No. 20-55437

IN THE

United States Court of Appeals

for the Ninth Circuit

KIM RHODE, et al.,
Plaintiffs-Appellees,

v.

XAVIER BECERRA, in his official capacity as Attorney General of the State of California,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of California
No. 3:18-cv-00802 BEN JLB (Benitez, J.)

APPENDIX TO BRIEF OF AMICUS CURIAE GUN OWNERS OF CALIFORNIA

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August 7, 2020

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December 4, 2015

RECEIVED
DEC 07 2015
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Submission of Amendment to The Safety for All Act of 2016, No. 15-0098*

Dear Ms. Johansson:

As you know, I serve as counsel for the proponent of the proposed statewide initiative, "The Safety for All Act of 2016." The proponent of the proposed initiative is Gavin Newsom. On his behalf, I am enclosing the following documents:

- The amended text of "The Safety for All Act of 2016";
- A red-line version showing the changes made in the amended text; and
- A signed authorization from the proponent for the submission of the amended text together with his request that the Attorney General's Office prepare a circulating title and summary using the amended text.

Please continue to direct all inquiries or correspondence relative to this proposed initiative to me at the address listed below:

Thomas A. Willis
Margaret R. Prinzing
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,

Thomas A. Willis

TAW:NL
Enclosures
(00263117)

December 4, 2015

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Submission of Amendment to The Safety for All Act of 2016, No. 15-0098, and Request to Prepare Circulating Title and Summary*

Dear Ms. Johansson:

On October 27, 2015, I submitted a proposed statewide initiative titled "The Safety for All Act of 2016" ("Initiative") and submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution.

Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the text of the Initiative. As the proponent of the Initiative, I approve the submission of the amended text to the Initiative and I declare that the amendment is reasonably germane to the theme, purpose, and subject of the Initiative. I request that the Attorney General prepare a circulating title and summary using the amended Initiative.

Sincerely,

Gavin Newsom

Enclosures
(00263103)

15-0098 Amdt. #1

THE SAFETY FOR ALL ACT OF 2016

SECTION 1. Title.

This measure shall be known and may be cited as "The Safety for All Act of 2016."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

1. Gun violence destroys lives, families and communities. From 2002 to 2013, California lost 38,576 individuals to gun violence. That is more than seven times the number of U.S. soldiers killed in combat during the wars in Iraq and Afghanistan combined. Over this same period, 2,258 children were killed by gunshot injuries in California. The same number of children murdered in the Sandy Hook elementary school massacre are killed by gunfire in this State every 39 days.

2. In 2013, guns were used to kill 2,900 Californians, including 251 children and teens. That year, at least 6,035 others were hospitalized or treated in emergency rooms for non-fatal gunshot wounds, including 1,275 children and teens.

3. Guns are commonly used by criminals. According to the California Department of Justice, in 2014 there were 1,169 firearm murders in California, 13,546 armed robberies involving a firearm, and 15,801 aggravated assaults involving a firearm.

4. This tragic violence imposes significant economic burdens on our society. Researchers conservatively estimate that gun violence costs the economy at least $229 billion every year, or more than $700 per American per year. In 2013 alone, California gun deaths and injuries imposed $83 million in medical costs and $4.24 billion in lost productivity.

5. California can do better. Reasonable, common-sense gun laws reduce gun deaths and injuries, keep guns away from criminals and fight illegal gun trafficking. Although California has led the nation in gun safety laws, those laws still have loopholes that leave communities throughout the state vulnerable to gun violence and mass shootings. We can close these loopholes while still safeguarding the ability of law-abiding, responsible Californians to own guns for self-defense, hunting and recreation.

6. We know background checks work. Federal background checks have already prevented more than 2.4 million gun sales to convicted criminals and other illegal purchasers in America. In 2012 alone, background checks blocked 192,043 sales of firearms to illegal purchasers including 82,000 attempted purchases by felons. That means background checks stopped roughly 225 felons from buying firearms every day. Yet California law only requires background checks for people who purchase firearms, not for people who purchase ammunition. We should close that loophole.

7. Right now, any violent felon or dangerously mentally ill person can walk into a sporting goods store or gun shop in California and buy ammunition, no questions asked. That should change. We should require background checks for ammunition sales just like gun sales, and stop both from getting into the hands of dangerous individuals.

8. Under current law, stores that sell ammunition are not required to report to law enforcement when ammunition is lost or stolen. Stores should have to report lost or stolen ammunition within 48 hours of discovering that it is missing so law enforcement can work to prevent that ammunition from being illegally trafficked into the hands of dangerous individuals.

9. Californians today are not required to report lost or stolen guns to law enforcement. This makes it difficult for law enforcement to investigate crimes committed with stolen guns, break-up gun trafficking rings, and return guns to their lawful owners. We should require gun owners to report their lost or stolen guns to law enforcement.

10. Under current law, people who commit felonies and other serious crimes are prohibited from possessing firearms. Yet existing law provides no clear process for those people to relinquish their guns when they become prohibited at the time of conviction. As a result, in 2014, the Department of Justice identified more than 17,000 people who possess more than 34,000 guns illegally, including more than 1,400 assault weapons. We need to close this dangerous loophole by not only requiring prohibited people to turn in their guns, but also ensuring that it happens.

11. Military-style large-capacity ammunition magazines – some capable of holding more than 100 rounds of ammunition – significantly increase a shooter's ability to kill a lot of people in a short amount of time. That is why these large capacity ammunition magazines are common in many of America's most horrific mass shootings, from the killings at 101 California Street in San Francisco in 1993 to Columbine High School in 1999 to the massacre at Sandy Hook Elementary School in Newtown, Connecticut in 2012.

12. Today, California law prohibits the manufacture, importation and sale of military-style, large capacity ammunition magazines, but does not prohibit the general public from possessing them. We should close that loophole. No one except trained law enforcement should be able to possess these dangerous ammunition magazines.

13. Although the State of California conducts background checks on gun buyers who live in California, we have to rely on other states and the FBI to conduct background checks on gun buyers who live elsewhere. We should make background checks outside of California more effective by consistently requiring the State to report who is prohibited from possessing firearms to the federal background check system.

14. The theft of a gun is a serious and potentially violent crime. We should clarify that such crimes can be charged as felonies, and prevent people who are convicted of such crimes from possessing firearms.

SEC. 3. Purpose and Intent.

The people of the State of California declare their purpose and intent in enacting "The Safety For All Act of 2016" (the "Act") to be as follows:

1. To implement reasonable and common-sense reforms to make California's gun safety laws the toughest in the nation while still safeguarding the Second Amendment rights of all law-abiding, responsible Californians.

2. To keep guns and ammunition out of the hands of convicted felons, the dangerously mentally ill, and other persons who are prohibited by law from possessing firearms and ammunition.

3. To ensure that those who buy ammunition in California – just like those who buy firearms – are subject to background checks.

4. To require all stores that sell ammunition to report any lost or stolen ammunition within 48 hours of discovering that it is missing.

5. To ensure that California shares crucial information with federal law enforcement by consistently requiring the state to report individuals who are prohibited by law from possessing firearms to the federal background check system.

6. To require the reporting of lost or stolen firearms to law enforcement.

7. To better enforce the laws that require people to relinquish their firearms once they are convicted of a crime that makes them ineligible to possess firearms.

8. To make it illegal in California to possess the kinds of military-style ammunition magazines that enable mass killings like those at Sandy Hook Elementary School; a movie theater in Aurora, Colorado; Columbine High School; and an office building at 101 California Street in San Francisco, California.

9. To prevent people who are convicted of the theft of a firearm from possessing firearms, and to effectuate the intent of Proposition 47 that the theft of a firearm is felony grand theft, regardless of the value of the firearm, in alignment with sections 25400 and 1192.7 of the Penal Code.

SEC. 4. Lost or Stolen Firearms.

Division 4.5 (commencing with Section 25250) is hereby added to Title 4 of Part 6 of the Penal Code, and Section 26835 of the Penal Code is hereby amended.

Division 4.5 (commencing with Section 25250) is added to Title 4 of Part 6 of the Penal Code, to read:

DIVISION 4.5. LOST OR STOLEN FIREARMS

25250. (a) Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.

(b) Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days if the firearm is subsequently recovered by the person.

(c) Notwithstanding subdivision (a), a person shall not be required to report the loss or theft of a firearm that is an antique firearm within the meaning of subdivision (c) of Section 16170.

25255. Section 25250 shall not apply to the following:

(a) Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties if he or she reports the loss or theft to his or her employing agency.

(b) Any United States marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties.

(c) Any person who is licensed, pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and who reports the theft or loss in accordance with Section 923(g)(6) of Title 18 of the United States Code, or the successor provision thereto, and applicable regulations issued thereto.

(d) Any person whose firearm was lost or stolen prior to July 1, 2017.

25260. Pursuant to Section 11108, every sheriff or police chief shall submit a description of each firearm that has been reported lost or stolen directly into the Department of Justice Automated Firearms System.

25265. (a) Every person who violates Section 25250 is, for a first violation, guilty of an infraction punishable by a fine not to exceed one hundred dollars ($100).

(b) Every person who violates Section 25250 is, for a second violation, guilty of an infraction, punishable by a fine not to exceed one thousand dollars ($1,000).

(c) Every person who violates Section 25250 is, for a third or subsequent violation, guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

25270. Every person reporting a lost or stolen firearm pursuant to Section 25250 shall report the make, model, and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report.

25275. (a) No person shall report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. A violation of this section is an infraction, punishable by a fine not exceeding two hundred fifty dollars ($250) for a first offense, and by a fine not exceeding one thousand dollars ($1,000) for a second or subsequent offense.

(b) This section shall not preclude prosecution under any other law.

Section 26835 of the Penal Code is amended to read:

26835. A licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(a) "IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(b) "IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(c) "IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(d) "IF YOU NEGLIGENTLY STORE OR LEAVE A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, WHERE A PERSON UNDER 18 YEARS OF AGE IS LIKELY TO ACCESS IT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO ONE THOUSAND DOLLARS ($1,000),

UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(e) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(f) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."

(g) "NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD."

(h) "IF A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS OR THEFT OCCURRED WITHIN FIVE DAYS OF THE TIME YOU KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE FIREARM HAD BEEN LOST OR STOLEN."

SEC. 5. Strengthening The National Instant Criminal Background Check System.

Section 28220 of the Penal Code is amended to read:

(a) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(b) ~~To the extent that funding is available, t~~ The Department of Justice ~~may~~ shall participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, 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.

(c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, 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.

(d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 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 Section 28225, 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 26815 and 27540.

(e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, 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 26815 and 27540.

(f)(1)(A) The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:

(i) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(ii) The purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(iii) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(B) The dealer shall provide the purchaser with information about the manner in which he or she may contact the department regarding the delay described in subparagraph (A).

(2) The department shall notify the purchaser by mail regarding the delay and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser shall report any inaccuracies or incompleteness to the department on an approved form.

(3) If the department ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:

(A) If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

(B) If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in 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 in compliance with subdivision (c) of Section 28220.

(4) If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or

record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

(g) Commencing July 1, 2017, upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, the Department of Justice shall submit the name, date of birth, and physical description of the person to the National Instant Criminal Background Check System Index, Denied Persons Files. The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.

SEC. 6. Possession of Large-Capacity Magazines.

Section 32406 is hereby added to the Penal Code; Sections 32310, 32400, 32405, 32410, 32425, 32435, and 32450 of the Penal Code are hereby amended, and Section 32420 of the Penal Code is hereby repealed.

Section 32310 of the Penal Code is amended to read:

(a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, ~~commencing January 1, 2000,~~ any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

(b) For purposes of this section, "manufacturing" includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.

(c) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars ($100) per large-capacity magazine, or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars ($100) per large-capacity magazine, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who may not lawfully possess a large-capacity magazine commencing July 1, 2017 shall, prior to July 1, 2017:

(1) Remove the large-capacity magazine from the state;

(2) Sell the large-capacity magazine to a licensed firearms dealer; or

(3) Surrender the large-capacity magazine to a law enforcement agency for destruction.

Section 32400 of the Penal Code is amended to read:

32400. Section 32310 does not apply to the sale of, giving of, lending of, possession of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

Section 32405 of the Penal Code is amended to read:

32405. Section 32310 does not apply to the sale to, lending to, transfer to, purchase by, receipt of, possession of, or importation into this state of, a large-capacity magazine by a sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of that officer's duties.

Section 32406 of the Penal Code is added to the Penal Code, to read:

32406. Section 32310(c) does not apply to an honorably retired sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or honorably retired sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer's duties. "Honorably retired" shall have the same meaning as provided in Section 16690.

Section 32410 of the Penal Code is amended to read:

32410. Section 32310 does not apply to the sale, ~~or~~ purchase, or possession of any large-capacity magazine to or by a person licensed pursuant to Sections 26700 to 26915, inclusive.

Section 32420 of the Penal Code is repealed:

~~32420. Section 32310 does not apply to the importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the same large-capacity magazine.~~

Section 32425 of the Penal Code is amended to read:

32425. Section 32310 does not apply to any of the following:

(a) The lending or giving of any large-capacity magazine to a person licensed pursuant to Sections 26700 to 26915, inclusive, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(b) The possession of any large-capacity magazine by a person specified in subdivision (a) for the purposes specified in subdivision (a).

~~(b)~~ (c) The return to its owner of any large-capacity magazine by a person specified in subdivision (a).

Section 32435 of the Penal Code is amended to read:

32435. Section 32310 does not apply to any of the following:

(a) The sale of, giving of, lending of, possession of, importation into this state of, or purchase of, any large-capacity magazine, to or by any entity that operates an armored vehicle business pursuant to the laws of this state.

(b) The lending of large-capacity magazines by an entity specified in subdivision (a) to its authorized employees, while in the course and scope of employment for purposes that pertain to the entity's armored vehicle business.

(c) The possession of any large-capacity magazines by the employees of an entity specified in subdivision (a) for purposes that pertain to the entity's armored vehicle business.

~~(c)~~(d) The return of those large-capacity magazines to the entity specified in subdivision (a) by those employees specified in subdivision (b).

Section 32450 of the Penal Code is amended to read:

32450. Section 32310 does not apply to the purchase or possession of a large-capacity magazine by the holder of a special weapons permit issued pursuant to Section 31000, 32650, or 33300, or pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this division, for any of the following purposes:

(a) For use solely as a prop for a motion picture, television, or video production.

(b) For export pursuant to federal regulations.

(c) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations.

SEC. 7. Firearms Dealers.

Sections 26885 and 26915 of the Penal Code are hereby amended.

Section 26885 of the Penal Code is amended to read:

26885. (a) Except as provided in subdivisions (b) and (c) of Section 26805, all firearms that are in the inventory of a licensee shall be kept within the licensed location.

(b) Within 48 hours of discovery, a licensee shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located:

(1) Any firearm or ammunition that is merchandise of the licensee.

(2) Any firearm or ammunition that the licensee takes possession of pursuant to Chapter 5 (commencing with Section 28050), or pursuant to Section 30312.

(3) Any firearm or ammunition kept at the licensee's place of business.

Section 26915 of the Penal Code is amended to read:

26915. (a) Commencing January 1, 2018, a ~~A~~ firearms dealer ~~may~~ shall require any agent or employee who handles, sells, or delivers firearms to obtain and provide to the dealer a certificate of eligibility from the Department of Justice pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and California firearms dealer number of the firearms dealer with whom the person is employed.

(b) The department shall notify the firearms dealer in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing firearms.

(c) If the local jurisdiction requires a background check of the agents or employees of a firearms dealer, the agent or employee shall obtain a certificate of eligibility pursuant to subdivision (a).

(d)(1) Nothing in this section shall be construed to preclude a local jurisdiction from conducting an additional background check pursuant to Section 11105. The local jurisdiction may not charge a fee for the additional criminal history check.

(2) Nothing in this section shall be construed to preclude a local jurisdiction from prohibiting employment based on criminal history that does not appear as part of obtaining a certificate of eligibility.

(e) The licensee shall prohibit any agent who the licensee knows or reasonably should know is within a class of persons prohibited from possessing firearms pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, from coming into contact with any firearm that is not secured and from accessing any key, combination, code, or other means to open any of the locking devices described in subdivision (g).

(f) Nothing in this section shall be construed as preventing a local government from enacting an ordinance imposing additional conditions on licensees with regard to agents or employees.

(g) For purposes of this article, "secured" means a firearm that is made inoperable in one or more of the following ways:

(1) The firearm is inoperable because it is secured by a firearm safety device listed on the department's roster of approved firearm safety devices pursuant to subdivision (d) of Section 23655.

(2) The firearm is stored in a locked gun safe or long-gun safe that meets the standards for department-approved gun safes set forth in Section 23650.

(3) The firearm is stored in a distinct locked room or area in the building that is used to store firearms, which can only be unlocked by a key, a combination, or similar means.

(4) The firearm is secured with a hardened steel rod or cable that is at least one-eighth of an inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

SEC. 8. Sales of Ammunition.

Article 4 (commencing with section 30370) and Article 5 (commencing with section 30385) are hereby added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code; Sections 16151, 30314, 30342, 30348, 30363, and 30371 are hereby added to the Penal Code; the heading of Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of Part 6, and Sections 16150, 17315, 30306, 30312, 30347, 30350, and 30352 of the Penal Code are hereby amended, and Section 16662 of the Penal Code is hereby repealed.

Section 16150 of the Penal Code is amended to read:

16150. (a) ~~As used in Section 30300, "ammunition" means handgun ammunition as defined in Section 16650.~~ As used in this part, except in subdivision (a) of Section 30305 and in Section 30306, "ammunition" means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. "Ammunition" does not include blanks.

(b) As used in subdivision (a) of Section 30305 and in Section 30306, "ammunition" includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. "Ammunition" does not include blanks.

Section 16151 is added to the Penal Code, to read:

16151. (a) As used in this part, commencing January 1, 2018, "ammunition vendor" means any person, firm, corporation, or other business enterprise that holds a current ammunition vendor license issued pursuant to Section 30385.

(b) Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the

dealer complies with the requirements of Articles 2 (commencing with Section 30300) and 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of this part.

Section 16662 of the Penal Code is repealed.

~~16662. As used in this part, "handgun ammunition vendor" means any person, firm, corporation, dealer, or any other business enterprise that is engaged in the retail sale of any handgun ammunition, or that holds itself out as engaged in the business of selling any handgun ammunition.~~

Section 17315 of the Penal Code is amended to read:

17315. As used in ~~Article 3 (commencing with Section 30345)~~ Articles 2 through 5 of Chapter 1 of Division 10 of Title 4, "vendor" means an ~~handgun~~ ammunition vendor.

Section 30306 of the Penal Code is amended to read:

30306. (a) Any person, corporation, ~~or~~ firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who he or she knows or using reasonable care should know is prohibited from owning, possessing, or having under custody or control, any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Any person, corporation, firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person whom the person, corporation, firm, or other business enterprise knows or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a person who is prohibited from owning, possessing, or having under custody or control any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

~~(b)~~(c) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and another provision of law shall not be punished under more than one provision.

Section 30312 of the Penal Code is amended to read:

30312. (a) ~~Commencing February 1, 2011, the~~ (1) Commencing January 1, 2018, the sale of ammunition by any party shall be conducted by or processed through a licensed ammunition vendor.

(2) When neither party to an ammunition sale is a licensed ammunition vendor, the seller shall deliver the ammunition to a vendor to process the transaction. The ammunition vendor shall then promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the vendor's own merchandise. If the ammunition vendor cannot legally deliver the ammunition to the purchaser, the vendor shall forthwith return the ammunition to the seller. The ammunition vendor may charge the purchaser an administrative fee to process the transaction, in an amount to be set by the Department of Justice, in addition to any applicable fees that may be charged pursuant to the provisions of this title.

(b) Commencing January 1, 2018, the sale, delivery or transfer of ownership of ~~handgun~~ ammunition by any party may only occur in a face-to-face transaction with the seller, deliverer or transferor ~~being provided bona fide evidence of identity from the purchaser or other transferee,~~ provided, however, that ammunition may be purchased or acquired over the Internet or through other means of remote ordering if a licensed ammunition vendor initially receives the ammunition and processes the transaction in compliance with this section and Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of this part.

~~(b)~~(c) Subdivisions (a) and (b) shall not apply to ~~or affect~~ the sale, delivery, or transfer of ~~handgun~~ ammunition to any of the following:

(1) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale, delivery, or transfer is for exclusive use by that government agency and, prior to the sale, delivery, or transfer of the ~~handgun~~ ammunition, written authorization from the head of the agency employing the purchaser or transferee is obtained, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency employing the individual.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(3) An importer or manufacturer of ~~handgun~~ ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

(5) A person whose licensed premises are outside this state and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(6) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto,

whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to Section 26710.

(7) ~~A handgun~~ An ammunition vendor.

(8) A consultant-evaluator.

(9) A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.

(10) A person who purchases or receives ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.

~~(c)~~(d) A violation of this section is a misdemeanor.

Section 30314 is added to the Penal Code, to read:

30314. (a) Commencing January 1, 2018, a resident of this state shall not bring or transport into this state any ammunition that he or she purchased or otherwise obtained from outside of this state unless he or she first has that ammunition delivered to a licensed ammunition vendor for delivery to that resident pursuant to the procedures set forth in Section 30312.

