}$$

	Revenue Increase	\$0 (DROS fee remains at \$14)	\$3 (DROS fee-increased to \$17)	\$5 (DROS fee-increased of \$19)
Cost Cutting				
\$0 (a)		\$1,298,000 92,714	\$293,000 17,235	\$377,000 surplus 0
\$351,000 (b)		\$947,000 67,642	\$58,000 surplus 0	\$728,000 surplus 0
\$1,298,000 ©		\$0 0	\$1,005,000 surplus 0	\$1,675,000 surplus 0

## Cutting Expenditures

Expenditures to DROS may be cut in two ways. First, as mentioned above, there are 5.0 positions DROS funded in CJIS, costing \$351,000. DROS is a dubious funding source for these positions. While they may somewhat contribute to the goals of the DROS program, an overwhelming majority of their time is spent on non-DROS workload. If the funding source of these positions were switched to FFA, DROS would see the savings. The second means to cut expenditures would be to reduce DROS funding in FD. Unless additional funding was brought in from another source, this would increase the backlog on DROS applications and the division may not be able to meet all of it's legal obligations.

## Increasing Revenue

The DROS fund has not had a Cost of Living Increase (COLA) since 1991. Increasing the DROS fee from \$14 to \$19 would bring in an extra \$1,675,000 in to the fund based upon the current number of DROS transaction (335,000 transactions x \$5 extra revenue=\$1,675,000). This extra revenue would solve all of DROS's financial worries for years to come and allow the fund to slightly increase its reserves. The table immediately below shows how much the DROS fee would have been if the COLA's had been implemented overtime, the second table is a revised fund condition statement based on the increased rate and revenue.

DROS Fee with a 3% COLA added every year since 1991

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Fee	14	14.42	14.85	15.29	15.76	16.23	16.72	17.22	17.73	18.27	18.81	19.38
\$												

## DROS FUND Condition if the fee was raised from \$14 to \$19 in 2004-05

0460 Dealer Record of Sale Special Account	2002-03	2003-04	2004-05	2005-06
BEGINNING BALANCE	3,818	2,243	1,113	1,779
Revenues:	6,747	7,127	9,102	9,102
Transfers In from other Funds:	160	168		
Totals, Resources	10,725	9,538	10,215	10,881
Expenditures	8,482	8,425	8,436	8,436
ENDING BALANCE	2,243	1,113	1,779	2,445

## Solutions

Solution # 1 – Implement the COLA and raise the DROS fee from \$14 to \$19 and not cut any expenditures. This will be the least painful solution for the Firearms Division. If the fee is raised as of July 1, 2004 the fund will not run out of money and will actually start building up it's reserves. There will not need to be any cuts with this solution.

Solution # 2 – Move CJIS positions that are funded out of DROS and into the Fingerprint Fee Account. The following our positions that are controlled by CJIS that do very little if any DROS related work and yet they are billed to the DROS Fund: CIS I 420-732-8462-001, PT II 420,795,9928-001, PT II 420-795-9928-003, Field Rep 420-732-8519-006 and Field Rep 420-732-8519-004. By shifting these positions it would save the DROS Fund \$351,000 per year. Currently the DROS Fund brings in \$7,127,000 and has expenditures of \$8,425,000 that is a difference of \$1,298,000. That \$1,298,000 deficit could be reduced to \$947,000 (\$1,298,000 minus \$351,000 = \$947,000) if the CJIS positions are shifted out of DROS funding. Then the Firearms Division would need to cut its program by \$947,000 for the DROS Fund to become stable. This solution will not generate any surplus and will only work if gun sales remain stable and expenditures stay the same.

Solution # 3 – Increase the DROS fee from \$14 to \$17 instead of the COLA level of \$19. If gun sales remain the same then that small increase would bring in an extra \$1,005,000 per year and that increase along with a cut to either Firearms or CJS of \$293,000 would stabilize the FUND for now and stop the DROS fund from depleting its reserves.

Solution # 4 – Do nothing. Expect that DROS applications will rise to a level to support the current level of expenditures. If this does not happen, the DROS Fund will be bankrupt in FY 2005-06.

Solution # 5 – Pursue a combination of the above 4 options. Essentially, this is a combination of hard technical cuts to the program, or redirection of expenditures to other funds, but allows for us to expect that gun sales will not remain this low indefinitely.

### Recommendation

Solution # 5.

(File Location: I:\Budgets\Firearms\Issue Paper\DROS SHORTFALL.doc)

For more information on this report or other issues, contact Robert Sharp, Budget Office, at 916/323-5346 or [robert.sharp@doj.ca.gov](mailto:robert.sharp@doj.ca.gov).

# APPENDIX A

## ADDITIONAL DROS PROHIBITING CATEGORIES POST (Resulting in Increased Number of Eligibility Reviews)

THE FOLLOWING FIREARM PROHIBITING MISDEMEANORS WERE ADDED:

### PENAL CODE SECTIONS:

1991	1994	1995	2000
136.5	273.5	71	422
140	273.6	76	136.1
171b	646.9	148(d)	
171c		186.28	
171d		246	
240		417.1	
241		417.6	
242		12023	
243		12040	
244.5		12072(b)	
245		12072(g)(3)	
246.3			
247			
417			
417.2			
626.9			
12034(b) or (d)			
12100(a)			
12320			
12590			

### 1991

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE  
WARDS OF JUVENILE COURT FOR WIC 707(b) OFFENSE

PRIVATE PARTY TRANSFERS ARE NOW REQUIRED TO GO THRU DEALER  
AND HAVE DOJ BACKGROUND CHECK COMPLETED (NEW LEGISLATION)

### 1993

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON PEACE  
OFFICERS (NEW LEGISLATION)

## APPENDIX A

1994

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE WARD OF JUVENILE COURT FOR PC 1203.073(b) OFFENSE

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON SECURITY GUARDS (NEW LEGISLATION)

1995

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE WARD OF JUVENILE COURT FOR PC 12071(c)(1) OFFENSE  
FEDERAL BRADY PROHIBITIONS ADDED (NICS)

1998

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON PAWN REDEMPTIONS AND CONSIGNMENT SALES/RETURNS (NICS)

NEW FIREARM PROHIBITION: MISDEMEANOR DRUG OFFENSES

REQUIRED TO CHECK INS STATUS, MENTAL DEFECTIVES, OUT OF STATE WARRANTS, DENIAL NOTIFICATION (NICS)

2000

DOJ REQUIRED TO CONTACT LOCALS TO CONFIRM FIREARMS PROHIBITING RESTRAINING ORDERS (POLICY)

2002

DOJ REQUIRED TO CONDUCT NICS ICE CHECKS (NICS)

DOJ REQUIRED TO CONDUCT ARMED PROHIBITED TRACKING. INCL. CHECKING AFS ON DENIALS, UPDATING CAPS, NOTIFYING AGENTS (NEW LEGISLATION)

2003

DOJ REQUIRED TO NOTIFY THE DA OF FIREARM DENIALS (AG DECISION)

# APPENDIX A

2004

NEW FIREARM PROHIBITION: ELDER ABUSE RESTRAINING ORDERS (NEW LEGISLATION)

DOJ REQUIRED TO CHECK VIOLENT GANG AND TERRORISM FILE (VGTOF) ON FIREARM ELIGIBILITY CHECKS (NICS)

DOJ REQUIRED TO CONDUCT PERSONAL FIREARM ELIGIBILITY CHECKS (NEW LEGISLATION)



## APPENDIX B

### DEALER'S RECORD OF SALE (DROS) REGISTER HISTORY (Revised June 1, 2003)

This summary highlights several major change in California firearms laws that affected firearm purchase transactions and dealer licensure requirements over the past several decades.

- 1909 - Penal Code required dealers to keep a register of pistol and revolver purchasers and to make the register open to the inspection of any peace officer.
- 1923 - Laws regulating and controlling pistol and revolver possession, sales and use were passed. Pistols and revolvers could not be delivered to purchasers on the day of sale, and a copy of the register was transmitted to the local law enforcement agency.
- 1931 - The laws were amended to provide both the local law enforcement agency and the Department of Justice (DOJ) with a copy of the register and again prohibited delivery on the day of sale.
- 1953 - Passage of the Dangerous Weapons' Control Laws extended the waiting period to 3 days as a "cooling off" period. DOJ notified local law enforcement agencies of purchasers who were "potentially prohibited," and the agencies would confiscate the weapons from purchasers.
- 1965 - Laws amended to extend the waiting period to 5 days, and DOJ continued to notify local law enforcement agencies of potentially prohibited purchasers.
- 1972 - DOJ, for the first time, was required to notify dealers of prohibited purchasers, but was unable to stop delivery due to retention of the five-day waiting period.
- 1975 - Waiting period extended to 15 days to give DOJ time to determine if purchasers were prohibited and to notify dealers to stop sales.
- 1991 - Rifle/Shotguns require 15-day wait and purchaser clearance for the first time. Prohibited categories were expanded. Requires all private party transactions to be processed by a licensed dealer.
- 1992 - Penal Code section 12071 was amended to require firearms dealers to obtain a Certificate of Eligibility (COE) (cost \$73.00 initial and \$17.00 annual renewal) from DOJ by undergoing a firearms eligibility background check.
- 1994 - Purchasers of handguns are required to obtain a Basic Firearm Safety Certificate prior to taking possession of a handgun.
- 1995 - The DOJ Centralized List (CL) of Firearms Dealers was enacted into law. Firearms Dealers had to be established on the CL (cost \$85.00 per year per store

## APPENDIX B

location) to be able to obtain DROS registers and/or submit them to DOJ for background check processing.

- 1997 - The old process of dealers mailing completed DROS registers to DOJ for processing was replaced with a new electronic/telephonic firearms eligibility background check process. The waiting period for both handguns and long guns was reduced to 10 days.
- 1998 - The DROS process was amended to include the Federal National Instant Criminal (NICS) background check requirements and the California DOJ was established as the state's NICS Point of Contact (POC). Also, pawn and consignment transactions were incorporated into the DROS process.
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- 2001 - Unsafe Handgun law- New law required the DOJ to certify laboratories to test handguns to be sold/manufactured in California. Effective January 1, 2001, only those handguns that had successfully passed required testing could be sold/transferred/manufactured within the state. {12125 PC}
- 2002 - Safety Device law- New law required that all firearms sold/transferred/manufactured within the state must be accompanied by a DOJ certified firearms safety device. The DOJ certified laboratories to test firearms safety devices and certified only those devices that had successfully passed required testing.
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- 2003 - (a) Handgun Safety Certificate- purchasers of handguns must meet new safety training requirements and obtain a "Handgun Safety Certificate" prior to purchasing a handgun. Implementation of the HSC repealed and replaced the BFSC requirements that were established in 1994. {12800 PC}  
(b) Handgun Demonstration- purchasers of handguns must perform safe handling demo. (12071b)  
(c) Internet Automated DROS process initiated. The firearm recipient's identification number, name, and date of birth must be obtained by swiping the recipient's CA ID or DL card through a magnetic card stripe reader.  
(d) Thumb print required on all DROS.  
(e) No handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indication that he or she is a California resident.  
(f) CALDOJ implemented a new federal requirement to require U.S. Citizenship information on the DROS as a result of a federal mandate issued by the U.S. Attorney General. The new requirement was implemented as a homeland security precaution in the wake of the 911 terrorist attacks on the U.S.

APPENDIX C

FIREARMS DIVISION AND CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION DROS FUNDED POSITIONS

POSITION NUMBER	CLASSIFICATION	EMPLOYEE	FUNCTION
<b>FIREARMS DIVISION ADMIN.</b>			
419 510 7500 001	Director	[REDACTED]	Administration - Executive
420 510 5706 001	Deputy Attorney General III (5)	[REDACTED]	Administration - Executive
420 510 5731 001	Research Analyst II	[REDACTED]	Administration - Budget
420 510 1247 003	Executive Secretary (5)	[REDACTED]	Administration - Executive
420 510 1247 002	Executive Secretary (5)	[REDACTED]	Administration - Executive
420 510-4870-901	Student Assistant	[REDACTED]	Administration - Executive
420 510 1470 002	Associate Info Systems Analyst	[REDACTED]	Administration - Legislation
420 510 5157 001	Associate Govt Program Analyst	[REDACTED]	Administration - Personnel
420 510 5157 002	Staff Services Analyst	[REDACTED]	Administration - Procurement
<b>FIREARMS DIVISION ENFORCEMENT</b>			
419 510 8681 001	Assistant Bureau Chief	[REDACTED]	Administration - Executive
419 510 8523 001	Special Agent In Charge	VACANT	Enforcement
420 510 1550 001	Property Controller I (8)	VACANT (Advertised)	Enforcement
419 510 8482 901	Retired Annuitant Special Agent	[REDACTED]	Enforcement
419 510 8482 901	Retired Annuitant Special Agent	[REDACTED]	Enforcement
420 510 1176 001	Secretary	[REDACTED]	Enforcement
419 510 8482 002	Special Agent	VACANT	Enforcement
419 510 8524 001	Special Agent Supervisor	[REDACTED]	Enforcement
419 510 8524 003	Special Agent Supervisor	VACANT	Enforcement
419 510 8524 002	Special Agent Supervisor	VACANT	Enforcement
<b>FIREARMS DIVISION (BROADWAY STAFF)</b>			
420 510 4799 001	Dept of Justice Administrator III	[REDACTED]	Administration - Program
420 510 1181 002	Word Processing Technician	[REDACTED]	Administration - Program
420 510 4797 004	Dept of Justice Administrator I	[REDACTED]	Firearms Clearance
420 510 8439 001	Criminal Ident Specialist III	[REDACTED]	Automated Firearms
420 510 8436 003	Criminal Ident & Intel Supervisor	[REDACTED]	Denial Review
420 510 8456 013	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 005	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 016	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 008	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 014	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 011	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 007	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 010	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 003	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 009	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 002	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8454 003	Criminal Ident Specialist III	[REDACTED]	Denial Review
420 510 9927 008	Program Technician	[REDACTED]	Denial Review
420 510 9927 010	Program Technician	[REDACTED]	Denial Review
420 510 9927 003	Program Technician	[REDACTED]	Denial Review

5/25/2004

APPENDIX C

FIREARMS DIVISION AND CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION DROS FUNDED POSITIONS

POSITION NUMBER	CLASSIFICATION	EMPLOYEE	FUNCTION
FIREARMS DIVISION ADMIN.			
420 510 9928 006	Program Technician II	[REDACTED]	Dental Review
420 510 9928 009	Program Technician II	[REDACTED]	Dental Review
420 510 1379 001	Office Assistant (G)	VACANT	Mental Health
420 510 9927 006	Program Technician	[REDACTED]	Mental Health
420 510 9927 004	Program Technician	[REDACTED]	Mental Health
420 510 9928 002	Program Technician II	[REDACTED]	Mental Health
420 510 9928 005	Program Technician II	[REDACTED]	Mental Health
420 510 9928 003	Program Technician II	[REDACTED]	Mental Health
420-510-9927-901	Retired Annuitant Program Tech	[REDACTED]	Mental Health
420 510 9925 002	Supv Program Technician II	[REDACTED]	Mental Health
420 510 9927 001	Program Technician	[REDACTED]	Processing Resolution
420 510 9927 005	Program Technician	[REDACTED]	Processing Resolution
420 510 9927 007	Program Technician	[REDACTED]	Processing Resolution
420 510 9927 011	Program Technician	[REDACTED]	Processing Resolution
420 510 9925 001	Program Technician II	[REDACTED]	Information Services
420 510 4797 003	Dept of Justice Administrator I	[REDACTED]	Dealer Inspection
420 510 8519 006	Field Representative	[REDACTED]	Dealer Inspection
420 510 8519 001	Field Representative	[REDACTED]	Dealer Inspection
420 510 8519 007	Field Representative	[REDACTED]	Dealer Inspection
420 510 8519 011	Field Representative	[REDACTED]	Dealer Inspection
420 510 8519 002	Field Representative	[REDACTED]	Information Services
420 510 5393 006	Associate Govt Program Analyst	[REDACTED]	Information Services
420 510 5157 007	Staff Services Analyst	[REDACTED]	Information Services
420 510 5157 006	Staff Services Analyst	[REDACTED]	Information Services

APPENDIX C

FIREARMS DIVISION AND CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION DROS FUNDED POSITIONS

POSITION NUMBER	CLASSIFICATION	EMPLOYEE	FUNCTION
<b>FIREARMS DIVISION ADMIN.</b>			
420 510 4797 002	Dept of Justice Administrator I	[REDACTED]	Licensing & Permits
420 510 5393 001	Associate Govt Program Analyst	[REDACTED]	Licensing & Permits
420 510 8436 002	Criminal Ident & Intel Supervisor	[REDACTED]	Licensing & Permits
420 510 8456 004	Criminal Ident Specialist II	[REDACTED]	Licensing & Permits
420 510 8456 012	Criminal Ident Specialist II	[REDACTED]	Licensing & Permits
420 510 8456 001	Criminal Ident Specialist II	[REDACTED]	Licensing & Permits
420 510 8456 021	Criminal Ident Specialist II	[REDACTED]	Licensing & Permits
420 510 8456 019	Criminal Ident Specialist II	[REDACTED]	Licensing & Permits
420 510 8454 002	Criminal Ident Specialist III	[REDACTED]	Licensing & Permits
420 510 8443 001	Criminal Intel Specialist I	[REDACTED]	Licensing & Permits
420 510 8519 003	Field Representative	[REDACTED]	Licensing & Permits
420 510 9928 004	Program Technician II	[REDACTED]	Licensing & Permits
420 510 9928 007	Program Technician II	[REDACTED]	Licensing & Permits
420 510 9928 001	Program Technician II	[REDACTED]	Licensing & Permits
420 510 5157 004	Staff Services Analyst	[REDACTED]	Licensing & Permits
420 510 4870 901	Student Assistant	[REDACTED]	Licensing & Permits
420 510 1181 001	Word Processing Technician	[REDACTED]	Licensing & Permits

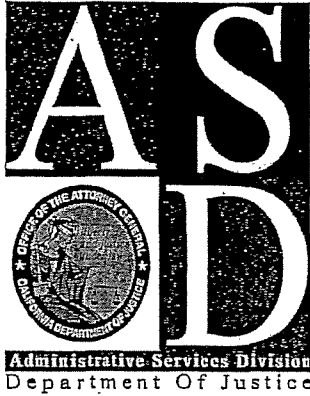
POSITION NUMBER	CLASSIFICATION	EMPLOYEE	FUNCTION
<b>CJIS DIVISION</b>			
<b>DROS POSITIONS</b>			
420 861 1579 016	Associate Programmer Analyst (S)	[REDACTED]	Automated Firearms System
421 861 1579 008	Associate Programmer Analyst (S)	[REDACTED]	Consolidated Firearms Information System
422 861 1579 083	Associate Programmer Analyst (S)	[REDACTED]	Consolidated Firearms Information System
420 732 8436 003	Criminal Ident & Intel Supervisor	[REDACTED]	Firearms eligibility support; restraining order system
420 706 8519 001	Field Representative	[REDACTED]	Training & Inspections & Audit
421 706 8519 003	Field Representative	[REDACTED]	Training & Inspections & Audit
422 706 8519 005	Field Representative	[REDACTED]	Training & Inspections & Audit
420 732 8519 006	Field Representative	[REDACTED]	Firearms eligibility support; restraining order system
420 732 2436 004	Field Representative	[REDACTED]	Firearms eligibility support; restraining order system
420 795 1441 001	Office Assistant (G)	[REDACTED]	Folders Operation
420 732 1441 001	Office Assistant (G)	[REDACTED]	Mail support
420 795 9927 002	Program Technician	[REDACTED]	Position was cut to ASD 9/1/00 without funding
420 795 9928 001	Program Technician II	[REDACTED]	Disposition Update
420 795 9928 003	Program Technician II	[REDACTED]	Disposition Update
420 795 1419 001	Key Data Operator	[REDACTED]	Folders Operation
420 732 8439 002	Criminal Intel Specialist III	[REDACTED]	Firearms eligibility support; restraining order system
420 861 1581 016	Staff Programmer Analyst (Supvr)	[REDACTED]	Consolidated Firearms Information System
420 861 1587 007 @ 33%	Systems Software Specialist I (T)	[REDACTED]	Network
420 861 1587 005 @ 33%	Systems Software Specialist I (T)	[REDACTED]	Unix
420 861 1587 024 @ 33%	Systems Software Specialist I (T)	[REDACTED]	Dial

## Document No. 2

3-page Budget Office drat report (plus partial appendices)  
regarding DROS fund

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Building A Foundation For Success



Budget Office  
 Dealer Record of Sale (DROS) Cash Flow Problem  
 December 16, 2004

**Issue**

DROS has run out of cash and as of December 14 has a (-\$894,000) negative balance. Currently expenditures exceed revenues in the Dealers Record Of Sale (DROS) Special Fund by \$346,000 per year. The recent \$5 increase on DROS transactions should correct this problem over time as revenues rise but DROS has no operating cash.

**Background**

The other component that affects DROS revenue is handgun sales volume. Handgun sales volume peaked in Fiscal Year (FY) 1999-00 at 470,754 applications requested. This figure declined to 300,638 by FY 2003-04; a 37% drop in three years. This trend is easy to see from the chart below.

**History of handgun application volume**

	FY	FY	FY	FY	FY	FY
APPLICATIONS	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Dealers' Record of Sale (DROS)	392,948	470,754	365,717	359,110	335,908	300,638

The decline in gun sales has substantially impacted the DROS revenues, it's balance and it's reserves. If this trend was to continue without remedy, the fund will go bankrupt by the end of FY 2004-05 as seen in the following fund condition statement.

0460 Dealer Record of Sale Special Account	2002-03	2003-04	2004-05	2005-06
BEGINNING BALANCE	3,818	1,962	149	-197
Revenues:	6,466	6,252	7,852	7,852
Transfers In from other Funds:	160	173		
Totals, Resources	10,444	8,387	8,001	7,655
Expenditures	8,482	8,238	8,198	8,667
ENDING BALANCE	1,962	149	-197	-1,012

Between un-funded mandated programs, increasing workload per application and inflation, the declining number of applications has not translated to decreased expenditures. The following is a sample of the programs that Firearms has been required to manage without additional funding.

- **Law Enforcement Gun Releases** - law enforcement agencies submit a request to Firearms Division to do firearms eligibility checks on confiscated guns (i.e., stolen, safekeeping, arrest) before they are returned to the owner. This is done to ensure that guns are not being released to prohibited individuals. Firearms Division conducts approximately 7,000 law enforcement gun release eligibility checks annually at no charge. Approx cost to DROS Fund: \$175,000 annually = 2 CIS II, 1 PT II.
- **DROS Enforcement Activities** - began in 1999 when the Firearms Division was established to provide firearms expertise and training to law enforcement agencies and firearms dealers. Approx cost to DROS Fund: \$254,000 annually = 1 Special Agent Supervisor and 1 Special Agent.
- **AB 2080** - would require that any Federal Firearms License holder who transfers firearms within California to also comply with all California requirements relative to gun dealer licensing. Due to DROS Fund condition, this has not yet been implemented. If implemented, approx cost to DROS Fund: \$548,000 one-time for database development and \$50,000 ongoing = 1 CIS II.
- **DAG Legal Support** - began in 1999 when the Firearms Division was established to provide legal counsel in numerous firearms related court cases. The Firearms FASA Fund provides \$60,000 to support this position with the remaining coming from DROS. Approx cost to DROS Fund: \$100,000 annually = 1 DAG III.

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See appendix A for a list of all the changes since 1991 that now has to be checked before a firearms background check can be cleared.

## Discussion

Without a cash balance DROS cannot pay for Firearms or CJIS expenditures. As revenue comes into DROS expenditures are paid but DOJ's General Fund is covering the outstanding expenditures. Even with the fee increase it will take time for DROS to build up its reserves since it is already has an \$894,000 negative cash balance.

The Walmart settlement will cover \$800,000 of the deficit but without establishing some permanent cuts DROS may never build up its reserves since expenditures of \$8,198,000 still exceed projected revenues of \$7,852,000 (2003-04 revenue of \$6,252,000 plus \$1,600,000 (\$5 fee increase on 320,000 transactions equals \$1,600,000)). The current year expenditures include a voluntary savings from Firearms of almost \$400,000. It appears that DROS will not build up the reserves in the current year.



During Fiscal Year (FY) 2005-06, DROS is projected to have \$8,667,000 in expenditures and have revenue of \$7,852,000. This will put the fund in a deficit of \$815,000.

### Cutting Expenditures

For Firearms and CJIS to maintain current combined authority spending levels of \$8,667,000 then there has to be 365,000 DROS transactions per year plus the other fees that the DROS Fund collects revenue for like special permits. If Firearms projects 320,000 transactions per year then expenditures need to be reduced to \$7,852,000.

### Increased Revenue

The recent increase in the DROS fee from \$14 to \$19 will bring in an extra \$1,600,000 in to the fund based upon the current number of projected DROS transaction (320,000 transactions x \$5 extra revenue=\$1,600,000). Unfortunately that only brings projected revenues up to \$7,852,000

The California Pistol and Rifle Association (CPRA) is asking the LAO to review the recent fee increase and how we had the right to implement all the previous COLA's. The table below shows how much the DROS fee would have been if the COLA's had been implemented overtime.