(b) Subdivision (a) does not apply to any of the following:

(1) An ammunition vendor.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(3) An importer or manufacturer of ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

(5) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to Section 26710.

(6) A person who acquired the ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.

(c) A violation of this section is an infraction for any first time offense, and either an infraction or a misdemeanor for any subsequent offense.

The heading of Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code is amended to read:

ARTICLE 3. ~~Handgun~~ Ammunition Vendors [30342~~5~~ - 30365]

Section 30342 is added to the Penal Code, to read:

30342. (a) Commencing January 1, 2018, a valid ammunition vendor license shall be required for any person, firm, corporation, or other business enterprise to sell more than 500 rounds of ammunition in any 30-day period.

(b) A violation of this section is a misdemeanor.

Section 30347 of the Penal Code is amended to read:

30347. (a) An ammunition vendor shall require any agent or employee who handles, sells, delivers, or has under his or her custody or control any ammunition, to obtain and provide to the vendor a certificate of eligibility from the Department of Justice issued pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and address of the ammunition vendor with whom the person is employed, or the name and California firearms dealer number of the ammunition vendor if applicable.

(b) The Department shall notify the ammunition vendor in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing ammunition under Section 30305(a) or federal law.

(c) An ammunition vendor shall not permit any agent or employee who the vendor knows or reasonably should know is a person described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title or Section 8100 or 8103 of the Welfare and Institutions Code to handle, sell, ~~or~~ deliver, or have under his or her custody or control, any ~~handgun~~ ammunition in the course and scope of employment.

Section 30348 is added to the Penal Code, to read:

30348. (a) Except as provided in subdivision (b), the sale of ammunition by a licensed vendor shall be conducted at the location specified in the license.

(b) A vendor may sell ammunition at a gun show or event if the gun show or event is not conducted from any motorized or towed vehicle.

(c) For purposes of this section, "gun show or event" means a function sponsored by any national, state, or local organization, devoted to the collection, competitive use, or other sporting

use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

(d) Sales of ammunition at a gun show or event shall comply with all applicable laws including Sections 30347, 30350, 30352, and 30360.

Section 30350 of the Penal Code is amended to read:

30350. An ammunition vendor shall not sell or otherwise transfer ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or display for transfer of ownership of any ~~handgun~~ ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor.

Section 30352 of the Penal Code is amended to read:

30352. (a) Commencing ~~February 1, 2011, a~~ July 1, 2019, an ammunition vendor shall not sell or otherwise transfer ownership of any ~~handgun~~ ammunition without, at the time of delivery, legibly recording the following information on a form to be prescribed by the Department of Justice:

(1) The date of the sale or other ~~transaction~~ transfer.

(2) The purchaser's or transferee's driver's license or other identification number and the state in which it was issued.

(3) The brand, type, and amount of ammunition sold or otherwise transferred.

(4) The purchaser's or transferee's full name and signature.

(5) The name of the salesperson who processed the sale or other transaction.

~~(6) The right thumbprint of the purchaser or transferee on the above form.~~

(6~~7~~) The purchaser's or transferee's full residential address and telephone number.

(7~~8~~) The purchaser's or transferee's date of birth.

(b) Commencing July 1, 2019, an ammunition vendor shall electronically submit to the Department the information required by subdivision (a) for all sales and transfers of ownership of ammunition. The Department shall retain this information in a database to be known as the Ammunition Purchase Records File. This information shall remain confidential and may be used by the Department and those entities specified in, and pursuant to, subdivision (b) or (c) of Section 11105, through the California Law Enforcement Telecommunications System, only for law enforcement purposes. The ammunition vendor shall not use, sell, disclose, or share such information for any other purpose other than the submission required by this subdivision without the express written consent of the purchaser or transferee.

(c) Commencing on July 1, 2019, only those persons listed in this subdivision, or those persons or entities listed in subdivision (e), shall be authorized to purchase ammunition. Prior to delivering any ammunition, an ammunition vendor shall require bona fide evidence of identity to verify that the person who is receiving delivery of the ammunition is a person or entity listed in subdivision (e) or one of the following:

(1) A person authorized to purchase ammunition pursuant to Section 30370.

(2) A person who was approved by the Department to receive a firearm from the ammunition vendor, pursuant to Section 28220, if that vendor is a licensed firearms dealer, and the ammunition is delivered to the person in the same transaction as the firearm.

(d) Commencing July 1, 2019, the ammunition vendor shall verify with the Department, in a manner prescribed by the Department, that the person is authorized to purchase ammunition by comparing the person's ammunition purchase authorization number to the centralized list of authorized ammunition purchasers. If the person is not listed as an authorized ammunition purchaser, the vendor shall deny the sale or transfer.

~~(b)~~(e) Subdivisions (a) and (d) shall not apply to ~~or affect~~ sales or other transfers of ownership of ~~handgun~~ ammunition by ~~handgun~~ ammunition vendors to any of the following, if properly identified:

~~(1) A person licensed pursuant to Sections 26700 to 26915, inclusive.~~

~~(2)~~ (1) ~~A handgun~~ An ammunition vendor.

~~(3)~~ (2) A person who is on the centralized list of exempted federal firearms licensees maintained by the department pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

~~(4)~~ (3) A ~~target facility that holds a business or regulatory license, or~~ person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.

~~(5)~~ (4) A gunsmith.

~~(6)~~ (5) A wholesaler.

~~(7)~~ (6) A manufacturer or importer of firearms or ammunition licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

~~(8)~~ (7) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer of ownership is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ~~handgun~~ ammunition,

written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed.

(8)(a) A properly identified sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or properly identified sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(b)(1) Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a full-time paid peace officer who is authorized to carry a firearm in the course and scope of the officer's duties.

(2) The certification shall be delivered to the vendor at the time of purchase or transfer and the purchaser or transferee shall provide bona fide evidence of identity to verify that he or she is the person authorized in the certification.

(3) The vendor shall keep the certification with the record of sale and submit the certification to the Department.

(f) The Department of Justice is authorized to adopt regulations to implement the provisions of this section.

Section 30363 is added to the Penal Code, to read:

30363. Within 48 hours of discovery, an ammunition vendor shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the vendor's business premises are located:

(1) Any ammunition that is merchandise of the vendor.

(2) Any ammunition that the vendor takes possession of pursuant to Section 30312.

(3) Any ammunition kept at the vendor's place of business.

Article 4 (commencing with Section 30370) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:

Article 4. Ammunition Purchase Authorizations

30370. (a)(1) Commencing on January 1, 2019, any person who is 18 years of age or older may apply to the Department for an ammunition purchase authorization.

(2) The ammunition purchase authorization may be used by the authorized person to purchase or otherwise seek the transfer of ownership of ammunition from an ammunition vendor, as that term is defined in Section 16151, and shall have no other force or effect.

(3) The ammunition purchase authorization shall be valid for four years from July 1, 2019 or the date of issuance, whichever is later, unless it is revoked by the Department pursuant to subdivision (b).

(b) The ammunition purchase authorization shall be promptly revoked by the Department upon the occurrence of any event which would have disqualified the holder from being issued the ammunition purchase authorization pursuant to this section. If an authorization is revoked, the Department shall upon the written request of the holder state the reasons for doing so and provide the holder an appeal process to challenge that revocation.

(c) The Department shall create and maintain an internal centralized list of all persons who are authorized to purchase ammunition and shall promptly remove from the list any persons whose authorization was revoked by the Department pursuant to this section. The Department shall provide access to the list by ammunition vendors for purposes of conducting ammunition sales or other transfers, and shall provide access to the list by law enforcement agencies for law enforcement purposes.

(d) The Department shall issue an ammunition purchase authorization to the applicant if all of the following conditions are met:

(1) The applicant is 18 years of age or older.

(2) The applicant is not prohibited from acquiring or possessing ammunition under Section 30305(a) or federal law.

(3) The applicant pays the fees set forth in subdivision (g).

(e)(1) Upon receipt of an initial or renewal application, the Department shall examine its records, and the records it is authorized to request from the State Department of State Hospitals, pursuant to Section 8104 of the Welfare and Institutions Code, and if authorized, the National Instant Criminal Background Check System, as described in Section 922(t) of Title 18 of the United States Code, in order to determine if the applicant is prohibited from possessing or acquiring ammunition under Section 30305(a) or federal law.

(2) The applicant shall be approved or denied within 30 days of the date of the submission of the application to the Department. If the application is denied, the Department shall state the reasons for doing so and provide the applicant an appeal process to challenge that denial.

(3) If the Department is unable to ascertain the final disposition of the application within 30 days of the applicant's submission, the Department shall grant authorization to the applicant.

(4) The ammunition purchase authorization number shall be the same as the number on the document presented by the person as bona fide evidence of identity.

(f) The Department shall renew a person's ammunition purchase authorization before its expiration, provided that the Department determines that the person is not prohibited from acquiring or possessing ammunition under Section 30305(a) or federal law, and provided the applicant timely pays the renewal fee set forth in subdivision (g).

(g) The Department may charge a reasonable fee not to exceed $50 per person for the issuance of an ammunition purchase authorization or the issuance of a renewal authorization, however, the Department shall not set these fees any higher than necessary to recover the reasonable, estimated costs to fund the ammunition authorization program provided for in this section and Section 30352, including the enforcement of this program and maintenance of any data systems associated with this program.

(h) A fund to be known as the "Ammunition Safety and Enforcement Special Fund" is hereby created within the State Treasury. All fees received pursuant to this section shall be deposited into the Ammunition Safety and Enforcement Special Fund of the General Fund, and, notwithstanding Section 13340 of the Government Code, are continuously appropriated for purposes of implementing, operating and enforcing the ammunition authorization program provided for in this section and Section 30352, and for repaying the start-up loan provided for in Section 30371.

(i) The Department shall annually review and may adjust all fees specified in subdivision (g) for inflation.

(j) The Department of Justice is authorized to adopt regulations to implement the provisions of this section.

Section 30371 is added to the Penal Code, to read:

30371. (a) There is hereby appropriated twenty-five million dollars ($25,000,000) from the General Fund as a loan for the start-up costs of implementing, operating and enforcing the provisions of the ammunition authorization program provided for in Sections 30352 and 30370.

(b) For purposes of repaying the loan, the Controller shall, after disbursing moneys necessary to implement, operate and enforce the ammunition authorization program provided for in Sections 30352 and 30370, transfer all proceeds from fees received by the Ammunition Safety and Enforcement Special Fund up to the amount of the loan provided by this Section, including interest at the pooled money investment account rate, to the General Fund.

Article 5 (commencing with Section 30385) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:

Article 5. Ammunition Vendor Licenses

30385. (a) The Department of Justice is authorized to issue ammunition vendor licenses pursuant to this article. The Department shall, commencing July 1, 2017, commence accepting applications for ammunition vendor licenses. If an application is denied, the Department shall inform the applicant of the reason for denial in writing.

(b) The ammunition vendor license shall be issued in a form prescribed by the Department of Justice and shall be valid for a period of one year. The Department may adopt regulations to administer the application and enforcement provisions of this article. The license shall allow the licensee to sell ammunition at the location specified in the license or at a gun show or event as set forth in Section 30348.

(c)(1) In the case of an entity other than a natural person, the Department shall issue the license to the entity, but shall require a responsible person to pass the background check pursuant to Section 30395.

(2) A "responsible person" for purposes of this article, means a person having the power to direct the management, policies and practices of the entity as it pertains to ammunition.

(d) Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Article 2 (commencing with Section 30300) and Article 3 (commencing with Section 30342) of this chapter.

30390. (a) The Department may charge ammunition vendor license applicants a reasonable fee sufficient to reimburse the Department for the reasonable, estimated costs of administering the license program, including the enforcement of this program and maintenance of the registry of ammunition vendors.

(b) The fees received by the Department pursuant to this article shall be deposited in the Ammunition Vendor's Special Account, which is hereby created. Notwithstanding Section 13340 of the Government Code, the revenue in the fund is continuously appropriated for use by the Department of Justice for the purpose of implementing, administering and enforcing the provisions of this article, and for collecting and maintaining information submitted pursuant to Section 30352.

(c) The revenue in the Firearms Safety and Enforcement Special Fund shall also be available upon appropriation to the Department of Justice for the purpose of implementing and enforcing the provisions of this article.

30395. (a) The Department is authorized to issue ammunition vendor licenses to applicants who the Department has determined, either as an individual or a responsible person, are not prohibited

from possessing, receiving, owning, or purchasing ammunition under Section 30305(a) or federal law, and who provide a copy of any regulatory or business license required by local government, a valid seller's permit issued by the State Board of Equalization, a federal firearms license if the person is federally licensed, and a certificate of eligibility issued by the Department.

(b) The Department shall keep a registry of all licensed ammunition vendors. Law enforcement agencies shall be provided access to the registry for law enforcement purposes.

(c) An ammunition vendor license is subject to forfeiture for a breach of any of the prohibitions and requirements of Article 2 (commencing with Section 30300) or Article 3 (commencing with Section 30342) of this chapter.

SEC. 9. Nothing in this Act shall preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to the sale or transfer of ammunition.

SEC. 10. Securing Firearms From Prohibited Persons.

Sections 1524, 27930 and 29810 of the Penal Code are hereby amended, and a new Section 29810 is hereby added to the Penal Code.

Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or

embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or any evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(9) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.

(10) When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

(11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(15) Beginning January 1, 2018, the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Sections 29800 or 29805 of the Penal Code, and the court has made a finding pursuant to Section 29810(c)(3) that the person has failed to relinquish the firearm as required by law.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2)(A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the

seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d)(1) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that

the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in *People v. Superior Court* (Laff) (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute any evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

(k) This section shall not be construed to create a cause of action against any foreign or California corporation, its officers, employees, agents, or other specified persons for providing location information.

Section 27930 of the Penal Code is amended to read:

27930. Section 27545 does not apply to deliveries, transfers, or returns of firearms made pursuant to any of the following:

(a) Sections 18000 and 18005.

(b) Division 4 (commencing with Section 18250) of Title 2.

(c) Chapter 2 (commencing with Section 33850) of Division 11.

(d) Sections 34005 and 34010.

(e) Section 29810.

Section 29810 of the Penal Code is amended to read:

29810. (a) For any person who is subject to Section 29800 or 29805, the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this chapter from owning, purchasing, receiving, possessing, or having under custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. If the prohibition on owning or possessing a firearm will expire on a date specified in the court order, the form shall inform the defendant that he or she may elect to have his or her firearm transferred to a firearms dealer licensed pursuant to Section 29830.

(b) Failure to provide the notice described in subdivision (a) is not a defense to a violation of this chapter.

(c) This section shall be repealed effective January 1, 2018.

Section 29810 is added to the Penal Code, to read:

29810. (a)(1) Upon conviction of any offense that renders a person subject to Section 29800 or Section 29805, the person shall relinquish all firearms he or she owns, possesses, or has under his or her custody or control in the manner provided in this section.

(2) The court shall, upon conviction of a defendant for an offense described in subdivision (a), instruct the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and shall order the defendant to relinquish all firearms in the manner provided in this section. The court shall also provide the defendant with a Prohibited Persons Relinquishment Form developed by the Department of Justice.

(3) Using the Prohibited Persons Relinquishment Form, the defendant shall name a designee and grant the designee power of attorney for the purpose of transferring or disposing of any firearms. The designee shall be either a local law enforcement agency or a consenting third party who is not prohibited from possessing firearms under state or federal law. The designee shall, within the time periods specified in subdivisions (d) and (e), surrender the firearms to the control of a local law enforcement agency, sell the firearms to a licensed firearms dealer, or transfer the firearms for storage to a firearms dealer pursuant to Section 29830.

(b) The Prohibited Persons Relinquishment Form shall do all of the following:

(1) Inform the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and that he or she shall relinquish all firearms through a designee within the time periods set forth in subdivisions (d) or (e) by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830.

(2) Inform the defendant that any cohabitant of the defendant who owns firearms must store those firearms in accordance with Section 25135.

(3) Require the defendant to declare any firearms that he or she owned, possessed, or had under his or her custody or control at the time of his or her conviction, and require the defendant to describe the firearms and provide all reasonably available information about the location of the firearms to enable a designee or law enforcement officials to locate the firearms.

(4) Require the defendant to name a designee, if the defendant declares that he or she owned, possessed, or had under his or her custody or control any firearms at the time of his or her conviction, and grant the designee power of attorney for the purpose of transferring or disposing of all firearms.

(5) Require the designee to indicate his or her consent to the designation and, except a designee that is a law enforcement agency, to declare under penalty of perjury that he or she is not prohibited from possessing any firearms under state or federal law.

(6) Require the designee to state the date each firearm was relinquished and the name of the party to whom it was relinquished, and to attach receipts from the law enforcement officer or licensed firearms dealer who took possession of the relinquished firearms.

(7) Inform the defendant and the designee of the obligation to submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within the time periods specified in subdivisions (d) and (e).

(c)(1) When a defendant is convicted of an offense described in subdivision (a), the court shall immediately assign the matter to a probation officer to investigate whether the Automated Firearms System or other credible information, such as a police report, reveals that the defendant owns, possesses, or has under his or her custody or control any firearms. The assigned probation officer shall receive the Prohibited Persons Relinquishment Form from the defendant or the defendant's designee, as applicable, and ensure that the Automated Firearms System has been properly updated to indicate that the defendant has relinquished those firearms.

(2) Prior to final disposition or sentencing in the case, the assigned probation officer shall report to the court whether the defendant has properly complied with the requirements of this section by relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and by timely submitting a completed Prohibited Persons Relinquishment Form. The probation officer shall also report to the Department of Justice on a form to be developed by the Department of Justice whether the Automated Firearms System has been updated to indicate which firearms have been relinquished by the defendant.

(3) Prior to final disposition or sentencing in the case, the court shall make findings concerning whether the probation officer's report indicates that the defendant has relinquished all firearms as required, and whether the court has received a completed Prohibited Persons Relinquishment Form, along with the receipts described in subdivision (d)(1) or (e)(1). The court shall ensure that these findings are included in the abstract of judgment. If necessary to avoid a delay in sentencing, the court may make and enter these findings within fourteen days of sentencing.

(4) If the court finds probable cause that the defendant has failed to relinquish any firearms as required, the court shall order the search for and removal of any firearms at any location where the judge has probable cause to believe the defendant's firearms are located. The court shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(5) Failure by a defendant to timely file the completed Prohibited Persons Relinquishment Form with the assigned probation officer shall constitute an infraction punishable by a fine not exceeding one hundred dollars ($100).

(d) The following procedures shall apply to any defendant who is a prohibited person within the meaning of subdivision (a)(1) who does not remain in custody at any time within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within five days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within five days following the conviction, along with the receipts described in subdivision (d)(1) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within five days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

(e) The following procedures shall apply to any defendant who is a prohibited person within the meaning of subdivision (a)(1) who is in custody at any point within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within fourteen days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, within fourteen days following conviction, along with the receipts described in subdivision (e)(1) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within fourteen days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

(4) If the defendant is released from custody during the fourteen days following conviction and a designee has not yet taken temporary possession of each firearm to be relinquished as described above, the defendant shall, within five days following his or her release, relinquish each firearm required to be relinquished pursuant to subdivision (d)(1).

(f) For good cause, the court may shorten or enlarge the time periods specified in subdivisions (d) and (e), enlarge the time period specified in subdivision (c)(3), or allow an alternative method of relinquishment.

(g) The defendant shall not be subject to prosecution for unlawful possession of any firearms declared on the Prohibited Persons Relinquishment Form if the firearms are relinquished as required.

(h) Any firearms that would otherwise be subject to relinquishment by a defendant under this section, but which are lawfully owned by a cohabitant of the defendant, shall be exempt from relinquishment, provided the defendant is notified that the cohabitant must store the firearm in accordance with Section 25135.

(i) A law enforcement agency shall update the Automated Firearms System to reflect any firearms that were relinquished to the agency pursuant to this section. A law enforcement agency shall retain a firearm that was relinquished to the agency pursuant to this section for 30 days after the date the firearm was relinquished. After the 30-day period has expired, the firearm is subject to destruction, retention, sale or other transfer by the agency, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of the firearm is necessary or proper to the ends of justice, or if the defendant provides written notice of an intent to appeal a conviction for an offense described in subdivision (a), or if the Automated Firearms System indicates that the firearm was reported lost or stolen by the lawful owner. If the firearm was reported lost or stolen, the firearm shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4. The agency shall notify the Department of Justice of the disposition of relinquished firearms pursuant to Section 34010.

(j) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of a firearm pursuant to Section 33880.

(k) This section shall become operative on January 1, 2018.

SEC. 11. Theft of Firearms.

Sections 490.2 and 29805 of the Penal Code are hereby amended.

Section 490.2 of the Penal Code is amended to read:

(a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

(c) This section shall not apply to theft of a firearm.

Section 29805 of the Penal Code is amended to read:

29805. Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 490.2 if the property taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

SEC. 12. Interim Standards.