DROS Fee with a 3% COLA added every year since 1991

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Fee \$	14	14.42	14.85	15.29	15.76	16.23	16.72	17.22	17.73	18.27	18.81	19.38

### Solutions

DROS expenditures need to be permanently cut by \$800,000 to allow DROS to become solvent.

(File Location: I:\Budgets\Firearms\Issue Paper\DROS Cash flow problem .doc)

For more information on this report or other issues, contact Robert Sharp, Budget Office, at 916/323-5346 or [robert.sharp@doj.ca.gov](mailto:robert.sharp@doj.ca.gov).

# APPENDIX A

## ADDITIONAL DROS PROHIBITING CATEGORIES POST (Resulting in Increased Number of Eligibility Reviews)

THE FOLLOWING FIREARM PROHIBITING MISDEMEANORS WERE ADDED:

### PENAL CODE SECTIONS:

1991	1994	1995	2000
136.5	273.5	71	422
140	273.6	76	136.1
171b	646.9	148(d)	
171c		186.28	
171d		246	
240		417.1	
241		417.6	
242		12023	
243		12040	
244.5		12072(b)	
245		12072(g)(3)	
246.3			
247			
417			
417.2			
626.9			
12034(b) or (d)			
12100(a)			
12320			
12590			

### 1991

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE  
WARDS OF JUVENILE COURT FOR WIC 707(b) OFFENSE

PRIVATE PARTY TRANSFERS ARE NOW REQUIRED TO GO THRU DEALER  
AND HAVE DOJ BACKGROUND CHECK COMPLETED (NEW LEGISLATION)

### 1993

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON PEACE  
OFFICERS (NEW LEGISLATION)

## APPENDIX A

### 1994

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE  
WARDS OF JUVENILE COURT FOR PC 1203.073(b) OFFENSE

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON SECURITY  
GUARDS (NEW LEGISLATION)

### 1995

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE  
WARDS OF JUVENILE COURT FOR PC 12071(c)(1) OFFENSE  
FEDERAL BRADY PROHIBITIONS ADDED (NICS)

### 1998

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON PAWN  
REDEMPTIONS AND CONSIGNMENT SALES/RETURNS (NICS)

NEW FIREARM PROHIBITION: MISDEMEANOR DRUG OFFENSES

REQUIRED TO CHECK INS STATUS, MENTAL DEFECTIVES, OUT OF STATE  
WARRANTS, DENIAL NOTIFICATION (NICS)

### 2000

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DOJ REQUIRED TO CONTACT LOCALS TO CONFIRM FIREARMS  
PROHIBITING RESTRAINING ORDERS (POLICY)

### 2002

DOJ REQUIRED TO CONDUCT NICS ICE CHECKS (NICS)

DOJ REQUIRED TO CONDUCT ARMED PROHIBITED TRACKING. INCL  
CHECKING AFS ON DENIALS, UPDATING CAPS, NOTIFYING AGENTS (NEW  
LEGISLATION)

### 2003

DOJ REQUIRED TO NOTIFY THE DA OF FIREARM DENIALS (AG DECISION)

## APPENDIX A

2004

NEW FIREARM PROHIBITION: ELDER ABUSE RESTRAINING ORDERS (NEW LEGISLATION)

DOJ REQUIRED TO CHECK VIOLENT GANG AND TERRORISM FILE (VGTOF) ON FIREARM ELIGIBILITY CHECKS (NICS)

DOJ REQUIRED TO CONDUCT PERSONAL FIREARM ELIGIBILITY CHECKS (NEW LEGISLATION)

## APPENDIX B

### DEALER'S RECORD OF SALE (DROS) REGISTER HISTORY (Revised June 1, 2003)

This summary highlights several major change in California firearms laws that affected firearm purchase transactions and dealer licensure requirements over the past several decades.

- 1909 - Penal Code required dealers to keep a register of pistol and revolver purchasers and to make the register open to the inspection of any peace officer.
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## APPENDIX B

location) to be able to obtain DROS registers and/or submit them to DOJ for background check processing.

- 1997 - The old process of dealers mailing completed DROS registers to DOJ for processing was replaced with a new electronic/telephonic firearms eligibility background check process. The waiting period for both handguns and long guns was reduced to 10 days.
- 1998 - The DROS process was amended to include the Federal National Instant Criminal (NICS) background check requirements and the California DOJ was established as the state's NICS Point of Contact (POC). Also, pawn and consignment transactions were incorporated into the DROS process.
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- 2001 - Unsafe Handgun law- New law required the DOJ to certify laboratories to test handguns to be sold/manufactured in California. Effective January 1, 2001, only those handguns that had successfully passed required testing could be sold/transferred/manufactured within the state. {12125 PC}
- 2002 - Safety Device law- New law required that all firearms sold/transferred/manufactured within the state must be accompanied by a DOJ certified firearms safety device. The DOJ certified laboratories to test firearms safety devices and certified only those devices that had successfully passed required testing.
- 
- 2003 - (a) Handgun Safety Certificate- purchasers of handguns must meet new safety training requirements and obtain a "Handgun Safety Certificate" prior to purchasing a handgun. Implementation of the HSC repealed and replaced the BFSC requirements that were established in 1994. {12800 PC}
- (b) Handgun Demonstration- purchasers of handguns must perform safe handling demo. (12071b)
- (c) Internet Automated DROS process initiated. The firearm recipient's identification number, name, and date of birth must be obtained by swiping the recipient's CA ID or DL card through a magnetic card stripe reader.
- (d) Thumb print required on all DROS.
- (e) No handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indication that he or she is a California resident.
- (f) CALDOJ implemented a new federal requirement to require U.S. Citizenship information on the DROS as a result of a federal mandate issued by the U.S. Attorney General. The new requirement was implemented as a homeland security precaution in the wake of the 911 terrorist attacks on the U.S.

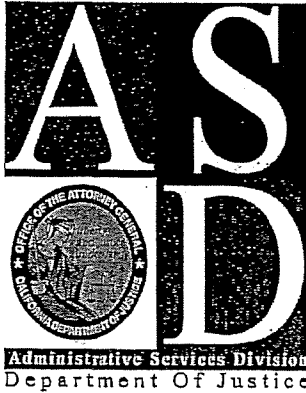
# APPENDIX B

## Document No. 3

4-page Budget Office report (plus appendix)  
regarding DROS fund



Building A Foundation For Success



Budget Office  
 Dealer Record of Sale (DROS) Cash Flow Problem  
 January 19, 2005

**Issue**

Due to a decline in gun sales and relatively static costs to run the Dealer Record of Sales (DROS) program, the DROS Account is in effect bankrupt. While there is still cash in the DROS Account today, the balance remaining in the fund is small and is more than offset by charges being held by the Accounting Office, which should be applied against the fund. If all appropriate charges were applied against the account, the balance would be -\$894,000.

**Background**

The primary source of revenue for the DROS fund is the fee for the background check required to be completed prior to a person being authorized to purchase a handgun. The number of requests for this check has been falling steadily since Fiscal Year (FY) 1999-00. Handgun sales volume peaked in Fiscal Year (FY) 1999-00 at 470,754 applications requested. This figure then declined to 300,638 by FY 2003-04, a 37% drop over three years. This trend is shown in the chart below.

**History of handgun application volume**

APPLICATIONS	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
Dealers' Record of Sale (DROS)	392,948	470,754	365,717	359,110	335,908	300,638

The decline in gun sales has negatively impacted DROS revenues, and in turn the DROS fund balance. However expenditures have declined nominally. Given these two trends, and assuming these trends will continue without remedy, the fund will go bankrupt by the end of FY 2004-05 as seen in the following fund condition statement.

0460 Dealer Record of Sale Special Account	2002-03	2003-04	2004-05	2005-06
BEGINNING BALANCE	3,818	1,962	149	-197
Revenues:	6,466	6,252	7,852	7,852
Transfers In from other Funds:	160	173		
Totals, Resources	10,444	8,387	8,001	7,655
Expenditures	8,482	8,238	8,198	8,667

ENDING BALANCE

1,962      149      -197      -1,012

Between unfunded programs, increasing workload per application and inflation, the declining number of applications has not translated to decreased expenditures. The following is a sample of the programs that Firearms has been required to manage without additional funding.

- **Law Enforcement Gun Releases** - law enforcement agencies submit a request to Firearms Division to do firearms eligibility checks on confiscated guns (i.e., stolen, safekeeping, arrest) before they are returned to the owner. This is done to ensure that guns are not being released to prohibited individuals. Firearms Division conducts approximately 7,000 law enforcement gun release eligibility checks annually at no charge. Approximate cost to DROS Account: \$175,000 annually = 2 CIS II, 1 PT II.
- **DROS Enforcement Activities** - began in 1999 when the Firearms Division was established to provide firearms expertise and training to law enforcement agencies and firearms dealers. Approximate cost to DROS Account: \$254,000 annually = 1 Special Agent Supervisor and 1 Special Agent.
- **AB 2080** - would require that any Federal Firearms License holder who transfers firearms within California to also comply with all California requirements relative to gun dealer licensing. Due to the DROS Account condition, this has not yet been implemented. If implemented, approx cost to DROS Fund: \$548,000 one-time for database development and \$50,000 ongoing = 1 CIS II.
- **DAG Legal Support** - began in 1999 when the Firearms Division was established to provide legal counsel in numerous firearms related court cases. The Firearms FASA Fund provides \$60,000 to support this position with the remaining funding coming from DROS. Approximate cost to DROS Fund: \$100,000 annually = 1 DAG III.

See Appendix A for a list of all the changes since 1991 that now has to be checked before a firearms background check can be cleared.

### Discussion

There are several factors that may improve the DROS fund condition. The pending Walmart settlement could result in as much as \$2,000,000 being available to bolster the DROS fund balance, though not all may be available to spend immediately. The DROS fee increase will increase revenue into the DROS fund. Cost reductions will help balance the flow of cash.

Wal-Mart: The Wal-Mart settlement will bring an \$2,000,000 in new one-time funds to DROS. \$800,000 of the settlement will be deposited directly into DROS to pay for investigative and attorney costs. It is not clear whether some of this amount of this may not be due the Division of Civil Law for representing California in this case. The remaining \$1,200,000 is for future monitoring of Wal-Mart with the option, in the event Wal-Mart stops selling firearms, to spend the remaining money to develop and implement a system to validate the age of ammunition

purchasers. It is not clear that any existing operations would fall under intended use of these funds.

DROS Fee Increase: The DROS fee increase from \$14 to \$19 is expected to bring in an additional \$1,600,000 annually based on 320,000 transactions per year. DROS revenue in FY 2003-04 was approximately \$7,852,000; consequently, the forecast FY 2004-05 DROS revenue forecast is \$8,198,000. The current year expenditures include a voluntary savings from Firearms of almost \$400,000. It appears that DROS will not build up the reserves in the current year. At this point DROS revenues have not reflected the November increase do to the two-month lag.

The California Pistol and Rifle Association (CPRA) may file (according to Firearms Division no suit has been filed at this time) a suit claiming DOJ could have only raised the DROS fee by the latest years Consumer Price Index (CPI) which would reduce the DROS fee increase from \$5.00 to \$0.42. This would clearly decimate our ability to sustain this fund given existing expenditure levels. Similarly, any reduction in this increase will negatively affect fund sustainability.

Appendix A. details two potential outcomes: (1) The Base Case assumes DOJ gets only what we are fairly certain will come our way and (2) Scenario 1 offers a slightly rosier picture with DOJ receiving an additional approximately \$300,000 from DROS and DROS expenditures being reduced approximately \$1,200,000 annually. Note the Base Case indicates the fund cannot balance this year, and even Scenario 1 brings the fund to barely balance. That means DOJ will have to come up with General Fund to fill the cash gap. Additional attention to new Firearms Divisions expenditures now will help ensure this fund does not require \$2.6 million General Fund at the end of this FY to balance.

### Cutting Expenditures

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For Firearms and CJIS to maintain current combined authority spending levels of \$8,667,000 then there has to be 365,000 DROS transactions per year plus the other fees that the DROS Fund collects revenue for like special permits. If Firearms projects 320,000 transactions per year then expenditures need to be reduced to \$7,852,000.

### Solutions

- (1) DOJ should enforce strict spending restrictions from the DROS fund now to avoid immediate and future attention being drawn to the fact that we have depleted this fund to insolvency. No new expenditures should be allowed and immediate cost reductions should be implemented. Without these actions, the DROS fund could require as much as \$2.6 million to balance this year.
- (2) Have the Firearms Division make a permanent cut of \$1.6 million and the Criminal Justice Information System make a permanent cut of \$1 million through a negative Finance Letter.
- (3) Do Nothing.

## Budget Office Recommendations

(1) DOJ should enforce strict spending restrictions from the DROS fund now to avoid immediate and future attention being drawn to the fact that we have depleted this fund to insolvency. No new expenditures should be allowed and immediate cost reductions should be implemented. Without these actions, the DROS fund could require as much as \$2.6 million to balance this year.

(File Location: I:\Budgets\Firearms\Issue Paper\DROS Cash flow problem to Steve Coony .doc)

For more information on this report or other issues, contact Robert Sharp, Budget Office, at 916/323-5346 or [robert.sharp@doj.ca.gov](mailto:robert.sharp@doj.ca.gov).

# APPENDIX A

## DROS Cash Position Estimate

	Base Case	Scenario 1
Actual Cash Balance as of 12/14/04	629,000	
Add: Revenue received, but not posted by Controller	106,000	
Less: Costs not PFA'd due to insufficient funds	1,629,000	
Estimated Cash Position	(894,000)	
Add: Certain Walmart money	800,000	
Less: ProRata	175,000	
Subtotal	(269,000)	
Expected Total Revenue	7,852,000	8,149,000
Expected Total Expenditures (FD)	6,517,300	5,319,300
Expected Total Expenditures (CJIS)	1,658,000	1,658,000
Total Expected Year-End Cash	(592,300)	902,700
Monthly savings required to balance by 6/30/05	(84,614)	128,957
Less: Need for fund balance (3 months)	2,043,825	2,043,825
Grand Total Cash	(2,636,125)	(1,141,125)
Monthly savings to have a \$1,000,000 by 6/30/05	(227,471)	(13,900)
Monthly savings to have a \$2,043,825 by 6/30/06	(138,743)	(60,059)
Add: Uncertain Walmart money	1,200,000	1,200,000
Potential Grand Total Cash	(1,436,125)	58,875

# **EXHIBIT C**

**Volume 3**

# **STATUTES OF CALIFORNIA**

**AND DIGESTS OF MEASURES**

**1990**

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,  
Primary Election, June 5, 1990  
and General Election, November 6, 1990

General Laws, Amendments to the Codes, Resolutions,  
and Constitutional Amendments passed by the  
California Legislature

**1989–90 Regular Session**  
**1989–90 First Extraordinary Session**



Compiled by  
**BION M. GREGORY**  
*Legislative Counsel*

However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of the pro rata refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid to the University of California for continued research on dates. If no such program exists, the funds shall be paid into the State Treasury as unclaimed trust funds.

77886. Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all producers and grower-handlers whose names and addresses are on file with the commission and to the appropriate policy committees in both the Assembly and Senate.

SEC. 2. This act, which applies only to Riverside County, is a special act within the meaning of Section 16 of Article IV of the California Constitution. The Legislature finds that a general statute cannot be made applicable in this situation because Riverside County is unique in the production and shipment of dates that enter channels of trade around the world.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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#### CHAPTER 1090

An act to amend Sections 12076 and 12077 of, and to amend the heading of Chapter 1 (commencing with Section 12000) of Title 2 of Part 4 of, the Penal Code, and to amend Sections 8100, 8104, and 8105 of the Welfare and Institutions Code, relating to firearms, and making an appropriation therefor.

[Approved by Governor September 18, 1990. Filed with  
Secretary of State September 20, 1990 ]

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Chapter 1 (commencing with Section 12000) of Title 2 of Part 4 of the Penal Code is amended to read:



## CHAPTER 1. FIREARMS

SEC. 2. Section 12076 of the Penal Code, as amended by Chapter 177 of the Statutes of 1990, is amended to read:

12076. (a) The purchaser or transferee of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser or transferee. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) Two copies of the original sheet of the register shall, on the date of sale or transfer, be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento. The third copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale or transfer is made. Where the sale or transfer is made in a district where there is no municipal police department, the third copy of the original sheet shall be mailed to the sheriff of the county wherein the sale or transfer is made.

The third copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or transferee or the pistol, revolver, or other firearm to be purchased or transferred, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to

subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased or transferred, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee sufficient to reimburse the following:

(1) The department for the cost of furnishing this information. All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local public mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8105 of the Welfare and Institutions Code made by the act which also added this paragraph.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, and the estimated reasonable costs of local public mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision.

(e) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, its acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

SEC. 3. Section 12077 of the Penal Code, as amended by Chapter 177 of the Statutes of 1990, is amended to read:

12077. (a) (1) The Department of Justice shall prescribe the form of the register described in Section 12074. There shall be two forms of the register with the format set forth in paragraph (2) of this subdivision for pistols, revolvers, and other firearms capable of being

concealed upon the person and the format set forth in paragraph (3) of this subdivision for all firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person.

(2) For pistols, revolvers, and other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a mental patient, or whether the purchaser is on leave of absence from a mental hospital pursuant to Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, and a statement that any person signing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register is guilty of a misdemeanor.

(3) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a felony as

described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a mental patient, or whether the purchaser is on leave of absence from a mental hospital pursuant to Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, and a statement that any person signing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register is guilty of a misdemeanor.

(b) (1) The original of each dealer's record of sale of a firearm document shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General or agents of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification.

(2) Dealers shall use ink to complete each document.

(3) The dealer or salesperson making a sale shall ensure that all information is provided legibly. The dealer and salespersons shall be informed that incomplete or illegible information will delay sales.

(4) Each original shall contain instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(5) One firearm transaction shall be reported on each record of sale document.

(c) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm.

(2) "Purchase" means the purchase or transfer of a firearm.

SEC. 4. Section 8100 of the Welfare and Institutions Code, as amended by Chapter 9 of the Statutes of 1990, is amended to read:

8100. No person who is a mental patient in any hospital or institution or on leave of absence from any hospital or institution shall own or have in his or her possession or under his or her custody or control, or purchase or receive or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon.

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

# **EXHIBIT D**

Volume 4

# STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1995

Constitution of 1879 as Amended

General Laws, Amendments to the Codes,  
and Resolutions passed by the  
California Legislature

**1995-96 Regular Session**  
**1995-96 First Extraordinary Session**  
**1995-96 Second Extraordinary Session**



*Compiled by*  
BION M. GREGORY  
*Legislative Counsel*

request, the counsel is deemed to have refused to aid or represent the commission in that matter.

The legal counsel shall refuse to represent the commission in circumstances in which the counsel knows, or has reason to know, that at the time the request is made a conflict exists between the interests of the commission and the interests of the governing board or the community college district.

If the legal counsel refuses to aid or represent the commission in a legal matter, the commission may employ its own attorney, and the reasonable cost thereof shall constitute a legal charge against the general funds of the community college district.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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## CHAPTER 901

An act to amend Section 12076 of the Penal Code, relating to firearms.

[Approved by Governor October 13, 1995. Filed with  
Secretary of State October 16, 1995.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 12076 of the Penal Code is amended to read:  
12076. (a) The purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) (1) Two copies of the original sheet of the register, on the date of sale, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(2) One copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made. This copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(3) A photocopy of the original shall be provided to the purchaser by the dealer.

(4) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of



Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (l) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071.

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (d) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(f) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Sections 12289 and 12809.

(g) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(h) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(i) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(j) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

- (2) "Purchase" means the purchase, loan, or transfer of a firearm.
- (3) "Sale" means the sale, loan, or transfer of a firearm.
- (4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 2. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) (1) Two copies of the original sheet of the register, on the date of sale, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(2) One copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made. This copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(3) A photocopy of the original shall be provided to the purchaser by the dealer.

(4) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department

of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (I) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071.

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (d) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(f) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Sections 12289 and 12809.

(g) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(h) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) or paragraph (2) of subdivision (t) of Section 12078.

(i) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(j) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

SEC. 3. Section 2 of this bill incorporates amendments to Section 12076 of the Penal Code proposed by both this bill and AB 70. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 12076 of the Penal Code, and (3) this bill is enacted after AB 70, in which case Section 1 of this bill shall not become operative.

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## CHAPTER 902

An act to amend Section 50081 of the Government Code, and to amend Section 12081 of the Penal Code, relating to peace officers.

[Approved by Governor October 13, 1995. Filed with  
Secretary of State October 16, 1995.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 50081 of the Government Code is amended to read:

50081. (a) To the extent that funds have been made available to a local agency pursuant to Section 50082, the legislative body of a local agency shall furnish each newly hired police officer and deputy

# **EXHIBIT E**

**FIREARMS DIVISION FEES  
RULEMAKING FILE**

**DOJ COPY**

**FEBRUARY, 2005**



STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW

In re:

DEPARTMENT OF JUSTICE

REGULATORY ACTION:

Adopt sections 4001, 4002, 4003, 4004, 4005, 4006

Amend sections 984.1

NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE

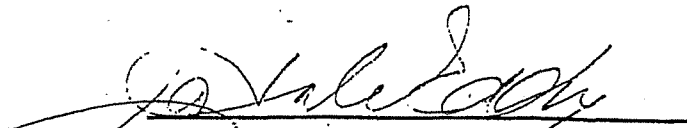
Government Code Section 11349.6

OAL File No. 05-0301-04 C

This Certificate of Compliance adopts and amends fees for the Dealer Record of Sale (DROS) account. (Previous OAL file # 04-1025-01E)

OAL approves this regulatory action pursuant to section 11349.1 of the Government Code.

DATE: 04/11/05

  
KATHLEEN EDDY  
Staff Counsel

for: WILLIAM L. GAUSEWITZ  
Director

Original : Bill Lockyer, Attorney General

cc : Mike Small

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## CERTIFICATION

The foregoing table of contents constitutes the Department of Justice's rulemaking file for the subject regulations. The rulemaking file as submitted is complete. The rulemaking record for the subject regulations was closed on February 27, 2005.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Sacramento, California, on February 27, 2005.

Signed:



MIKE SMALL

Department of Justice Administrator I

**A**

**NOTICE OF PROPOSED  
RULEMAKING (STD 400)**

# NOTICE OF PROPOSED RULEMAKING

## PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Department of Justice (DOJ) proposes to adopt Title 11, Division 5, Chapter 1, section 4001, 4002, 4003, 4004, 4005, 4006, and 4007, and amend Title 11, Division 1, Chapter 13, section 984.1 of the California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action. These regulations were previously adopted and amended as "emergency regulations" that became effective November 1, 2004. This notice commences the regular rulemaking process as required to make the regulations permanent.

## PUBLIC HEARING

The DOJ will hold a public hearing starting at 10:00 a.m. on Tuesday, February 22, 2005, at the EDD/Sacramento Works Mark Sanders Complex (training room #2) located at 2901 50<sup>th</sup> Street, 4949 Broadway, Sacramento, California. The hearing room is wheel chair accessible. At the hearing, any person may present oral or written comments regarding the proposed regulatory action. The DOJ requests but does not require that persons who make oral comments also submit a written copy of their testimony at the hearing.

## WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the DOJ. The written comment period closes at 5:00 p.m., on February 22, 2005. Only comments received at the DOJ offices by that time will be considered. Please submit written comments to:

Mail: Jeff Amador, Field Representative  
Department of Justice  
Firearms Licensing and Permits Section  
PO Box 820200  
Sacramento, CA 94203-0200  
or

Email: [jeff.amador@doj.ca.gov](mailto:jeff.amador@doj.ca.gov)

## AUTHORITY AND REFERENCE

Authority: Penal Code sections 832.15(c), 12054(a), 12071(a)(5), 12076(f)(i)(j), 12423, 12424, 13511.5 and Business and Professions Code section 7583.26(a).

Reference: Penal Code sections 832.15, 12054, 12071, 12071.1, 12072, 12076, 12078, 12083, 12084, 12086, 12289, 12420, 12423, 12424, 12424.5, 12425, 12426, 13511.5; Health & Safety Code section 12101; and Business and Professions Code section 7583.26.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing laws mandate the DOJ to charge fees sufficient to reimburse its costs for processing various licenses, reports, certifications and firearm (purchase, loan, sale or transfer) transactions. The proposed regulations raise fees at an amount commensurate with increases in the DOJ's processing costs in order to allow for the continued operation of these important programs.

Penal Code Section 12076(f) provides the DOJ with statutory authority to charge \$14 per Dealer Record of Sale (DROS) transaction to reimburse the DOJ for costs specified in statute. This section also allows for adjustment of the fee at a rate not to exceed any increase in the California Consumer Price Index (CCPI). Additionally, fees specified under Penal Code Sections 13511.5, 832.15, 1207, 12054, and 12424, and Business and Professions Code Section 7583.26 also need to be raised to meet the costs of these statutorily mandated programs. Revenue from these fees is deposited into the Dealer Record of Sale Special Account. The DROS fee of \$14 has not been raised since 1991. Despite the gradual decline in revenue and a steady increase in workload, DOJ has continued to provide consistent and quality service to the public, law enforcement and firearms dealers through economies of scale.

### Section 948.1. Fees.

Current statutory language authorizes the Firearms Division of the DOJ to charge a fee sufficient to administer the Certificate of Eligibility (COE) program. The proposed amendment raises the current \$17 fee to \$22, commensurate with the Firearms Division's processing costs of \$22 per COE.

### Section 4001. DROS Fees.

Current statutory language authorizes the Firearms Division of the DOJ to charge a fee sufficient to reimburse its Dealer's Record of Sale (DROS) processing costs, not to exceed \$14. Fee increases may not exceed any increase in the California Consumer Price Index (CCPI). The proposed regulation raises the current \$14 DROS fee to \$19. The proposed \$19 fee is commensurate with the Firearms Division's processing costs of \$19 per DROS, and does not exceed increases in the CCPI which equate to \$20.02 per DROS.

### Section 4002. Miscellaneous Report Fees.

Current statutory language authorizes the Firearms Division of the DOJ to charge a fee sufficient to reimburse its processing costs related to various firearms related forms and reports, not to exceed \$14. Fee increases may not exceed any increase in the California Consumer Price Index (CCPI). The proposed regulation raises the current \$14 fee to \$19. The proposed \$19 fee is commensurate with the Firearms Division's processing costs of \$19 per report or firearm, and does not exceed increases in the CCPI which equate to \$20.02 per report or firearm.

### Section 4003. POST Certification Fees.

Current statutory language authorizes the Firearms Division of the DOJ to charge a fee sufficient to reimburse its costs for determining whether a POST candidate is prohibited from possessing a firearm. The proposed regulation raises the current \$14 fee to \$19, commensurate with the Firearms Division's processing costs of \$19 per POST firearms eligibility certification.

Section 4004. Peace Officer Candidate Firearms Clearance Fees.

Current statutory language authorizes the Firearms Division of the DOJ to charge a fee sufficient to reimburse its costs for determining whether a peace officer candidate is prohibited from possessing a firearm. The proposed regulation raises the current \$14 fee to \$19, commensurate with the Firearms Division's processing costs of \$19 per peace officer candidate firearms clearance.

Section 4005. Security Guard Firearm Clearance Fees.

Current statutory language authorizes the Firearms Division of the DOJ to charge a fee sufficient to reimburse its costs for furnishing firearm eligibility information upon submission of a Security Guard Firearm Card application/renewal. The proposed regulation raises the current \$28 fee to \$38, commensurate with the Firearms Division's processing costs of \$38 per security guard firearms clearance.

Section 4006. CCW Fees.

Current statutory language authorizes the Firearms Division of the DOJ to charge a fee sufficient to reimburse its costs for furnishing firearm eligibility information upon submission of an application or renewal of a firearm license to carry a concealed weapon (CCW). Fee increases may not exceed legislatively approved cost-of-living adjustments. The proposed regulation raises the current initial permit application fees ranging from \$17-\$68 to \$22-\$88. The proposed fees are commensurate with the Firearms Division's processing costs of \$22-\$88 and do not exceed annual cost-of-living adjustments which equate to \$24.03-\$97.22.

Section 4007. Tear Gas Permit Application Fees.

Current statutory language authorizes the DOJ to charge a fee sufficient to reimburse its costs for processing tear gas permit applications. Fee increases may not exceed legislatively approved annual cost-of-living adjustments for the department's budget. The proposed regulation raises the initial permit application fee from \$177 to \$229 and the annual renewal fee from \$43 to \$61. The proposed fees are commensurate with the DOJ's processing costs of \$229 (initial) and \$61 (renewal) and do not exceed annual cost-of-living adjustments which equate to \$252.92 and \$61.44 respectively.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following determinations:

Mandate on local agencies or school districts: None

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts that a representative person or business would incur in reasonable compliance with the proposed action: Fee increases will have a cost impact on individuals seeking to obtain for the first time, or renew, various licenses, permits, and certifications issued by the DOJ, as well as persons acquiring a firearm(s). The \$5.00 DROS fee increase in Section 4001, could potentially have a minimal cost impact on gun dealers if there is a reduction in firearm sales. The fee increases do not exceed the DOJ's respective processing costs and do not exceed the respective increases in the California Consumer Price Index.

Significant effect on housing costs: None.

Small business determination: The DOJ has determined the fee increases will have a cost impact on individuals seeking to obtain for the first time, or renew, various licenses, permits, and certifications issued by the DOJ, as well as a cost impact on persons acquiring a firearm(s). The fee increases do not exceed the DOJ's respective processing costs and do not exceed the respective increases in the California Consumer Price Index.

Assessment regarding effect on jobs/businesses: The DOJ has determined the fee increases will have minimal, if any, impact on the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business with the State of California.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the DOJ must determine that no reasonable alternative considered by the DOJ, or that has otherwise been identified and brought to the attention of the DOJ would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations. Any person interested in presenting statements or arguments with respect to alternatives to the proposed regulations may do so during the written comment period.

## CONTACT PERSONS

Please direct inquiries concerning the proposed administrative action to Jeff Amador at (916) 227-3661. The backup contact person is Steven Teeters at (916) 227-0163. The mailing address for Jeff Amador and Steven Teeters is:

Department of Justice  
Firearms Licensing and Permits Section  
PO Box 820200  
Sacramento, CA 94203-0200

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The DOJ will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. The proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, and all information upon which the rulemaking is based are available at the DOJ website at <http://caag.state.ca.us/firearms/regs/>. You may also obtain copies by contacting Jeff Amador at the telephone number or address above.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the DOJ may adopt the proposed regulations substantially as described in this notice. If the DOJ makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the DOJ adopts the regulations as advised. The DOJ will accept written comments on the modified text for 15 days after the date on which they are made available. Copies of any modified text will be available at the DOJ website at <http://caag.state.ca.us/firearms/regs/>. You may also obtain a written copy of any modified text by contacting Steven Teeters at the telephone number or address above.

## **AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon completion, the final statement of reasons will be available at the DOJ website at <http://caag.state.ca.us/firearms/regs/>. You may also obtain a written copy of the final statement of reasons by contacting Steven Teeters at the telephone number or address above.

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in strikeout format, as well as the Final Statement of Reasons once it is completed, can be accessed through our website at <http://caag.state.ca.us/firearms/regs/>.



**B**

**TEXT OF REGULATIONS  
ORIGINALLY NOTICED  
TO THE PUBLIC**

## Title 11, Division 1, Chapter 13

### Article 4. Certificate of Eligibility

984.1. Fees. As authorized pursuant to subdivision (a) of section 12071 of the Penal Code, the Firearms Division fees for certificate of eligibility are as follows:

(a) Fee for initial application: \$22 Each application for a Certificate of Eligibility shall be accompanied by appropriate fees or the application will be returned immediately to the applicant unprocessed.

(b) Fee for renewal application: \$22 The appropriate fees are as follows:

(1) Initial Application:

Basic processing fee is \$17.00 plus a \$32.00 fingerprint card processing fee.

(2) Renewal Application:

Basic Processing fee is \$17.00.

Note: Authority cited: Sections ~~12070~~, 12071 and ~~12071.1~~, Penal Code. Reference: Sections ~~12070~~, 12071, and 12071.1, 12086, Penal Code and section 12101, Health and Safety Code.

## Title 11, Division 5, Chapter 1. Firearms Division Fees

4001. DROS Fees. As authorized pursuant to subdivisions (f) and (i) of section 12076 of the Penal Code, the Firearms Division fees for Dealers' Records of Sale (DROS) are as follows:

(a) (1) DROS fee for a single handgun: \$19

(2) DROS fee for each additional handgun submitted at the same time as first DROS: \$15

(b) DROS fee for one or more rifles or shotguns: \$19

Note: Authority cited: Section 12076, Penal Code. Reference: Sections 12072, 12076, 12083, 12084, and 12289, Penal Code.

4002. Miscellaneous Report Fees. As authorized pursuant to subdivisions (f) and (j) of section 12076 of the Penal Code, the Firearms Division fees for voluntary firearm ownership report, intra-familial transfer of handgun or handgun acquired by operation of law report, new resident's importation of handgun report, and curio and relic (C & R) collector's out-of-state acquisition of C & R handgun report are as follows:

- (a) Fee for voluntary firearm ownership report: \$19 per firearm reported
- (b) Fee for intra-familial transfer of handgun or handgun acquired by operation of law report: \$19 for one or more handguns reported
- (c) Fee for new resident's importation of handgun report: \$19 per handgun reported
- (d) Fee for C & R collector's out-of-state acquisition of C & R handgun report: \$19 per handgun reported

Note: Authority cited: Section 12076, Penal Code. Reference: Sections 12072, 12076, and 12078, Penal Code.

4003. POST Certification Fees. As authorized pursuant to section 13511.5 of the Penal Code, the Firearms Division fee for Peace Officer Standards Training (POST) firearms clearance certification is \$19.

Note: Authority cited: Section 13511.5, Penal Code. Reference: Section 13511.5, Penal Code.

4004. Peace Officer Candidate Firearms Clearance Fees. As authorized pursuant to subdivision (c) of section 832.15 of the Penal Code, the Firearms Division fee for peace officer candidate firearms clearance is \$19.

Note: Authority cited: Section 832.15, Penal Code. Reference: Section 832.15, Penal Code.

4005. Security Guard Firearms Clearance Fees. As authorized pursuant to subdivision (a) of section 7583.26 of the Business and Professions Code, the Firearms Division fees for security guard firearm clearances are as follows:

- (a) Initial fee for two year security guard firearms clearance: \$38
- (b) Renewal fee for two year security guard firearms clearance: \$38

Note: Authority cited: Section 7583.26, Business and Professions Code. Reference: Section 7583.26, Business and Professions Code.

4006. CCW Fees. As authorized pursuant to subdivision (a) of section 12054 of the Penal Code, the Firearms Division fees for licenses to carry concealed weapons (CCW) are as follows:

- (a) (1) Initial fee for 90 day employment CCW license: \$22
- (2) Renewal fee for 90 day employment CCW license: \$22
- (b) (1) Initial fee for 2 year resident CCW license: \$44
- (2) Renewal fee for for 2 year resident CCW license: \$44
- (c) (1) Initial fee for 3 year judicial CCW license: \$66
- (2) Renewal fee for 3 year judicial CCW license: \$66
- (d) (1) Initial fee for 4 year reserve peace officer CCW license: \$88
- (2) Renewal fee for 4 year reserve peace officer CCW license: \$88

Note: Authority cited: Section 12054, Penal Code. Reference: Section 12054, Penal Code.

4007. Tear Gas Permit Application Fees. As authorized pursuant to section 12424 of the Penal Code, the Department of Justice application fees for tear gas and tear gas weapons permits and protective tear gas system permits are as follows:

- (a) (1) Initial permit application fee for tear gas and tear gas weapons not intended or certified for personal self-defense purposes: \$229
- (2) Renewal permit application fee for tear gas and tear gas weapons not intended or certified for personal self-defense purposes: \$61
- (b) (1) Initial permit application fee for protective tear gas systems: \$229
- (2) Renewal permit application fee for protective tear gas systems: \$61

Note: Authority cited: Sections 12423 and 12424, Penal Code. Reference: Sections 12420, 12423, 12424, 12424.5, 12425, and 12426, Penal Code.

C

**INITIAL STATEMENT OF  
REASONS**

# INITIAL STATEMENT OF REASONS

## **Section 948.1. Fees.**

### Specific purpose of the regulation

The purpose of amending this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing Certificate of Eligibility (COE) applications. The proposed amendment raises the current \$17 fee to \$22, sufficient to cover the Firearms Division's processing costs of \$22 per COE. Due to a change in the applicant fingerprint card process, the Firearms Division no longer collects the fingerprint card processing fee as part of the COE application process. Rather, prior to submitting a COE application to the Firearms Division, the applicant must submit fingerprint impressions independently at a DOJ-approved Live Scan station, at which time the applicant must pay the respective fingerprint processing fees as statutorily authorized. Accordingly, the amended regulation reflects only the Firearms Division fee.

## **Section 4001. DROS Fees.**

### Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing a Dealer's Record of Sale (DROS). The proposed regulation raises the current \$14 DROS fee to \$19. The \$19 fee is sufficient to cover the Firearms Division's processing costs of \$19 per DROS, and does not exceed increases in the California Consumer Price Index (CCPI) that equate to \$20.02 per DROS.

## **Section 4002. Miscellaneous Report Fees.**

### Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fees are commensurate with the actual cost of processing of various firearms related forms and reports. The proposed regulation raises the current \$14 fees to \$19. The \$19 fees are sufficient to cover the Firearms Division's processing costs of \$19 per report or firearm, and do not exceed increases in the California Consumer Price Index which equate to \$20.02 per report or firearm.

## **Section 4003. POST Certification Fees.**

### Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for POST candidates. The proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per POST firearms eligibility certification.

**Section 4004. Peace Officer Candidate Firearms Clearance Fees.**

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for peace officer candidates. The proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per peace officer candidate firearms clearance.

**Section 4005. Security Guard Firearms Clearance Fees.**

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for Security Guard Firearm Card applications. The proposed regulation raises the current \$28 fee to \$38, sufficient to administer Firearms Division's processing costs of \$38 per security guard firearms clearance.

**Section 4006. CCW Fees.**

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for carry a concealed weapon (CCW) license applications. The proposed regulation raises the current initial permit application fees ranging from \$17-\$68 to \$22-\$88. The proposed fees are sufficient to cover the Firearms Division's processing costs of \$22-\$88 and do not exceed increases in the California Consumer Price Index which equate to \$24.03-\$97.22.

**Section 4007. Tear Gas Permit Application Fees.**

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Department of Justice fee is commensurate with the actual cost of processing tear gas permit applications. The proposed regulation raises the initial permit application fee from \$177 to \$229 and the annual renewal fee from \$43 to \$61. The proposed fees are sufficient to cover the DOJ's processing costs of \$229 (initial) and \$61 (renewal) and do not exceed increases in the California Consumer Price Index which equate to \$252.92 and \$61.44.

**Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007**

Factual basis

The Firearms Division of the Department of Justice (DOJ) is authorized to charge statutorily mandated fees to cover its processing costs for processing Dealer's Records of Sale (DROS) and other firearms related reports, clearances, and licenses specified in Penal Code Sections, 832.15, 12054, 12071, 12076, 12423, 12424, and 13511.5, and Business and Professions Code Section

7583.26. Four of the fee increases (sections 4001, 4002, 4006, 4007) are additionally constrained to rates not exceeding increases in the California Consumer Price Index (CCPI). In all cases, the Firearms Division is adopting fee increases only as needed to cover actual costs.

In processing these reports, licenses, etc., the Firearms Division must conduct a Basic Firearms Eligibility Check (BFEC) to insure that subjects are not prohibited from owning/possessing firearms pursuant to Penal Code Sections 12021 and 12021.1, Welfare and Institutions Code Sections 8100 and 8103, and Title 18 United States Code, Section 922(t). Workload related to conducting a BFEC has increased as a result of the addition of new state/federal firearm prohibition categories and watch list partly resultant from September 11, 2001 terrorist attacks. Also, the volume of manual reviews needed to ensure a complete and competent analysis also increased as result of a boom in the number of applicant records maintained on file in the DOJ criminal history system which often match/hit against an applicant BFEC inquiry. For example, in FY 2000-01 of the 365,717 DROS transactions, 275,568 required a full review (75%). That compares to FY 2003-04, where of the 300,638 DROS transactions, 297,363 required a full review (99%). As a result, although the volume of DROS transactions has slowly decreased, the average time spent on each transaction has increased.

**Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007**  
**Technical, theoretical, and/or empirical study, report or documents**

The California Consumer Price Index (CCPI) was used to ensure the fee increases in sections 4001, 4002, 4006, and 4007 do not exceed statutory limits based on increases in the CCPI. The CCPI information is available on the Division of Labor Statistics and Research website at [http://www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html).

**Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007**  
**Specific technologies and new equipment**

These regulations do not mandate the use of specific technologies or new equipment.

**Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007**  
**Reasonable Alternatives to the Regulation and the Agency's Reasons for Rejecting Them.**

No other reasonable alternatives were presented to or considered by the Firearms Division that would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome. The alternative of lower fees than those currently proposed was considered but rejected by the Firearms Division because it would require a reduction and/or elimination of services.

**Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007**  
**Reasonable Alternatives to the Proposed Regulatory Action That Would Lessen Any Adverse Impact on Small Businesses and the Agency's Reasons for Rejecting Them.**



The alternative of lower fees than those currently proposed was considered but rejected by the Firearms Division because it would require a reduction and/or elimination of services. The Department finds that the proposed regulation would not have an adverse impact on small businesses. Therefore, no such alternatives were identified and rejected.

Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007

Evidence Supporting Finding of No Significant Adverse Economic Impact on Any Business.

The Firearms Division determined the proposed regulations will not have a significant adverse economic impact because the fees are only a tiny fraction of the total overhead costs of running a business. The proposed DROS fee increase in Section 4001 would be the most likely to have an adverse impact on business (gun dealers) because of the potential reduction in firearm sales. However, a person who intends to buy even the least expensive firearm is not likely to be dissuaded from making the purchase because of the \$5 increase in DROS fees. Consequently, the Firearms Division believes the DROS fee increase will not cause any significant reduction in firearm sales. Furthermore, because the Firearms Division is statutorily mandated to assess fees sufficient to reimburse its costs, any potential adverse impact is the result of the statutes and not the regulations.

**Economic and Fiscal Impact Statement  
Department of Justice  
Fee Increase Regulations**

<u>PROJECTED FISCAL DETAIL EXPENDITURES</u>	<u>FY 04-05</u>	<u>FY 05-06</u>	<u>FY 06-07</u>
<b><u>PERSONAL SERVICES</u></b>			
Salaries	\$4,007,000	\$4,007,000	\$4,007,000
Staff Benefits	\$1,373,000	\$1,373,000	\$1,373,000
<b>Total Personal Services</b>	<b>\$5,380,000</b>	<b>\$5,380,000</b>	<b>\$5,380,000</b>
<b><u>OPERATING EXPENSES &amp; EQUIPMENT</u></b>			
General Expense	\$64,000	\$64,000	\$64,000
Printing	\$44,000	\$44,000	\$44,000
Communications	\$116,000	\$116,000	\$116,000
Travel In-State	\$108,000	\$108,000	\$108,000
Training	\$6,000	\$6,000	\$6,000
Facilities	\$391,000	\$391,000	\$391,000
Consulting Internal	\$11,000	\$11,000	\$11,000
Consulting External	\$968,000	\$968,000	\$968,000
Data Processing	\$148,000	\$148,000	\$148,000
Equipment	\$9,000	\$9,000	\$9,000
Central Admin Services	\$351,000	\$351,000	\$351,000
Other Items of Expense	\$96,000	\$96,000	\$96,000
Departmental Services	\$744,000	\$744,000	\$744,000
<b>Total Operating Expenses &amp; Equipment (1)</b>	<b>\$3,056,000</b>	<b>\$3,056,000</b>	<b>\$3,056,000</b>
<b>Grand Total Expenditures</b>	<b>\$8,436,000</b>	<b>\$8,436,000</b>	<b>\$8,436,000</b>
<b><u>PROJECTED FISCAL DETAIL REVENUE (2) (3)</u></b>	<b>\$7,986,000</b>	<b>\$8,674,000</b>	<b>\$8,674,000</b>

(1) Projected expenditures based on FY 03-04 information.

(2) FY 04-05 revenue reflects an 8 month fee increase.

(3) Revenue based on:

325,000 DROS transactions @ \$19

5,000 POST transactions @ \$19

23,000 Peace Officer transactions @ \$19

18,000 Security Guard transactions @ \$19

6,000 Handgun Reporting transactions @ \$19

4,000 COE transactions @ \$22

23,000 CCW transactions @ \$22

\$917,000 in "Other" Revenue not included in fee increase proposal

**D**

**WRITTEN COMMENTS  
SUBMITTED DURING 45-  
DAY COMMENT PERIOD**

**VIA FACSIMILE, E-MAIL, AND FEDERAL EXPRESS**

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Department of Justice  
Firearms License and Permit Section  
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Sacramento, CA 94203-02000  
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Email: [Jeff.Amador@doj.ca.gov](mailto:Jeff.Amador@doj.ca.gov)

**Re: Opposition to Fee Increase Regulations**

Mr. Amador,

I write on behalf of the National Rifle Association, the California Rifle and Pistol Association and the California Association of Firearm Retailers in opposition to the proposed fee increase regulations. The increases are unlawful, as they exceed the statutorily authorized increase amount, as described below.

The Firearms Division of the California Department of Justice (DOJ) is authorized to charge statutorily mandated fees to cover its costs for processing Dealer's Records of Sale (DROS) and other firearms related reports, clearances, and licenses specified in Penal Code Sections, 832.15, 12054, 12071, 12076, 12423, 12424, and 13511.5, and Business and Professions Code Section 7583.26. Each of these provisions, however, also limits what fees the DOJ may implement.

Four of the fee increases (sections 4001, 4002, 4006, 4007) are constrained to rates not exceeding increases in the California Consumer Price Index (CCPI). The DOJ, however, has increased the fee at a rate higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempt to do otherwise is unlawful.

**Certificate of Eligibility**

**Section 984.1**

The purported purpose of amending this regulation is to ensure that the Firearms Division fee is commensurate with *the actual cost of processing* Certificate of Eligibility (COE) applications.

The DOJ states that the "proposed amendment raises the current \$17 fee to \$22, sufficient to cover the Firearms Division's processing costs of \$22 per COE." It explains the

deletion of the \$32.00 fingerprint card processing fee from the current regulation as follows:

Due to a change in the applicant fingerprint card process, the Firearms Division no longer collects the fingerprint card processing fee of \$32.00 as part of the COE application process. Rather, prior to submitting a COE application to the Firearms Division, the applicant must submit fingerprint impressions independently at a DOJ-approved Live Scan station, at which time the applicant must pay the respective fingerprint processing fees as statutorily authorized.

Accordingly, the amended regulation reflects only the \$5.00 increase in the Firearms Division fee.

The statute that regulates this fee is Penal Code section 12071(a)(5). Subdivision (a)(5) requires that the DOJ adopt regulations to administer the COE program and recover the *full costs of administering the program* by imposing fees assessed to applicants who apply for those certificates.

Our clients object to this proposed regulation to the extent that the fee increase allows the recovery of the "full costs of administering the [COE] program."

#### Dealer's Record of Sale Fees

##### Section 4001

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the *actual cost of processing* a Dealer's Record of Sale (DROS).

The proposed regulation raises the current \$14 DROS fee to \$19. The DOJ states that the "\$19 fee is sufficient to cover the Firearms Division's processing costs of \$19 per DROS, [\$15.00 per DROS for any handgun purchased in a single transaction, excluding the first handgun] and does not exceed increases in the CCPI (CCPI) that equate to \$20.02 per DROS."

The statute that applies to this fee is Penal Code section 12076, subdivisions (f) and (i). Subdivision (f)(1) allows the DOJ to charge a fee sufficient to reimburse it for specified actions. The fee established by Penal Code section 12076(f) is \$14 and may be increased *only at a rate not to exceed* any increase in the CCPI as compiled and reported by the California Department of Industrial Relations. The specified actions under Penal Code section (f)(1) are as follows:

- The *actual costs* associated with the *preparation, sale, processing, and filing of forms or reports* required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.
- The *actual processing costs* associated with the *submission of a Dealer's Record of Sale to the department by a dealer* or of the submission of a Law Enforcement Firearms Transfer form to the department by a law enforcement agency acting

pursuant to *Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.*

- *The actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (l) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.*
- *The actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).*

Thus, the DOJ collect the fee to reimburse for only the above specified actions and may increase the fee at a rate not higher than increases in the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI increase by seeking retroactively to compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based upon **ONLY** the *increase in the CCPI* for that fiscal year. Any attempt do otherwise is unlawful.

Penal Code section 12076(f) also provides that any of the above costs incurred by the DOJ to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision; however, *no fees shall be charged to the dealer pursuant to subdivision (e).* Thus, there can be no duplication of fees, as would happen if fees were charged under both Penal Code section 12076 subdivisions (f) and (e).

Though the proposed regulation applies a fee to *each* handgun purchased, even if they are all purchased at the same time, such conduct is allowed under certain circumstances identified in Penal Code section 12076 subdivisions (i) and (j).

Penal Code section 12076(i)(1) mandates that only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of *any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.* Penal Code section 12076(i)(2) addresses single transactions of pistols, revolvers, or other firearms capable of being concealed upon the person, by requiring that the *department charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.*

The DOJ addressed Penal Code section 12076(i) by reducing the fee charged for the second handgun and any additional handguns thereafter purchased in the same transaction.

The DOJ has also addressed Penal Code section 12076 subdivision (j) in proposed regulation section 4002 below.

Our clients object to this proposed regulation to the extent that the recovery of *the actual cost of processing a Dealer's Record of Sale* exceeds the allowable reimbursement for

the specified actions described above and within Penal Code section 12076. Our clients also object to this proposed regulation to the extent that it exceeds that allowable cost of living adjustment in the fee by exceeding the CCPI cost of living adjustment.

### Miscellaneous Report Fees

#### Section 4002

The purpose of this regulation is to ensure that the Firearms Division fees are commensurate with the actual cost of processing of various firearms related forms and reports. The proposed regulation raises the current \$14 fees to \$19. The \$19 fees are sufficient to cover the Firearms Division's processing costs of \$19 per report or firearm, and do not exceed increases in the CCPI, which equate to \$20.02 per report or firearm.