Notwithstanding the Administrative Procedure Act (APA), and in order to facilitate the prompt implementation of the Safety For All Act of 2016, the California Department of Justice may adopt interim standards without compliance with the procedures set forth in the APA. The interim standards shall remain in effect for no more than two years, and may be earlier

superseded by regulations adopted pursuant to the APA. "Interim standards" mean temporary standards that perform the same function as "emergency regulations" under the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 3.5, Sections 11340 et seq.), except that in order to provide greater opportunity for public comment on permanent regulations, the interim standards may remain in force for two years rather than 180 days.

SEC. 13. Amending the Measure.

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a vote of 55 percent of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act.

SEC. 14. Conflicting Measures.

(a) In the event that this measure and another measure on the same subject matter, including but not limited to the regulation of the sale and/or possession of firearms or ammunition, shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 15. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstance, is for any reason held to be invalid or unconstitutional, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 16. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether such action is in trial court, on appeal, and on discretionary review by the Supreme Court of California and/or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

Background Clearance Unit
DROS Procedures

Background

The analyst in the Bureau of Firearms (BOF) is responsible for reviewing the Dealer Record of Sale (DROS) transactions to determine if that person is eligible to purchase/possess firearms in California. Pursuant to California Penal Codes Sections 28200-28250, California firearms dealers are required to submit a DROS to the Department of Justice (DOJ) for each person who attempts to purchase or receive a firearm from their business. A DROS is electronically transmitted to the DOJ via the DROS Entry System (DES). A Basic Firearms Eligibility Check (BFEC) is programmatically run for each DROS transaction to determine if there are any records that may affect that person's firearms eligibility. The analyst is mandated to respond to the firearms dealer within ten (10) days of the transaction date on the purchaser's eligibility to possess firearms.

It is important to note that pursuant to PC 11105 and Welfare and Institutions Code Section 8103 (e)(3), the DOJ BOF staff is prohibited from discussing an applicant's criminal record or mental health information on the telephone. Staff is also unable to provide legal advice or offer information regarding various legal steps needed to restore firearms rights.

Below are the determinations beyond approval that are made by the analyst for a DROS transaction.

Delay - A DROS application can be delayed for many reasons, most often due to the background check finding a record matching the subject's personal descriptors, such as name or date of birth. More time may also be needed to verify the record belongs to the individual attempting to possess/purchase the firearm and to obtain missing information that may be needed to help determine the eligibility.

Undetermined - Pursuant to PC 28220, the DOJ is authorized to temporarily delay a firearm transaction for up to 30 days from the date of the transaction when unable to immediately determine the purchaser's eligibility to possess/purchase firearms. If 30 days has passed since the transaction and the DOJ is still unable to make the determination on whether the purchaser can possess/purchase firearms, or whether the firearm involved in the sale/transfer is stolen, the dealer will be notified of the undetermined status via DES. It will then be at the dealer's sole discretion whether the firearm is released.

Rejected - There are two common reasons for why a DROS application may be rejected, the first being an attempt to purchase more than one handgun in a 30-day period, pursuant to PC 27540(f). The second reason is attempting to purchase a firearm using an invalid, suspended, revoked, or expired California Driver License or Identification Card, pursuant to PC 16400.

Denied - If a DROS application is denied, a letter will be sent to the purchaser explaining the reason and instructions on how to get a copy of the record that resulted in the denial of the application. A DROS can be denied due to something in the purchaser's criminal history that disqualifies them from being able to possess/purchase a firearm.

Basic Firearms Eligibility Check

A Basic Firearms Eligibility Check (BFEC) is run on all subjects that are processed in the California Firearms Information System (CFIS) and DROS. Any record(s) that may possibly match that individual will require review by the analyst.

The BFEC process searches the following databases for possible prohibiting records:

CHS – Criminal History System (California)

MHFPS/Ref File – Mental Health Firearms Prohibition System / Reference File

NICS/III/FBI – National Instant Gun Check System / Interstate Identification Index / Federal Bureau of Investigation

ICE – Immigration and Customs Enforcement

WPS/SRF/DVROS – Wanted Persons System/Supervised Release File/Domestic Violence Restraining Order System

DMV – Department of Motor Vehicles

Background Clearance Unit
DROS Procedures

Overview

The analyst should become familiar with the following:

- PC 29805 (known as 12021 PC prior to 2012)
- PC 29905 (known as 12021.1 PC prior to 2012)
- PC 23515 (known as 12001.6 PC prior to 2012)
- PC 1203.073 (Felony Dangerous Drugs)
- WIC 707(B) (Juveniles)
- WIC 8100 (Mental Health)
- Title 18 USC 922 (Federal)
- Knowing the difference between infractions, misdemeanors, and felonies
- Able to read and understand a CII rapsheet and FBI rapsheet
- Able to read a court disposition

Existing Provision	Corresponding New Provision
12001.1(a), 1st sent.	20810(a)
12001.1(a), 2d sent.	17290
12001.1(b)	20810(b)
12001.1(c)	20815
12001.1(d)	20820
12001.5	33210
12001.6	23515
12002(a) (re equip, authorized for enforcement of law or ordinance in city or county)	17515
12002(a) (other aspects)	22295(a)
12002(b)-(g)	22295(b)-(g)
12003	12003, 23505
12010	30000
12011	30005
12012	30010
12020 (entirety)	See discussion at pp. 245-47; see also Section 16590
12020(a)(1) (re air gauge knife)	20310
12020(a)(1) (re ballistic knife)	21110
12020(a)(1) (re belt buckle knife)	20410
12020(a)(1) (re billy, blackjack, sandbag, sandclub, sap, or slungshot)	22210
12020(a)(1) (re bullet with explosive agent)	30210
12020(a)(1) (re camouflaging firearm container)	24310
12020(a)(1) (re cane gun)	24410
12020(a)(1) (re cane sword)	20510
12020(a)(1) (re firearm not immediately recognizable as firearm)	24510
12020(a)(1) (re flechette dart)	30210
12020(a)(1) (re leaded cane)	22210
12020(a)(1) (re lipstick case knife)	20610
12020(a)(1) (re metal knuckles)	21810
12020(a)(1) (re certain metal handgrenades)	19200(a)
12020(a)(1) (re multiburst trigger activator)	32900
12020(a)(1) (re nunchaku)	22010
12020(a)(1) (re shobi-zue)	20710
12020(a)(1) (re short-barreled rifle or short-barreled shotgun)	33215
12020(a)(1) (re shuriken)	22410
12020(a)(1) (re unconventional pistol)	31500
12020(a)(1) (re undetectable firearm)	24610

*/ For further information relating to an entry with an asterisk, see the Supplemental Disposition Table immediately following this table.

Existing Provision	Corresponding New Provision
12020.5	17505
12021 (entirety)	29800-29875 (entire chapter)*
12021(a)	29800(a)
12021(b)	29800(b)
12021(c)(1)	29805
12021(c)(2)	29855
12021(c)(3)	29860
12021(c)(4)	29865
12021(d)(1), 1st sent.	29815(a)
12021(d)(1), 2d & 3d sent.	29815(b)
12021(d)(2)	29810
12021(e), 1st sent.	29820(a)-(b)
12021(e), 2d sent.	29820(c)
12021(e), 3d & 4th sent.	29820(d)
12021(f)	29800(c)
12021(g) (entirety)	29825
12021(g)(1)	29825(a)
12021(g)(2)	29825(b)
12021(g)(3)	29825(d)
12021(g)(4)	29825(c)
12021(h)	29850
12021(i)	29875
12021.1 (entirety)	29900-29905 (entire chapter)*
12021.1(a)	29900(a)
12021.1(b)	29905
12021.1(c)	29900(b)
12021.1(d)	29900(c)
12021.3 (entirety)	26590, 33850-33895 (entire chapter)*
12021.3(a)	33850
12021.3(b)	33855
12021.3(c)	33860
12021.3(d)	33865(a)
12021.3(e)(1)	33865(c)
12021.3(e)(2)	33865(d)
12021.3(e)(3)	33865(b)
12021.3(f)	33865(e)
12021.3(g)	33875

*/ For further information relating to an entry with an asterisk, see the Supplemental Disposition Table immediately following this table.

Existing Provision	Corresponding New Provision
12021.3(h)	33890
12021.3(i)(1)	33870(a)
12021.3(i)(2), 1st ¶	33870(b)
12021.3(i)(2), 2d ¶	33870(c)
12021.3(i)(3)	26590
12021.3(i)(4)	33895
12021.3(j)	33880
12021.3(k)	33885
12021.5-12022.95 (sentence enhancements)	left in place
12023	25800
12024	17500
12025 (entirety)	16750(a), 25400; 12025 (h) is not continued*
12025(a)	25400(a)
12025(b)	25400(c)
12025(c)	25400(f)
12025(d)	25400(d)
12025(e)	25400(e)
12025(f)	25400(b)
12025(g)	16750(a)
12025(h)	Not continued (repealed 1/1/05)
12025.5	25600
12026	25605
12026.1 (entirety)	16850, 25610*
12026.1(a), intro. cl.	25610(a)
12026.1(a)(1), except last phrase	25610(a)
12026.1(a)(1), last phrase	16850
12026.1(a)(2)	25610(a)
12026.1(b)	25610(b)
12026.1(c)	16850
12026.2 (entirety)	16850, 25505-25595 (entire article)*
12026.2(a)(1)	25510(a)
12026.2(a)(2)	25515
12026.2(a)(3)	25520
12026.2(a)(4)	25525(a)
12026.2(a)(5)	25530
12026.2(a)(6)	25525(b)
12026.2(a)(7)	25535(a)
12026.2(a)(8)	25510(b)

*/ For further information relating to an entry with an asterisk, see the Supplemental Disposition Table immediately following this table.

Background Clearance Unit
DROS Procedures

Interpreting Criminal Records

Felony Convictions

A conviction constitutes a felony (PC 17) if the defendant received:

- State Prison
- State Prison suspended
- Proceedings suspended
- Probation
- Probation and jail, and jail was not suspended
- Sentencing to Youth Authority out of Superior Court and was later committed to State Prison; or
- If conviction is a straight felony or one of the prohibiting misdemeanors pursuant to 12021(c)(1) PC, a release from California Youth Authority (CYA) pursuant to W&I 1772 does not restore eligibility to purchase or possess a firearm

A "wobbler" is any offense punishable by the court's discretion as a misdemeanor or felony.

Conviction of a "wobbler" constitutes a misdemeanor if:

- Judgment imposes a punishment other than State Prison
- Judgment imposes County Jail only
- Judgment imposes County Jail, suspended and probation is given
- Judgment imposes 365 days jail or subject received jail time and all or part of the jail time had been suspended
- Court commits defendant to the Youth Authority and declares offense to be a misdemeanor (person is still prohibited is misdemeanor offense listed in 12001.6 or 12021.1 PC)
- Court grants probation without imposition of sentence (actual sentencing) and at that time or thereafter, declares conviction to be a misdemeanor
- Probation is granted and court declared the conviction to be a misdemeanor
- Defendant is committed to Youth Authority and then paroled (still prohibited if misdemeanor offense is listed in 12001.6 or 12021.1 PC); or
- Juvenile court decided case. However, subject is prohibited if conviction is listed under 707(b) WIC, an offense described in Section 1203.073(b) PC or any offense enumerated in 12021(c)(1) OC and the person is under age 30

Conviction of a "wobbler" constitutes a felony if:

- Defendant received probation only and the court did not declare offense to be a misdemeanor
- Defendant received probation and county jail as condition of probation; or
- Judgment imposes State Prison or State Prison suspended

Other States

The laws of that particular state where the conviction occurred apply. If, for example, the conviction was a felony in a given state and at a given time, the DOJ considers it as a prohibition pursuant to PC Section 12021(a)(1). However, when in doubt, consult with a supervisor.

Federal Law

Pursuant to Federal Law, an offense punishable by death or imprisonment exceeding one year is a felony (US Code, Title 18, Section 1). The actual sentence given does not alter this; however, PC 12021 firearms prohibition only applies if:

- A conviction of a like offense under California Law can only result in imposition of felony punishment;
- Or the defendant was sentenced to a Federal correctional facility for more than 30 days, received a fine of more than $1,000, or received both such punishments (PC Sections 12021(b)(1) and (2)). However, when in doubt, consult with a supervisor.

US Military Offenses

An offense punishable by death or imprisonment exceeding one year is a felony (Refer to Articles of War). The actual sentence given does not alter this.

Subjects with the following types of military discharges are firearms prohibited:

- Dishonorable Discharge
- A bad conduct discharge (BCD) would depend on the charge and the punishment for that offense. Consult with a supervisor for any subject with BCD.

Other Countries

In the Supreme Court ruling of *US v. Bean*, foreign felony convictions cannot be used to prohibit firearm acquisition or possession.

Subsequent Action – California Law

A dismissal pursuant to PC Section 1203.4 *does not restore* the right to possess firearms unless dated prior to 09/15/1961.

A dismissal action pursuant to PC Section 1203.4(a) restores the person's right to possess a firearm only if jail time was imposed on a misdemeanor conviction and the offense is not listed in PC Section 12021.1 or a misdemeanor conviction for domestic violence (273.5 or 243(e)(1) PC).

A reduction to a misdemeanor pursuant to PC Section 17 restores the person's right to possess a firearm. Exceptions are misdemeanor convictions listed under PC Sections 12001.6, 12021(c)(1) and 12021.1.

A straight felony conviction cannot be reduced to a misdemeanor pursuant to PC 17. If unsure about any PC 17 reductions, consult a supervisor.

A dismissal action pursuant to WIC Section 1772 granted after the release from CYA does not restore the right to possess firearms if the conviction was for a straight felony or a misdemeanor that would prohibit possession (California Court decision 12/87). **See Attachment 1**

A dismissal action granted pursuant to WIC Section 3200, does not restore the right to possess firearms (Opinion CR76/31/I/L, DAG Adler, 09/15/1976). **See Attachment 2**

Conviction of a felony, the record of which is subject to destruction pursuant to H&S Code Section 11361.5(b) does not bar firearm possession (Refer to Opinion No. 80-411, DAG Dobson, 06/10/1980). **See Attachment 3**

Pardons – California Law

A California Governor's Pardon restores the right to possess firearms, but must include a Certificate of Rehabilitation pursuant to PC Section 4852.17 or Restoration of Firearms Rights pursuant to PC Section 4854.

Firearms rights are not restored if the felony involved the use of a Dangerous Weapon pursuant to PC Sections 4852.17 and 4854.

Background Clearance Unit
DROS Procedures

Pardons / Civil Liability Relief – Other States

A person convicted of a felony in another state who has a governor's pardon from that state is prohibited from possessing a firearm in California, unless the pardon expressly restores the right to receive and possess firearms. Rights are not restored if the conviction involved the use of a dangerous weapon (AG Opinion No. 82-801, 10/13/1983). **See Attachment 4**

A person convicted of a felony in another state whose civil disabilities were removed under the laws of that state (similar to PC Section 12023.4) is prohibited from possessing handguns in California (AG Opinion No. 67-100. DAG Winkler, 07/26/1967). **See Attachment 5**

Pardons and Grants of Relief – Federal

A person convicted of a felony under US statutes who has received a Presidential Pardon is eligible to possess firearms (Supreme Court decision Bradford v. Cardoza (19187) 195 Cal. App. 3d 361). **See Attachment 6**

A person convicted of a felony by the State of California, another state, or the Federal Government, who has received a grant of relief of disability from the BATF pursuant to Title 18, US Code, Section 925(c) is prohibited from possessing a firearm (Opinion No. CR72/63, DAG Chock, 04/03/1973). **See Attachment 7**

Under Title 18 US Code Section 5024, California is required to recognize expungement of a youthful offender's conviction pursuant to Title 18 US Code 5021. A person who has received such expungement may possess firearms in California (Opinion No. CR72/63, DAG Chock, 04/03/1973, also E. Bauer's Memo dated 02/28/1977). **See Attachment 8**

Other Denial Categories By Department Policy

Department Policy is to deny firearm purchases to any person who:

- Has made threats against the President of the United States or another elected official.
- When the purchaser or receiver identified on the DROS form answers YES to any of the questions on the DROS form, that person is deemed ineligible to purchase or receive that firearm, even if no record exists. **See Attachment 9**

Mental Health Denial Categories:

- A person in any of the following categories is statutorily prohibited from purchasing firearms if he or she is:
- A mental patient in a hospital or institution (WIC 8103)
- A mental patient on leave of absence from a hospital or institution (WIC 8103)
- A person adjudicated by the court to be a danger to self or others as a result of mental disorder or mental illness, after 10/01/1955, and if the person was not issued a Certificate of Relief (WIC 8103)
- A person placed under a conservatorship (WIC 8103)
- A person who is a mentally disordered sex offender (WIC 8103 and 6300)
- A person found by the court to be mentally incompetent to stand trial pursuant to PC Sections 1370 and 1370.1 or the law of any state or the United States
- A person who was admitted or certified under WIC 5150 is firearms *prohibited for 5 years* from the date of release; and
- A person who was admitted or certified under a WIC 5250, 5260, 5270.15 is firearms *prohibited for life* (pursuant to 18 USC, 922(d)(4))

Persons in the following categories are prohibited from purchasing firearms pursuant to Department policy:

- A person who has threatened the President of the United States or another elected official. If the Background Clearance Unit has documents on file indicating a person is in this category, the individual will be denied a firearms purchase; and
- A person who was reported to the DOJ as a mental patient or former mental patient pursuant to WIC Section 8105.

Background Clearance Unit
DROS Procedures

Background

Pursuant to California Penal Code Sections 28200-28250, California firearms dealers are required to submit a Dealer Record of Sale (DROS) to the California Department of Justice (DOJ) for each person who attempts to purchase or receive a firearm from their business.

Overview

When an individual purchases a firearm from a licensed dealer, the dealer enters the DROS, into the DROS Entry System (DES) where it is then electronically transmitted to DOJ via DES. An analyst will review the transaction and run a background check on the purchaser to determine their eligibility to purchase and/or possess a firearm. The analyst will enter the determination into DROS, where the status is sent to DES to notify the dealer if the firearm can be released.

Before you Begin

The following table outlines the applications and materials needed for the different processing steps.

Applications/Materials	Description	Action/Comments
Background Clearance Unit (BCU) DROS Procedures – Binder 1	Includes penal codes commonly seen when working a DROS, database procedures, examples, and additional reference material	Reference Binder is given to new analysts learning how to work DROS
BCU DROS Procedures – Binder 2	Includes NICS training, examples, point of contacts, and additional reference material	Federal Binder is given to new analysts learning how to work DROS
DOJ Web Portal (DROS)	Used to access DROS Transactions	An account will need to be created; login and password required
Automated Archive System (AAS)	An electronic database containing imaged documents	Procedures for using AAS are available in BCU DROS Procedures – Binder 1; login and password required
LEAWeb	A web-based interface used to access the CLETS	Procedures for using LEAWeb are available in the BCU DROS Procedures - Binder 1; login and password required

California Penal Code Book	Used to help the analyst identify a purchaser's firearms eligibility	http://leginfo.legislature.ca.gov can also be used to obtain the most recent versions of the penal codes
California Courts Directory and Fee Schedule	Reference guide for obtaining contact information for courts, district attorneys, and law enforcement agencies	Each analyst has their own copy of this resource
National Directory of Law Enforcement Administrators	Reference guide for obtaining contact information for law enforcement agencies	Located in the DROS library outside of Cubicle 184
The Sourcebook to Public Record Information	Reference guide for obtaining contact information for law enforcement agencies	Located in the DROS library outside of Cubicle 184
Microsoft Word	An application used to create documents	A template for the Fax Transmission Cover Sheet has been created in Word

Acronym	Description
AAS	Automated Archive System
BCU	Background Clearance Unit
BFEC	Basic Firearms Eligibility Check
CII	Criminal Identification and Information Number
DES	DROS Entry System
DOJ	California Department of Justice
DROS	Dealer Record Of Sale
III	Interstate Identification Index
NICS	National Instant Criminal History Background Check System
NTN	NICS Transaction Number
PPT	Private Party Transfer

Background Clearance Unit
DROS Procedures

An individual purchases a firearm from a licensed dealer.

↓

The dealer enters a Dealer Record of Sale (DROS), which includes purchaser and firearm information into DES.

↓

The transaction is electronically transmitted to DROS via DES.

↓

The analyst accesses the transaction in the DROS system and reviews the transaction and conducts a background check to make a determination on the individual's eligibility to purchase or possess a firearm.

↓

The determination is entered into DROS and then transmitted to the dealers via DES, notifying them whether they are allowed to release the firearm to the purchaser.

I. DOJ Web Login to

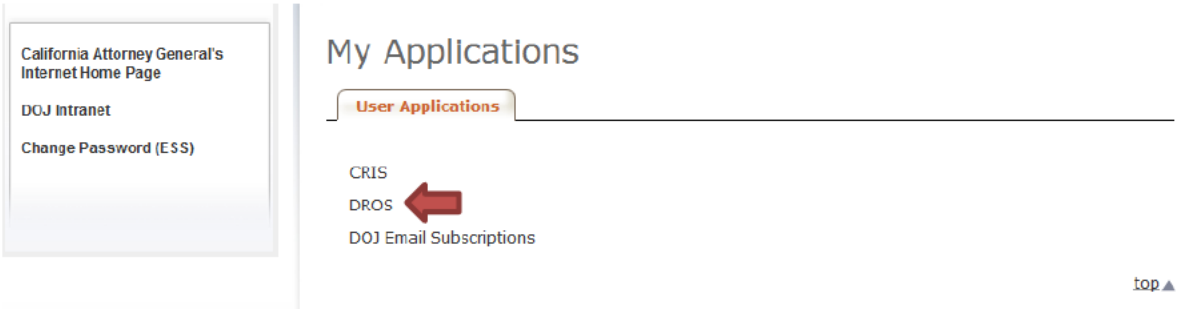
A DROS transaction is pro
Web Portal.