As authorized pursuant to subdivisions (f) and (j) of section 12076 of the Penal Code, the DOJ properly apply a single transaction fee for specified transactions, including for voluntary firearm ownership reports, intra-familial transfers of handguns or handguns acquired by operation of law reports, new resident's importation of handgun reports, and curio and relic (C&R) collector's out-of-state acquisition of C&R handgun reports.

Also, the increase in fees is subject to the same restrictions as those in proposed regulation section 4001. Thus, the DOJ may use the fees for specified actions and may increase them at a rate not higher than the CCPI increase. The DOJ, however, has increased the fee at a rate higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based *ONLY* upon the *increase in the CCPI* for the fiscal year in which the increase occurs. Any attempts do otherwise is unlawful.

Our clients object to this proposed regulation to the extent that the fee increase exceeds that allowed by Penal Code section 12076 by exceeding the cost of living adjustment in the CCPI.

### POST Certification Fees

#### Section 4003

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for POST candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per POST firearms eligibility certification."

The statutory law that applies to this fee is Penal Code section 13511.1: Penal Code section 13511.5 requires each applicant for admission to a basic course of training certified by the Commission on Peace Officer Standards and Training that includes the carrying and use of firearms (as prescribed by subdivision (a) of Section 832 and subdivision (a) of Section 832.3, who is not sponsored by a local or other law

enforcement agency, or is not a peace officer employed by a state or local agency, department, or district ) to submit written certification from the DOJ pursuant.

Nothing in Penal Code section 13511.5 permits the DOJ to charge fees to recover the processing costs of furnishing firearm eligibility information for POST Candidates.

#### Peace Officer Candidate Firearms Clearance Fees

##### Section 4004

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for peace officer candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per peace officer candidate firearms clearance."

The statute law that governs this fee is Penal Code section 832.15(a). Subdivision (a) requires the DOJ to notify a state or local agency as to whether an individual applying for a position as a peace officer, as defined by this chapter, is prohibited from possessing, receiving, owning, or purchasing a firearm pursuant to Sections 12021 or 12021.1 of the Penal Code, or Sections 8100 or 8103 of the Welfare and Institutions Code. The notice shall indicate the date that the prohibition expires.

Penal Code section 832.15(c) allows the DOJ to charge fees, but it limits their ability to charge fees so that the DOJ may charge only the applicant a fee sufficient to reimburse its costs for furnishing the information specified in subdivision (a).

The purpose for the increase states that it applies to the "processing costs" for peace officer candidate firearms clearance. To the extent that the fees being charged exceed the costs of furnishing state or local agencies with information pertaining to the applicants' ability to possess, receive, own or purchase a firearm pursuant to 12021 or 12021.1, our clients object to the increase.

#### Security Guard Firearm Clearance Fees

##### Section 4005

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for Security Guard Firearm Card applications.

The DOJ states that the "proposed regulation raises the current \$28.00 fee to \$38.00, sufficient to administer Firearms Division's processing costs of \$38.00 per security guard firearms clearance."

The statute that governs this fee is Business and Professions Code section 7583.26(a). Subdivision (a) allows the DOJ to charge the bureau a fee sufficient to reimburse the department's costs for furnishing firearm eligibility information upon submission of the



*application for issuance or renewal of a firearm permit. But, Business and Professions Code section 7583.26(a) also prohibits a fee from being charged if it exceeds actual costs for system development, maintenance, and processing necessary to provide this service.*

Our clients object to this proposed regulation to the extent that the increase in fees from \$28.00 to \$38.00 exceeds the actual cost for system development, maintenance, and processing necessary for the furnishing of firearm eligibility information upon submission of applications for issuance or renewal of security guard firearm cards.

#### CCW Fees

#### Section 4006

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for carry a concealed weapon (CCW) license applications.

The proposed regulation raises the current initial permit application fees ranging from \$17-\$68 to \$22-\$88. The DOJ states that the "proposed fees are sufficient to cover the Firearms Division's processing costs of \$22-\$88 and do not exceed increases in the CCPI which equate to \$24.03-\$97.22."

The statute that governs this fee is Penal Code section 12054(a). Subdivision (a) requires that each applicant for a new license or for the renewal of a license to pay at the time of filing his or her application a fee determined by the DOJ. But, Penal Code section 12054 also limits the fee that may be charged to an amount that does *not to exceed the application processing costs of the DOJ for the direct costs of furnishing the report required by Section 12052*. Penal Code section 12052 requires that the DOJ furnish the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Penal Code section 12054(a) also limits the fee increase rate to an amount *not to exceed the legislatively approved annual cost-of-living adjustments* for the department's budget.

Thus, the fees may increase only at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may **ONLY** increase their fee based upon the *increase in the CCPI* for that fiscal year. Any attempts do otherwise is unlawful.

Our clients object to the proposed regulation to the extent that DOJ's "actual cost of furnishing firearm eligibility information" for a CCW exceeds the "processing costs of the DOJ for the direct costs of furnishing the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office,

including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Our clients also object to the increase in fees on the grounds that the increase exceeds the approved annual costs of living adjustments for the applicable period.

**Tear Gas Permit Application Fees**  
**Section 4007**

The purported purpose of this regulation is to ensure that the DOJ fee is commensurate with the actual cost of processing tear gas permit applications.

The proposed regulation raises the initial permit application fee from \$177 to \$229 and the annual renewal fee from \$43 to \$61. The DOJ states that the "proposed fees are sufficient to cover the DOJ's processing costs of \$229 (initial) and \$61 (renewal) and do not exceed increases in the CCPI which equate to \$252.92 and \$61.44."

The statutory law that applies to this fee is Penal Code section 12424. Penal Code section 12424 requires each applicant for a Tear Gas Permit to pay at the time of filing his or her application a fee determined by the DOJ *not to exceed the application processing costs* of the DOJ. Penal Code section 12424 also requires that the payment of a permit renewal fee *not exceed the application processing costs* of the DOJ.

After the department establishes fees sufficient to reimburse the department for processing costs, fees charged *shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments* for the department's budget.

Thus, the fees may only be used for the above specified actions and may only increase at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the *increase in the CCPI* for that fiscal year. Any attempts do otherwise is unlawful.

Our clients object to the proposed regulation to the extent that the fee exceeds the DOJ's application processing costs. Our clients also object to the proposed regulation because the increases exceed the legislatively approved annual cost-of-living adjustments for the applicable period.

Very truly yours,

Trutanich-Michel, LLP

C.D. Michel

**From:** "John W. Mustafa" <jmustafa@t-mlawyers.com>  
**To:** <jeff.amador@doj.ca.gov>  
**Date:** 2/22/2005 5:02:33 PM  
**Subject:** Opposition to Fee Increase Regulations

VIA FACSIMILE, E-MAIL, AND FEDERAL EXPRESS

Jeff Amador, Field Representative

Department of Justice

Firearms License and Permit Section

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**Re:** Opposition to Fee Increase Regulations

Mr. Amador,

I write on behalf of the National Rifle Association, the California Rifle and Pistol Association and the California Association of Firearm Retailers in opposition to the proposed fee increase regulations. The increases are unlawful, as they exceed the statutorily authorized increase amount, as described below.

The Firearms Division of the California Department of Justice (DOJ) is authorized to charge statutorily mandated fees to cover its costs for processing Dealer's Records of Sale (DROS) and other firearms related reports, clearances, and licenses specified in Penal Code Sections, 832.15, 12054, 12071, 12076, 12423, 12424, and 13511.5, and Business and Professions Code Section 7583.26. Each of these provisions, however, also limits what fees the DOJ may implement.

Four of the fee increases (sections 4001, 4002, 4006, 4007) are constrained to rates not exceeding increases in the California Consumer Price Index (CCPI). The DOJ, however, has increased the fee at a rate

higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempt to do otherwise is unlawful.

#### Certificate of Eligibility

##### Section 984.1

The purported purpose of amending this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing Certificate of Eligibility (COE) applications.

The DOJ states that the "proposed amendment raises the current \$17 fee to \$22, sufficient to cover the Firearms Division's processing costs of \$22 per COE." It explains the deletion of the \$32.00 fingerprint card processing fee from the current regulation as follows:

Due to a change in the applicant fingerprint card process, the Firearms Division no longer collects the fingerprint card processing fee of \$32.00 as part of the COE application process. Rather, prior to submitting a COE application to the Firearms Division, the applicant must submit fingerprint impressions independently at a DOJ-approved Live Scan station, at which time the applicant must pay the respective fingerprint processing fees as statutorily authorized.

Accordingly, the amended regulation reflects only the \$5.00 increase in the Firearms Division fee.

The statute that regulates this fee is Penal Code section 12071(a)(5). Subdivision (a)(5) requires that the DOJ adopt regulations to administer the COE program and recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

Our clients object to this proposed regulation to the extent that the fee increase allows the recovery of the "full costs of administering the [COE] program."

Dealer's Record of Sale Fees

Section 4001

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing a Dealer's Record of Sale (DROS).

The proposed regulation raises the current \$14 DROS fee to \$19. The DOJ states that the "\$19 fee is sufficient to cover the Firearms Division's processing costs of \$19 per DROS, [\$15.00 per DROS for any handgun purchased in a single transaction, excluding the first handgun] and does not exceed increases in the CCPI (CCPI) that equate to \$20.02 per DROS."

The statute that applies to this fee is Penal Code section 12076, subdivisions (f) and (i). Subdivision (f)(1) allows the DOJ to charge a fee sufficient to reimburse it for specified actions. The fee established by Penal Code section 12076(f) is \$14 and may be increased only at a rate not to exceed any increase in the CCPI as compiled and reported by the California Department of Industrial Relations. The specified actions under Penal Code section (f)(1) are as follows:

\* The actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

\* The actual processing costs associated with the submission of a Dealer's Record of Sale to the department by a dealer or of the submission of a Law Enforcement Firearms Transfer form to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

\* The actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (l) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

\* The actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

Thus, the DOJ collect the fee to reimburse for only the above specified actions and may increase the fee at a rate not higher than increases in the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI increase by seeking retroactively to compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may

increase their fee based upon ONLY the increase in the CCPI for that fiscal year. Any attempt do otherwise is unlawful.

Penal Code section 12076(f) also provides that any of the above costs incurred by the DOJ to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision; however, no fees shall be charged to the dealer pursuant to subdivision (e). Thus, there can be no duplication of fees, as would happen if fees were charged under both Penal Code section 12076 subdivisions (f) and (e).

Though the proposed regulation applies a fee to each handgun purchased, even if they are all purchased at the same time, such conduct is allowed under certain circumstances identified in Penal Code section 12076 subdivisions (i) and (j).

Penal Code section 12076(i)(1) mandates that only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms. Penal Code section 12076(i)(2) addresses single transactions of pistols, revolvers, or other firearms capable of being concealed upon the person, by requiring that the department charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

The DOJ addressed Penal Code section 12076(i) by reducing the fee charged for the second handgun and any additional handguns thereafter purchased in the same transaction.

The DOJ has also addressed Penal Code section 12076 subdivision (j) in proposed regulation section 4002 below.

Our clients object to this proposed regulation to the extent that the recovery of the actual cost of processing a Dealer's Record of Sale exceeds the allowable reimbursement for the specified actions described above and within Penal Code section 12076. Our clients also object to this proposed regulation to the extent that it exceeds that allowable cost of living adjustment in the fee by exceeding the CCPI cost of living adjustment.

Miscellaneous Report Fees

Section 4002

The purpose of this regulation is to ensure that the Firearms Division fees are commensurate with the actual cost of processing of various firearms related forms and reports. The proposed regulation raises the current \$14 fees to \$19. The \$19 fees are sufficient to cover the Firearms Division's processing costs of \$19 per report or firearm, and do not exceed increases in the CCPI, which equate to \$20.02 per report or firearm.

As authorized pursuant to subdivisions (f) and (j) of section 12076 of the Penal Code, the DOJ properly apply a single transaction fee for specified transactions, including for voluntary firearm ownership reports, intra-familial transfers of handguns or handguns acquired by operation of law reports, new resident's importation of handgun reports, and curio and relic (C&R) collector's out-of-state acquisition of C&R handgun reports.

Also, the increase in fees is subject to the same restrictions as those in proposed regulation section 4001. Thus, the DOJ may use the fees for specified actions and may increase them at a rate not higher than the CCPI increase. The DOJ, however, has increased the fee at a rate higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempts do otherwise is unlawful.

Our clients object to this proposed regulation to the extent that the fee increase exceeds that allowed by Penal Code section 12076 by exceeding the cost of living adjustment in the CCPI.

POST Certification Fees

Section 4003

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for POST candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per POST firearms eligibility certification."

The statutory law that applies to this fee is Penal Code section 13511.1. Penal Code section 13511.5 requires each applicant for admission to a basic course of training certified by the Commission on Peace Officer Standards and Training that includes the carrying and use of firearms (as prescribed by subdivision (a) of Section 832 and subdivision (a) of Section 832.3, who is not sponsored by a local or other law enforcement agency, or is not a peace officer employed by a state or local agency, department, or district ) to submit written certification from the DOJ pursuant.

Nothing in Penal Code section 13511.5 permits the DOJ to charge fees to recover the processing costs of furnishing firearm eligibility information for POST Candidates.

#### Peace Officer Candidate Firearms Clearance Fees

##### Section 4004

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for peace officer candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per peace officer candidate firearms clearance."

The statute law that governs this fee is Penal Code section 832.15(a). Subdivision (a) requires the DOJ to notify a state or local agency as to whether an individual applying for a position as a peace officer, as defined by this chapter, is prohibited from possessing, receiving, owning, or purchasing a firearm pursuant to Sections 12021 or 12021.1 of the Penal Code, or Sections 8100 or 8103 of the Welfare and Institutions Code. The notice shall indicate the date that the prohibition expires.

Penal Code section 832.15(c) allows the DOJ to charge fees, but it limits their ability to charge fees so that the DOJ may charge only the applicant a fee sufficient to reimburse its costs for furnishing the information specified in subdivision (a).

The purpose for the increase states that it applies to the "processing costs" for peace officer candidate firearms clearance. To the extent that the fees being charged exceed the costs of furnishing state or



local agencies with information pertaining to the applicants ability to possess, receive, own or purchase a firearm pursuant to 12021 or 12021.1, our clients object to the increase.

Security Guard Firearm Clearance Fees

Section 4005

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for Security Guard Firearm Card applications.

The DOJ states that the "proposed regulation raises the current \$28.00 fee to \$38.00, sufficient to administer Firearms Division's processing costs of \$38.00 per security guard firearms clearance."

The statute that governs this fee is Business and Professions Code section 7583.26(a). Subdivision (a) allows the DOJ to charge the bureau a fee sufficient to reimburse the department's costs for furnishing firearm eligibility information upon submission of the application for issuance or renewal of a firearm permit. But, Business and Professions Code section 7583.26(a) also prohibits a fee from being charged if it exceeds actual costs for system development, maintenance, and processing necessary to provide this service.

Our clients object to this proposed regulation to the extent that the increase in fees from \$28.00 to \$38.00 exceeds the actual cost for system development, maintenance, and processing necessary for the furnishing of firearm eligibility information upon submission of applications for issuance or renewal of security guard firearm cards.

CCW Fees

Section 4006

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for carry a concealed weapon (CCW) license applications.

The proposed regulation raises the current initial permit application fees ranging from \$17-\$68 to \$22-\$88. The DOJ states that the "proposed fees are sufficient to cover the Firearms Division's processing costs of \$22-\$88 and do not exceed increases in the CCPI which equate to

\$24.03-\$97.22."

The statute that governs this fee is Penal Code section 12054(a). Subdivision (a) requires that each applicant for a new license or for the renewal of a license to pay at the time of filing his or her application a fee determined by the DOJ. But, Penal Code section 12054 also limits the fee that may be charged to an amount that does not to exceed the application processing costs of the DOJ for the direct costs of furnishing the report required by Section 12052. Penal Code section 12052 requires that the DOJ furnish the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Penal Code section 12054(a) also limits the fee increase rate to an amount not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

Thus, the fees may increase only at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the increase in the CCPI for that fiscal year. Any attempts do otherwise is unlawful.

Our clients object to the proposed regulation to the extent that DOJ's "actual cost of furnishing firearm eligibility information" for a CCW exceeds the "processing costs of the DOJ for the direct costs of furnishing the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Our clients also object to the increase in fees on the grounds that the increase exceeds the approved annual costs of living adjustments for the applicable period.

Tear Gas Permit Application Fees

Section 4007

The purported purpose of this regulation is to ensure that the DOJ fee is commensurate with the actual cost of processing tear gas permit applications.

The proposed regulation raises the initial permit application fee from \$177 to \$229 and the annual renewal fee from \$43 to \$61. The DOJ states that the "proposed fees are sufficient to cover the DOJ's processing costs of \$229 (initial) and \$61 (renewal) and do not exceed increases in the CCPI which equate to \$252.92 and \$61.44."

The statutory law that applies to this fee is Penal Code section 12424. Penal Code section 12424 requires each applicant for a Tear Gas Permit to pay at the time of filing his or her application a fee determined by the DOJ not to exceed the application processing costs of the DOJ. Penal Code section 12424 also requires that the payment of a permit renewal fee not exceed the application processing costs of the DOJ.

After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

Thus, the fees may only be used for the above specified actions and may only increase at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the increase in the CCPI for that fiscal year. Any attempts do otherwise is unlawful.

Our clients object to the proposed regulation to the extent that the fee exceeds the DOJ's application processing costs. Our clients also object to the proposed regulation because the increases exceed the legislatively approved annual cost-of-living adjustments for the applicable period.

Very truly yours,

Trutanich-Michel, LLP

C.D. Michel

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Gun law information: [www.calgunlaws.com](http://www.calgunlaws.com)  
<[blocked::http://www.calgunlaws.com/](http://www.calgunlaws.com/)>

CC: "NRA.Special Projects (607)" <[607.Interwoven@wcs.legal.local](mailto:607.Interwoven@wcs.legal.local)>

**E**

**PUBLIC HEARING**

# Transcript of Public Hearing (02/ 22/2005) on DOJ Firearms Division Fees

## OPENING

The Firearms Division of the Department of Justice is hosting today's hearing to receive public comments relative to proposed regulations regarding DOJ Firearms Division Fees. I'm Jeff Amador of the Firearms Division and I will be the Department of Justice hearing officer for today's proceeding. For the record, it is Tuesday, February 22nd, 2005 and the time is 10:00 a.m. For official record keeping purposes, the entire hearing is being tape recorded. A complete transcript from the recording and any exhibits or evidence presented during today's hearing will be included in the rulemaking file submitted to the Office of Administrative Law. This is a quasi-legislative hearing in which the Department is carrying out a mandated rulemaking function delegated by the Legislature. Subsequent to today's hearing, the Department will prepare a Final Statement of Reasons that will include a summary of each relevant comment or recommendation, and the Department's response.

## CLOSING

For the record, please note that today's hearing began at 10:00 a.m. as scheduled and it is now 11:00 a.m. Because nobody has appeared to make oral comments, I hereby close the oral portion of today's hearing. Written comments will be accepted at the Department of Justice offices at 4949 Broadway, until 5:00 p.m., at which time the public comment period will formally close.

**F**

**UPDATED INFORMATIVE  
DIGEST**

## UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.



**G**

**FINAL STATEMENT OF  
REASONS**

# FINAL STATEMENT OF REASONS

## Update of Initial Statement of Reasons

There is no information to be updated. All of the information provided in the Initial Statement of Reasons is accurate and current. Sections 984.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007 were adopted as originally proposed.

## Summary of Comments Received

The Department received one facsimile letter and e-mail submitted on behalf of the National Rifle Association, the California Rifle and Pistol Association and the California Association of Firearm Retailers. Attachment 1 is said letter in both formats. Attachment 2 comprises a summarization of their relevant comments and the Department's response to the relevant comments expressed in the identical communications.

## Alternatives Determination

No alternative considered by the Department would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected persons than the proposed regulation.

## Local Mandate Determination

The proposed regulation does not impose any mandate on local agencies or school districts.

**FINAL STATEMENT OF REASONS**

**ATTACHMENT 1**

**C.D. Michel, Esq., Facsimile Letter and E-Mail  
Commenting on the Proposed Regulations on Behalf  
of the National Rifle Association, the California Rifle  
and Pistol Association, and the California Association  
of Firearms Retailers**

**VIA FACSIMILE, E-MAIL, AND FEDERAL EXPRESS**

Jeff Amador, Field Representative  
Department of Justice  
Firearms License and Permit Section  
PO Box 820200  
Sacramento, CA 94203-02000  
Fax: (916) 227-3700  
Email: [Jeff.Amador@doj.ca.gov](mailto:Jeff.Amador@doj.ca.gov)

**Re: Opposition to Fee Increase Regulations**

Mr. Amador,

I write on behalf of the National Rifle Association, the California Rifle and Pistol Association and the California Association of Firearm Retailers in opposition to the proposed fee increase regulations. The increases are unlawful, as they exceed the statutorily authorized increase amount, as described below.

The Firearms Division of the California Department of Justice (DOJ) is authorized to charge statutorily mandated fees to cover its costs for processing Dealer's Records of Sale (DRoS) and other firearms related reports, clearances, and licenses specified in Penal Code Sections, 832.15, 12054, 12071, 12076, 12423, 12424, and 13511.5, and Business and Professions Code Section 7583.26. Each of these provisions, however, also limits what fees the DOJ may implement.

Four of the fee increases (sections 4001, 4002, 4006, 4007) are constrained to rates not exceeding increases in the California Consumer Price Index (CCPI). The DOJ, however, has increased the fee at a rate higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempt to do otherwise is unlawful.

**Certificate of Eligibility**

**Section 984.1**

The purported purpose of amending this regulation is to ensure that the Firearms Division fee is commensurate with *the actual cost of processing* Certificate of Eligibility (COE) applications.

The DOJ states that the "proposed amendment raises the current \$17 fee to \$22, sufficient to cover the Firearms Division's processing costs of \$22 per COE." It explains the

deletion of the \$32.00 fingerprint card processing fee from the current regulation as follows:

Due to a change in the applicant fingerprint card process, the Firearms Division no longer collects the fingerprint card processing fee of \$32.00 as part of the COE application process. Rather, prior to submitting a COE application to the Firearms Division, the applicant must submit fingerprint impressions independently at a DOJ-approved Live Scan station, at which time the applicant must pay the respective fingerprint processing fees as statutorily authorized.

Accordingly, the amended regulation reflects only the \$5.00 increase in the Firearms Division fee.

The statute that regulates this fee is Penal Code section 12071(a)(5). Subdivision (a)(5) requires that the DOJ adopt regulations to administer the COE program and recover the *full costs of administering the program* by imposing fees assessed to applicants who apply for those certificates.

Our clients object to this proposed regulation to the extent that the fee increase allows the recovery of the "full costs of administering the [COE] program."

#### Dealer's Record of Sale Fees

##### Section 4001

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the *actual cost of processing* a Dealer's Record of Sale (DROS).

The proposed regulation raises the current \$14 DROS fee to \$19. The DOJ states that the "\$19 fee is sufficient to cover the Firearms Division's processing costs of \$19 per DROS, [\$15.00 per DROS for any handgun purchased in a single transaction, excluding the first handgun] and does not exceed increases in the CCPI (CCPI) that equate to \$20.02 per DROS."

The statute that applies to this fee is Penal Code section 12076, subdivisions (f) and (i). Subdivision (f)(1) allows the DOJ to charge a fee sufficient to reimburse it for specified actions. The fee established by Penal Code section 12076(f) is \$14 and may be increased *only at a rate not to exceed* any increase in the CCPI as compiled and reported by the California Department of Industrial Relations. The specified actions under Penal Code section (f)(1) are as follows:

- The *actual costs* associated with *the preparation, sale, processing, and filing of forms or reports* required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.
- The *actual processing costs* associated with *the submission of a Dealer's Record of Sale to the department by a dealer* or of the submission of a Law Enforcement Firearms Transfer form to the department by a law enforcement agency acting

pursuant to *Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.*

- The *actual costs* associated with the *preparation, sale, processing, and filing of reports* utilized pursuant to subdivision (l) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.
- The *actual costs* associated with the *electronic or telephonic transfer of information* pursuant to subdivision (c).

Thus, the DOJ collect the fee to reimburse for only the above specified actions and may increase the fee at a rate not higher than increases in the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI increase by seeking retroactively to compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based upon *ONLY the increase in the CCPI* for that fiscal year. Any attempt do otherwise is unlawful.

Penal Code section 12076(f) also provides that any of the above costs incurred by the DOJ to implement this subdivision shall be reimbursed from fees collected and charged pursuant to *this subdivision*; however, *no fees shall be charged to the dealer pursuant to subdivision (e)*. Thus, there can be no duplication of fees, as would happen if fees were charged under both Penal Code section 12076 subdivisions (f) and (e).

Though the proposed regulation applies a fee to *each* handgun purchased, even if they are all purchased at the same time, such conduct is allowed under certain circumstances identified in Penal Code section 12076 subdivisions (i) and (j).

Penal Code section 12076(i)(1) mandates that only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of *any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms*. Penal Code section 12076(i)(2) addresses single transactions of pistols, revolvers, or other firearms capable of being concealed upon the person, by requiring that the *department charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction*.

The DOJ addressed Penal Code section 12076(i) by reducing the fee charged for the second handgun and any additional handguns thereafter purchased in the same transaction.

The DOJ has also addressed Penal Code section 12076 subdivision (j) in proposed regulation section 4002 below.

Our clients object to this proposed regulation to the extent that the recovery of *the actual cost of processing a Dealer's Record of Sale* exceeds the allowable reimbursement for

the specified actions described above and within Penal Code section 12076. Our clients also object to this proposed regulation to the extent that it exceeds that allowable cost of living adjustment in the fee by exceeding the CCPI cost of living adjustment.

### Miscellaneous Report Fees

#### Section 4002

The purpose of this regulation is to ensure that the Firearms Division fees are commensurate with the actual cost of processing of various firearms related forms and reports. The proposed regulation raises the current \$14 fees to \$19. The \$19 fees are sufficient to cover the Firearms Division's processing costs of \$19 per report or firearm, and do not exceed increases in the CCPI, which equate to \$20.02 per report or firearm.

As authorized pursuant to subdivisions (f) and (j) of section 12076 of the Penal Code, the DOJ properly apply a single transaction fee for specified transactions, including for voluntary firearm ownership reports, intra-familial transfers of handguns or handguns acquired by operation of law reports, new resident's importation of handgun reports, and curio and relic (C&R) collector's out-of-state acquisition of C&R handgun reports.

Also, the increase in fees is subject to the same restrictions as those in proposed regulation section 4001. Thus, the DOJ may use the fees for specified actions and may increase them at a rate not higher than the CCPI increase. The DOJ, however, has increased the fee at a rate higher than the CCPI increase; the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based *ONLY* upon the *increase in the CCPI* for the fiscal year in which the increase occurs. Any attempts do otherwise is unlawful.

Our clients object to this proposed regulation to the extent that the fee increase exceeds that allowed by Penal Code section 12076 by exceeding the cost of living adjustment in the CCPI.

### POST Certification Fees

#### Section 4003

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for POST candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per POST firearms eligibility certification."

The statutory law that applies to this fee is Penal Code section 13511.1. Penal Code section 13511.5 requires each applicant for admission to a basic course of training certified by the Commission on Peace Officer Standards and Training that includes the carrying and use of firearms (as prescribed by subdivision (a) of Section 832 and subdivision (a) of Section 832.3, who is not sponsored by a local or other law

enforcement agency, or is not a peace officer employed by a state or local agency, department, or district ) to submit written certification from the DOJ pursuant.

Nothing in Penal Code section 13511.5 permits the DOJ to charge fees to recover the processing costs of furnishing firearm eligibility information for POST Candidates.

### Peace Officer Candidate Firearms Clearance Fees

#### Section 4004

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for peace officer candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per peace officer candidate firearms clearance."

The statute law that governs this fee is Penal Code section 832.15(a). Subdivision (a) requires the DOJ to notify a state or local agency as to whether an individual applying for a position as a peace officer, as defined by this chapter, is prohibited from possessing, receiving, owning, or purchasing a firearm pursuant to Sections 12021 or 12021.1 of the Penal Code, or Sections 8100 or 8103 of the Welfare and Institutions Code. The notice shall indicate the date that the prohibition expires.

Penal Code section 832.15(c) allows the DOJ to charge fees, but it limits their ability to charge fees so that the DOJ may charge only the applicant a fee sufficient to reimburse *its costs for furnishing the information* specified in subdivision (a).

The purpose for the increase states that it applies to the "processing costs" for peace officer candidate firearms clearance. To the extent that the fees being charged exceed the costs of furnishing state or local agencies with information pertaining to the applicants' ability to possess, receive, own or purchase a firearm pursuant to 12021 or 12021.1, our clients object to the increase.

### Security Guard Firearm Clearance Fees

#### Section 4005

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for Security Guard Firearm Card applications.

The DOJ states that the "proposed regulation raises the current \$28.00 fee to \$38.00, sufficient to administer Firearms Division's processing costs of \$38.00 per security guard firearms clearance."

The statute that governs this fee is Business and Professions Code section 7583.26(a). Subdivision (a) allows the DOJ to charge the bureau a fee *sufficient to reimburse the department's costs for furnishing firearm eligibility information upon submission of the*



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*application for issuance or renewal of a firearm permit. But, Business and Professions Code section 7583.26(a) also prohibits a fee from being charged if it exceeds actual costs for system development, maintenance, and processing necessary to provide this service.*

Our clients object to this proposed regulation to the extent that the increase in fees from \$28.00 to \$38.00 exceeds the actual cost for system development, maintenance, and processing necessary for the furnishing of firearm eligibility information upon submission of applications for issuance or renewal of security guard firearm cards.

CCW Fees  
Section 4006

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for carry a concealed weapon (CCW) license applications.

The proposed regulation raises the current initial permit application fees ranging from \$17-\$68 to \$22-\$88. The DOJ states that the "proposed fees are sufficient to cover the Firearms Division's processing costs of \$22-\$88 and do not exceed increases in the CCPI which equate to \$24.03-\$97.22."

The statute that governs this fee is Penal Code section 12054(a). Subdivision (a) requires that each applicant for a new license or for the renewal of a license to pay at the time of filing his or her application a fee determined by the DOJ. But, Penal Code section 12054 also limits the fee that may be charged to an amount that does *not to exceed the application processing costs of the DOJ for the direct costs of furnishing the report required by Section 12052*. Penal Code section 12052 requires that the DOJ furnish the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Penal Code section 12054(a) also limits the fee increase rate to an amount *not to exceed the legislatively approved annual cost-of-living adjustments* for the department's budget.

Thus, the fees may increase only at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the *increase in the CCPI* for that fiscal year. Any attempts do otherwise is unlawful.

Our clients object to the proposed regulation to the extent that DOJ's "actual cost of furnishing firearm eligibility information" for a CCW exceeds the "processing costs of the DOJ for the direct costs of furnishing the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office,

including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Our clients also object to the increase in fees on the grounds that the increase exceeds the approved annual costs of living adjustments for the applicable period.

**Tear Gas Permit Application Fees**  
**Section 4007**

The purported purpose of this regulation is to ensure that the DOJ fee is commensurate with the actual cost of processing tear gas permit applications.

The proposed regulation raises the initial permit application fee from \$177 to \$229 and the annual renewal fee from \$43 to \$61. The DOJ states that the "proposed fees are sufficient to cover the DOJ's processing costs of \$229 (initial) and \$61 (renewal) and do not exceed increases in the CCPI which equate to \$252.92 and \$61.44."

The statutory law that applies to this fee is Penal Code section 12424. Penal Code section 12424 requires each applicant for a Tear Gas Permit to pay at the time of filing his or her application a fee determined by the DOJ *not to exceed the application processing costs* of the DOJ. Penal Code section 12424 also requires that the payment of a permit renewal fee *not exceed the application processing costs* of the DOJ.

After the department establishes fees sufficient to reimburse the department for processing costs, fees charged *shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments* for the department's budget.

Thus, the fees may only be used for the above specified actions and may only increase at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher than the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the *increase in the CCPI* for that fiscal year. Any attempts otherwise is unlawful.

Our clients object to the proposed regulation to the extent that the fee exceeds the DOJ's application processing costs. Our clients also object to the proposed regulation because the increases exceed the legislatively approved annual cost-of-living adjustments for the applicable period.

Very truly yours,

**Trutanich-Michel, LLP**

C.D. Michel

**From:** "John W. Mustafa" <jmustafa@t-mlawyers.com>  
**To:** <jeff.amador@doj.ca.gov>  
**Date:** 2/22/2005 5:02:33 PM  
**Subject:** Opposition to Fee Increase Regulations

VIA FACSIMILE, E-MAIL, AND FEDERAL EXPRESS

Jeff Amador, Field Representative

Department of Justice

Firearms License and Permit Section

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Re: Opposition to Fee Increase Regulations

Mr. Amador,

I write on behalf of the National Rifle Association, the California Rifle and Pistol Association and the California Association of Firearm Retailers in opposition to the proposed fee increase regulations. The increases are unlawful, as they exceed the statutorily authorized increase amount, as described below.

The Firearms Division of the California Department of Justice (DOJ) is authorized to charge statutorily mandated fees to cover its costs for processing Dealer's Records of Sale (DROS) and other firearms related reports, clearances, and licenses specified in Penal Code Sections, 832.15, 12054, 12071, 12076, 12423, 12424, and 13511.5, and Business and Professions Code Section 7583.26. Each of these provisions, however, also limits what fees the DOJ may implement.

Four of the fee increases (sections 4001, 4002, 4006, 4007) are constrained to rates not exceeding increases in the California Consumer Price Index (CCPI). The DOJ, however, has increased the fee at a rate

higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempt to do otherwise is unlawful.

#### Certificate of Eligibility

##### Section 984.1

The purported purpose of amending this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing Certificate of Eligibility (COE) applications.

The DOJ states that the "proposed amendment raises the current \$17 fee to \$22, sufficient to cover the Firearms Division's processing costs of \$22 per COE." It explains the deletion of the \$32.00 fingerprint card processing fee from the current regulation as follows:

Due to a change in the applicant fingerprint card process, the Firearms Division no longer collects the fingerprint card processing fee of \$32.00 as part of the COE application process. Rather, prior to submitting a COE application to the Firearms Division, the applicant must submit fingerprint impressions independently at a DOJ-approved Live Scan station, at which time the applicant must pay the respective fingerprint processing fees as statutorily authorized.

Accordingly, the amended regulation reflects only the \$5.00 increase in the Firearms Division fee.

The statute that regulates this fee is Penal Code section 12071(a)(5). Subdivision (a)(5) requires that the DOJ adopt regulations to administer the COE program and recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

Our clients object to this proposed regulation to the extent that the fee increase allows the recovery of the "full costs of administering the [COE] program."

## Dealer's Record of Sale Fees

### Section 4001

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing a Dealer's Record of Sale (DROS).

The proposed regulation raises the current \$14 DROS fee to \$19. The DOJ states that the "\$19 fee is sufficient to cover the Firearms Division's processing costs of \$19 per DROS, [\$15.00 per DROS for any handgun purchased in a single transaction, excluding the first handgun] and does not exceed increases in the CCPI (CCPI) that equate to \$20.02 per DROS."

The statute that applies to this fee is Penal Code section 12076, subdivisions (f) and (i). Subdivision (f)(1) allows the DOJ to charge a fee sufficient to reimburse it for specified actions. The fee established by Penal Code section 12076(f) is \$14 and may be increased only at a rate not to exceed any increase in the CCPI as compiled and reported by the California Department of Industrial Relations. The specified actions under Penal Code section (f)(1) are as follows:

- \* The actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.
- \* The actual processing costs associated with the submission of a Dealer's Record of Sale to the department by a dealer or of the submission of a Law Enforcement Firearms Transfer form to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.
- \* The actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (l) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.
- \* The actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

Thus, the DOJ collect the fee to reimburse for only the above specified actions and may increase the fee at a rate not higher than increases in the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI increase by seeking retroactively to compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may

increase their fee based upon ONLY the increase in the CCPI for that fiscal year. Any attempt do otherwise is unlawful.

Penal Code section 12076(f) also provides that any of the above costs incurred by the DOJ to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision; however, no fees shall be charged to the dealer pursuant to subdivision (e). Thus, there can be no duplication of fees, as would happen if fees were charged under both Penal Code section 12076 subdivisions (f) and (e).

Though the proposed regulation applies a fee to each handgun purchased, even if they are all purchased at the same time, such conduct is allowed under certain circumstances identified in Penal Code section 12076 subdivisions (i) and (j).

Penal Code section 12076(i)(1) mandates that only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms. Penal Code section 12076(i)(2) addresses single transactions of pistols, revolvers, or other firearms capable of being concealed upon the person, by requiring that the department charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

The DOJ addressed Penal Code section 12076(i) by reducing the fee charged for the second handgun and any additional handguns thereafter purchased in the same transaction.

The DOJ has also addressed Penal Code section 12076 subdivision (j) in proposed regulation section 4002 below.

Our clients object to this proposed regulation to the extent that the recovery of the actual cost of processing a Dealer's Record of Sale exceeds the allowable reimbursement for the specified actions described above and within Penal Code section 12076. Our clients also object to this proposed regulation to the extent that it exceeds that allowable cost of living adjustment in the fee by exceeding the CCPI cost of living adjustment.

Miscellaneous Report Fees

### Section 4002

The purpose of this regulation is to ensure that the Firearms Division fees are commensurate with the actual cost of processing of various firearms related forms and reports. The proposed regulation raises the current \$14 fees to \$19. The \$19 fees are sufficient to cover the Firearms Division's processing costs of \$19 per report or firearm, and do not exceed increases in the CCPI, which equate to \$20.02 per report or firearm.

As authorized pursuant to subdivisions (f) and (j) of section 12076 of the Penal Code, the DOJ properly apply a single transaction fee for specified transactions, including for voluntary firearm ownership reports, intra-familial transfers of handguns or handguns acquired by operation of law reports, new resident's importation of handgun reports, and curio and relic (C&R) collector's out-of-state acquisition of C&R handgun reports.

Also, the increase in fees is subject to the same restrictions as those in proposed regulation section 4001. Thus, the DOJ may use the fees for specified actions and may increase them at a rate not higher than the CCPI increase. The DOJ, however, has increased the fee at a rate higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempts do otherwise is unlawful.

Our clients object to this proposed regulation to the extent that the fee increase exceeds that allowed by Penal Code section 12076 by exceeding the cost of living adjustment in the CCPI.

### POST Certification Fees

#### Section 4003

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for POST candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per POST firearms eligibility certification."

The statutory law that applies to this fee is Penal Code section 13511.1. Penal Code section 13511.5 requires each applicant for admission to a basic course of training certified by the Commission on Peace Officer Standards and Training that includes the carrying and use of firearms (as prescribed by subdivision (a) of Section 832 and subdivision (a) of Section 832.3, who is not sponsored by a local or other law enforcement agency, or is not a peace officer employed by a state or local agency, department, or district ) to submit written certification from the DOJ pursuant.

Nothing in Penal Code section 13511.5 permits the DOJ to charge fees to recover the processing costs of furnishing firearm eligibility information for POST Candidates.

#### Peace Officer Candidate Firearms Clearance Fees

##### Section 4004

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for peace officer candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per peace officer candidate firearms clearance."

The statute law that governs this fee is Penal Code section 832.15(a). Subdivision (a) requires the DOJ to notify a state or local agency as to whether an individual applying for a position as a peace officer, as defined by this chapter, is prohibited from possessing, receiving, owning, or purchasing a firearm pursuant to Sections 12021 or 12021.1 of the Penal Code, or Sections 8100 or 8103 of the Welfare and Institutions Code. The notice shall indicate the date that the prohibition expires.

Penal Code section 832.15(c) allows the DOJ to charge fees, but it limits their ability to charge fees so that the DOJ may charge only the applicant a fee sufficient to reimburse its costs for furnishing the information specified in subdivision (a).

The purpose for the increase states that it applies to the "processing costs" for peace officer candidate firearms clearance. To the extent that the fees being charged exceed the costs of furnishing state or



local agencies with information pertaining to the applicants ability to possess, receive, own or purchase a firearm pursuant to 12021 or 12021.1, our clients object to the increase.

#### Security Guard Firearm Clearance Fees

##### Section 4005

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for Security Guard Firearm Card applications.

The DOJ states that the "proposed regulation raises the current \$28.00 fee to \$38.00, sufficient to administer Firearms Division's processing costs of \$38.00 per security guard firearms clearance."

The statute that governs this fee is Business and Professions Code section 7583.26(a). Subdivision (a) allows the DOJ to charge the bureau a fee sufficient to reimburse the department's costs for furnishing firearm eligibility information upon submission of the application for issuance or renewal of a firearm permit. But, Business and Professions Code section 7583.26(a) also prohibits a fee from being charged if it exceeds actual costs for system development, maintenance, and processing necessary to provide this service.

Our clients object to this proposed regulation to the extent that the increase in fees from \$28.00 to \$38.00 exceeds the actual cost for system development, maintenance, and processing necessary for the furnishing of firearm eligibility information upon submission of applications for issuance or renewal of security guard firearm cards.

#### CCW Fees

##### Section 4006

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for carry a concealed weapon (CCW) license applications.

The proposed regulation raises the current initial permit application fees ranging from \$17-\$68 to \$22-\$88. The DOJ states that the "proposed fees are sufficient to cover the Firearms Division's processing costs of \$22-\$88 and do not exceed increases in the CCPI which equate to

\$24.03-\$97.22."

The statute that governs this fee is Penal Code section 12054(a). Subdivision (a) requires that each applicant for a new license or for the renewal of a license to pay at the time of filing his or her application a fee determined by the DOJ. But, Penal Code section 12054 also limits the fee that may be charged to an amount that does not to exceed the application processing costs of the DOJ for the direct costs of furnishing the report required by Section 12052. Penal Code section 12052 requires that the DOJ furnish the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Penal Code section 12054(a) also limits the fee increase rate to an amount not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

Thus, the fees may increase only at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the increase in the CCPI for that fiscal year. Any attempts do otherwise is unlawful.

Our clients object to the proposed regulation to the extent that DOJ's "actual cost of furnishing firearm eligibility information" for a CCW exceeds the "processing costs of the DOJ for the direct costs of furnishing the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Our clients also object to the increase in fees on the grounds that the increase exceeds the approved annual costs of living adjustments for the applicable period.

Tear Gas Permit Application Fees

#### Section 4007

The purported purpose of this regulation is to ensure that the DOJ fee is commensurate with the actual cost of processing tear gas permit applications.

The proposed regulation raises the initial permit application fee from \$177 to \$229 and the annual renewal fee from \$43 to \$61. The DOJ states that the "proposed fees are sufficient to cover the DOJ's processing costs of \$229 (initial) and \$61 (renewal) and do not exceed increases in the CCPI which equate to \$252.92 and \$61.44."

The statutory law that applies to this fee is Penal Code section 12424. Penal Code section 12424 requires each applicant for a Tear Gas Permit to pay at the time of filing his or her application a fee determined by the DOJ not to exceed the application processing costs of the DOJ. Penal Code section 12424 also requires that the payment of a permit renewal fee not exceed the application processing costs of the DOJ.

After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

Thus, the fees may only be used for the above specified actions and may only increase at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the increase in the CCPI for that fiscal year. Any attempts do otherwise is unlawful.

Our clients object to the proposed regulation to the extent that the fee exceeds the DOJ's application processing costs. Our clients also object to the proposed regulation because the increases exceed the legislatively approved annual cost-of-living adjustments for the applicable period.

Very truly yours,

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CC: "NRA.Special Projects (607)" <[607.interwoven@wcs.legal.local](mailto:607.interwoven@wcs.legal.local)>

**FINAL STATEMENT OF REASONS**

**ATTACHMENT 2**

**Summarization of the Relevant Comments of C.D.**

**Michel's Facsimile Letter and E-Mail and**

**the Department's Response to the**

**Relevant Comments Expressed in the**

**Letter and E-Mail**

Re: Opposition to Fee Increase Regulations

Mr. Amador,

I write on behalf of the National Rifle Association, the California Rifle and Pistol Association and the California Association of Firearm Retailers in opposition to the proposed fee increase regulations. The increases are unlawful, as they exceed the statutorily authorized increase amount, as described below.

The Firearms Division of the California Department of Justice (DOJ) is authorized to charge statutorily mandated fees to cover its costs for processing Dealer's Records of Sale (DROS) and other firearms related reports, clearances, and licenses specified in Penal Code Sections, 832.15, 12054, 12071, 12076, 12423, 12424, and 13511.5, and Business and Professions Code Section 7583.26. Each of these provisions, however, also limits what fees the DOJ may implement.

Four of the fee increases (sections 4001, 4002, 4006, 4007) are constrained to rates not exceeding increases in the California Consumer Price Index (CCPI). The DOJ, however, has increased the fee at a rate higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempt to do otherwise is unlawful.

Comment 1

### Certificate of Eligibility

#### Section 984.1

The purported purpose of amending this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing Certificate of Eligibility (COE) applications.

The DOJ states that the "proposed amendment raises the current \$17 fee to \$22, sufficient to cover the Firearms Division's processing costs of \$22 per COE." It explains the deletion of the \$32.00 fingerprint card processing fee from the current regulation as follows:

Comment 2

Due to a change in the applicant fingerprint card process, the Firearms Division no longer collects the fingerprint card processing fee of \$32.00 as part of the COE application process. Rather, prior to submitting a COE application to the Firearms Division, the applicant must submit fingerprint impressions independently at a DOJ-approved Live Scan station, at which time the applicant must pay the respective fingerprint processing fees as statutorily authorized.

Accordingly, the amended regulation reflects only the \$5.00 increase in the Firearms Division fee.

The statute that regulates this fee is Penal Code section 12071(a)(5). Subdivision (a)(5) requires that the DOJ adopt regulations to administer the COE program and recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

Our clients object to this proposed regulation to the extent that the fee increase allows the recovery of the "full costs of administering the [COE] program."

### **Dealer's Record of Sale Fees**

#### **Section 4001**

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing a Dealer's Record of Sale (DROS).

The proposed regulation raises the current \$14 DROS fee to \$19. The DOJ states that the "\$19 fee is sufficient to cover the Firearms Division's processing costs of \$19 per DROS, [\$15.00 per DROS for any handgun purchased in a single transaction, excluding the first handgun] and does not exceed increases in the CCPI (CCPI) that equate to \$20.02 per DROS."

The statute that applies to this fee is Penal Code section 12076, subdivisions (f) and (i). Subdivision (f)(1) allows the DOJ to charge a fee sufficient to reimburse it for specified actions. The fee established by Penal Code section 12076(f) is \$14 and may be increased only at a rate not to exceed any increase in the CCPI as compiled and reported by the California Department of Industrial Relations: The specified actions under Penal Code section (f)(1) are as follows:

- \* The actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.
- \* The actual processing costs associated with the submission of a Dealer's Record of Sale to the department by a dealer or of the submission of a Law Enforcement Firearms Transfer form to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.
- \* The actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (l) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

\* The actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

Thus, the DOJ collect the fee to reimburse for only the above specified actions and may increase the fee at a rate not higher than increases in the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI increase by seeking retroactively to compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based upon ONLY the increase in the CCPI for that fiscal year. Any attempt do otherwise is unlawful.

Comment 3

Penal Code section 12076(f) also provides that any of the above costs incurred by the DOJ to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision; however, no fees shall be charged to the dealer pursuant to subdivision (e). Thus, there can be no duplication of fees, as would happen if fees were charged under both Penal Code section 12076 subdivisions (f) and (e).

Comment 4

Though the proposed regulation applies a fee to each handgun purchased, even if they are all purchased at the same time, such conduct is allowed under certain circumstances identified in Penal Code section 12076 subdivisions (i) and (j).

Penal Code section 12076(i)(1) mandates that only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms. Penal Code section 12076(i)(2) addresses single transactions of pistols, revolvers, or other firearms capable of being concealed upon the person, by requiring that the department charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

The DOJ addressed Penal Code section 12076(i) by reducing the fee charged for the second handgun and any additional handguns thereafter purchased in the same transaction.

The DOJ has also addressed Penal Code section 12076 subdivision (j) in proposed regulation section 4002 below.

Our clients object to this proposed regulation to the extent that the recovery of the actual cost of processing a Dealer's Record of Sale exceeds the allowable reimbursement for the specified actions described above and within Penal Code section 12076.

Comment 3

Our clients also object to this proposed regulation to the extent that it exceeds that allowable cost of living adjustment in the fee by exceeding the CCPI cost of living adjustment.



## Miscellaneous Report Fees

### Section 4002

The purpose of this regulation is to ensure that the Firearms Division fees are commensurate with the actual cost of processing of various firearms related forms and reports. The proposed regulation raises the current \$14 fees to \$19. The \$19 fees are sufficient to cover the Firearms Division's processing costs of \$19 per report or firearm, and do not exceed increases in the CCPI, which equate to \$20.02 per report or firearm.

As authorized pursuant to subdivisions (f) and (j) of section 12076 of the Penal Code, the DOJ properly apply a single transaction fee for specified transactions, including for voluntary firearm ownership reports, intra-familial transfers of handguns or handguns acquired by operation of law reports, new resident's importation of handgun reports, and curio and relic (C&R) collector's out-of-state acquisition of C&R handgun reports.

Also, the increase in fees is subject to the same restrictions as those in proposed regulation section 4001. Thus, the DOJ may use the fees for specified actions and may increase them at a rate not higher than the CCPI increase. The DOJ, however, has increased the fee at a rate higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempts do otherwise is unlawful.

Comment 5

Our clients object to this proposed regulation to the extent that the fee increase exceeds that allowed by Penal Code section 12076 by exceeding the cost of living adjustment in the CCPI.

## POST Certification Fees

### Section 4003

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for POST candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per POST firearms eligibility certification."

The statutory law that applies to this fee is Penal Code section 13511.1. Penal Code section 13511.5 requires each applicant for admission to a basic course of training certified by the Commission on Peace Officer Standards and Training that includes the carrying and use of

firearms (as prescribed by subdivision (a) of Section 832 and subdivision (a) of Section 832.3, who is not sponsored by a local or other law enforcement agency, or is not a peace officer employed by a state or local agency, department, or district ) to submit written certification from the DOJ pursuant.

Comment 6

Nothing in Penal Code section 13511.5 permits the DOJ to charge fees to recover the processing costs of furnishing firearm eligibility information for POST Candidates.