1. Open Mozilla Fi
2. Select **DOJ We**

3. Enter your Novell username and password.

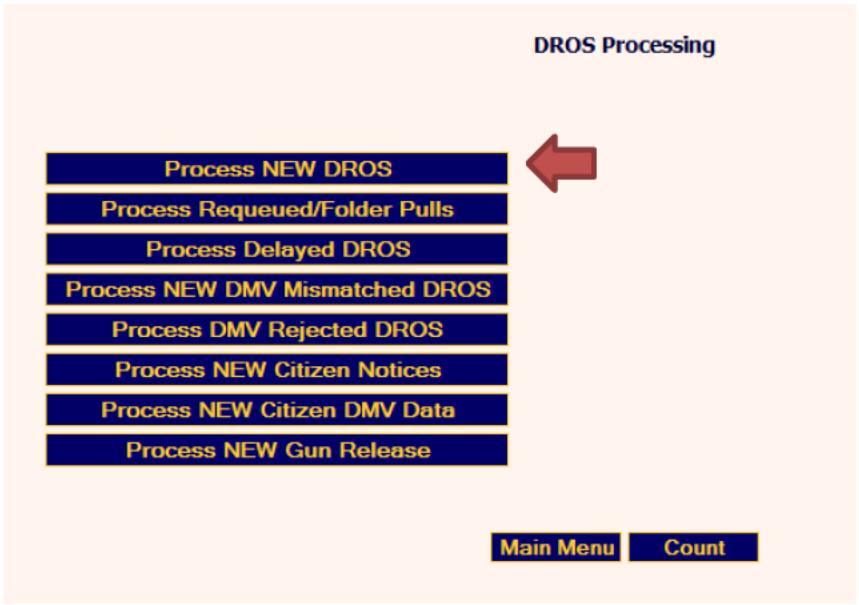
***Note**: Do not have the portal open in more than one browser. This will cause an error in the system.*

4. Select **DROS** from the user application list.
   a. If DROS is unavailable, contact your supervisor.



5. Select **DROS Processing.**

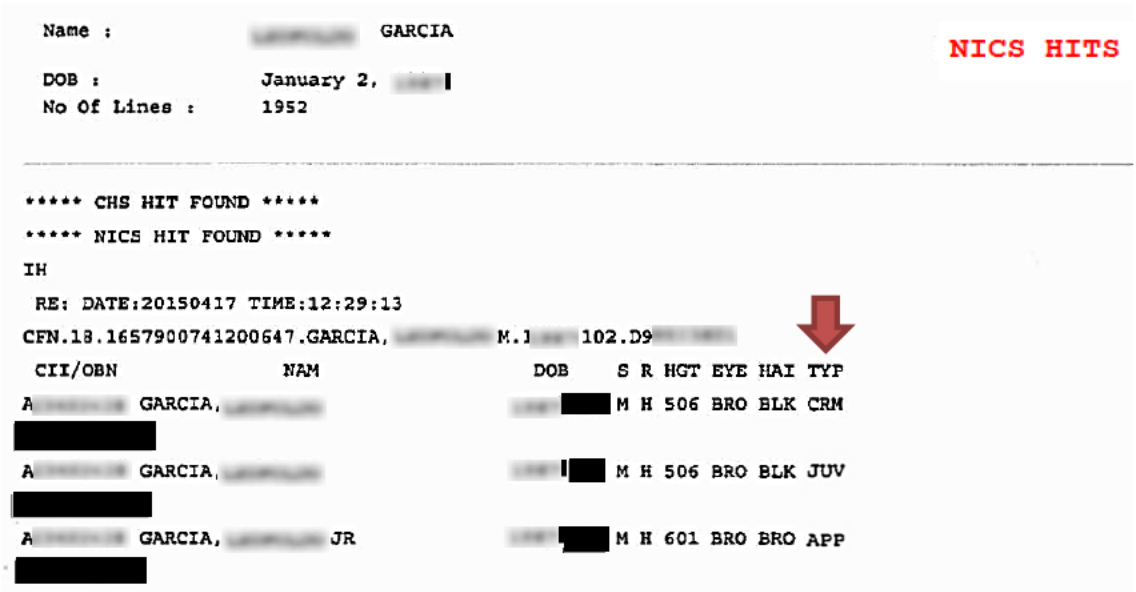
6. Select Process NEW DROS to receive a new unprocessed DROS.



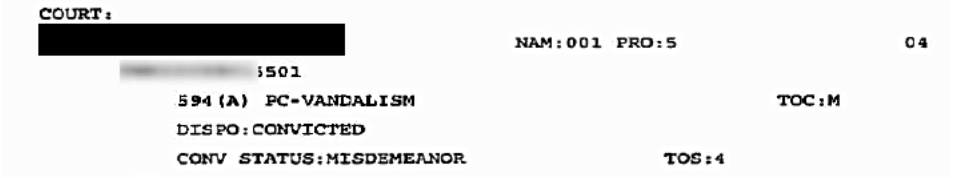
7. Click View Hits to open the BFEC for the transaction.
   a. The BFEC will open in a separate window.

II. Review the BFEC

1. Verify that the **name**, **date of birth**, and **driver license** from one of the entries on the BFEC matches the information provided on the DROS.
   a. The BFEC shows records for the purchaser as well as others with similar names.
   b. If **NICS HITS** is shown in the top right corner of the BFEC, one of the identifiers for an individual showing on the BFEC matches an entry from one of the federal databases (NCIC, FBI, III, etc.) and could be a possible prohibitor.
   c. If the purchaser is using a Department of Defense/Military identification, the analyst may find information in the FBI section of the BFEC.



2. Check to see the **type of record**.
   a. The types of records are criminal (crm), unknown (unk), application (app), or juvenile (juv).
   b. Run a **Multiple Query** if the type of record is **crm** and the record does not show on the BFEC. **Refer to for LEAWeb procedures section in the BCU DROS Procedures – Binder 1.**
3. Review the **Automated Criminal History Record (ACHS)** cycle for the individual.
   a. This will include any arrest, court, or commitment information for the State of California.



4. Look at the **NICS records.**
   a. These will include any federal prohibitions or out of state charges.
      i. Other databases may be needed to gain more information.
5. Ensure there are **no banners** in the BFEC.
   a. A banner from **NICS** will tell the analyst not to proceed without further instruction.
      i. The assigned supervisor will receive an e-mail from NICS as to whether the banner has been cleared and forward the message to the analysts. **Refer to the Banner Clear Flag section in the BCU DROS Procedures – Binder 1**.

```
**************************************************************************
DO NOT PROCEED WITH THIS TRANSACTION UNTIL CONTACTED BY FBI/NICS.
**************************************************************************
```

   b. A **stolen gun** hit may appear at the top or within the BFEC.
      i. If the analyst receives a DROS with a Stolen Gun hit, the DROS must be placed on Delay. See **Step XII.**
      ii. Give the DROS printout and a copy of the stolen hit to the assigned Stolen Gun analyst. **Refer to the Stolen Gun Flags section in the BCU DROS Procedures – Binder 1.**

```
***** STOLEN GUN HIT FOUND *****
```

   c. A **30-Day restriction** banner may also appear.
      i. This will be the only content in the BFEC. An AFS cross-reference (XREF) serial number will display the banner that caused the restriction to appear.
      ii. If the restriction banner is associated with a previous DROS that has been approved, delayed, denied, or undetermined, the DROS should be denied for 30-day reject. **See Step XI**
         (1) Make sure the purchaser/possessor does not have an exemption to the one handgun per a 30-Day Period, such as being a peace officer or a collector.

```
[redacted] PURCHASE RESTRICTION DENIAL: AFS XREF [redacted]
**************************************************************************
```

Note**: If the purchaser is using a peace officer exemption, verify this information by searching the individual's driver license in LEAWeb. **Refer to the DMV section of the LEAWEb procedures in the BCU DROS Procedures – Binder 1.

6. Analyze the **penal codes** if there is an arrest record.
   a. The analyst must determine if the records will prohibit the individual from purchasing and/or possessing a firearm. **Refer to the Penal Code Section of the BCU DROS Procedures – Binder 1 and California Penal Code book.**

   ***Note**: For a juvenile Record, if the purchaser is over 30 years old, the charge is no longer prohibiting.*

   b. The analyst may see an arrest cycle in the BFEC with no disposition information, and will need to pull the folder. See **Step III.**
      i. The Phone Resolution Unit will make a Mental Health Note of what information was received from the agencies.
      ii. If there is no folder, the previous DROS will need to be pulled from the shelves located in the assigned area (see supervisor).
   c. The analyst will also need to check the Automated Archive System (AAS) for additional information.
   d. The analyst may also need to **delay** the current transaction to allow for additional research.
   e. When sending a packet to the **Phone Resolution Unit** for additional information, only ask for the information that was not already received. **See Step IV.**
7. Check the **Related DROS tab**.

   a. Verify whether the purchaser and/or possessor has any related transactions.
   b. If so, check to see if the transaction has already been assigned to another analyst or if it is unprocessed.
      i. If the transaction has been assigned to another analyst, coordinate with that person when making the determination.
      ii. If the transaction is unprocessed, the analyst needs to search the transaction number and requeue it into his/her queue.
   c. Select View Hits and review the BFEC before making the determination.

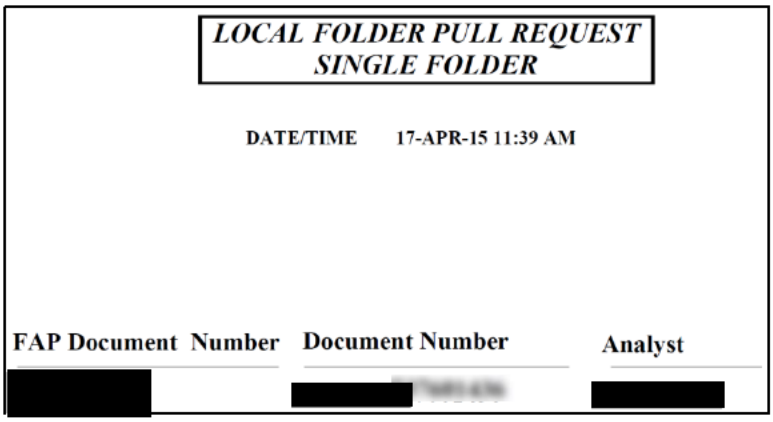
8. Check for a **'Yes' answers tab** on the transaction.
   a. Verify the answer by reviewing the BFEC for possible prohibitions.
      i. If the 'yes' is correct, **Deny** the DROS.

      ii. If the 'yes' answer is incorrect, process the transaction as normal (approve, delay, etc.).
9. Close the BFEC once a determination has been made.
10. Select the **determination** for the transaction.
    a. The analyst may also **Requeue** if there is a need to come back to the transaction.

III. Folder Pull Requests

1. Find the **Criminal Identification and Information (CII)** number from the BFEC for the purchaser.
   a. Enter the **CII number** into the textbox on the Pull Folder tab of the DROS.
      i. Include the letter in front (A (Automated), M (Manual), H (Hybrid)) when entering the CII Number.
   b. Select **local**.
2. **Save the entry.**

   a. A pop-up window will appear with the folder pull request.



LOCAL FOLDER PULL REQUEST
SINGLE FOLDER

DATE/TIME 17-APR-15 11:39 AM

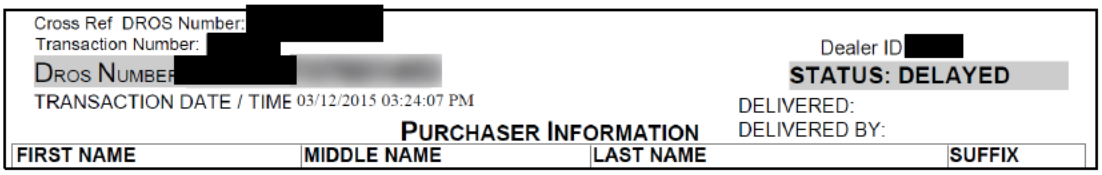
FAP Document Number | Document Number | Analyst

***Note**: The folder pull requests can also be handwritten with the CII number and analyst's name and then placed in the folder pull basket.*

3. **Print** the folder pull request.
   a. Place the request in the folder pull basket located in the assigned area (see supervisor) for a technician to retrieve the folders from room G-121.
   b. A technician may return the folder request with a message that the folder has been imaged and can be viewed in AAS.
4. Check **AAS.**
   a. Even though the folder has been pulled, additional information may still be available on AAS.

IV. Phone Resolution (In-State Disposition Retrieval)

1. Search the **CII number** in LEAWeb**. Refer to the LEAWeb procedures section in the BCU DROS Procedures – Binder 1.**
   a. The CII number is available in the BFEC.
   b. Searching the CII number in LEAWeb will provide the criminal history on the individuial instead of the individual and others with similar names, like in the BFEC.
2. **Print** out the criminal history.
3. Write the **county number** and initials at the top of the criminal history. **Refer to County Codes Flag section in the BCU DROS Procedures – Binder 1.**
   a. The analyst needs to write their initials on the criminal history so the technicians in Phone Resolution know who to return the packet to.
4. **Circle** the specific entry on the record that requires more information**.**
   a. Provide a note stating what additional information needs to be obtained.
5. **Print** the DROS showing the delayed status**.**
   a. Write the county code, analyst's initials and if there is a folder for the individual on the top of the DROS.


Cross Ref DROS Number: [redacted]
Transaction Number: [redacted]
DROS NUMBER [redacted]
Dealer ID [redacted]
STATUS: DELAYED
TRANSACTION DATE / TIME 03/12/2015 03:24:07 PM
DELIVERED:
DELIVERED BY:
PURCHASER INFORMATION

FIRST NAME	MIDDLE NAME	LAST NAME	SUFFIX

6. Place the DROS at the **front** of the packet**.**
   a. The criminal history should be behind the DROS.
   b. Add any additional documentation to the back of the packet.
7. **Staple** the packet**.**
8. Place the packet for Phone Resolution in their incoming basket in the assigned area (supervisor).
9. **Review** the packet once it comes back from Phone Resolution Unit to ensure the information received is for the correct individual.
   a. Return the packet to Phone Resolution if there is missing information or if it is not for the correct individual.

Note: *Los Angeles Police Department recycles booking numbers, so it is imperative the information being received is for the correct person and not for another individual who had the same booking number.*

Note: *The Phone Resolution Unit will obtain information from agencies within* ***California only****.*

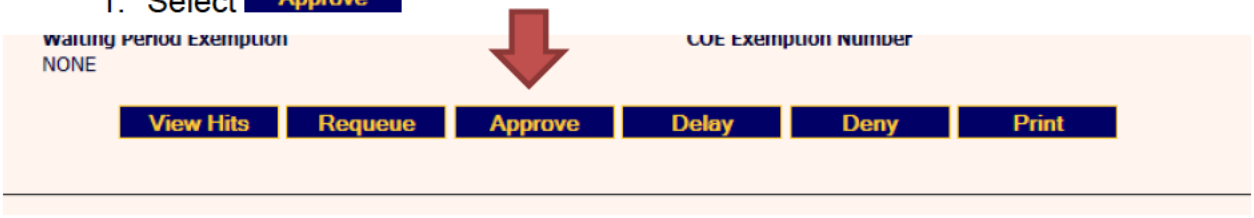
V. Chasing Dispositions (Out-of-State Disposition Retrieval)

1. Determine what additional information is needed.
    a. The analyst may have to contact the arresting agency, courts, or prosecutors in order to obtain this information.
2. **Contact** the agency.
    a. **Refer to the California Courts Directory and Fee Schedule book, National Directory of Law Enforcement Administrators and The Sourcebook to Public Record Information** located in the DROS library in the assigned area (see supervisor).
    b. **Refer to the BCU DROS Procedures – Binder 2** for the NICS Point of Contact List.
    c. The analyst may choose to call, fax, or e-mail the agency.
        i. Some agencies may request a fax or e-mail for documentation purposes.
3. Open **Microsoft Word.**
    a. Click on the **DOJ** tab.
    b. Select Fax Cover.

    c. The analyst will insert his or her information in the "To:" section of the fax and insert the information for the receiving agency in to "From:" section.
    d. Include some of the subject's information in the "Message/Instructions" section, such as the subject's name and date of birth.
        i. Additional information will need to be tailored depending on what is being requested.
        ii. For example, if requesting disposition information from the arresting agency, the analyst should provide the subject's name, date of birth, CII number, date of arrest and the charge, as well as a statement on what they want to obtain from the agency.

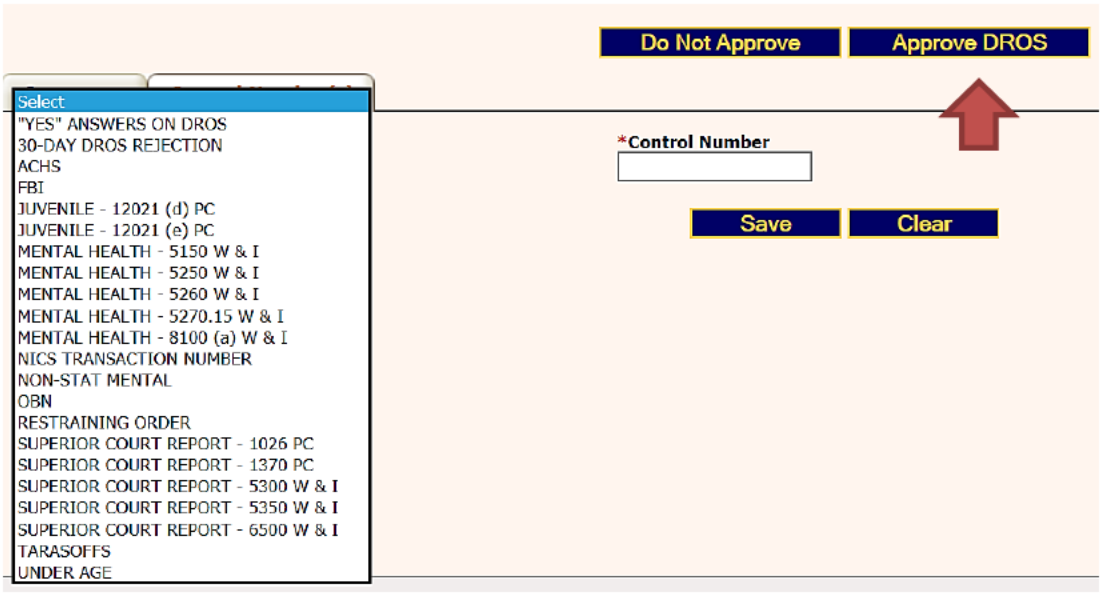
VI. Approving a Transaction

1. Select **Approve**



   a. Select the **Control Number Type** and enter the **Control Number**.
      i. ACHS and FBI will be used the most as the Control Number Types with the CII number and FBI number, respectively.
   b. **Save** the entry.

2. Select **Approve DROS**



   a. A message in **blue** will appear at the top of the page if the DROS is successfully approved.

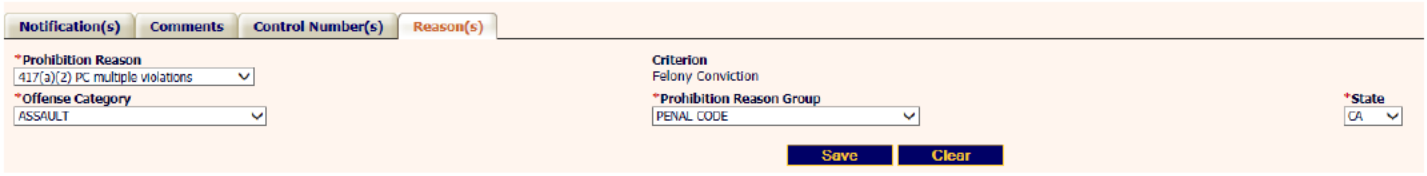
   b. No letter prints for DROS approvals. The dealer receives notification via DES.