## Peace Officer Candidate Firearms Clearance Fees

### Section 4004

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for peace officer candidates.

The DOJ states that the "proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per peace officer candidate firearms clearance."

The statute law that governs this fee is Penal Code section 832.15(a). Subdivision (a) requires the DOJ to notify a state or local agency as to whether an individual applying for a position as a peace officer, as defined by this chapter, is prohibited from possessing, receiving, owning, or purchasing a firearm pursuant to Sections 12021 or 12021.1 of the Penal Code, or Sections 8100 or 8103 of the Welfare and Institutions Code. The notice shall indicate the date that the prohibition expires.

Penal Code section 832.15(c) allows the DOJ to charge fees, but it limits their ability to charge fees so that the DOJ may charge only the applicant a fee sufficient to reimburse its costs for furnishing the information specified in subdivision (a).

Comment 7

The purpose for the increase states that it applies to the "processing costs" for peace officer candidate firearms clearance. To the extent that the fees being charged exceed the costs of furnishing state or local agencies with information pertaining to the applicants ability to possess, receive, own or purchase a firearm pursuant to 12021 or 12021.1, our clients object to the increase.

## Security Guard Firearm Clearance Fees

### Section 4005

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for Security Guard Firearm Card applications.

The DOJ states that the "proposed regulation raises the current \$28.00 fee to \$38.00, sufficient to administer Firearms Division's processing costs of \$38.00 per security guard firearms clearance."

The statute that governs this fee is Business and Professions Code section 7583.26(a). Subdivision (a) allows the DOJ to charge the bureau a fee sufficient to reimburse the department's costs for furnishing firearm eligibility information upon submission of the application for issuance or renewal of a firearm permit. But, Business and Professions Code section 7583.26(a) also prohibits a fee from being charged if it exceeds actual costs for system development, maintenance, and processing necessary to provide this service.

Comment 8

Our clients object to this proposed regulation to the extent that the increase in fees from \$28.00 to \$38.00 exceeds the actual cost for system development, maintenance, and processing necessary for the furnishing of firearm eligibility information upon submission of applications for issuance or renewal of security guard firearm cards.

## CCW Fees

### Section 4006

The purported purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for carry a concealed weapon (CCW) license applications.

The proposed regulation raises the current initial permit application fees ranging from \$17-\$68 to \$22-\$88. The DOJ states that the "proposed fees are sufficient to cover the Firearms Division's processing costs of \$22-\$88 and do not exceed increases in the CCPI which equate to \$24.03-\$97.22."

The statute that governs this fee is Penal Code section 12054(a). Subdivision (a) requires that each applicant for a new license or for the renewal of a license to pay at the time of filing his or her application a fee determined by the DOJ. But, Penal Code section 12054 a also limits the fee that may be charged to an amount that does not to exceed the application processing costs of the DOJ for the direct costs of furnishing the report required by Section 12052. Penal Code section 12052 requires that the DOJ furnish the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Penal Code section 12054(a) also limits the fee increase rate to an amount not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

Comment 9

Thus, the fees may increase only at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the increase in the CCPI for that fiscal year. Any attempts do otherwise is unlawful.

Our clients object to the proposed regulation to the extent that DOJ's "actual cost of furnishing firearm eligibility information" for a CCW exceeds the "processing costs of the DOJ for the direct costs of furnishing the local licensing authority "a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."

Our clients also object to the increase in fees on the grounds that the increase exceeds the approved annual costs of living adjustments for the applicable period.

## **Tear Gas Permit Application Fees**

### **Section 4007**

The purported purpose of this regulation is to ensure that the DOJ fee is commensurate with the actual cost of processing tear gas permit applications.

The proposed regulation raises the initial permit application fee from \$177 to \$229 and the annual renewal fee from \$43 to \$61. The DOJ states that the "proposed fees are sufficient to cover the DOJ's processing costs of \$229 (initial) and \$61 (renewal) and do not exceed increases in the CCPI which equate to \$252.92 and \$61.44."

The statutory law that applies to this fee is Penal Code section 12424. Penal Code section 12424 requires each applicant for a Tear Gas Permit to pay at the time of filing his or her application a fee determined by the DOJ not to exceed the application processing costs of the DOJ. Penal Code section 12424 also requires that the payment of a permit renewal fee not exceed the application processing costs of the DOJ.

After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

Comment 10

Thus, the fees may only be used for the above specified actions and may only increase at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed

to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the increase in the CCPI for that fiscal year. Any attempts do otherwise is unlawful.

Our clients object to the proposed regulation to the extent that the fee exceeds the DOJ's application processing costs. Our clients also object to the proposed regulation because the increases exceed the legislatively approved annual cost-of-living adjustments for the applicable period.

Very truly yours,  
Trutanich-Michel, LLP

C.D. Michel

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Gun law information: [www.calgunlaws.com](http://www.calgunlaws.com)  
<blocked::<http://www.calgunlaws.com/>>

DEPARTMENT OF JUSTICE RESPONSES TO PUBLIC COMMENT ON PROPOSED REGULATIONS TO INCREASE FIREARMS DIVISION FEES

#	Comment	Department's Response
1	<p>The DOJ, however, has increased the fee at a rate higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempt to do otherwise is unlawful.</p>	<p>The department disagrees with the comment. The commenter's interpretation that the pertinent statutes do not allow cumulative invocation of California Consumer Price Index (CCPI) increases back to the previous fee increase is not corroborated by the plain reading of the relevant statutes. The statutes state nothing more than the respective fee increases are capped by CCPI. If the legislature contemplated a "use it or lose it" approach to the CCPI cap on fee increases, it could have easily required the department to review its fee schedule annually and make fee adjustments not to exceed the CCPI for that specific year. However, the legislature did not do this, probably in recognition of the burden to the public and the department of invoking fee increases each and every year. The statutes do require that the department recover the full costs of administering each respective program. This mandate effectively precludes the department from invoking annual fee increases, as the commenter would suggest, if such a fee increase would actually exceed the costs of administering the program. At the same time, this mandate also requires the department to fully fund its costs by fees alone. The only manner at the department's disposal to balance these requirements without violating either is to exploit the flexibility of invoking increases occasionally on a cumulatively-based CCPI cap. The commenter's argument of a "use it or lose it" cost of living cap is fiscally unsound and cannot be seriously contemplated as the legislature's intent.</p>

DEPARTMENT OF JUSTICE RESPONSES TO PUBLIC COMMENT ON PROPOSED REGULATIONS TO INCREASE FIREARMS DIVISION FEES

#	Comment	Department's Response
2	<p>The DOJ states that the "proposed amendment raises the current \$17 fee to \$22, sufficient to cover the Firearms Division's processing costs of \$22 per COE." It explains the deletion of the \$32.00 fingerprint card processing fee from the current regulation as follows:</p> <p>Due to a change in the applicant fingerprint card process, the Firearms Division no longer collects the fingerprint card processing fee of \$32.00 as part of the COE application process. Rather, prior to submitting a COE application to the Firearms Division, the applicant must submit fingerprint impressions independently at a DOJ-approved Live Scan station, at which time the applicant must pay the respective fingerprint processing fees as statutorily authorized.</p> <p>Accordingly, the amended regulation reflects only the \$5.00 increase in the Firearms Division fee.</p> <p>The statute that regulates this fee is Penal Code section 12071(a)(5). Subdivision (a)(5) requires that the DOJ adopt regulations to administer the COE program and recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.</p> <p>Our clients object to this proposed regulation to the extent that the fee increase allows the recovery of the "full costs of administering the [COE] program."</p>	<p>The department disagrees with the comment. The commenter is placing an undue and unfair burden on the applicant by suggesting that the Firearms Division collect all the costs at one time. Information technology advances have produced the ability to collect and transmit fingerprint impressions electronically. The department's new fingerprinting collection system is designed "Live Scan." The COE application process is now, effectively, a two-step procedure. The applicant must first submit his/her fingerprints via Live Scan prior to submitting a physical COE application form to the department. The Live Scan fees must be paid at the time of the fingerprint submissions. Since the law does not require the applicant to follow-through and actually submit a COE application form after submitting fingerprints, it is reasonable and fair for the department to collect Live Scan fees only at the time of fingerprint submission, and COE application fees only at the time of submitting the COE application form. Thus, the department is incrementally accepting fees at the point each component service is rendered sufficient to cover that service. It seems the commenter would applaud such a fair and reasonable system rather than insist the statutes demand the entire fee be collected at once, whether the entire service is utilized or not.</p>

DEPARTMENT OF JUSTICE RESPONSES TO PUBLIC COMMENT ON PROPOSED REGULATIONS TO INCREASE FIREARMS DIVISION FEES

#	Comment	Department's Response
3	<p>The DOJ, however, has increased the fee at a rate higher the CCPI increase by seeking retroactively to compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based upon ONLY the increase in the CCPI for that fiscal year. Any attempt do otherwise is unlawful.</p> <p>Our clients object to this proposed regulation to the extent that the recovery of the actual cost of processing a Dealer's Record of Sale exceeds the allowable reimbursement for the specified actions described above and within Penal Code section 12076. Our clients also object to this proposed regulation to the extent that it exceeds that allowable cost of living adjustment in the fee by exceeding the CCPI cost of living adjustment.</p>	<p>The department disagrees with the comment that proposed fee increase exceeds the department's costs of administering the DROS program.</p> <p>The department also disagrees with the commenter's interpretation that the pertinent statutes do not allow cumulative invocation of California Consumer Price Index (CCPI) increases back to the previous fee increase is neither corroborated by the plain reading of the relevant statutes. The statutes state nothing more than the respective fee increases are capped by CCPI. If the legislature contemplated a "use it or lose it" approach to the CCPI cap on fee increases, it could have easily required the department to review its fee schedule annually and make fee adjustments not to exceed the CCPI for that specific year. However, the legislature did not do this, probably in recognition of the burden to the public and the department of invoking fee increases each and every year. The statutes do require that the department recover the full costs of administering each respective program. This mandate effectively precludes the department from invoking annual fee increases, as the commenter would suggest, if such a fee increase would actually exceed the costs of administering the program. At the same time, this mandate also requires the department to fully fund its costs by fees alone. The only manner at the department's disposal to balance these requirements without violating either is to exploit the flexibility of invoking increases occasionally on a cumulatively-based CCPI cap. The commenter's argument of a "use it or lose it" cost of living cap is fiscally unsound and cannot be seriously contemplated as the legislature's intent.</p>



DEPARTMENT OF JUSTICE RESPONSES TO PUBLIC COMMENT ON PROPOSED REGULATIONS TO INCREASE FIREARMS DIVISION FEES

#	Comment	Department's Response
4	<p>Penal Code section 12076(f) also provides that any of the above costs incurred by the DOJ to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision; however, no fees shall be charged to the dealer pursuant to subdivision (e). Thus, there can be no duplication of fees, as would happen if fees were charged under both Penal Code section 12076 subdivisions (f) and (e).</p>	<p>The department disagrees with the comment's suggestion that the department's proposed fee increase possibly double charges under both subdivisions (e) and (f) of Penal Code section 12076. Making it clear that there is only one Dealer Record of Sale (DROS) fee, these subdivisions make it clear that the flow of this fee is from the gun purchaser via the firearms dealer to DOJ. While these statutes make the firearms dealer responsible for passing this fee on to the department, they also make it clear it is the proposed gun purchaser (the DROS applicant) who must pay the fee. Therefore, there is no "double charging" of the DROS fee as a result of the department's proposed fee increases.</p>

DEPARTMENT OF JUSTICE RESPONSES TO PUBLIC COMMENT ON PROPOSED REGULATIONS TO INCREASE FIREARMS DIVISION FEES

#	Comment	Department's Response
5	<p>Also, the increase in fees is subject to the same restrictions as those in proposed regulation section 4001. Thus, the DOJ may use the fees for specified actions and may increase them at a rate not higher than the CCPI increase. The DOJ, however, has increased the fee at a rate higher than the CCPI increase: the proposed increase seeks to capture revenue retroactively to compensate for the period of years that the DOJ failed to increase fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may increase their fee based ONLY upon the increase in the CCPI for the fiscal year in which the increase occurs. Any attempts do otherwise is unlawful.</p> <p>Our clients object to this proposed regulation to the extent that the fee increase exceeds that allowed by Penal Code section 12076 by exceeding the cost of living adjustment in the CCPI.</p>	<p>The department disagrees with the comment. The commenter's interpretation that the pertinent statutes do not allow cumulative invocation of California Consumer Price Index (CCPI) increases back to the previous fee increase is neither corroborated by the plain reading of the relevant statutes. The statutes state nothing more than the respective fee increases are capped by CCPI. If the legislature contemplated a "use it or lose it" approach to the CCPI cap on fee increases, it could have easily required the department to review its fee schedule annually and make fee adjustments not to exceed the CCPI for that specific year. However, the legislature did not do this, probably in recognition of the burden to the public and the department of invoking fee increases each and every year. The statutes do require that the department recover the full costs of administering each respective program. This mandate effectively precludes the department from invoking annual fee increases, as the commenter would suggest, if such a fee increase would actually exceed the costs of administering the program. At the same time, this mandate also requires the department to fully fund its costs by fees alone. The only manner at the department's disposal to balance these requirements without violating either is to exploit the flexibility of invoking increases occasionally on a cumulatively-based CCPI cap. The commenter's argument of a "use it or lose it" cost of living cap is fiscally unsound and cannot be seriously contemplated as the legislature's intent.</p>

DEPARTMENT OF JUSTICE RESPONSES TO PUBLIC COMMENT ON PROPOSED REGULATIONS TO INCREASE FIREARMS DIVISION FEES

#	Comment	Department's Response
6	Nothing in Penal Code section 13511.5 permits the DOJ to charge fees to recover the processing costs of furnishing firearm eligibility information for POST Candidates.	The department disagrees with the comment. While the commenter is technically accurate that Penal Code section 13511.5 itself does not expressly authorize DOJ to charge fees for the Peace Officer Standard and Training (POST) Candidate firearms eligibility clearance process, 13511.5 PC does explicitly state that this process shall be executed by the department in the manner of Penal Code sections 11122, 11123, and 11124, which authorize the department to charge up to \$25. Clearly, the department's proposed \$19 fee to cover the actual costs of performing this process is within the scope and authority of these pertinent statutes.
7	The purpose for the increase states that it applies to the "processing costs" for peace officer candidate firearms clearance. To the extent that the fees being charged exceed the costs of furnishing state or local agencies with information pertaining to the applicants ability to possess, receive, own or purchase a firearm pursuant to 12021 or 12021.1, our clients object to the increase.	The department disagrees with the comment that proposed fee increase exceeds the department's costs of administering the DROS program.
8	Our clients object to this proposed regulation to the extent that the increase in fees from \$28.00 to \$38.00 exceeds the actual cost for system development, maintenance, and processing necessary for the furnishing of firearm eligibility information upon submission of applications for issuance or renewal of security guard firearm cards.	The department disagrees with the comment that proposed fee increase exceeds the department's costs of administering the DROS program.

DEPARTMENT OF JUSTICE RESPONSES TO PUBLIC COMMENT ON PROPOSED REGULATIONS TO INCREASE FIREARMS DIVISION FEES

#	Comment	Department's Response
9	<p>Penal Code section 12054(a) also limits the fee increase rate to an amount not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.</p> <p>Thus, the fees may increase only at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher than the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the increase in the CCPI for that fiscal year. Any attempts do otherwise is unlawful.</p> <p>Our clients object to the proposed regulation to the extent that DOJ's "actual cost of furnishing firearm eligibility information" for a CCW exceeds the "processing costs of the DOJ for the direct costs of furnishing the local licensing authority" a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm."</p> <p>Our clients also object to the increase in fees on the grounds that the increase exceeds the approved annual costs of living adjustments for the applicable period.</p>	<p>The department disagrees with the comment that proposed fee increase exceeds the department's costs of administering the DROS program.</p> <p>The department also disagrees with the commenter's interpretation that the pertinent statutes do not allow cumulative invocation of California Consumer Price Index (CCPI) increases back to the previous fee increase is neither corroborated by the plain reading of the relevant statutes. The statutes state nothing more than the respective fee increases are capped by CCPI. If the legislature contemplated a "use it or lose it" approach to the CCPI cap on fee increases, it could have easily required the department to review its fee schedule annually and make fee adjustments not to exceed the CCPI for that specific year. However, the legislature did not do this, probably in recognition of the burden to the public and the department of invoking fee increases each and every year. The statutes do require that the department recover the full costs of administering each respective program. This mandate effectively precludes the department from invoking annual fee increases, as the commenter would suggest, if such a fee increase would actually exceed the costs of administering the program. At the same time, this mandate also requires the department to fully fund its costs by fees alone. The only manner at the department's disposal to balance these requirements without violating either is to exploit the flexibility of invoking increases occasionally on a cumulatively-based CCPI cap. The commenter's argument of a "use it or lose it" cost of living cap is fiscally unsound and cannot be seriously contemplated as the legislature's intent.</p>

DEPARTMENT OF JUSTICE RESPONSES TO PUBLIC COMMENT ON PROPOSED REGULATIONS TO INCREASE FIREARMS DIVISION FEES

#	Comment	Department's Response
10	<p>After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.</p> <p>Thus, the fees may only be used for the above specified actions and may only increase at a rate not higher than the CCPI. The DOJ, however, has increased the fee at a rate higher the CCPI by seeking to retroactively compound the fee increase over the period of years that the DOJ failed to increase their fees. Nothing in the Penal Code allows retroactive fee increases. The DOJ may ONLY increase their fee based upon the increase in the CCPI for that fiscal year. Any attempts do otherwise is unlawful.</p> <p>Our clients object to the proposed regulation to the extent that the fee exceeds the DOJ's application processing costs. Our clients also object to the proposed regulation because the increases exceed the legislatively approved annual cost-of-living adjustments for the applicable period.</p>	<p>The department disagrees with the comment that proposed fee increase exceeds the department's costs of administering the DROS program.</p> <p>The department also disagrees with the commenter's interpretation that the pertinent statutes do not allow cumulative invocation of California Consumer Price Index (CCPI) increases back to the previous fee increase is neither corroborated by the plain reading of the relevant statutes. The statutes state nothing more than the respective fee increases are capped by CCPI. If the legislature contemplated a "use it or lose it" approach to the CCPI cap on fee increases, it could have easily required the department to review its fee schedule annually and make fee adjustments not to exceed the CCPI for that specific year. However, the legislature did not do this, probably in recognition of the burden to the public and the department of invoking fee increases each and every year. The statutes do require that the department recover the full costs of administering each respective program. This mandate effectively precludes the department from invoking annual fee increases, as the commenter would suggest, if such a fee increase would actually exceed the costs of administering the program. At the same time, this mandate also requires the department to fully fund its costs by fees alone. The only manner at the department's disposal to balance these requirements without violating either is to exploit the flexibility of invoking increases occasionally on a cumulatively-based CCPI cap. The commenter's argument of a "use it or lose it" cost of living cap is fiscally unsound and cannot be seriously contemplated as the legislature's intent.</p>

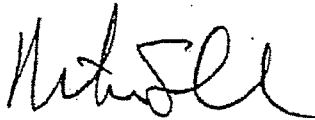
**H**

**STATEMENT OF MAILING  
NOTICES**

**STATEMENT OF MAILING NOTICE**  
(Section 86 of Title 1 of the California Code of Regulations)

The Department of Justice has complied with the provisions of Government Code Section 11346.4, subdivision (a)(1) through (4), regarding the mailing of the notice of proposed regulatory action. The notice was mailed on January 5, 2005, over 45 days prior to the close of the public comment period and the public hearing, which was held on February 22, 2005.

Dated: 2/27/05

  
\_\_\_\_\_  
Mike Small, Department of  
Justice Administrator I

**I**

**ECONOMIC AND FISCAL  
IMPACT STATEMENT  
(STD 399)**



**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

D. 389 (Rev. 2-98)

See SAM Section 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME Justice	CONTACT PERSON Patty Westerinen	TELEPHONE NUMBER 916-263-0851
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT**

**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements  |
| <input checked="" type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance   |
| <input checked="" type="checkbox"/> c. Impacts jobs or occupations         | <input checked="" type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness             | <input type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) \_\_\_\_\_

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits): All California Firearms Dealers, Law Enforcement Agencies, Armed Security Guards and California residents who possess/purchase firearms.

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

Enter the number of businesses that will be created: n/a eliminated: n/a

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts:  Statewide  Local or regional (list areas): \_\_\_\_\_

5. Enter the number of jobs created: n/a or eliminated: n/a Describe the types of jobs or occupations impacted: No jobs will be created or eliminated; however, Firearms Dealers, Armed Security Guards, Law Enforcement and citizens will be impacted.

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes  No If yes, explain briefly: \_\_\_\_\_

**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 86,760,000

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ 22 Annual ongoing costs: \$ 88,000 Years: 10

c. Initial costs for an Individual: \$ 19-22 Annual ongoing costs: \$ 8,586,000 Years: 10

d. Describe other economic costs that may occur: Costs based on 404,000 transactions at fees of \$19 to \$22.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

If multiple industries are impacted, enter the share of total costs for each industry: n/a

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ n/a

4. Will this regulation directly impact housing costs?  Yes  No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_

5. Are there comparable Federal regulations?  Yes  No Explain the need for State regulation given the existence or absence of Federal regulations: Request specific to fee increase only with no other regulatory changes.

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ U

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: All citizens will benefit. This fee increase will allow the State of California to continue providing the level of service necessary to avoid a public safety emergency relative to the purchase/possession of firearms.

2. Are the benefits the result of:  specific statutory requirements, or  goals developed by the agency based on broad statutory authority?

Explain: Fees are allowed in statute. This request is for an increase only.

3. What are the total statewide benefits from this regulation over its lifetime? \$ n/a

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: No other alternatives are viable.

Fees have not been raised since 1991 and the Department is projecting to run out of cash in the Dealers' Record of Sale Special Account in the Spring of 2005.

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: n/a

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?  Yes  No

Regulation requests a fee increase only and does not include regulatory changes.

Explain: \_\_\_\_\_

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)

Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)**

Will the estimated costs of this regulation to California business enterprises exceed \$10 million?  Yes  No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: \$ _____

**FISCAL IMPACT STATEMENT**

**A. FISCAL EFFECT ON LOCAL GOVERNMENT** (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_) or (Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

b. will be requested in the \_\_\_\_\_ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of \_\_\_\_\_

2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in \_\_\_\_\_

b. implements the court mandate set forth by the \_\_\_\_\_ court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_ election; (DATE)

d. is issued only in response to a specific request from the \_\_\_\_\_, which is/are the only local entity(s) affected;

e. will be fully financed from the \_\_\_\_\_ (FEES, REVENUE, ETC.) authorized by Section \_\_\_\_\_ of the \_\_\_\_\_ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

3. Savings of approximately \$ \_\_\_\_\_ annually.

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)**

5. No fiscal impact exists because this regulation does not affect any local entity or program.  
 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ 0 in the current State Fiscal Year. It is anticipated that State agencies will:  
 a. be able to absorb these additional costs within their existing budgets and resources.  
 b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
2. Savings of of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
2. Savings of of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

SIGNATURE <i>Lee Howard</i>		TITLE Director, ASD
AGENCY SECRETARY <sup>1</sup>	PROGRAM BUDGET MANAGER	DATE
APPROVAL/CONCURRENCE <input checked="" type="checkbox"/>		10-25-04
DEPARTMENT OF FINANCE <sup>2</sup>	<input checked="" type="checkbox"/>	DATE
APPROVAL/CONCURRENCE		

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

2. Finance approval and signature is required when SAM sections 6600-6670 require completion of Fiscal Impact Statement in the STD. 399.

**Economic and Fiscal Impact Statement  
Department of Justice  
Fee Increase Regulations**

<u>PROJECTED FISCAL DETAIL EXPENDITURES</u>	<u>FY 04-05</u>	<u>FY 05-06</u>	<u>FY 06-07</u>
<b>PERSONAL SERVICES</b>			
Salaries	\$4,007,000	\$4,007,000	\$4,007,000
Staff Benefits	\$1,373,000	\$1,373,000	\$1,373,000
<b>Total Personal Services</b>	<b>\$5,380,000</b>	<b>\$5,380,000</b>	<b>\$5,380,000</b>
<b>OPERATING EXPENSES &amp; EQUIPMENT</b>			
General Expense	\$64,000	\$64,000	\$64,000
Printing	\$44,000	\$44,000	\$44,000
Communications	\$116,000	\$116,000	\$116,000
Travel In-State	\$108,000	\$108,000	\$108,000
Training	\$6,000	\$6,000	\$6,000
Facilities	\$391,000	\$391,000	\$391,000
Consulting Internal	\$11,000	\$11,000	\$11,000
Consulting External	\$968,000	\$968,000	\$968,000
Data Processing	\$148,000	\$148,000	\$148,000
Equipment	\$9,000	\$9,000	\$9,000
Central Admin Services	\$351,000	\$351,000	\$351,000
Other Items of Expense	\$96,000	\$96,000	\$96,000
Departmental Services	\$744,000	\$744,000	\$744,000
<b>Total Operating Expenses &amp; Equipment (1)</b>	<b>\$3,056,000</b>	<b>\$3,056,000</b>	<b>\$3,056,000</b>
<b>Grand Total Expenditures</b>	<b>\$8,436,000</b>	<b>\$8,436,000</b>	<b>\$8,436,000</b>
<b><u>PROJECTED FISCAL DETAIL REVENUE (2) (3)</u></b>	<b>\$7,986,000</b>	<b>\$8,674,000</b>	<b>\$8,674,000</b>

(1) Projected expenditures based on FY 03-04 information.