Note: *If there is no control number, enter NSA for Not the Same As in the textbox.*

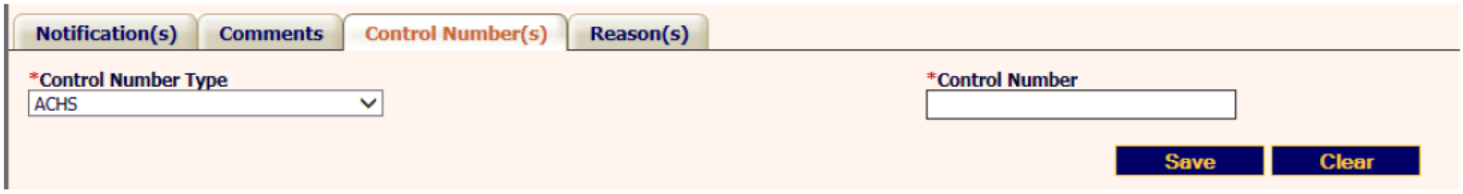
VII. Denying a Transaction

1. Select **Deny**

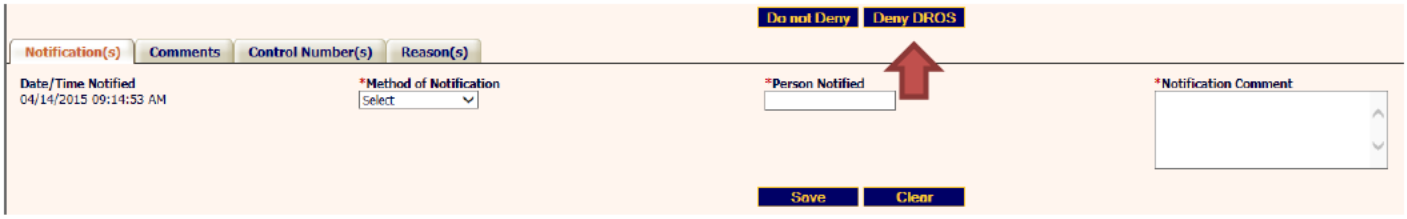
2. Click on the **Reason(s)** tab.
   a. Enter all of the required information for the Denial.
   b. **Save** the information.
   c. **Print** the reason screen.
      i. This will be included in the Denial packet.



3. Click on the **Control Number(s)** tab.
   a. Enter the **Control Number** and the **Control Type**.

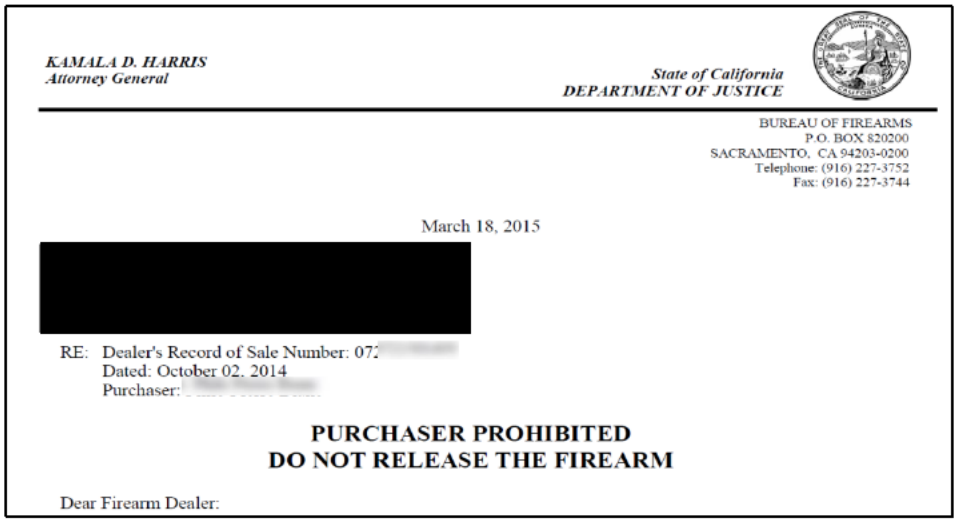


4. Click on the **Notification(s)** tab.
   a. Enter the mandatory sections.
   b. The comment should provide specific information for the denial reason.
   c. **Save** the information.



5. Select **Deny DROS**

6. **Print** the denial letter that will appear in a separate window.
   a. Write the analyst's assigned initial on the bottom right corner of the letter to the dealer.



KAMALA D. HARRIS
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State of California
DEPARTMENT OF JUSTICE

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Fax: (916) 227-3744

March 18, 2015

[redacted]

RE: Dealer's Record of Sale Number: 07[redacted]
Dated: October 02, 2014
Purchaser: [redacted]

PURCHASER PROHIBITED
DO NOT RELEASE THE FIREARM

Dear Firearm Dealer:

   b. A notification will appear in **blue** at the top of the screen if the DROS is successfully denied.

DROS[redacted] was successfully denied.

7. Notify the dealer if the denial is a **Private Party Transfer** (PPT).
   a. The DROS will show in the analyst's queue with a DROS number beginning with 9999700000000000.
   b. If the purchaser is denied for a PPT, a **Multiple Query** will need to be run on the seller to determine if the firearm can be returned to the individual. **Refer to the LEAWeb procedures section in the BCU DROS Procedures – Binder 1**.
      i. Check the boxes for NICS and III to generate a NTN.
   c. If both the seller and the purchaser are denied, instruct the dealer to give the firearm to the local law enforcement agency.
   d. If the seller is eligible to purchase or possess firearms, the firearm he or she attempted to sell can be returned.
   e. Make a comment on the denied purchaser's DROS of the seller's eligibility and their NTN number.

Weapon | Dealer | Comments | Delivery | Related DROS

Purchaser Comments

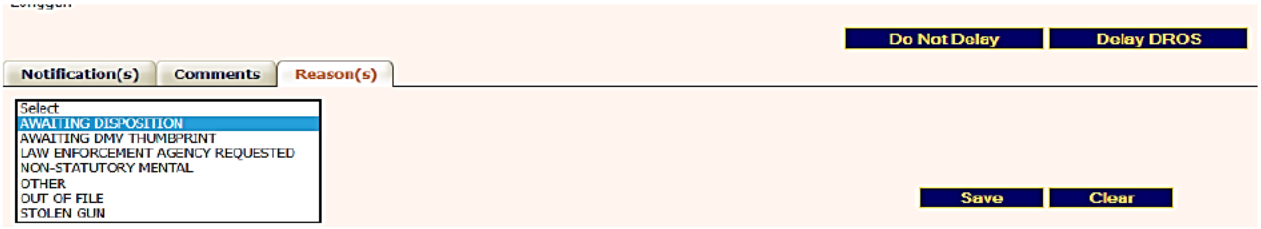
Seller OK - NTN: [redacted]

8. Create the denial packet for the typing basket. **Refer to the Denial Flag section in the BCU DROS Procedures – Binder 1**
    a. The order of the packet is:
        i. Letter to Dealer
        ii. Print-out of DROS with denied status
        iii. Print-out of the Reason for Denial page
        iv. Additional documentation
9. **Do not staple** the packet**.**
    a. Paperclip the packet together and place in the typing basket located in the assigned area (see supervisor).
10. Determine if any additional letters need to be printed**.**
    a. A route slip can be attached to the denial packet going to the typing basket to let the technicians know to create another letter for the packet. **Refer to Route Slip Flag section in the BCU DROS Procedures – Binder 1**.
11. File the packet in the assigned area (see supervisor) once it has been returned.

VIII. Delaying a Transaction

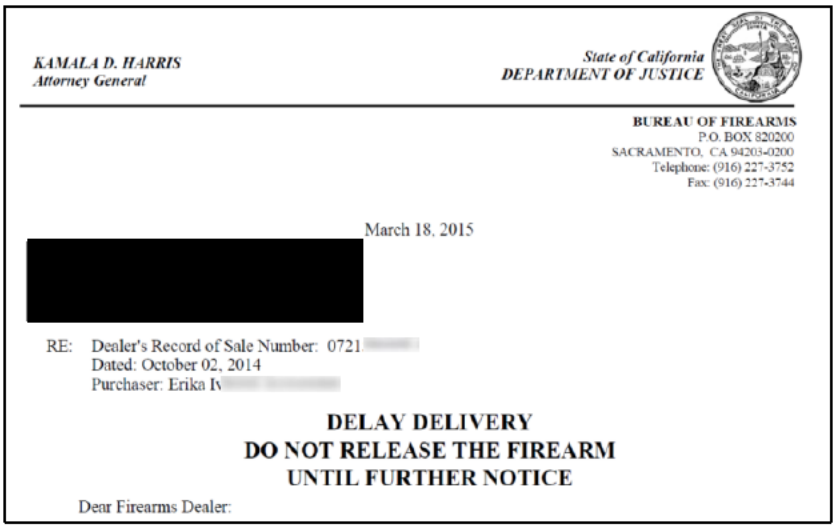
1. Select **Delay**

2. Click on the **Reason(s)** tab.
3. Select the reason for the delay.
   a. **Save** the information.



4. Click on the **Notification(s)** tab.
   a. Enter the mandatory sections.
   b. The comment should provide specific information for the delay reason.
   c. **Save** the information.

5. Select **Delay DROS**
6. **Print** the letter that appears in a separate window.
   a. Write the analyst's assigned initial in the bottom right corner of the letter to the dealer.



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Fax: (916) 227-3744

March 18, 2015

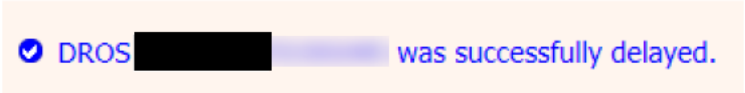
[redacted]

RE: Dealer's Record of Sale Number: 0721
Dated: October 02, 2014
Purchaser: Erika I

DELAY DELIVERY
DO NOT RELEASE THE FIREARM
UNTIL FURTHER NOTICE

Dear Firearms Dealer:

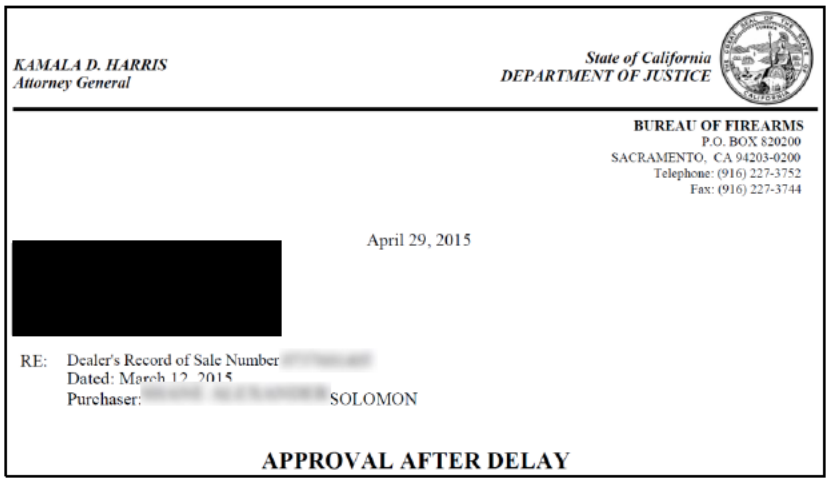
b. A notification will appear in **blue** at the top of the screen if the DROS was successfully delayed.



7. Select **Process Delayed DROS** to view the DROS after it has been delayed.
8. Create the delay packet for the typing basket. **Refer to the Delay Flag section in the BCU DROS Procedures – Binder 1.**
   a. The order of the packet is:
      i. Letter to Dealer
      ii. Letter to purchaser
      iii. Print-out of DROS with delayed status
      iv. Print-out of the Reason for Delay page
      v. Additional documentation
9. **Do not staple** the packet.
   a. Paperclip the packet together and place in the typing basket located in the assigned area (see supervisor).
10. Hold onto the packet once returned by the technicians.
    a. Additional documentation will be added to the Delay packet once a final determination has been made.

IX. Approval After Delay

1. Select **Process Delayed DROS**
   a. Open the transaction for the individual.
2. Run a **Multiple Query** in LEAWeb to review the purchaser's record and to see if new information has been added. **Refer to BCU DROS Procedures – Binder 1 for LEAWeb Procedures.**
   a. Check the boxes for NICS and III to generate an NTN.
3. Select **Approve**
4. **Print** the letters that appear in a separate window.



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April 29, 2015

[redacted]

RE: Dealer's Record of Sale Number
Dated: March 12, 2015
Purchaser: SOLOMON

APPROVAL AFTER DELAY

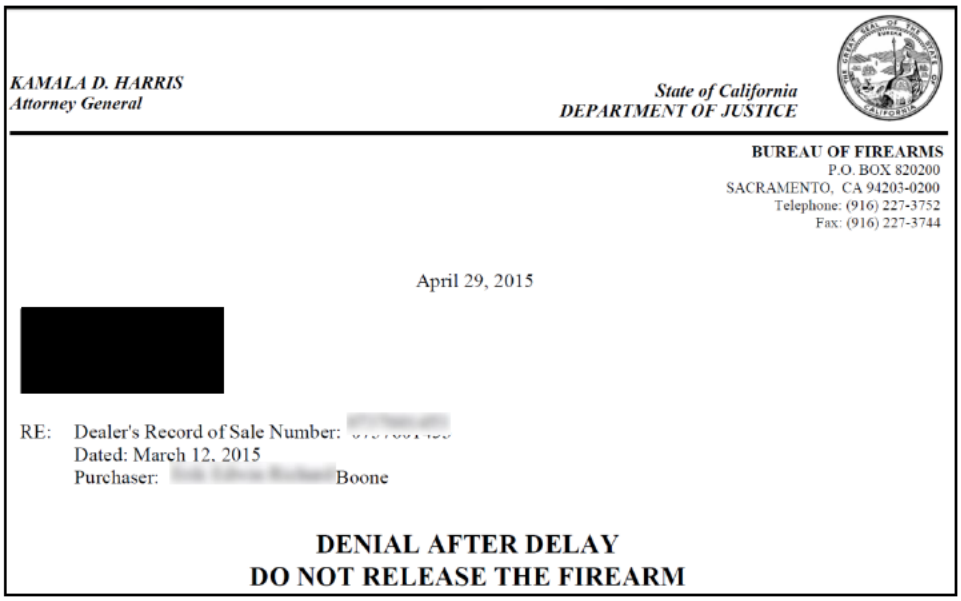
5. Write the **NTN** on the bottom left corner and the analyst's assigned letter on the bottom right corner of the letter to the dealer.
6. **Print** the DROS showing the status change from Delay to Approved.

Cross Ref DROS Number: [redacted]
Transaction Number: [redacted]
DROS NUMBER [redacted]
Dealer ID [redacted]
STATUS: APPROVED

7. Paperclip the letter and DROS print-out to the top of the purchaser's Delay packet. **Refer to the Approval After Delay Flag section in the BCU DROS Procedures – Binder 1.**
   a. Place the packet in the typing basket located in the assigned area (see supervisor).
   b. File the packet in the appropriate drawer located in the assigned area (see supervisor) once it has been returned.

X. Denial After Delay

1. Select **Process Delayed DROS**
   a. Open the transaction for the individual.
2. Select **Deny**
3. Print the letters that appears in a separate window.



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April 29, 2015

[redacted]

RE: Dealer's Record of Sale Number: [redacted]
Dated: March 12, 2015
Purchaser: [redacted] Boone

DENIAL AFTER DELAY
DO NOT RELEASE THE FIREARM

4. **Print** the DROS showing the status change from Delayed to Denied.

Dealer's Record of Sale of Firearm
State of California

Cross Ref DROS Number: [redacted]
Transaction Number: [redacted]
DROS NUMBER [redacted]

Dealer ID [redacted]
STATUS: DENIED

5. Notify the dealer if the denial is a **Private Party Transfer** (PPT).
   a. The DROS will show in the analyst's queue with a DROS number beginning with 9999700000000000.
   b. If the purchaser is denied for a PPT, a **Multiple Query** will need to be run on the seller to determine if the firearm can be returned to the individual. **Refer to the LEAWeb procedures section in the BCU DROS Procedures – Binder 1**.
      i. Check the boxes for NICS and III to generate a NTN.
   c. If both the seller and the purchaser are denied, instruct the dealer to give the firearm to the local law enforcement agency.

d. If the seller is eligible to purchase or possess firearms, the firearm he or she attempted to sell can be returned.

e. Make a comment on the denied purchaser's DROS of the seller's eligibility and their NTN number.

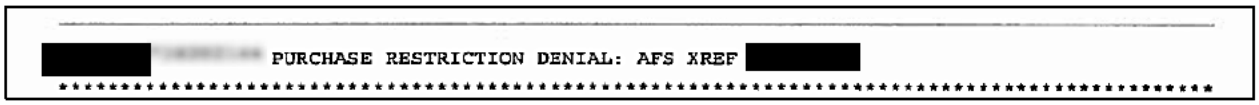
6. **Paperclip** the letter and DROS print-out to the top of the purchaser's Delay packet. **Refer to Denial After Delay Flag in the BCU DROS Procedures – Binder 1.**

   a. Place the packet in the typing basket located in the assigned area (see supervisor).

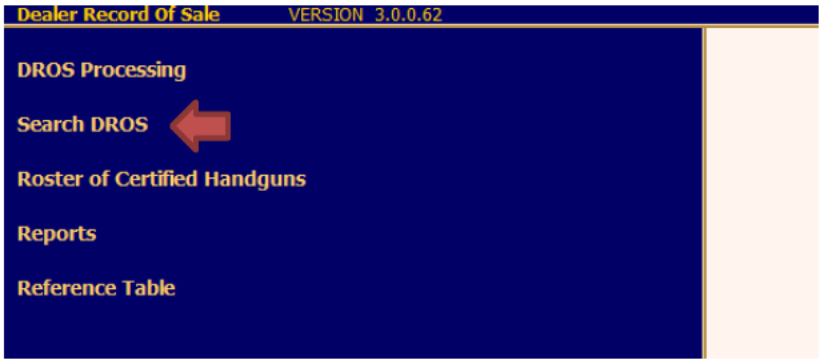
   b. File the packet in the appropriate drawer located in the assigned area (see supervisor) once it has been returned.

XI. 30-Day Violations

1. Determine if the purchaser has a **30-day violation**.
   a. The BFEC will only show the 30-day restriction banner and an AFS cross-reference (XREF) number.

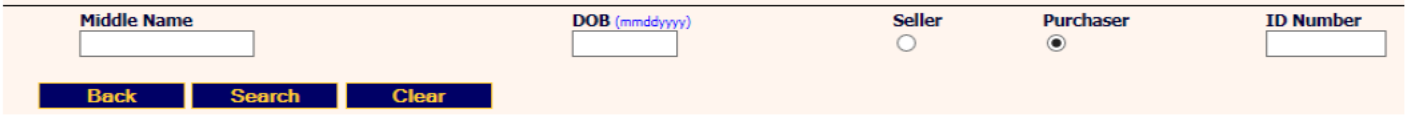


2. Check the transaction for any exemptions. **Refer to BCU DROS Procedures – Binder 1 and California Penal Code book.**
   a. The analyst should call the dealer to ensure there are no exemptions, such as purchasing for a security company or purchasing on consignment, before denying the DROS.
3. Requeue the DROS to return to it later.
4. Inquire on the previous DROS using the purchasers **California Driver License**.
5. Select **Main Menu.**
   a. Select **Search DROS**.

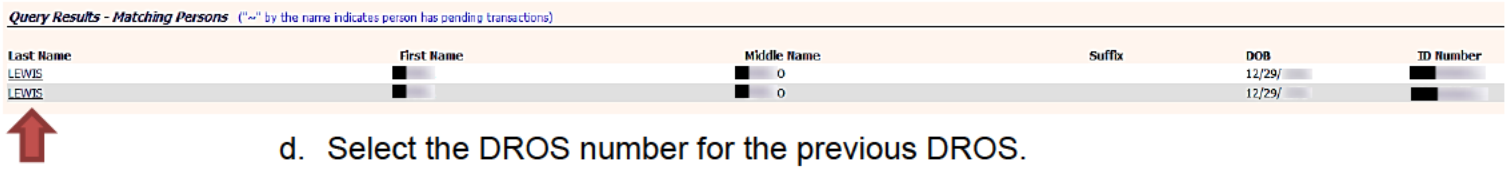


   b. Select **Query Person**

      i. Enter the driver license number in the ID Number field.
      ii. Select **search**.

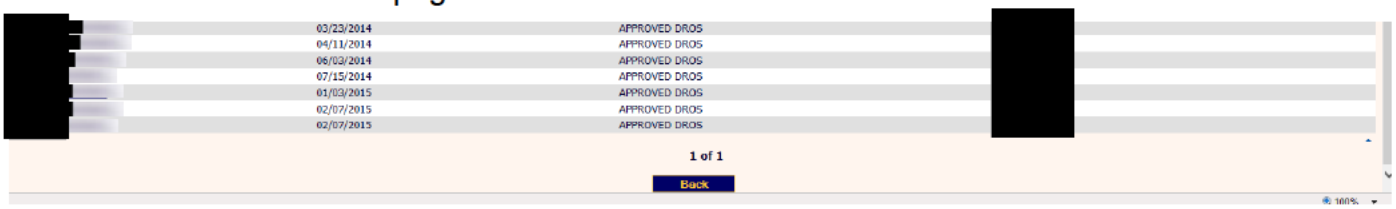


c. Select the **name** of the individual.



d. Select the DROS number for the previous DROS.

i. The most recent transactions appear on the bottom of the last page.



6. **Print** the DROS.

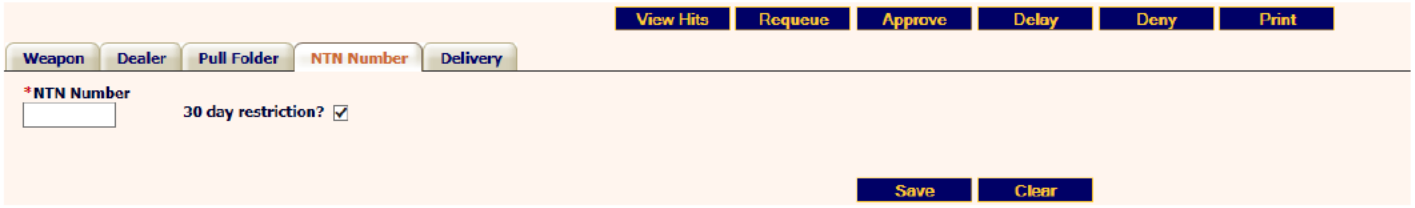
a. If there are no exemptions on the previous DROS, **deny** the current DROS for violating the one handgun per 30-day rule.

7. Open the current DROS from **Process Requeued/Folder Pulls**

a. Select the NTN Number tab.

i. Check the box for 30-Day Restriction.

ii. **Save** the change.



Note: *The 30-day restriction box on the NTN Number tab needs to be check-marked before denying the DROS.*

Note: *If the purchaser is using Exemption X91 – Particular and Limited Authority Peace Officers, the dealer must be called to confirm if the purchaser is the owner of the private security company. Only owners can purchase multiple handguns without violating the one handgun in 30 days rule.* **Refer to the memorandum section in the BCU DROS Procedures – Binder 1.**

8. **Deny** the DROS.

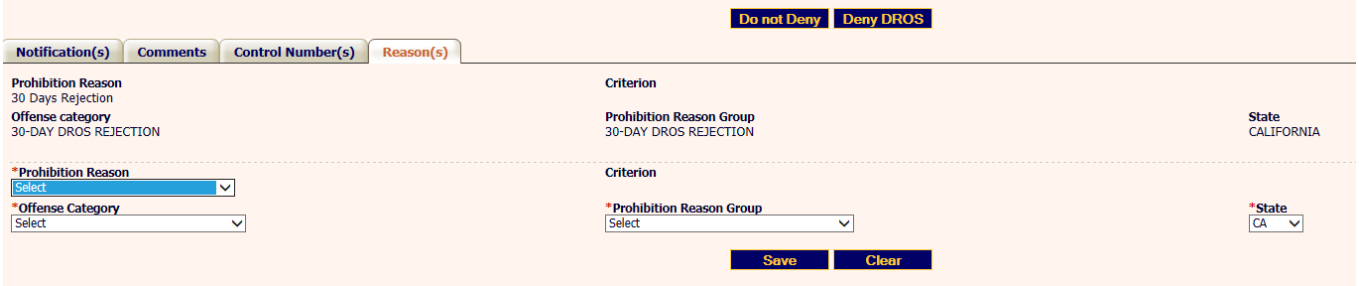
9. Click on the **Reason(s)** tab.

a. Choose **30 Day Rejection** for the Prohibition Reason, Offense Category, and the Prohibition Reason Group.

b. **Save** the information.

c. **Print** the reason screen.

i. This will be included in the packet.

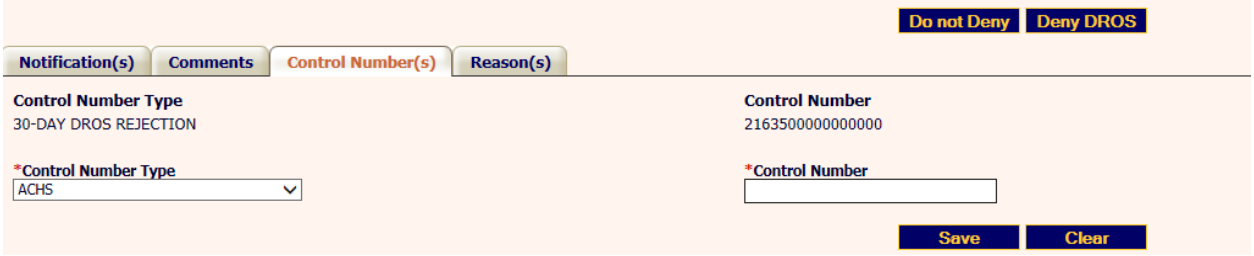


10. Select the **Control Number(s)** tab**.**

a. Enter **30-Day DROS Rejection** as the Control Number Type.

b. Insert the previous DROS number for the Control Number.

c. **Save** the information.



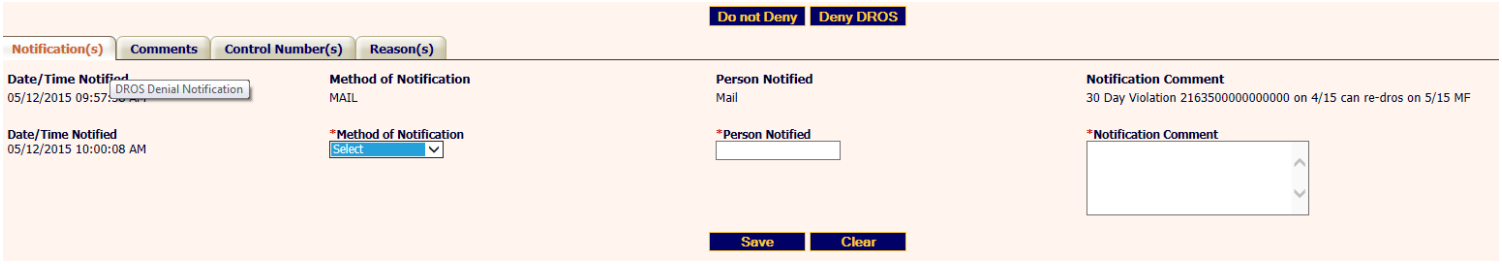
11. Click on the **Notification(s)** tab.

a. Enter Mail for the Method of Notification and Person Notified.

b. Enter a comment.

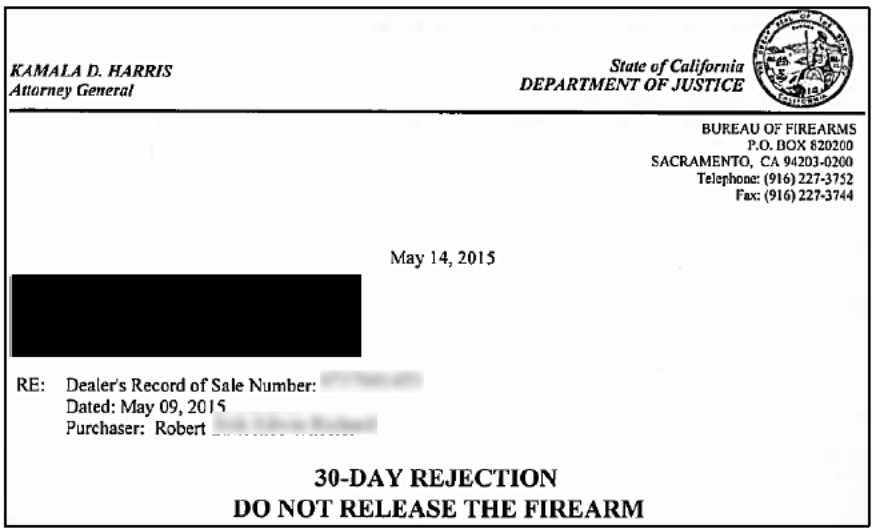
i. The analyst's comment should note the previous DROS that was denied for a 30-Day violation, the previous DROS number, and the date of the previous DROS. The day the purchaser can re-DROS as well as the analyst's initials should be included.

c. **Save** the information.



12. **Select** **Deny DROS**

13. **Print** the denial letters that appear in a separate window.



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P.O. BOX 820200
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Fax: (916) 227-3744

May 14, 2015

[redacted]

RE: Dealer's Record of Sale Number:
Dated: May 09, 2015
Purchaser: Robert

30-DAY REJECTION
DO NOT RELEASE THE FIREARM

14. **Print** the DROS to show the status has changed to 30-Day reject.

Cross Ref DROS Number: [redacted]
Transaction Number: [redacted]
DROS NUMBER: [redacted]
TRANSACTION DATE / TIME 03/12/2015 03:15:23 PM

Dealer ID [redacted]
STATUS: 30-DAY REJECT

15. Notify the **dealer** the firearm cannot be released to the purchaser.
    a. The dealer should also be aware of the date the purchaser can re-DROS.
16. Create the 30-Day Rejection packet. **Refer to the 30-Day Flag section in the BCU DROS Procedures – Binder 1.**
    a. The analyst's assigned initial is written on the bottom right corner of the letter being sent to the dealer.
    b. The analyst's initials and date of the denial should be written at the top of the DROS print-out below the status.
    c. The order of the packet is:
        i. Letter to Dealer
        ii. Print-out of DROS with 30-day Reject status
        iii. Print-out of the Reason for Denial page
        iv. Print-out of the previous DROS that is causing the 30-day restriction
17. **Do not staple** the packet.
    a. Paperclip the packet together and place in the typing basket located in the assigned area (see supervisor).
    b. File the packet in the appropriate drawer located in the assigned area (see supervisor) once it has been returned.

California State Auditor

October 2013

Armed Persons With Mental Illness

Insufficient Outreach From the Department of Justice and Poor Reporting From Superior Courts Limit the Identification of Armed Persons With Mental Illness

Report 2013-103

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California State Auditor

Elaine M. Howle State Auditor
Doug Cordiner Chief Deputy

October 29, 2013 2013-103

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor (state auditor) presents this audit report concerning the reporting and identification of persons with mental illness who are prohibited from owning or possessing a firearm.

This report concludes that the Department of Justice (Justice) has not sufficiently reached out to superior courts (courts) or mental health facilities to remind them of firearm prohibition reporting requirements in state law. We surveyed 34 courts that did not appear to be submitting firearm prohibition reports to Justice's mental health unit from 2010 through 2012 and learned that most of them were unaware of the reporting requirements. Those courts who were able to do so indicated that they had not reported about 2,300 mental health determinations to Justice over the three-year period. We also visited three courts that did report information—Los Angeles, San Bernardino, and Santa Clara—and found these courts did not report all required mental health determinations to Justice. Further, Justice was not aware of and has not reached out to all mental health facilities in the State that were approved to treat reportable individuals.

Justice needs to improve its controls over processing the information about persons with mental illness that it receives from reporting entities. For example, we found that some key staff decisions, such as determining that a specific individual is not an armed prohibited person, are not subject to supervisory review once staff complete training. In fact, three of eight such decisions we reviewed were incorrect, and the lack of supervisory review may have contributed to these incorrect decisions. Similarly, decisions to delete prohibition information in the Mental Health Firearms Prohibition System do not require supervisory review.

In May 2013 the governor signed into law a $24 million appropriation to provide additional support to Justice's effort to confiscate firearms from individuals it has identified as armed prohibited persons. As of July 2013 Justice reported that more than 20,800 persons were still deemed to be armed prohibited persons for a variety of reasons not limited to mental health, and these persons had not had their firearms confiscated. Justice has begun the process of hiring additional enforcement agents. However, because Justice uses the information it receives from courts and mental health facilities to identify persons who are prohibited from possessing a firearm, Justice must improve its outreach to these entities and strengthen its management of the information it does receive to ensure it does all it can to protect the public.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

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Contents

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Summary

Results in Brief

The Department of Justice (Justice) manages California's effort to identify firearm owners in the State who are prohibited from owning or possessing a firearm because of a mental health-related event in their life. Justice refers to these individuals as *armed prohibited persons*. Justice attempts to identify armed prohibited persons by matching its records of firearm owners against reports about individuals with mental illness that it receives from superior courts (courts) and mental health facilities. Although it relies on information from courts and mental health facilities to identify these persons, Justice had not sufficiently reached out to the courts or mental health facilities to remind them to promptly report this required information. In addition, Justice needs to improve its controls over processing the information it does receive from reporting entities, because key decisions, such as whether a person is prohibited, are left to staff whose work does not receive a supervisory review. Because of these issues, Justice cannot identify all armed prohibited persons in California as effectively as it should, and the information it uses to ensure public safety by confiscating firearms is incomplete.

Although state law requires courts to report individuals to Justice whenever the courts make certain mental health determinations, many courts in the State were not aware of these requirements. We surveyed 34 courts that did not appear to be reporting these determinations, and their collective responses indicated that they had not reported about 2,300 mental health determinations to Justice over the three-year period from 2010 through 2012, the focus period of this audit. Additionally, several courts indicated that, generally due to system limitations, they could not provide us with the number of reportable determinations they had failed to report. Before our audit, Justice had not reached out to the courts to remind them about the reporting requirements, and it still has not followed up with nonreporting courts to confirm that they had no reportable determinations.

Further, we visited three courts that did report information to Justice during the audit period, but they did not fully comply with state law because they failed to report all of their required court determinations. For example, we found that the Mental Health Courthouse at the Los Angeles Superior Court (Los Angeles Court) was unaware of several court determinations it was required to report. Among these were those that determined that individuals were mentally incompetent to stand trial or that an individual is a danger to others. Additionally, we found that the San Bernardino Superior Court (San Bernardino Court) had not reported any of

Audit Highlights . . .

Our audit of the reporting and identification of persons with mental illness who are prohibited from owning or possessing a firearm (armed prohibited persons) highlighted the following:

- *The Department of Justice (Justice) has not sufficiently reached out to the superior courts (courts) or mental health facilities to remind them to promptly report required information and cannot identify all armed prohibited persons in California effectively.*
- *Many courts were not aware of state law requiring them to report individuals to Justice when the courts make certain mental health determinations—the 34 courts we surveyed indicated they had not reported about 2,300 of these determinations collectively over a three-year period.*
- *None of the three courts we visited fully complied with state law because they failed to report all of their required determinations, such as those that determined that individuals were mentally incompetent to stand trial or those deemed a danger to others.*
- *Each of the courts we visited varied in their interpretation of state law's current requirement to report determinations to Justice immediately.*
- *We identified 22 mental health facilities that Justice had not contacted about reporting requirements.*
- *Justice has struggled to keep up with its existing workload—it has at times had a daily backlog of cases waiting for initial review that exceeded the informal cap of 1,200 cases.*

continued on next page . . .

- *There is a lack of supervisory review, and three of the eight decisions regarding armed prohibited person status we reviewed were incorrect.*
- *Justice reported that more than 20,800 persons were still deemed to be armed prohibited persons as of July 2013, and these persons had not had their firearms confiscated.*

the determinations we reviewed of individuals deemed mentally incompetent to stand trial. Further, the Santa Clara Superior Court (Santa Clara Court) did not notify Justice about any of its determinations that an individual was to be committed to a mental health facility for an extended period or that an individual's conservatorship was to be terminated early. We also found that these courts varied in their interpretations of state law's current requirement to report determinations to Justice *immediately*. Legislation signed by the governor in October 2013 will change this requirement effective January 1, 2014. This change will give courts more time to report to Justice than the 24 hours given to mental health facilities, which are also required to report certain individuals to Justice. Because the information courts report is important for public safety, we question this change.

Additionally, Justice was not aware of and has not reached out to all mental health facilities in the State that were approved to treat reportable individuals. By comparing Justice's facilities outreach list to a list of approved mental health facilities, we identified 22 mental health facilities that Justice had not contacted about reporting requirements. When it does not reach out to all mental health facilities in the State, Justice risks being unable to identify all armed prohibited persons because the mental health facilities may not know about the reporting requirements or how or when to report such individuals.

However, if additional mental health facilities and courts were to report prohibiting events, Justice's workload would increase, and it has struggled to keep up with its existing workload. Justice's Armed and Prohibited Persons unit (APPS unit) in its Bureau of Firearms has at times had a daily backlog waiting for initial review that exceeded the informal cap Justice set of 1,200 pending matches. For example, Justice reported that a significant rise in the Armed Prohibited Persons System backlog during late 2012 and early 2013 coincided with a rise in the number of required background checks for firearm purchases. At the time the background check workload increased, Justice reports that it shifted APPS unit staff to complete these checks, and we found Justice did not meet its own internal deadline for completing initial reviews of potential armed prohibited persons. Justice could again face similar challenges.

Further, current weaknesses in Justice's workload management and controls over information it receives demonstrate that it may be unprepared for an increase in workload. Justice needs to improve its controls over processing the information about persons with mental illness that it receives from reporting entities. For some of the report records we reviewed, Justice had not entered information it received into the databases that would make the information available for the APPS unit to review.

Additionally, we found that some key staff decisions, such as determining that a specific individual is not an armed prohibited person, are not subject to supervisory review once staff complete training. In fact, three of eight such decisions we reviewed were incorrect, and the lack of supervisory review may have contributed to these incorrect decisions. Similarly, decisions to delete prohibition information in the Mental Health Firearms Prohibition System (mental health database) do not require supervisory review. If Justice improved its controls over this information, it would reduce the risk of failing to identify all armed prohibited persons and it would have all the information necessary to ensure public safety through firearms confiscation.

The need for improvements to Justice's identification of armed prohibited persons has recently taken on greater importance due to an increase in funding to aid in the confiscation of firearms from those prohibited persons. In May 2013 the governor signed into law an appropriation of $24 million to provide additional support to Justice's effort to confiscate firearms from armed prohibited persons. Over the two-year period ending in May 2013, Justice had completed a total of three confiscation sweeps, which, in addition to its ongoing confiscation efforts, collected a total of nearly 4,000 firearms from armed prohibited persons. However, Justice reported that more than 20,800 persons were still deemed to be armed prohibited persons—for a variety of reasons not limited to mental health—as of July 2013, and these persons had not had their firearms confiscated. In response to the new appropriation, Justice has begun the process of hiring additional enforcement agents. However, these agents will rely on the information that Justice receives from reporting entities and that its staff review and make determinations about. Therefore, it is critical that Justice improve its outreach and internal processes so its agents can better protect the public from armed prohibited persons.

Recommendations

To ensure that it has the necessary information to identify armed prohibited persons with mental illness, Justice should at least once a year consider information about court reporting levels and request that courts it determines may be underreporting forward all required case information.

To ensure that all required prohibited individuals are reported to Justice, the three courts we visited—Los Angeles, San Bernardino, and Santa Clara—should ensure that they implement procedures to report all types of determinations that state law requires.

The Legislature should amend state law to specify that all mental health-related prohibiting events must be reported to Justice within 24 hours regardless of the entity required to report.

To ensure that it keeps an accurate and up-to-date list of all mental health facilities required to report individuals with mental illness, at least twice a year Justice should update its outreach list of mental health facilities, and as soon as it identifies mental health facilities that have not yet received information about reporting requirements, Justice should send these facilities this information.

To ensure that timely information is available for its efforts to identify armed prohibited persons and confiscate their firearms, Justice should manage staff priorities to meet its internal deadline for initially reviewing potential prohibited persons.

To ensure that it makes correct determinations about whether an individual is an armed prohibited person, Justice should implement quality control procedures, including supervisory review, over APPS unit staff determinations.

To ensure that it processes all reports it receives about persons with mental illness, Justice's mental health unit should develop and implement quality control procedures, including periodic supervisory review of report entry to ensure that all reports are entered correctly into the mental health database. Additionally, it should conduct a supervisory review of all staff decisions to delete records from the database before their deletion.

Agency Comments

Justice agreed with all of our recommendations and outlined steps it will take to implement them. In general, the other entities to which we directed recommendations acknowledged that they need to improve their practices and agreed to implement changes to address the issues we found. However, the Administrative Office of the Courts cited resource issues as precluding courts from implementing a change we recommend to state law. In addition, San Francisco Superior Court objected to specific language in our report and did not indicate whether it agreed with our recommendation to the court.

Introduction

Background

State law, enacted in 2001 and subject to appropriation of funds, mandated the Department of Justice (Justice) to create a database to match information related to persons in the State who are prohibited from owning or possessing a firearm (prohibited persons) to its records of firearm owners to determine whether these individuals are prohibited from owning their firearms.[1] This database, commonly known as the Armed Prohibited Persons System (APPS database), was implemented in November 2006. The purpose of this system is to cross-reference all persons in California who are firearm owners and who are unlawfully in possession of a firearm because of a qualifying event in their life that prohibits them from owning a firearm. Justice refers to these individuals as *armed prohibited persons*. Justice has described California as the only state in the United States that has established an automated system for tracking handgun and assault weapon owners who might fall into a prohibited status. This system and its purpose are separate from Justice's other duty to complete background checks for individuals who are attempting to purchase a firearm.

Although different qualifying events can cause someone to become a prohibited person, the scope of this audit is limited to prohibitions related to mental health. Because of the variety of prohibiting events, different entities throughout the State are required to report to Justice when a prohibiting event occurs. Mental health facilities are generally responsible for reporting prohibiting events related to mental health status. Superior courts (courts) are generally responsible for reporting events related to criminal proceedings, but they are also required to report information to Justice related to determinations concerning an individual's mental health. Local law enforcement is required to report whenever a licensed psychotherapist reports that a patient has made a threat against an individual. Such reports are known as Tarasoff reports.

[1] Current state law directs Justice to identify persons who have ownership or possession of a firearm, as indicated by a record in Justice's Consolidated Firearms Information System (CFIS). CFIS contains records of firearm owners from information that Justice receives from sales and subsequent transfers of firearms as well as registered owners of assault weapons. Thus, we use the term *firearm owners* throughout the report to describe these individuals.