(2) FY 04-05 revenue reflects an 8 month fee increase.

(3) Revenue based on:

325,000 DROS transactions @ \$19

5,000 POST transactions @ \$19

23,000 Peace Officer transactions @ \$19

18,000 Security Guard transactions @ \$19

6,000 Handgun Reporting transactions @ \$19

4,000 COE transactions @ \$22

23,000 CCW transactions @ \$22

\$917,000 in "Other" Revenue not included in fee increase proposal

# **EXHIBIT F**

Date of Hearing: July 6, 2011

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Felipe Fuentes, Chair

SB 819 (Leno) – As Amended: April 14, 2011

Policy Committee: Public Safety

Vote: 5-2

Urgency: No State Mandated Local Program: No

Reimbursable:

SUMMARY

This bill specifies that the Department of Justice (DOJ) may use existing gun purchaser fees (known as the dealer record of sale (DROS)) for costs associated with its firearms-related regulatory and enforcement activities regarding possession, in addition to costs associated with the explicitly referenced sale, purchase, loan, or transfer, of firearms.

This bill also makes a series of findings and declarations, including:

- 1) "A Dealer Record of Sale fee is imposed upon every sale or transfer of a firearm by a dealer in California. Existing law authorizes the DOJ to utilize these funds for firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to any provision listed in Penal Code Section 16580, but not expressly for the enforcement activities related to possession." (Penal Code Section 16580 references possession issues.)
- 2) "Rather than placing an additional burden on the taxpayers of California to fund enhanced enforcement of the existing armed prohibited persons program, it is the intent of the Legislature in enacting this bill to allow the DOJ to utilize the Dealer Record of Sale Account for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System."

FISCAL EFFECT

Significant ongoing increase in the use of existing DROS fees, in the range of \$1 million.

This bill does not appropriate funds or raise a fee. It explicitly authorizes the use of DROS funding for an additional purpose. According to DOJ, the sponsor of this bill, upon passage of this bill, DOJ will pursue a Budget Change Proposal (BCP) for the 2012-13 budget bill to fund Armed Prohibited Persons System (APPS) efforts from the DROS fund. DOJ estimates that BCP will request about \$1 million for special agents to assist other agents and local law enforcement in APPS sweeps.

In addition, DOJ states it will seek one-time funds of about \$500,000 for APPS DOJ task forces.

Currently there is a DROS reserve of about \$5.5 million. This assumes a one-time \$11.5 million budget transfer to the GF.

COMMENTS

- 1) Rationale. The author's intent is to clarify that DOJ may use existing department resources to help enforce the APPS to keep guns out of the hands of the more than 18,000 persons who are on California's Prohibited Armed Persons File due to mental illness, felony convictions, or gun-related convictions.

According to the author, "It is in everyone's interest to ensure that firearms are not in the possession of prohibited persons. However, law-abiding firearms owners have a particularly strong interest in this to help avoid gun ownership from becoming strongly associated with the random acts of deranged individuals. Moreover, the purpose of the bill is to strengthen enforcement of existing guns laws. A prospective gun owner pays a fee to determine whether he or she is eligible to purchase a gun (background check), it makes sense that the fee should apply to enforcement when those same individuals become "ineligible" due to criminal behavior or mental illness. Accordingly, there is a very close nexus between the DROS fund and the bill's intended purpose. Moreover, the bill is aligned with gun advocates' stated interest in heightened enforcement of existing gun laws and the alternative would be to place this additional burden on the tax payer at large."

- 2) DOJ's Armed Prohibited Persons System, the only such system in the nation, has identified 18,700 prohibited persons and 36,300 guns associated with these persons (June 2011 statistics). The APPS maintains information about persons who are, or will be, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or an assault weapon. The APPS also provides authorized law enforcement agencies with inquiry capabilities to determine the prohibition status of a person of interest.
- 3) Supporters, including a list of law enforcement agencies, cite the growing list of prohibited persons and the underutilization of APPS, largely due to a lack of state and local resources. While disarming prohibited persons is largely a local law enforcement responsibility, local law enforcement welcomes DOJ's intent to assist them via task forces and sweeps.
- 4) Opponents, generally gun enthusiasts, object to using DROS fees for what they see as expansive purposes.

Analysis Prepared by: Geoff Long / APPR. / (916) 319-2081



# **EXHIBIT G**

**SENATE COMMITTEE ON PUBLIC SAFETY**

Senator Loni Hancock, Chair  
2011-2012 Regular Session

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SB 819 (Leno)  
As Amended April 14, 2011  
Hearing date: April 26, 2011  
Penal Code  
SM:dl

USES OF DEALER RECORD OF SALE FUNDS

HISTORY

Source: Attorney General Kamala D. Harris

Prior Legislation: AB 302 (Beall) – Chap. 344, Stats. Of 2010  
AB 161 (Steinberg) – Chap. 754, Stats. of 2003  
AB 950 (Brulte) – Chap. 944, Stats. of 2001

Support: Association for Los Angeles Deputy Sheriffs; Riverside Sheriffs' Association;  
California Chapters of the Brady Campaign to Prevent Gun Violence; California  
State Sheriffs' Association; Statewide Law Enforcement Association; Legal  
Community Against Violence

Opposition: California Association of Firearms Retailers; California Rifle and Pistol  
Association; California Sportsman's' Lobby, Inc.; Crossroads of the West;  
National Rifle Association; National Shooting Sports Foundation Inc.; Outdoor  
Sportsmen's Coalition of California; Safari Club International

KEY ISSUE

SHOULD THE DEPARTMENT OF JUSTICE BE AUTHORIZED TO USE DEALER  
RECORD OF SALE FUNDS FOR COSTS ASSOCIATED WITH ITS FIREARMS-RELATED  
REGULATORY AND ENFORCEMENT ACTIVITIES REGARDING THE POSSESSION AS  
WELL AS THE SALE, PURCHASE, LOAN, OR TRANSFER OF FIREARMS, AS  
SPECIFIED?

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### PURPOSE

*The purpose of this bill is to provide that the Department of Justice may use dealer record of sale (DROS) funds for costs associated with its firearms-related regulatory and enforcement activities regarding the possession as well as the sale, purchase, loan, or transfer of firearms, as specified.*

Existing Federal law states that it shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to persons if that person is under indictment or has been convicted of specified crimes, is under a restraining order, has been committed to a mental institution, and other specified disqualifying factors. (18 U.S.C. § 922.)

Existing California law:

- Requires that persons who sell, lease, or transfer firearms be licensed by California. (Penal Code §§ 26500 and 26700, et seq.<sup>1</sup>)
- Sets forth a series of requirements to be state licensed by DOJ, which provides that to be recognized as state licensed, a person must be on a centralized list of gun dealers and allows access to the centralized list by authorized persons for various reasons. (Penal Code § 26700.)
- Requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to DOJ to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. The record of applicant information must be transmitted to the Department of Justice in Sacramento by electronic transfer on the date of the application to purchase. The original of each record of electronic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. (Pen Code § 28160-28220.)
- Requires handguns to be centrally registered at time of transfer or sale by way of transfer forms centrally compiled by the DOJ. DOJ is required to keep a registry from data sent to

<sup>1</sup> SB 1080, Chap. 711, Stats. 2010, and SB 1115, Chap. 178, Stats. 2010, recast and renumbered most statutes relating to deadly weapons without any substantive change to those statutes. Those changes will become operative January 1, 2012. All references to affected code sections will be to the revised version unless otherwise indicated.

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DOJ indicating who owns what handgun by make, model, and serial number and the date thereof. (Penal Code § 11106(a) and (c).)

- Requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is prohibited from purchasing a firearm because of a prior felony conviction or because they had previously purchased a handgun within the last 30 days, or because they had received inpatient treatment for a mental health disorder, as specified. (Penal Code § 28220.)
- States that, to the extent funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as specified, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law. (Penal Code § 28220.)
- States that if the department determines that the purchaser is prohibited from possessing a firearm, as specified, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact. (Penal Code § 28220.)
- States that no person who has been taken into custody, found to be a danger to himself, herself, or others, and, as a result, admitted to a specified mental health facility, shall 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, except as specified. (Welfare and Institutions Code § 8103(f)(1).) For each such person, the facility shall immediately, on the date 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. (Welfare and Institutions Code § 8103(f)(2)(A).)
- No person who has been certified for intensive treatment for a mental disorder, as specified, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years and relevant treatment facilities shall report the identities of such persons to DOJ, as specified. (Welfare and Institutions Code § 8103(g).)
- The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial

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Relations. This fee, known as the Dealer Record of Sale or DRoS fee, shall be no more than is necessary to fund the following:

- The department for the cost of furnishing this information.
- The department for the cost of meeting its obligations to notify specified persons that they are prohibited from owning firearms due to their receiving inpatient treatment for a mental disorder.
- Local mental health facilities for state-mandated local costs resulting from the specified reporting requirements.
- The State Department of Mental Health for the costs resulting from the specified requirements imposed.
- Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the specified reporting requirements.
- Local law enforcement agencies for state-mandated local costs resulting from the notification requirements regarding service of restraining orders, as specified.
- Local law enforcement agencies for state-mandated local costs resulting from the notification requirements regarding specified persons prohibited from owning firearms due to their receiving inpatient treatment for a mental disorder.
- For the actual costs associated with the electronic or telephonic transfer of information, as specified.
- The Department of Food and Agriculture for the costs resulting from the notification provisions regarding importing firearms into the state, as specified.
- The department for the costs associated with public education requirements regarding importation of firearms into California, as specified.
- The department for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(Penal Code § 28225(a) – (b).)

- The fee established pursuant to this section shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed as specified, the costs of the State

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Department of Mental Health for complying with the requirements imposed as specified, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed as specified, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements, as specified, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements imposed as specified, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the specified notification provisions, the estimated reasonable costs of the department for the costs associated with public education requirements regarding importation of firearms into California, and the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to specified provisions of law pertaining to firearms. (Penal Code § 28225(c).)

- The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations:
  - For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to any provision listed in subdivision (a) of Section 16585.
  - For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department.
  - For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to Section 26905, 27565, or 28000, or paragraph (1) of subdivision (a) of Section 27560.
  - For the actual costs associated with the electronic or telephonic transfer of information pursuant to Section 28215.
  - Any costs incurred by the Department of Justice to implement this section shall be reimbursed from fees collected and charged pursuant to this section. No fees shall be charged to the dealer pursuant to Section 28225 for implementing this section.

(Penal Code § 28230.)

- All money received by the department pursuant to this article shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to any of the following:

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- This article.
  - Annual inspections of permitted destructive devices. (See § 18910.)
  - Regulating firearms transaction between licensed dealers (See § 27555.)
  - Conduct public education and notification programs regarding importation of firearms into the state. (See § 27560(d) and (e).)
  - Maintain a list of federally licensed firearms dealers in California exempt from the state dealer licensing requirements, as specified. (See Article 6 (commencing with Section 28450).)
  - Inspection of inventory of licensed firearms dealers. (See § 31110.)
  - Public education and notification programs regarding registration of assault weapons. (See § 31115.)
  - Retesting of handguns on the not unsafe handgun list, as specified. (See § 32020(a).)
  - Inspection of inventories of machine guns held under permit. (See § 32670.)
  - Inspection of inventories of short-barreled shotguns and rifles held under permit (See § 33320.) (Penal Code § 28235.)
- The Attorney General shall establish and maintain an online database to be known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to 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.
  - The information contained in the Prohibited Armed Persons File shall only be available to specified entities through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Penal Code § 30000.)

This bill would provide that DOJ may use dealer record of sale (DROS) funds for costs associated with its firearms-related regulatory and enforcement activities regarding the *possession* as well as the sale, purchase, loan, or transfer of firearms, as specified.

This bill would make specified findings and declarations.

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### *RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION*

For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation. As these cases have progressed, prison conditions have continued to be assailed, and the scrutiny of the federal courts over California's prisons has intensified.

On June 30, 2005, in a class action lawsuit filed four years earlier, the United States District Court for the Northern District of California established a Receivership to take control of the delivery of medical services to all California state prisoners confined by the California Department of Corrections and Rehabilitation ("CDCR"). In December of 2006, plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a three-judge federal panel issued an order requiring California to reduce its inmate population to 137.5 percent of design capacity -- a reduction at that time of roughly 40,000 inmates -- within two years. The court stayed implementation of its ruling pending the state's appeal to the U.S. Supreme Court.

On Monday, June 14, 2010, the U.S. Supreme Court agreed to hear the state's appeal of this order and, on Tuesday, November 30, 2010, the Court heard oral arguments. A decision is expected as early as this spring.

In response to the unresolved prison capacity crisis, in early 2007 the Senate Committee on Public Safety began holding legislative proposals which could further exacerbate prison overcrowding through new or expanded felony prosecutions.

This bill does not appear to aggravate the prison overcrowding crisis described above.

### COMMENTS

#### 1. Need for This Bill

According to the author:

The California Department of Justice (DOJ) maintains APPS, an online database, to cross-reference persons who have ownership or possession of a firearm, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from having a firearm. Authorized law enforcement agencies have access to APPS. DOJ populates APPS with all handgun and assault weapon owners across the state and matches them against criminal history records to determine who might fall into a prohibited status. When a match is found, the system automatically raises a flag. APPS, further, interfaces with the Automated Firearms System and identifies the

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handguns and assault<sup>2</sup> weapons in that prohibited individual's possession. In theory, local agencies and DOJ would then confiscate the weapons. When local agencies confiscate weapons, notice is sent to DOJ so that the individual can be removed from the list.

APPS is currently funded through the general fund. There is, however, an account that holds the fees charged by dealers for each firearm purchase. This is called the Dealer Record of Sale (DROS) account. Penal Code section 12076 allows the Department of Justice to use this account to fund firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter. Penal Code section 12076, however, does not fund DOJ or local agencies to confiscate unlawfully possessed firearms.

There are currently more than 18,000 armed prohibited people statewide, including convicted felons. 30 to 35 percent of prohibited people have been adjudicated mentally ill. Armed prohibited people are believed to hold up to 34,101 handguns and 1,590 assault weapons. Every day there are an additional 15 to 20 individuals added to APPS. Despite their best efforts, local and State law enforcement agencies do not have the funding or resources to keep up with this influx.

## 2. Background – The Prohibited Armed Persons File

In 2001, the Legislature created the Prohibited Armed Persons File to ensure otherwise prohibited persons do not continue to possess firearms. (SB 950 (Brulte), Chapter 944, Statutes of 2001.) The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearm Information System, and who, subsequent to 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. (Penal Code § 30000(a).) According to DOJ, in July 2003, it received funding to build a database of this information – the Armed and Prohibited Persons System – which became operational in 2006 and made fully available to local law enforcement in 2007.

SB 950 also mandated that DOJ provide investigative assistance to local law enforcement agencies to better insure the investigation of individuals who continue to possess firearms despite being prohibited from doing so. (Penal Code § 30010.) DOJ states that its special agents have trained approximately 500 sworn local law enforcement officials in 196 police departments and 35 sheriff's departments on how to use the database during firearms investigations. The Department states it has also conducted 50 training sessions on how to use the vehicle-mounted California Law Enforcement Telecommunications System terminals to access the database.

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<sup>2</sup> Because long guns are not required to be registered, the list of firearms in an armed prohibited person's possession would likely not include long guns.

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<http://ag.ca.gov/newsalerts/release.php?id=1505&year=2007&month=12>)

Recently, the New York Times reported on California's Armed Prohibited Persons File and the problems it seeks to address:

By law, Roy Perez should not have had a gun three years ago when he shot his mother 16 times in their home in Baldwin Park, Calif., killing her, and then went next door and killed a woman and her 4-year-old daughter.

Mr. Perez, who pleaded guilty to three counts of murder and was sentenced last year to life in prison, had a history of mental health issues. As a result, even though in 2004 he legally bought the 9-millimeter Glock 26 handgun he used, at the time of the shootings his name was in a statewide law enforcement database as someone whose gun should be taken away, according to the authorities.

The case highlights a serious vulnerability when it comes to keeping guns out of the hands of the mentally unstable and others, not just in California but across the country.

In the wake of the Tucson shootings, much attention has been paid to various categories of people who are legally barred from buying handguns — those who have been “adjudicated as a mental defective,” have felony convictions, have committed domestic violence misdemeanors and so on. The focus has almost entirely been on gaps in the federal background check system that is supposed to deny guns to these prohibited buyers.

There is, however, another major blind spot in the system.

Tens of thousands of gun owners, like Mr. Perez, bought their weapons legally but under the law should no longer have them because of subsequent mental health or criminal issues. In Mr. Perez's case, he had been held involuntarily by the authorities several times for psychiatric evaluation, which in California bars a person from possessing a gun for five years.

Policing these prohibitions is difficult, however, in most states. The authorities usually have to stumble upon the weapon in, say, a traffic stop or some other encounter, and run the person's name through various record checks.

California is unique in the country, gun control advocates say, because of its computerized database, the Armed Prohibited Persons System. It was created, in part, to enable law enforcement officials to handle the issue pre-emptively, actively identifying people who legally bought handguns, or registered assault weapons, but are now prohibited from having them.

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The list had 18,374 names on it as of the beginning of this month — 15 to 20 are added a day — swamping law enforcement's ability to keep up. Some police departments admitted that they had not even tried.

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The state Justice Department's firearms bureau does have a small unit, with 20 agents, that tracks down people on the list. Last year, it investigated 1,717 people and seized 1,224 firearms.

The list is growing far faster, however, than names are being removed. "We're just not a very big bureau," Mr. Lindley said. "We do the best we can with the personnel that we have."

The bureau is planning a sweep this spring focused on people on the list for mental health reasons. Last summer, a man from the Fresno area who had recently been released from a mental health facility was found to possess 73 guns, including 17 unregistered assault rifles.

In the case of Mr. Perez, Lieutenant Cowan, of Baldwin Park, said he learned that state agents had been scheduled to visit Mr. Perez to confiscate his weapon — two weeks after the rampage took place.

*(States Struggle to Disarm People Who've Lost Right to Own Guns, By Ed Connolly and Michael Luo, New York Times, Feb. 5, 2011,)*

[http://www.nytimes.com/2011/02/06/us/06guns.html?\\_r=1](http://www.nytimes.com/2011/02/06/us/06guns.html?_r=1)

### 3. What This Bill Would Do

As noted above, current law establishes a mechanism whereby DOJ cross-references persons who are prohibited from possessing a firearm with records of persons who have purchased firearms, and any "prohibited person" who is listed as a firearm owner goes in the Prohibited Armed Persons File. DOJ and local law enforcement agencies can utilize that list to investigate firearms violations and seize firearms from prohibited persons.

Current law provides that DOJ may require licensed firearms dealers to charge a fee, as specified, in connection with firearm sales. These fees are deposited in the Dealer Record of Sale (DROS) Special Account. DROS funds may be used to reimburse DOJ for the costs associated with funding DOJ firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms, as specified, (Penal code §§ 28225, 28230, 28235.) It is somewhat unclear under current law whether DROS funds could be used to reimburse DOJ for its enforcement efforts related to the Armed Prohibited Persons File. SB 819 would state that DROS funds may be used by DOJ for

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enforcement activities related to the *possession* as well as the sale, purchase, loan, or transfer of firearms. This would clarify that DOJ is permitted to use DROS funds to pay for its efforts to retrieve unlawfully possessed firearms and prosecute individuals who possess those firearms despite being prohibited by law from doing so.

SHOULD IT BE SPECIFIED THAT DROS FUNDS MAY BE USED TO FINANCE DOJ'S ENFORCEMENT OF LAWS REGARDING THE UNLAWFUL POSSESSION OF FIREARMS?

4. Argument in Support

The California Chapters of the Brady Campaign to Prevent Gun Violence states:

The Dealers' Record of Sale (DROS) fee is charged by the California Department of Justice (DOJ) for most firearm transfers. The fees reimburse DOJ for expenses incurred related to the DROS process, including conducting the background check of prospective firearm purchasers. The DROS fees are deposited in the DROS Special Account of the General Fund and are available, upon appropriation by the Legislature, for expenditure by DOJ to offset specified costs.

Existing law provides that DROS fees may also be used to fund firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms. SB 819 would additionally authorize using the DROS fees for regulatory and enforcement activities related to the possession of firearms. It is important to note that SB 819 does not create a new class of persons prohibited from purchasing or possessing firearms. The bill would simply help DOJ better enforce existing firearm laws and ensure that dangerous individuals who have lost their gun rights are not in possession of firearms. SB 819 would not impose a cost to the state general fund, but would allow DROS funds, as approved by the regular budget process, to be used for certain firearm enforcement programs.

Specifically, SB 819 seeks to allow a portion of the annual surplus of DROS funds to be expended on DOJ's Armed and Prohibited Persons System (APPS) Program. The APPS database maintained by DOJ contains information on persons who have purchased handguns and subsequently become prohibited by law from purchasing or possessing firearms. Law enforcement can use this information to disarm persons who may be in the database as a result of a felony or violent misdemeanor conviction, a commitment to a mental health facility, or the result of a domestic violence restraining order for which they failed to surrender their firearm.

The California Brady Chapters pushed for full implementation of the APPS program under Attorney General Brown and from July 1, 2007 to September 30,

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2010, DOJ conducted 5,762 APPS investigations, resulting in the seizure of 5,985 firearms. A partial review of investigations by BOF indicates that approximately 40% of all APPS investigations results in the seizure of at least one firearm.<sup>i</sup> As of March 3, 2010, there were 17,134 armed and prohibited persons in the APPS database. This group of prohibited persons was believed to be in possession of 29,358 handguns and 1,514 assault weapons.<sup>ii</sup> By November 1, 2010, the numbers had increased to 18,166 prohibited persons in the APPS database, with 33,019 handguns and 1,555 assault weapons associated with the prohibited persons.<sup>iii</sup> (There is no data on long guns owned by prohibited persons since long gun records are not maintained in the California database.) Despite the investigation and seizure of almost six thousand firearms, the number of prohibited persons with firearms in APPS is growing due to the fact that gun owners are becoming prohibited faster than DOJ and local law enforcement agencies can conduct investigations and seizure of the firearms.

Local law enforcement agencies are provided monthly information regarding the armed and prohibited persons in the agency's jurisdiction. However at the present time, many agencies do not have the resources or personnel to work the APPS cases and rely on assistance from DOJ's criminal intelligence specialists and special agents. In today's environment of shrinking budgets, it is important to find alternative ways to fund the state's important public safety programs.

#### 5. Argument in Opposition

The National Shooting Sports Foundation, Inc. states:

While NSSF supports keeping firearms out of the hands of persons who are prohibited from possessing firearms, it opposes taking the money to fund this activity from the Dealers Record of Sale (DROS) Special Account of the General Fund.

The money paid into the DROS fund by a prospective purchaser or other transferee of a firearm, is a fee to pay for the costs of a criminal and mental history background check to determine the person's eligibility to lawfully possess a firearm.

The DROS fee is not a regulatory fee, tax license or other form of non-user charge. NSSF believes that the DROS fund has often been improperly used to fund non-background check activities of the Department of Justice (DOJ).

Since the use of DROS fees for the purposes of SB 819 would be to use them in the same manner as a tax, the bill should require a 2/3's vote of each house of the Legislature for passage.

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If the bill were to be amended to designate a different source of funding, NSSF would remove its opposition and likely support the bill. NSSF does not support unfunded legislation.

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- i Data provided by the CA DOJ, November 2, 2010.
  - ii Data provided by the CA DOJ, March 4, 2010.
  - iii Data provided by the CA DOJ, November 2, 2010.

# **EXHIBIT H**

Senate Bill No. 819

CHAPTER 743

An act to amend Section 28225 of the Penal Code, relating to firearms.

[Approved by Governor October 9, 2011, Filed with  
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 819, Leno. Firearms.

Existing law authorizes the Department of Justice to require a firearms dealer to charge each firearm purchaser a fee, as specified, to fund various specified costs in connection with, among other things, a background check of the purchaser, and to fund the costs associated with the department's firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms. The bill would make related legislative findings and declarations.

This bill would also authorize using those charges to fund the department's firearms-related regulatory and enforcement activities related to the possession of firearms, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) California is the first and only state in the nation to establish an automated system for tracking handgun and assault weapon owners who might fall into a prohibited status.

(b) The California Department of Justice (DOJ) is required to maintain an online database, which is currently known as the Armed Prohibited Persons System, otherwise known as APPS, which cross-references all handgun and assault weapon owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon.

(c) The DOJ is further required to provide authorized law enforcement agencies with inquiry capabilities and investigative assistance to determine the prohibition status of a person of interest.

(d) Each day, the list of armed prohibited persons in California grows by about 15 to 20 people. There are currently more than 18,000 armed prohibited persons in California. Collectively, these individuals are believed to be in possession of over 34,000 handguns and 1,590 assault weapons. The illegal possession of these firearms presents a substantial danger to public safety.



Ch. 743

— 2 —

(e) Neither the DOJ nor local law enforcement has sufficient resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons.

(f) A Dealer Record of Sale fee is imposed upon every sale or transfer of a firearm by a dealer in California. Existing law authorizes the DOJ to utilize these funds for firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to any provision listed in Section 16580 of the Penal Code, but not expressly for the enforcement activities related to possession.