Determinations That Superior Courts Must Report to the Department of Justice

An individual has been found by the court to be:

- A danger to others as a result of a mental disorder or illness, which results in a court-ordered commitment to a treatment facility.
- Not guilty by reason of insanity or has regained his or her sanity.
- Mentally incompetent to stand trial or has regained his or her competency.
- Gravely disabled due to a mental disorder or impairment by chronic alcoholism and requiring a conservator, and the possession of a firearm would present a danger to himself or herself or others.
- No longer gravely disabled and requiring a conservator or the court has found that the possession of a firearm would no longer present a danger to himself or herself or others.

Source: California Welfare and Institutions Code, sections 8103, 5300, and 6500.

Reporting by the Courts

State law requires courts to report certain mental health determinations to Justice immediately after the court makes the determination.[2] The text box shows the types of judicial determinations that courts are required to report to Justice. These determinations are related to both civil and criminal matters. Courts can report their determinations to Justice by either electronic or paper means. As Figure 1 shows, the courts send their determinations either to Justice's Bureau of Criminal Information and Analysis (criminal information unit) or to Justice's Bureau of Firearms' mental health unit. Each unit at Justice processes reports from the courts into a different Justice database. The criminal information unit inputs reports from the courts into Justice's Automated Criminal History System (criminal history system), while mental health unit staff enter reports they receive into the Mental Health Firearms Prohibition System (mental health database).

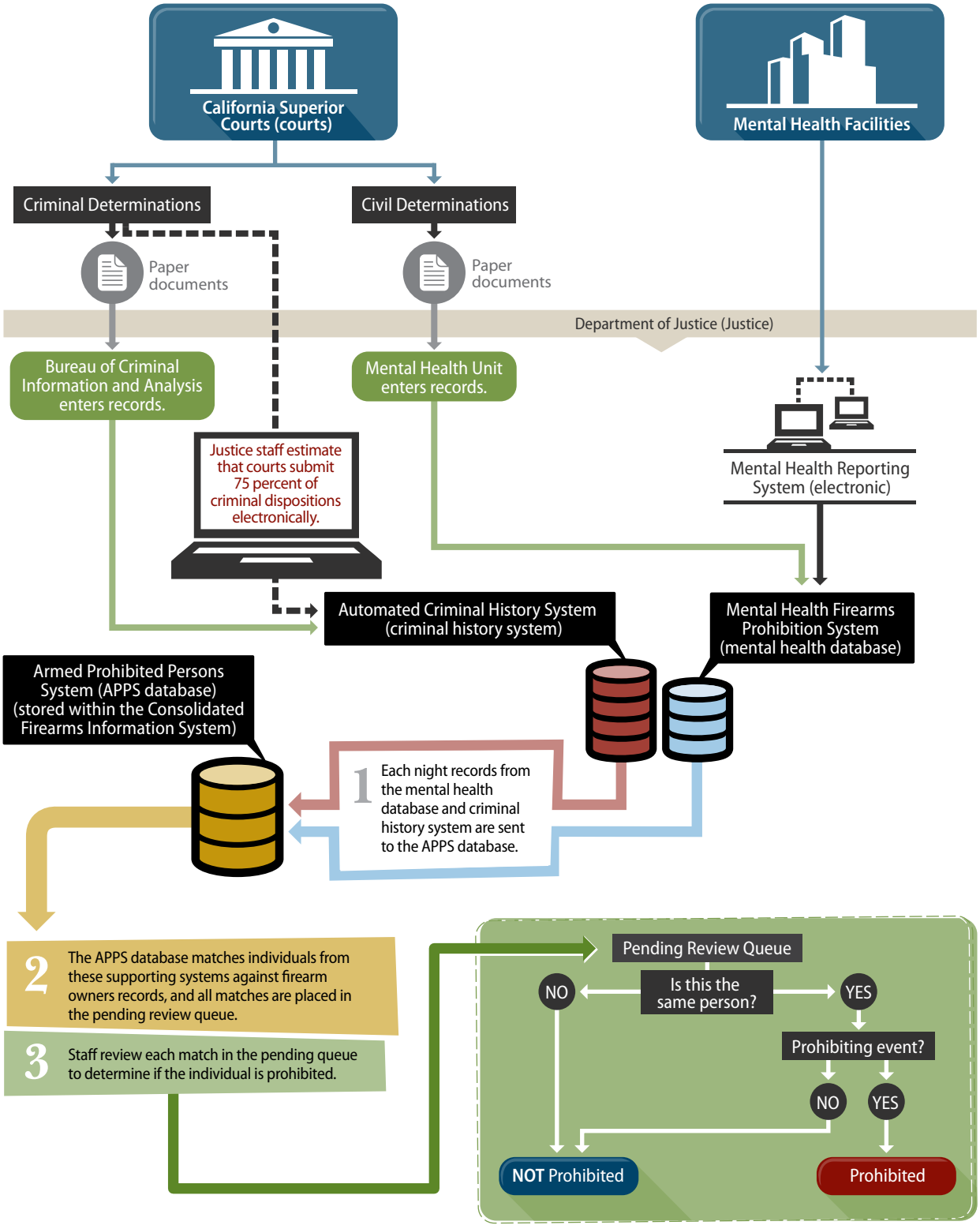
Not all determinations that courts report to Justice result in an individual being prohibited from possessing a firearm. Some determinations will reverse or lift a previous prohibition. For example, a court determination that an individual requires a conservatorship because of a mental illness can result in prohibition from possessing a firearm if the court orders such a prohibition. However, if the court later orders an early termination of the original conservatorship or determines that the individual's possession of a firearm would no longer present a danger, the individual is no longer prohibited under state law from possessing a firearm. State law requires courts to report both types of determinations to Justice.

Reporting by Mental Health Facilities and the California Department of State Hospitals

California has both public and private mental health facilities that provide treatment to individuals for mental health issues. These include psychiatric health facilities and acute psychiatric hospitals

[2] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which courts must report their mental health determinations. Specifically, courts will no longer be required to report immediately but will be required to report as soon as possible but not later than two court days after the determination. Also, courts will be required to report these determinations electronically.

Figure 1
The Process of Reporting Mental Health Firearm Prohibiting Events to the Department of Justice and Identifying Armed Prohibited Persons



Sources: Information provided by Justice's Bureau of Firearms and the Bureau of Criminal Information and Analysis.

that provide inpatient treatment to individuals with mental health needs. State law requires mental health facilities to report to Justice certain individuals who are placed for treatment. Specifically, these facilities are required to report individuals placed under involuntary holds at a mental health facility and individuals who, after their involuntary hold, are found to be in need of further treatment.[3] In all cases, state law requires that mental health facilities report these prohibiting events to Justice immediately and update Justice regarding the person's discharge from the facility if the individual remained at the facility for more than one month.[4] Figure 1 on the previous page shows the flow of reported information. As the figure shows, Justice stores the information from mental health facilities in its mental health database.

Effective July 2012 state law requires all mental health facilities to report prohibited persons to Justice electronically. According to a committee analysis of this change to the law, this requirement was intended to decrease the time it takes to report prohibiting events to Justice and thereby increase the speed at which Justice can identify prohibited persons. In fact, Justice had implemented an electronic reporting system as early as July 2009, and mental health facilities had the option of reporting electronically before use of this system was required in July 2012.

Additionally, the California Department of State Hospitals (State Hospitals) operates eight hospital facilities statewide, some of which provide treatment to patients who are prohibited from possessing firearms because of their mental health condition. State law requires State Hospitals to maintain and make available to Justice those records as are necessary to identify prohibited persons. This information must be kept in a central location, and State Hospitals must make it available to Justice upon request. Due to the legislation discussed in footnote 4, effective January 1, 2014, State Hospitals will be required to provide this information to Justice electronically and within 24 hours of a request.

Justice's Process for Identifying Prohibited Persons

The Armed and Prohibited Persons unit (APPS unit) within Justice's Bureau of Firearms is responsible for identifying armed persons with mental illness from a daily list of individuals who may meet

[3] State law requires mental health facilities to report individuals who have been taken to a facility involuntarily and admitted to the facility for evaluation and treatment because they present a danger to themselves or others. Throughout this report, we refer to this process as an *involuntary hold*.

[4] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which mental health facilities must report individuals with prohibiting events. Specifically, facilities will no longer be required to report immediately but will be required to report within 24 hours.

the criteria. As of April 2013 the APPS unit consisted of 10 staff, a manager, and a supervisor. As shown in Figure 1, every evening an automatic check matches the records in the mental health database and criminal history system with information in Justice's CFIS, which contains a record of firearm owners in California since 1996 and of assault weapon owners since 1989.[5] Specifically, Justice compares personal identifying information such as Social Security numbers to identify individuals who own a firearm and who may have had a mental health prohibiting event logged into one of the two databases within the last 24 hours. All persons identified through this automated check are placed in a pending queue for APPS unit staff to review.

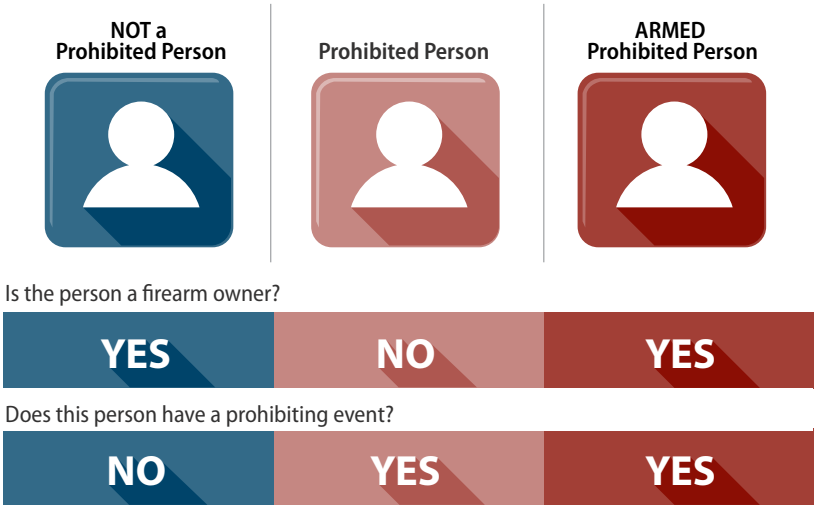
Staff in the APPS unit manually review each person in the pending review queue to determine whether the automated check has matched the correct individual. For example, the automated check will match an individual with a recent prohibiting event with someone in CFIS who has the same personal identification number, such as a California driver's license number, but a different name and date of birth. Justice has implemented a manual review of these potentially prohibited persons so that firearm owners are not incorrectly labeled as prohibited persons by an automated process. In addition to verifying identity, staff also verify that the event that pulled the individual from the criminal history system or the mental health database is actually a prohibiting event. When staff determine that someone is a prohibited person, they change that individual's status in the APPS database to *prohibited* and update his or her information, including address and firearm ownership information.

The APPS database identifies individuals who own firearms and whether they have a prohibition. The state law that required Justice to create the APPS database specifically requires Justice to search its firearm records to determine whether the individual has had a prohibiting event. State law does not direct Justice to, nor is Justice attempting to, identify for purposes of the APPS database individuals who have prohibiting events, are unarmed, and are living at the same residence as firearm owners. Legislation signed by the governor in October 2013 will amend state law, effective January 1, 2014, to specify that when firearm owners know or have reason to know that they reside with a prohibited person, they may not keep a firearm at the residence unless the firearm is maintained under specific conditions that state law prescribes, such as within a locked container. A violation of these provisions will constitute a misdemeanor. Further, the APPS unit is not responsible for background checks for firearm purchases. Another Bureau of Firearms unit, the Dealers' Record of Sale processing unit,

[5] Additional databases, such as Justice's Domestic Violence Restraining Order System, are also matched against the records of firearm owners. However, only the mental health database and the criminal history system are pertinent to our review.

is responsible for completing these background checks. Figure 2 shows the possible types of prohibited person status as they relate to firearm ownership.

Figure 2
Types of Prohibited Person Status



Sources: California State Auditor's analysis of state law and the Department of Justice's Bureau of Firearms' *Armed Prohibited Persons System Training Manual*.

Note: The term *prohibited person* means that the individual is prohibited from owning or possessing a firearm.

As of July 2013 Justice had identified more than 20,800 persons as armed prohibited persons. Of this total, Justice estimated that about one-third are prohibited due to an event related to their mental health; these types of prohibitions are the subject of this audit. Testifying about the known armed prohibited persons at an Assembly budget subcommittee hearing in March 2013, the chief of Justice's Bureau of Firearms indicated that a lack of resources has prevented Justice from being able to make any major progress in removing firearms from individuals identified as armed prohibited persons. Although some confiscation efforts have occurred, efforts have been limited. In May 2013 Justice received additional funding to advance its efforts to confiscate firearms by addressing a backlog of armed prohibited persons in the APPS database, which we discuss further in Chapter 2.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor (state auditor) to review Justice's management of information it receives regarding

individuals with mental illness who are prohibited from owning or possessing a firearm and what Justice does to identify whether these individuals are armed. The audit committee also directed the state auditor to review a selection of courts to determine whether the courts had sufficient policies, procedures, and practices to report all relevant court determinations to Justice in a timely manner. Table 1 lists the objectives that the audit committee approved and the methods we used to address them.

Table 1
Audit Objectives and the Methods Used to Address Them

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant laws and other background materials. We identified no relevant regulations that were significant to the audit objectives.
2	Review and evaluate the Department of Justice's (Justice) policies and procedures for identifying, tracking, and monitoring of information related to prohibited persons with mental illness and determine whether the policies and procedures comply with laws and regulations.	• Reviewed Justice's relevant policies and procedures and compared them to the requirements in state law. • Interviewed Justice's staff to determine and document the key steps in Justice's processes for receiving and entering information into the Automated Criminal History System (criminal history system) and the Mental Health Firearms Prohibition System (mental health database) and what supervisory controls exist over this process. • Interviewed staff regarding the process that Armed and Prohibited Persons unit (APPS unit) staff use to determine that an individual is a prohibited person and what supervisory controls exist over these decisions. • Interviewed Justice staff to determine whether Justice makes any effort to reach out to superior courts (courts) that do not report mental health determinations.
3	Review and assess Justice's process for communicating with public and private mental health facilities and the California Department of State Hospitals (State Hospitals), and for requesting and obtaining information from these entities concerning prohibited persons with mental illness. Determine the extent to which Justice is successful in obtaining this information and if not, what recourse, if any, it can take.	At Justice we performed the following steps: • Interviewed staff at Justice to understand how they obtain information from public and private mental health facilities and whether they believe Justice has any recourse when facilities do not report. • Reviewed mental health facility outreach documents that communicate facility reporting requirements to determine if the outreach documents inform facilities about their reporting duties. • Determined whether Justice's outreach list of mental health facilities was complete by obtaining an independent listing of mental health facilities, which was maintained by the California Department of Social Services, and comparing it to the list Justice uses for outreach activities. • For 2012 determined how many mental health facilities reported information to Justice and the trend in facility reporting levels. Determined what actions Justice has taken to receive reports from facilities that stopped reporting or had a significant drop in their reporting levels. • Reviewed email communications and interviewed Justice's staff to understand Justice's attempts to request that State Hospitals share information about prohibited persons. At State Hospitals we performed the following steps: • Interviewed staff to determine how often State Hospitals reported prohibited persons to Justice. • Interviewed staff to determine whether State Hospitals reported information to Justice electronically. • Determined which hospital facilities reported electronically in 2012 and whether those facilities are the only ones that treat patients that should be reported.

continued on next page . . .

	AUDIT OBJECTIVE	METHOD
4	Examine Justice's practices to determine the following:	
	a. Whether Justice complies with its policies and procedures in processing reports from the various entities to ensure that information regarding prohibited persons with mental illness is updated in its Armed Prohibited Persons System (APPS database).	• Interviewed staff to understand processes and controls regarding receiving and processing reports from courts, mental health facilities, and local law enforcement. • Reviewed a selection of 24 paper prohibition reports to determine if Justice was accurately processing reports of mental health prohibiting events it received in a timely manner. • Justice's mental health unit received 15 of these paper records from courts, mental health facilities, or local law enforcement. Although we intended to review five reports from each of the three years in our audit period (2010 through 2012), our selection of reports was more heavily weighted towards reports from August 2012 through December 2012 because Justice's record retention practices left fewer paper reports before that time available for our review. • Obtained the remaining nine paper reports from the Los Angeles Superior Court (Los Angeles Court). This court was the only court we visited under Objective 5 that reported some criminal case information using paper forms. • Reviewed a selection of individuals related to mental health determinations from the APPS unit and determined whether Justice correctly identified each individual's prohibited status and entered the required information into the APPS database. In 12 of these selected determinations, the individual was an armed prohibited person, and in eight, the individual was not an armed prohibited person. • Obtained and reviewed the Bureau of Firearms' and Bureau of Criminal Information and Analysis' record retention schedules and interviewed applicable staff.
	b. The length of time it takes Justice to process reports identifying prohibited persons with mental illness and to update applicable databases.	• Calculated the average amount of time that passes between the time an individual is available for review in the APPS database and the time an APPS unit staff person makes a determination about whether that individual is prohibited. • Identified the cases in which Justice took the longest amount of time to make an APPS determination and interviewed Justice's staff about why these determinations took longer to process. • As part of testing under Objective 4(a), reviewed the time it took Justice to enter reports of prohibiting events that it received into the criminal history system and the mental health database. • As part of work completed under Objective 4(d), determined the average time it took Justice to process reports it received from mental health facilities.
	c. Whether Justice has a backlog in processing and updating the APPS database and the extent, source, and reasons for any backlogs.	• Interviewed Justice's staff to determine whether backlogs exist in the APPS database and what may cause backlogs. • Determined how Justice prioritizes the APPS database review queue. • Documented the circumstances that led to the historical backlog of firearm owners and Justice's efforts to reduce this backlog. • Reviewed the APPS unit manager's records of the number of potentially prohibited persons that the APPS unit reviewed during the time the manager oversaw the unit.
	d. Whether the requirement to electronically submit information imposed by Assembly Bill 302—Chapter 344, Statutes of 2010—has improved the efficiency of processing applicable reports.	• By quarter for 2010 through 2012, calculated the average amount of time it took mental health facilities to report individuals with mental illness to Justice and the time it took Justice to enter these reports into its mental health database. Compared the period of time before and after the electronic reporting requirement to determine if the amount of time it took both the facilities and Justice to process reports decreased after the reporting requirement. • Determined when Justice first made electronic reporting available to facilities.
5	For a sample of courts, conduct the following:	We visited selected locations at three courts: Los Angeles, San Bernardino, and Santa Clara. At each court, we performed the following procedures:
	a. Review the courts' policies and protocols related to tracking relevant information about prohibited persons with mental illness and reporting required information to Justice. Assess the courts' compliance with related laws and regulations.	• Reviewed the court's policies, procedures, and practices related to reporting the required court determinations to Justice in a timely manner. When written policies and procedures did not exist, we interviewed court staff to understand the courts' reporting practices. • Compared the court's policies, procedures, or practices to the requirements in state law to determine if the courts reported all of the types of court determinations that state law requires courts to report to Justice. • Interviewed staff at the courts to determine how they understand the law's requirement to report to Justice immediately.

	AUDIT OBJECTIVE	METHOD
	b. Review the courts' practices and determine whether the courts are properly, and in a timely manner, transmitting required information on prohibited persons with mental illness to Justice.	• Reviewed a selection of court determinations that state law requires the court to report to Justice to determine if the court complied with state law and its own policies and procedures for reporting. We reviewed 27 to 30 determinations at each of the three courts. • For cases where the court failed to report determinations to Justice, we reviewed the related individual's firearm ownership history. We also reviewed Justice's criminal history system and mental health database to assess whether the individual had been reported previously or by another entity for a mental health event.
	c. Identify the courts' monitoring policies and control processes to determine whether they adequately ensure that courts comply with reporting requirements.	• Identified monitoring policies and controls over reporting during our review of court policies, procedures, and practices described in step 5(a). • Tested the court determinations we selected in step 5(b) to see whether the court's controls ensured that Justice receives reports of prohibiting qualifying events in a timely fashion.
6	Review and assess any other issues that are significant to the reporting of information to Justice related to prohibited persons with mental illness, and the use of these data to protect the public.	• Based on data obtained from Justice's mental health database, surveyed courts that appeared to report only a few or no determinations to Justice in order to determine if the courts were aware of the reporting requirements, whether they had ever been contacted by Justice about the reporting requirements, and if they had not been reporting, the total number of determinations that should have been reported to Justice. • Interviewed staff at Justice regarding its efforts and process to remove firearms from known prohibited persons. • Reviewed summary information pertaining to the number of armed prohibited persons in the State as of July 2013 and the extent of the backlog in confiscating firearms. • Reviewed legislation, signed into law in May 2013, that appropriated additional funding to Justice for the purpose of confiscating firearms from armed prohibited persons.

Sources: California State Auditor's analysis of Joint Legislative Audit Committee audit request number 2013-103, planning documents, and analysis of information and documentation identified in the column titled *Method*.

Assessment of Data Reliability

In performing this audit, we obtained electronic data files extracted from Justice's APPS database and mental health database. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues. We did not perform accuracy and completeness testing of these data because the source documents required for this testing are stored by various entities, such as mental health facilities, courts, or firearm retailers located throughout the State, making such testing cost-prohibitive. Consequently, we found the data from the APPS and mental health databases were of undetermined reliability for the purposes of calculating mental health facilities reporting statistics, the number of mental health reports submitted to Justice, number of firearm owners with personal identifying numbers not used in the matching

process, and the average number of days it took Justice to make a determination. Further, we also used these data for the purpose of selecting determinations for review. Nevertheless, we used data from the APPS database and the mental health database, as they represent the best available sources of data related to armed prohibited persons.