(g) Rather than placing an additional burden on the taxpayers of California to fund enhanced enforcement of the existing armed prohibited persons program, it is the intent of the Legislature in enacting this measure to allow the DOJ to utilize the Dealer Record of Sale Account for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System.

SEC. 2. Section 28225 of the Penal Code is amended to read:

28225. (a) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

(b) The fee under subdivision (a) shall be no more than is necessary to fund the following:

- (1) The department for the cost of furnishing this information.
- (2) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.
- (3) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.
- (4) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.
- (5) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.
- (6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.
- (7) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.
- (8) For the actual costs associated with the electronic or telephonic transfer of information pursuant to Section 28215.
- (9) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(10) The department for the costs associated with subdivisions (d) and (e) of Section 27560.

(11) The department for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(c) The fee established pursuant to this section shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (3) of subdivision (b), the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (4) of subdivision (b), the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (5) of subdivision (b), the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (7) of subdivision (b), the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, the estimated reasonable costs of the department for the costs associated with subdivisions (d) and (e) of Section 27560, and the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(d) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in this section to the department.

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# **EXHIBIT I**

Senate Bill No. 140

CHAPTER 2

An act to add Section 30015 to the Penal Code, relating to firearms, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 1, 2013. Filed with Secretary  
of State May 1, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 140, Leno. Firearms: prohibited persons.

Existing law establishes the Dealers' Record of Sale Special Account in the General Fund with moneys in the account available upon appropriation by the Legislature. Existing law requires the Attorney General to establish and maintain an online database to be known as the Prohibited Armed Persons File, sometimes referred to as the Armed Prohibited Persons System, to cross-reference persons who have ownership or possession of a firearm with those who are prohibited from owning or possessing a firearm.

This bill would appropriate \$24,000,000 from the Dealers' Record of Sale Special Account to the Department of Justice to address the backlog in the Armed Prohibited Persons System, thereby making an appropriation. The bill would require the department to report to the Joint Legislative Budget Committee regarding ways the backlog in the Armed Prohibited Persons System has been reduced or eliminated, as specified. The bill would make related findings and declarations.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) California is the first and only state in the nation to establish an automated system for tracking handgun and assault weapon owners who might fall into a prohibited status.

(b) The online database, which is currently known as the Armed Prohibited Persons System (APPS), cross-references all handgun and assault weapon owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon.

(c) Each day, the list of armed prohibited persons in California grows by about 15 to 20 people. There are currently more than 20,000 armed prohibited persons in California. Collectively, these individuals are believed to be in possession of over 39,000 handguns and 1,670 assault weapons.

(d) Neither the Department of Justice nor local law enforcement has sufficient resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons.

(e) It is the intent of the Legislature in enacting this measure to allow the Department of Justice to utilize additional Dealers' Record of Sale Special Account funds for the limited purpose of addressing the current APPS backlog and the illegal possession of these firearms, which presents a substantial danger to public safety.

SEC. 2. Section 30015 is added to the Penal Code, to read:

30015. (a) The sum of twenty-four million dollars (\$24,000,000) is hereby appropriated from the Dealers' Record of Sale Special Account of the General Fund to the Department of Justice to address the backlog in the Armed Prohibited Persons System (APPS) and the illegal possession of firearms by those prohibited persons.

(b) No later than March 1, 2015, and no later than March 1 each year thereafter, the department shall report to the Joint Legislative Budget Committee all of the following for the immediately preceding calendar year:

(1) The degree to which the backlog in the APPS has been reduced or eliminated.

(2) The number of agents hired for enforcement of the APPS.

(3) The number of people cleared from the APPS.

(4) The number of people added to the APPS.

(5) The number of people in the APPS before and after the relevant reporting period, including a breakdown of why each person in the APPS is prohibited from possessing a firearm.

(6) The number of firearms recovered due to enforcement of the APPS.

(7) The number of contacts made during the APPS enforcement efforts.

(8) Information regarding task forces or collaboration with local law enforcement on reducing the APPS backlog.

(c) (1) The requirement for submitting a report imposed under subdivision (b) is inoperative on March 1, 2019, pursuant to Section 10231.5 of the Government Code.

(2) A report to be submitted pursuant to subdivision (b) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the current Armed Prohibited Persons System (APPS) backlog and the illegal possession of firearms, which presents an immediate danger to public safety, it is necessary for this act to take effect immediately.

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# **EXHIBIT J**

Date of Hearing: August 23, 1995

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Charles Poochigian, Chair

SB 670 (Lewis) - As Amended: June 20, 1995

Policy Committee: Public Safety

Vote: 5-4

State Mandated Local Program: No

Reimbursable: No

SUBJECT

Firearms: dealers' record of sale.

This bill:

Provides that the Department of Justice (DOJ) may charge a firearms dealer a fee not to exceed fourteen dollars for processing Dealer Record of Sale (DROS) firearms sales information and that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index (CCPI) as compiled by the Department of Industrial Relations. This fee shall be no more than is sufficient to reimburse State costs for the processing of DROS's. In addition, the bill would prohibit DOJ from using the fee to directly fund or make a loan to fund programs other than existing authorized programs approved for funding from the DROS fund.

FISCAL EFFECT

DOJ indicates that this capped \$14 fee is sufficient to fund the existing authorized programs. However, DOJ is concerned that future program cost increases in excess of the CCPI would result in a deficiency to existing operations and would most likely result in a General Fund augmentation.

COMMENTS

The committee may wish to consider amending the bill to provide allowances for fee increases when DROS program cost increases exceed growth in the CCPI.

SB 671 (Lewis) is joined to this bill. SB 671 postpones the implementation of the Consolidated Firearms Information System, intended to computerize records of firearms sales. SB 671 also reduces the waiting period from 15 days to 10 days for both handguns and long guns.

Committee: Public Safety

AYES: Setencich, Boland, Bowler, Rainey, Rogan

NAYS: Villaraigosa, Kuehl, Martinez, K. Murray

Consultant: Charles Pattillo

322-4323

AAPPRO

SB 670

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# **EXHIBIT K**



SENATE THIRD READING

SB 670 (Lewis) - As Amended: August 29, 1995

SENATE VOTE: 34-0

ASSEMBLY ACTIONS:

COMMITTEE: PUB. S. VOTE: 5-4 COMMITTEE: APPR. VOTE: 16-2

Ayes: Setencich, Boland, Bowler,  
Rainey, Rogan

Ayes: Poochigian, V. Brown, Aguiar,  
Baca, Bordonaro, Brewer, Burton,  
Frusetta, Goldsmith, Lee,  
K. Murray, Olberg, Rogan,  
Takasugi, Villaraigosa,  
Setencich

Nays: Villaraigosa, Kuehl, Martinez,  
K. Murray

Nays: Bates, Bustamante

DIGEST

Existing law:

- 1) Requires every firearms dealer to keep a register in which certain information is to be entered pursuant to specified procedures.
- 2) Authorizes the Department of Justice (DOJ) to charge the dealer a fee sufficient to reimburse costs of the department relating to furnishing information required by the firearms dealer under these procedures and specified costs of the State Department of Mental Health, local mental health facilities and institutions, and local law enforcement agencies relating to reporting and notification requirements.

This bill:

- 1) Fixes the dealer fee at \$14 as of the date the measure takes affect.
- 2) Allows the DOJ to raise the fee at the same rate as the Consumer Price Index (CPI) every year from the date this measure becomes law.
- 3) Deems discretionary for the purpose of civil liability, the acts of the DOJ as they apply to background checks on firearms.

FISCAL EFFECT

DOJ indicates that this capped \$14 fee is sufficient to fund the existing authorized programs. However, DOJ is concerned that future program cost increases in excess of the CPI would result in a deficiency to existing operations and would most likely result in a General Fund augmentation.

COMMENTS

According to the author:

Since the enactment of AB 497 (Connelly) of 1990, dealer record of sale (DROS) fees have risen 350%, with little or no progress in expediting the firearm background check process. In addition, DROS funds have been "raided" to fund other DOJ programs. This bill would cap the DROS fees at no more than the cost of the background check program and would prohibit the DOJ from spending or loaning DROS funds for purposes other than the background check information - a cost saving process which will permit the Department of Justice to avoid future DROS fee increases.

The DROS fee for firearms has risen from \$4.25 to \$14 in the past five years. This is an increase of greater than 300%. The DROS fee is charged by the DOJ to dealers; the dealers, in turn, charge that fee to purchasers.

This bill would prohibit the department from using the fee to directly fund, or as a loan to fund, any program other than the costs specified in that provision. By permitting the fee to be increased no more than the annual increase in the CPI, as compiled and reported by the Department of Industrial Relations, the fee will only be increased when necessary.

Under this bill, persons who are injured because the DOJ failed to conduct an accurate background check on an applicant who buys a handgun, would not have a claim under the California Tort Claims Act. Any conduct by the DOJ that took place before this act is signed into law would not be affected by this bill.

This bill would provide that it shall become operative only if SB 671 (Lewis), pending in the Assembly, is chaptered and becomes effective on or before January 1, 1996.

Analysis prepared by: Donald J. Currier / apubs / 445-3268

FN 018966

# **EXHIBIT L**

Date of Hearing: June 21, 2011  
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Tom Ammiano, Chair

SB 819 (Leno) – As Amended: April 14, 2011

SUMMARY: Provides that the Department of Justice (DOJ) may use dealer record of sale (DROS) funds for costs associated with its firearms-related regulatory and enforcement activities regarding the possession, as well as the sale, purchase, loan, or transfer, of firearms, as specified. Specifically, this bill:

- 1) Authorizes the using the DOJ purchaser fee to fund the DOJ's firearms-related regulatory and enforcement activities related to the possession of firearms.
- 2) Makes the following findings and declarations:
  - a) California is the first and only state in the nation to establish an automated system for tracking handgun and assault weapon owners who might fall into a prohibited status.
  - b) DOJ is required to maintain an online database, which is currently known as the "Armed Prohibited Persons System" (APPS), which cross-references all handgun and assault weapon owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon.
  - c) The DOJ is further required to provide authorized law enforcement agencies with inquiry capabilities and investigative assistance to determine the prohibition status of a person of interest.
  - d) Each day, the list of armed prohibited persons in California increases by about 15 to 20 people. There are currently more than 18,000 armed prohibited persons in California. Collectively, these individuals are believed to be in possession of over 34,000 handguns and 1,590 assault weapons. The illegal possession of these firearms presents a substantial danger to public safety.
  - e) Neither the DOJ nor local law enforcement has sufficient resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons.
  - f) A DROS fee is imposed upon every sale or transfer of a firearm by a dealer in California. Existing law authorizes the DOJ to utilize these funds for firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to any provision listed in Penal Code Section 16580, but not expressly for the enforcement activities related to possession.

- g) Rather than placing an additional burden on the taxpayers of California to fund enhanced enforcement of the existing armed prohibited persons program, it is the intent of the Legislature in enacting this bill to allow the DOJ to utilize the DROS Account for the additional, limited purpose of funding enforcement of the APPS.

EXISTING LAW:

- 1) States that it shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to persons if that person is under indictment or has been convicted of specified crimes, is under a restraining order, has been committed to a mental institution, and other specified disqualifying factors. (18 U.S.C. Section 922.)
- 2) Requires that persons who sell, lease, or transfer firearms be licensed by California. (Penal Code Sections 26500 and 26700, et seq.)
- 3) Sets forth a series of requirements to be state licensed by DOJ, which provides that to be recognized as state licensed, a person must be on a centralized list of gun dealers and allows access to the centralized list by authorized persons for various reasons. (Penal Code Section 26700.)
- 4) Requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to DOJ to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. The record of applicant information must be transmitted to the DOJ in Sacramento by electronic transfer on the date of the application to purchase. The original of each record of electronic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, DOJ employee designated by the Attorney General, or agent of the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. (Penal Code Sections 28160 to 28220.)
- 5) Requires handguns to be centrally registered at time of transfer or sale by way of transfer forms centrally compiled by the DOJ. DOJ is required to keep a registry from data sent to DOJ indicating who owns what handgun by make, model, and serial number and the date thereof. [Penal Code Section 11106(a) and (c).]
- 6) Requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the California Department of Mental Health (DMH) pursuant to Welfare and Institutions Code (WIC) Section 8104, in order to determine if the purchaser is prohibited from purchasing a firearm because of a prior felony conviction or because they had previously purchased a handgun within the last 30 days, or because they had received inpatient treatment for a mental health disorder, as specified. (Penal Code Section 28220.)
- 7) States that, to the extent funding is available, DOJ may participate in the National Instant Criminal Background Check System (NICS), as specified, and, if that participation is

implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law. (Penal Code Section 28220.)

- 8) States that if DOJ determines that the purchaser is prohibited from possessing a firearm, as specified, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact. (Penal Code Section 28220.)
- 9) States that no person who has been taken into custody, found to be a danger to himself, herself, or others, and, as a result, admitted to a specified mental health facility, shall 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, except as specified. [WIC Section 8103(f)(1).] For each such person, the facility shall immediately, on the date of admission, submit a report to DOJ, on a form prescribed by DOJ, 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. [WIC Section 8103(f)(2)(A).]
- 10) No person who has been certified for intensive treatment for a mental disorder, as specified, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years and relevant treatment facilities shall report the identities of such persons to DOJ, as specified. [WIC Section 8103(g).]
- 11) DOJ may require the dealer to charge each firearm purchaser a fee not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. This fee, known as the Dealer Record of Sale or DRoS fee, shall be no more than is necessary to fund the following:
  - a) DOJ for the cost of furnishing this information.
  - b) DOJ for the cost of meeting its obligations to notify specified persons that they are prohibited from owning firearms due to their receiving inpatient treatment for a mental disorder.
  - c) Local mental health facilities for state-mandated local costs resulting from the specified reporting requirements.
  - d) The DMH for the costs resulting from the specified requirements imposed.
  - e) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the specified reporting requirements.

- f) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements regarding service of restraining orders, as specified.
  - g) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements regarding specified persons prohibited from owning firearms due to their receiving inpatient treatment for a mental disorder.
  - h) For the actual costs associated with the electronic or telephonic transfer of information, as specified.
  - i) The Department of Food and Agriculture for the costs resulting from the notification provisions regarding importing firearms into the state, as specified.
  - j) DOJ for the costs associated with public education requirements regarding importation of firearms into California, as specified.
  - k) DOJ for the costs associated with funding DOJ firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to any provision listed in Section 16580. [Penal Code Section 28225(a) and (b).]
- 12) The fee established pursuant to this section shall not exceed the sum of the actual processing costs of the DOJ, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed as specified, the costs of DMH for complying with the requirements imposed as specified, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed as specified, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements, as specified, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements imposed as specified, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the specified notification provisions, the estimated reasonable costs of the DOJ for the costs associated with public education requirements regarding importation of firearms into California, and the estimated reasonable costs of DOJ firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to specified provisions of law pertaining to firearms. [Penal Code Section 28225(c).]
- 13) DOJ may charge a fee sufficient to reimburse it for each of the following but not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations:
- a) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to any provision listed in Penal Code Section 16585(a).
  - b) For the actual processing costs associated with the submission of a DROS to the DOJ.

- c) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to Penal Code Section 26905, 27565, or 28000, or 27560(1)(a).
  - d) For the actual costs associated with the electronic or telephonic transfer of information pursuant to Penal Code Section 28215.
  - e) Any costs incurred by the DOJ to implement this section shall be reimbursed from fees collected and charged pursuant to this section. No fees shall be charged to the dealer pursuant to Penal Code Section 28225 for implementing this section. (Penal Code Section 28230.)
- 14) All money received by the DOJ pursuant to this article shall be deposited in the DROS Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the DOJ to offset the costs incurred pursuant to any of the following:
- a) This article.
  - b) Annual inspections of permitted destructive devices. (Penal Code Section 18910.)
  - c) Regulating firearms transaction between licensed dealers. (Penal Code Section 27555.)
  - d) Conduct public education and notification programs regarding importation of firearms into California. [Penal Section 27560(d) and (e).]
  - e) Maintain a list of federally licensed firearms dealers in California exempt from the state dealer licensing requirements, as specified. [Penal Code Section 28450 et seq.]
  - f) Inspection of inventory of licensed firearms dealers. (Penal Code Section 31110.)
  - g) Public education and notification programs regarding registration of assault weapons. (Penal Code Section 31115.)
  - h) Retesting of handguns on the not unsafe handgun list, as specified. [Penal Code Section 32020(a).]
  - i) Inspection of inventories of machine guns held under permit. (Penal Code Section 32670.)
  - j) Inspection of inventories of short-barreled shotguns and rifles held under permit. (Penal Code Sections 33320 and 28235.)
- 15) States the Attorney General shall establish and maintain an online database to be known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to 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. The information contained in the Prohibited Armed Persons File shall only be available to specified entities through the California Law



Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Penal Code Section 30000.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) Author's Statement: "SB 819 will amend the Penal Code to allow the DOJ to use existing Department resources to provide enhanced enforcement of the APPS which has identified over 36,000 handguns and assault weapons in the hands of more than 18,000 prohibited persons such as convicted felons and the mentally ill.

"Recently, the New York Times reported on California's Armed Prohibited Persons File and the problems it seeks to address:

"By law, Roy Perez should not have had a gun three years ago when he shot his mother 16 times in their home in Baldwin Park, Calif., killing her, and then went next door and killed a woman and her 4-year-old daughter.

"Mr. Perez, who pleaded guilty to three counts of murder and was sentenced last year to life in prison, had a history of mental health issues. As a result, even though in 2004 he legally bought the 9-millimeter Glock 26 handgun he used, at the time of the shootings his name was in a statewide law enforcement database as someone whose gun should be taken away, according to the authorities.

"The case highlights a serious vulnerability when it comes to keeping guns out of the hands of the mentally unstable and others, not just in California but across the country.

"In the wake of the Tucson shootings, much attention has been paid to various categories of people who are legally barred from buying handguns — those who have been 'adjudicated as a mental defective,' have felony convictions, have committed domestic violence misdemeanors and so on. The focus has almost entirely been on gaps in the federal background check system that is supposed to deny guns to these prohibited buyers.

"There is, however, another major blind spot in the system.

"Tens of thousands of gun owners, like Mr. Perez, bought their weapons legally but under the law should no longer have them because of subsequent mental health or criminal issues. In Mr. Perez's case, he had been held involuntarily by the authorities several times for psychiatric evaluation, which in California bars a person from possessing a gun for five years.

"Policing these prohibitions is difficult, however, in most states. The authorities usually have to stumble upon the weapon in, say, a traffic stop or some other encounter, and run the person's name through various record checks.

"California is unique in the country, gun control advocates say, because of its computerized database, the APPS. It was created, in part, to enable law enforcement officials to handle the issue pre-emptively, actively identifying people who legally bought handguns, or registered

assault weapons, but are now prohibited from having them.

"The list had 18,374 names on it as of the beginning of this month — 15 to 20 are added a day — swamping law enforcement's ability to keep up. Some police departments admitted that they had not even tried.

"SB 819 addresses the critical need to enforce existing firearm prohibition laws. Increased confiscation of unlawfully possessed firearms could result in the prevention of future crimes and potentially major future cost savings associated with avoided prosecution and incarceration. This bill is strongly supported local law as well organizations working to reduce firearms violence in our communities."

- 2) Background: According to the background provided by the author, SB 819 will amend the Penal Code to allow DOJ to use existing DOJ resources to provide enhanced enforcement of the APPS which has identified over 36,000 handguns and assault weapons in the hands of more than 18,000 prohibited persons such as convicted felons and the mentally ill. SB 819 addresses the critical need to enforce existing firearm prohibition laws.

Enforcement of existing firearms laws are a critical component of the state's responsibility to ensure public safety. However, there is a huge blind spot in the system. Tens of thousands of gun owners bought their weapons legally, but under law should no longer have them due to subsequent mental health or criminal issues. In fact, every day, the list of armed prohibited persons in California grows by about 15 to 20 people. As of March 22, 2011, the Bureau of Firearms identified 18,377 individuals with a prior felony conviction or mental health disorder that disqualified them from possessing more than 36,000 firearms.

"Although DOJ and local law enforcement have the authority to confiscate these weapons in the interest of public safety, the truth is, the situation continues to get worse. Law enforcement is struggling to disarm people who've lost the right to own a gun. Neither DOJ nor the locals have the resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of the newly prohibited."

- 3) Armed Prohibited Persons System: California is the first and only state in the nation to establish an automated system for tracking handgun and assault weapon owners who pose a threat to public safety. The APPS maintains information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or an assault weapon. The APPS also provides authorized law enforcement agencies with inquiry capabilities to determine the prohibition status of a person of interest. DOJ populates APPS with all handgun and assault weapon owners across the state and matches them against criminal history records to determine who might fall into a prohibited status. Automatic notifications from state and federal criminal history systems will be received daily to determine if there is a match for a current California gun owner. When a match is found, the system automatically raises a flag to Firearms Division staff, which triggers an investigation into the person's status.

For example, the daily APPS report for March 22, 2011 provided a breakdown of prohibited persons by county. A few examples include: Orange County - 1,163 prohibited persons with 2,488 illegal handguns; Sacramento County - 516 prohibited persons with 1,037 illegal

handguns; and San Diego County - 841 prohibited persons with 1,841 illegal handguns

- 4) DOJ's Role in APPS Enforcement: Although the burden for confiscating weapons falls largely on local jurisdictions, in practice, most local jurisdictions are too short on resources to do much or only vaguely aware of how the APPS database works. In fact, 98% of the individuals removed from the list are a result of DOJ efforts, not local law enforcement. While DOJ provides locals with access to the list of prohibited persons and has trained more than 1,300 officers in its use, DOJ's own team of 20 agents specifically tasked with investigating and confiscating the weapons of unlawful gun owners has proven to be the most effective.

For example, in Los Angeles County, a jurisdiction with 5,871 prohibited persons, local law enforcement was only able to confiscate weapons in six cases. DOJ was able to confiscate weapons in 76 cases.

- 5) Argument in Support: According to the Legal Community Against Violence, "[u]nder current law, DOJ is authorized to require firearms dealers to impose a fee attached to the purchase of a firearm; under state law, the fees, collected in the Dealers' Record of Sale Special Account of the General Fund ('DROS Fund'), may be used to fund a specific set of purposes, including DOJ 'regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms.' SB 819 (Leno) would authorize the use of the DROS Fund for enforcement activities related to the possession of firearms.

"DOJ maintains an APPS, which identifies individuals who legally purchased handguns or assault weapons but subsequently became prohibited from possessing firearms. APPS presently contains the names of over 18,000 Californians in possession of over 36,000 handguns and assault weapons, even though these individuals are prohibited from having guns under state law. The 18,000 prohibited persons include convicted felons, domestic abusers and mentally ill individuals, among others who have been convicted of serious crimes that rightfully disqualify them from firearm ownership. State efforts to disarm prohibited individuals are currently funded through the General Fund. SB 819 would enable the use of DROS Fund money for this important purpose."

- 6) Argument in Opposition: According to the California Association of Firearms Retailers (CAFR), "[t]he money paid to the DROS fund by a prospective purchaser or other transferee of a firearm is a fee to pay for the costs of a criminal and mental history background check to determine that person's eligibility to lawfully possess a firearm.

"The DROS fee is not a regulatory fee, tax, license or other form of non-user charge. CAFR believes that the DROS fund has often been improperly used to fund non-background check activities of DOJ.

"The use of DROS fees as proposed in SB 819 is considered to constitute a tax on prospective firearm purchasers since it would be used, in part, to pay for the general public services proposed in the bill, rather than for its original intended purpose as a user fee to pay for services rendered only to the fee payer."

- 7) Prior Legislation: AB 302 (Beall), Statutes of 2010, Chapter 344, required the electronic submission of specified information to DOJ with respect to persons admitted to a mental

health facility on the basis of being a threat to themselves or others, or as a result of being certified for intensive treatment.

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Los Angeles Deputy Sheriffs  
California Chapters of the Brady Campaign  
California Department of Justice  
California State Sheriffs' Association  
California Statewide Law Enforcement Association  
Legal Community Against Violence  
Los Angeles County Sheriff's Department  
Riverside Sheriffs' Association

Opposition

California Association of Firearms Retailers  
California Rifle and Pistol Association  
California Sportsman's Lobby  
Crossroads of the West  
Gun Owners of California  
National Rifle Association of America  
National Shooting Sports Foundation  
Outdoor Sportsmen's Coalition of California  
Safari Club International  
One private individual

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

## PROOF OF ELECTRONIC SERVICE

Case Name: *Gentry, et al. v. Becerra, et al.*  
Court of Appeal Case No.: C089655  
Superior Court Case No.: 34-2013-80001667

I, Sean A. Brady, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On February 7, 2020, I served a copy of the foregoing document(s) described as: **APPELLANTS' APPENDIX, VOLUME VI OF XVI, (Pages 1393 to 1637 of 4059)**, by electronic transmission as follows:

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[bob.asperger@doj.ca.gov](mailto:bob.asperger@doj.ca.gov)  
1300 I Street  
Sacramento, CA 95814  
Attorneys for Defendants and Respondents Xavier Becerra, et al.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 7, 2020, at Long Beach, California.

*s/ Sean A. Brady* \_\_\_\_\_  
Sean A. Brady  
Declarant