Chapter 1

SUPERIOR COURTS DID NOT REPORT ALL REQUIRED INDIVIDUALS, AND THE DEPARTMENT OF JUSTICE SHOULD DO MORE TO OBTAIN INFORMATION RELATED TO PERSONS WITH MENTAL ILLNESS

Chapter Summary

Although state law requires superior courts (courts) to report individuals to the Department of Justice (Justice) whenever the court makes certain mental health determinations, many courts in California were not aware of these requirements, and the corresponding lack of information inhibits Justice's ability to identify armed persons with mental illness. However, before our audit, Justice had not reached out to courts to remind them about the reporting requirement. Additionally, it has not followed up with nonreporting or apparent underreporting courts to determine whether these courts had any reportable determinations or why there had been a significant change in reporting. Further, we found that even three courts we visited that were reporting information to Justice were not always reporting all of their determinations as state law requires. For example, we found that the Mental Health Courthouse at the Los Angeles Superior Court (Los Angeles Court) was unaware of several types of court determinations it was required to report.

In addition to courts, state law requires mental health facilities to report persons who are prohibited from owning or possessing a firearm (prohibited persons) to Justice. However, Justice was not aware of and has not made contact with all mental health facilities in the State that may treat reportable individuals. When it does not reach out to all mental health facilities in the State, Justice risks being unable to identify armed prohibited persons because those facilities may not know how to report such individuals. When Justice and the courts do not make every effort to identify and report all persons with mental illness who are prohibited from possessing firearms, the risk increases that individuals who should no longer possess their firearms will go unnoticed, thus hindering Justice's effort to protect the public by confiscating those firearms.

Many Courts Were Unaware of the Mental Health Reporting Requirements, and Justice Had Not Completed Outreach to Remind These Courts of the Requirements

Data from Justice's Mental Health Firearms Prohibition System (mental health database) show that many courts appear not to be reporting any mental health determinations to Justice. Further, in

response to a survey we sent, a majority of these courts indicated that they were not aware of the requirement in state law to report certain mental health determinations. Although Justice was aware that courts were not reporting specific mental health events as state law requires, it had not reached out to the nonreporting courts before the start of our audit. When courts do not inform Justice of the required mental health determinations, Justice is less able to identify armed individuals with mental illness who continue to possess firearms.

Many Courts Failed to Report Mental Health Determinations to Justice Because They Were Unaware of the Reporting Requirements

As we discuss in the Introduction, state law requires the courts to notify Justice of certain mental health determinations that prohibit an individual from possessing a firearm. Courts must report some of these determinations to Justice's mental health unit, and staff in that unit then enter these reports into Justice's mental health database. However, records from that database show that from 2010 through 2012, many courts did not submit any reports regarding mental health determinations to the mental health unit. Based on this information, we surveyed 34 courts throughout the State that either had not reported any determinations or had reported very few. Court responses to key survey questions appear in Table 2.

Table 2
Responses From Superior Courts Surveyed by the California State Auditor Regarding Reporting Firearm Prohibitions to the Department of Justice

COURT NAME	DURING 2010 THROUGH 2012, WAS THE SUPERIOR COURT (COURT) AWARE OF THE REQUIREMENT TO REPORT MENTAL HEALTH DETERMINATIONS UNDER THE CALIFORNIA WELFARE AND INSTITUTIONS CODE, SECTION 8103?	HOW MANY CIVIL DETERMINATIONS DID COURTS INDICATE THEY FAILED TO REPORT FROM 2010 THROUGH 2012?
Alameda	No	963*,†
Alpine	No	0
Amador	No	0
Calaveras	No	23
Colusa	No	7
Contra Costa	Yes‡	Unable to determine§
Del Norte	Yes	0
El Dorado	No	130
Fresno	No	661
Glenn	No	47
Imperial	No	42
Inyo	Yes	0
Kings	No	Unable to determine§

COURT NAME	DURING 2010 THROUGH 2012, WAS THE SUPERIOR COURT (COURT) AWARE OF THE REQUIREMENT TO REPORT MENTAL HEALTH DETERMINATIONS UNDER THE CALIFORNIA WELFARE AND INSTITUTIONS CODE, SECTION 8103?	HOW MANY CIVIL DETERMINATIONS DID COURTS INDICATE THEY FAILED TO REPORT FROM 2010 THROUGH 2012?
Lassen	No	2
Madera	No	Unable to determine§
Mariposa	No	2
Mendocino	Yes	30
Modoc	No	17
Mono	No	1
Napa	No	Unable to determine§
Nevada	No	Unable to determine§
Plumas	No	14
Riverside	Yes‖	10†,‖
San Benito	No	0
San Francisco	No	15#
San Joaquin	No	74
Shasta	No	Unable to determine§
Sierra	No	0
Solano	No	200*
Stanislaus	No	7
Trinity	No	11
Tulare	No	Unable to determine§
Yolo	No	24†
Yuba	No	24
	Total number of reportable determinations:	**2,304****

Source: California State Auditor's analysis of responses to a survey of courts in 34 counties.

* These courts stated that they could not separately identify conservatorship orders that contained a firearm prohibition.

† These courts stated that they were only able to provide a partial number of determinations—either only for specific types of determinations or only for certain years.

‡ This court stated that its procedures show that court staff were aware of portions of the California Welfare and Institutions Code, Section 8103, but was not aware of all types of cases it was required to report.

§ These courts were unable to determine the number of reportable court determinations, with several courts citing limitations of their court case management systems.

‖ This court stated that it became aware of the requirement in March 2011, at which time it began reporting. Therefore, we did not include 173 determinations the court reported it made after it became aware. However, this court stated that before 2013 it submitted incomplete reports to Justice. These reports were not included in the data we analyzed.

In addition to the 15 determinations shown in the table that do not relate to conservatorships, San Francisco Superior Court reported 2,137 conservatorship orders in response to our survey. According to a managing attorney, the orders do not include firearm prohibitions. We discuss this issue further in the report text.

** Fifteen of the 2,304 determinations would have removed an individual's firearm restriction rather than imposed it.

According to the survey responses, many courts in the State were not aware of mental health reporting requirements that relate directly to firearm prohibitions. Specifically, 29 of the 34 courts we

surveyed indicated that between 2010 and 2012 they were not aware of the state law that requires them to notify Justice immediately about certain mental health determinations that prohibit an individual from possessing a firearm.[6] We noted that several courts stated they were not aware of the mental health reporting requirements but they did report criminal determinations to Justice, indicating that they were aware of a separate requirement in state law to report certain criminal case information. Because some mental health determinations, such as court findings that a person is mentally incompetent to stand trial, are criminal determinations, it is possible that courts reported some criminal mental health determinations in response to this requirement. Nevertheless, 29 of the 34 courts we surveyed were not aware of the requirements related specifically to firearm prohibitions that require them to report information immediately, which means the courts would not have reported all mental health prohibiting events.

At the same time that 29 of the 34 courts we surveyed were unaware of the firearm reporting requirements, many of those courts stated that they made determinations between 2010 and 2012 that should have been reported to Justice.

At the same time that they were unaware of the firearm reporting requirements, many of the courts we surveyed stated that they made determinations between 2010 and 2012 that should have been reported to Justice. In the survey responses we received, courts indicated that they collectively made about 2,300 civil mental health determinations, such as conservatorships and court-ordered commitments to mental health facilities, that should have been reported to Justice and were not. One court, the Alameda Superior Court (Alameda Court), accounted for the largest number of the unreported determinations shown in Table 2 beginning on page 16. Those 963 determinations relate to appointments and reappointments of conservators. Alameda Court's case management system could not distinguish between conservatorships with firearm restrictions and those that did not have restrictions. However, based on a random sample of cases reviewed and its discussion with county counsel that firearm prohibition language is included in such orders as a general rule, the court indicated that 100 percent of its conservatorship orders contained firearm prohibitions. Thus, these determinations should have been reported to Justice. Alameda Court's court services manager stated that because the court was not aware of the reporting requirement, it had no policies or procedures to report these determinations to Justice. However, the court services manager also stated that the court is taking steps to report such determinations to Justice now that it is aware of the requirement.

[6] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which courts must report their mental health determinations. Specifically, courts will no longer be required to report immediately but will be required to report as soon as possible but not later than two court days after the determination.

Further, seven courts we surveyed could not state how many court determinations they failed to report. Some of these courts acknowledged that they had reportable court determinations during the three-year period, and all but one indicated that they were entirely unaware of the reporting requirement in state law. Several courts cited the limitations of their court's case management system as the reason why they did not know how many court determinations went unreported. Therefore, while Table 2 indicates that a large number of court determinations have not been reported to Justice, the true number of unreported determinations is likely greater.

While courts indicated that a large number of court determinations have not been reported to Justice, the true number of unreported determinations is likely greater.

Finally, one of the courts we surveyed, the San Francisco Superior Court (San Francisco Court), reported that it made more than 2,100 conservatorship determinations during the three-year period. The court managing attorney stated that none of these conservatorship orders contained language that specifically prohibited the conserved individual from possessing a firearm. State law requires the court to make this specific finding in order to prohibit a conserved individual from owning, possessing, controlling, or having custody of a firearm. Therefore, according to the information the court provided, none of the individuals it placed under these conservatorships from 2010 through 2012 were prohibited from possessing a firearm by the court's conservatorship order, and we did not include them in Table 2.

San Francisco Court's managing attorney stated that none of the conservatorship orders contain a specific finding because the finding was not requested in the petitions the district attorney and the Office of Conservatorship Services filed with the court. She indicated that this was because all conservatorships for San Francisco Court arise from prior events that would already prohibit an individual from possessing a firearm (such as an involuntary hold at a mental health facility). However, the fact that a firearm prohibition was imposed for a prior event does not mean that it may not be appropriate to impose it when the conservatorship order is established. Further, the absence of a firearm prohibition in San Francisco Court's conservatorship orders is inconsistent with other courts in the State. We found, as indicated in survey responses, that even some courts in counties with smaller populations than San Francisco had at least some prohibition orders over the three years we reviewed. Therefore, the fact that San Francisco Court did not order a single firearm prohibition during the three-year period we reviewed stands in stark contrast to other courts in the State. After we discussed this contrast with the managing attorney, she noted that the court had already initiated efforts to have the district attorney and the Office of Conservatorship Services revise the petition form that

they submit to the court to specifically include the request for a prohibition if warranted. Such an effort appears necessary given the differences between the practices at the San Francisco Court and other courts we surveyed.

Despite Being Aware of Potential Underreporting, Justice Has Not Reminded Courts of the Reporting Requirement

When courts do not report mental health determinations as state law requires, Justice cannot identify armed persons with mental illness effectively.[7] Despite this, and despite being aware that some courts do not report the required mental health information, until our audit Justice performed no outreach to courts to remind them of the reporting requirement, and it still has not followed up with courts that do not report. The courts we surveyed indicated that they did not receive communication from Justice about the requirement to report at any time from 2010 through 2012. The assistant chief of Justice's Bureau of Firearms (assistant bureau chief) and the manager of Justice's Training Information and Compliance Section (training unit manager) reported that Justice distributed an information bulletin to the courts regarding the reporting requirements in 1991. However, the training unit manager was unable to locate the bulletin and stated that Justice has not provided firearm reporting training to individual courts. According to the assistant bureau chief, Justice did not conduct outreach to the courts because it believes it does not have the authority to require or enforce courts to comply with the reporting requirements contained in state law. Instead, Justice believes the Administrative Office of the Courts (AOC) is responsible for ensuring that courts are in compliance with state law.

The courts we surveyed indicated that they did not receive communication from Justice about the requirement to report at any time from 2010 through 2012.

The AOC is the staff agency for the Judicial Council, which is the policy-making body for California's court system. After the start of our audit, in April 2013, AOC contacted Justice to obtain a better understanding of how courts were reporting required mental health information and how Justice used the reported information.[8] According to Justice's assistant bureau chief, a supervising research analyst with AOC wanted to discuss courts that appeared not to be reporting. Around the time of this discussion, the assistant bureau chief sent AOC information about which courts Justice received reports from and how many reports these courts submitted.

[7] This lack of information could also affect Justice's decision to allow an individual to purchase a firearm if he or she is not currently a firearm owner. As discussed in the Introduction, this background check process, which another unit performs, was not the focus of this report.

[8] AOC provided internal emails indicating that another staff person had attempted to reach out to Justice in February 2013 during research on firearm prohibition requirements. However, we saw no email documentation of any communication between AOC and Justice until the April 2013 contact we discuss.

After this contact with Justice, AOC contacted all superior courts' presiding judges and court executive officers by email in May 2013 to remind them of the reporting requirements and to inform them about this audit. AOC's email also explained that Justice would be sending additional information to the courts about reporting individuals with mental illness. Justice's assistant bureau chief stated that since April or May 2013, he has experienced a rise in the number of calls from AOC and courts regarding reporting firearm prohibitions. In August 2013 Justice issued an information bulletin that reminds courts about the requirements and provides instructions about how to report individuals with mental illness. Additionally, Justice provided the forms courts should use for reporting. AOC has indicated that it will work to ensure that this information is incorporated into appropriate trainings for the courts.

In the absence of comprehensive outreach to address nonreporting, Justice did appear to practice some limited outreach to courts that submit incomplete reports to its mental health unit. A program technician in the mental health unit confirmed that it was the practice of unit staff to call courts that submit incomplete reports. In fact, one of the courts we surveyed stated that in March 2013 Justice contacted it to explain that its reports were incomplete.

Justice is in a unique position to conduct outreach to the courts. As the recipient of the reported information, Justice is the only entity that is aware of the extent to which courts statewide are reporting. Therefore, Justice needs to participate in any effort to track noncompliance with state law or to remind courts that appear to underreport mental health determinations. Justice and the AOC can benefit from working together to ensure that courts know what state law requires them to report and how to submit a report to Justice. Such a collaboration will ensure that Justice has done all it can to identify individuals that state law prohibits from possessing firearms because of a mental health-related court determination.

Justice and the AOC can benefit from working together to ensure that courts know what state law requires them to report and how to submit a report to Justice.

Reporting Courts We Visited Failed to Submit Some Types of Mental Health Determinations to Justice

Although not all courts were submitting required reports to Justice, other courts were reporting prohibited individuals to Justice's mental health unit. However, we found that although these courts reported some determinations, they did not report all of the required mental health events to Justice. In addition to surveying nonreporting courts, we visited courts in three counties—Los Angeles, San Bernardino, and Santa Clara—that were reporting information to Justice, and we reviewed their procedures and practices to determine whether these courts complied with the reporting

requirements in state law. As we discuss in the Introduction, state law requires courts to report certain mental health determinations to Justice immediately after making those determinations. In some cases, court staff were unaware of the requirement to report certain determinations, or the court's procedures did not specifically direct it to report some types of required determinations. Further, some court practices were insufficient to ensure that the court reported all required court determinations to Justice. When courts do not submit the information state law requires, Justice must rely on incomplete information to identify persons with mental illness who are prohibited from possessing firearms. Consequently, Justice is less likely to identify and disarm all armed prohibited persons.

Los Angeles Court Failed to Report Certain Mental Health Determinations

Despite reporting the largest volume of mental health determinations, Los Angeles Court failed to report 15 of the 27 determinations we reviewed.

Data obtained from Justice shows that Los Angeles Court reports the largest number of mental health prohibiting events to Justice's mental health unit. Despite reporting the largest volume of mental health determinations, Los Angeles Court failed to report 15 of the 27 determinations we reviewed. Most of these unreported determinations were from Los Angeles Court's Mental Health Courthouse, which is a centralized court location for cases involving mental health disorders and mental health legal issues. We also reviewed mental health determinations made at Los Angeles Court's Clara Shortridge Foltz Criminal Justice Center (Criminal Justice Center), which processes the greatest volume of cases related to criminal offenses. Although this court location does not deal exclusively with mental health issues, we found it did not always report those determinations that were related to an individual's mental competency.

Despite serving as the centralized courthouse for mental health-related cases, staff at the Mental Health Courthouse were not aware of several types of court determinations that state law requires the court to report to Justice. Specifically, staff were unaware that the court was required to report determinations regarding mental competency to stand trial, findings that a person is a danger to others, and court reappointments of conservatorships. According to a court administrator, for the three-year period we reviewed, the Mental Health Courthouse reported only original appointments or early terminations of conservatorships to Justice. The administrator stated that his courthouse had not received guidance from Justice regarding reporting requirements and did not have a contact at Justice from which the court could request assistance. Regardless, it is the court's responsibility to report prohibiting events to Justice as directed by state law.

We also found that, before our audit began, the Mental Health Courthouse lacked written procedures to ensure that staff were reporting mental health determinations to Justice. Instead, the court administrator stated that staff were trained verbally on what duties were expected of them in their position. The court administrator explained that at the Mental Health Courthouse, a firearm report form is printed only if a judicial assistant makes an entry on the court order to reflect that a judge has applied a firearm prohibition to a conserved individual. Therefore, a notation on the court order is the evidence that the court had printed a report to submit to Justice.

We reviewed 17 mental health determinations at the Mental Health Courthouse and found the courthouse also was not consistently following its own stated practices for reporting.[9] For 12 of the 17 determinations, we found no evidence that the courthouse reported its determination to Justice. Although some of these were determinations the Mental Health Courthouse admitted it was not reporting, among the determinations that the court knew it should report, we still found unreported cases. Specifically, we found that for two of the five conservatorship appointments we reviewed, the court order did not reflect the judicial assistant's entry to print a report for Justice. In contrast, although the courthouse claims to have been unaware that it was required to report reappointed conservatorships, we found court orders for two reappointments that indicated that the judicial assistant had printed a report to send to Justice.

The administrator at the Mental Health Courthouse stated that, after we informed Los Angeles Court that we would be visiting the court as part of this audit, he researched the courthouse's reporting practices and began work on new procedures to address determinations the courthouse was not reporting to Justice. In July 2013 the courthouse established new written procedures and a new firearm report form that identifies all court findings that should be reported to Justice. However, we noted that the new procedures do not discuss quality control steps, such as supervisory review and other monitoring processes, that could help the courthouse ensure that it submits all of its relevant court determinations. Revising these new procedures to include these elements would benefit the courthouse as it alters its practices to comply with state law.

Revising its new procedures to include quality control steps would benefit the courthouse as it alters its practices to comply with state law.

Although the Criminal Justice Center was aware of the requirements to report individuals with mental illness to Justice as state law requires, it did not report all court findings

[9] Because the courthouse hears civil cases as well as certain felony and misdemeanor cases, we chose 15 cases relating to civil determinations and two relating to criminal determinations. We reviewed additional criminal determinations at the Criminal Justice Center.

that an individual was mentally incompetent or that an individual had regained his or her competence to stand trial.[10] For 10 determinations judges made at the Criminal Justice Center, we found three determinations that were not reported to Justice. One of the three cases was a court finding that determined an individual was incompetent to stand trial, and two cases were court findings that restored an individual's competency. It is likely that the Criminal Justice Center's failure to report the latter two cases relates to a problem with its practices for reporting court determinations. According to a court administrator at the Criminal Justice Center, current courtroom procedures do not require the judicial assistant to send the case for processing when the court has made a determination that restoration of competence has occurred. She agreed that the current courtroom procedure needs to be reviewed and amended to require immediate reporting of competency determinations as state law requires.

The San Bernardino Superior Court Did Not Report Findings That Individuals Were Mentally Incompetent to Stand Trial

San Bernardino Court's criminal division at the central courthouse did not report any of the 15 determinations of mental incompetence to stand trial that we reviewed.

The San Bernardino Superior Court (San Bernardino Court) serves one of the most populated counties in California, and Justice's records show that the county has a relatively large percentage of the total number of prohibited persons in the State. However, its criminal division at the central courthouse that handles the largest volume of cases did not report any of the 15 determinations of mental incompetence to stand trial that we reviewed. Further, although a court supervisor noted that the determinations are infrequent, the probate division at the same central courthouse did not report any early terminations of conservatorships.

Although San Bernardino Court's criminal division initially believed it was electronically reporting all required information to Justice, we found that the court was not reporting any of its determinations related to mental incompetence. Specifically, in all 15 court determinations we reviewed, we did not find evidence that the criminal division reported its mental incompetency determinations to Justice. Further, as we discuss later in the chapter, we found that one of the 15 determinations was related to a firearm owner. When we discussed the lack of reporting with the court's district manager, she acknowledged that it was the court's oversight that information regarding mental incompetence was not being transmitted with the electronic dispositions.

[10] Unlike findings that an individual is incompetent to stand trial, restorations of competency to stand trial restore an individual's right to possess a firearm under state law. State law requires courts to report both the determination that an individual is incompetent to stand trial and the determination that an individual has regained competency.

Additionally, San Bernardino Court's probate division does not report a particular type of court determination to Justice. The probate division has not notified Justice of any court determinations to terminate an individual's conservatorship before the originally scheduled expiration date.[11] A court order terminating a conservatorship early would remove an individual's firearm prohibition under state law. According to the court's district manager, the probate division was aware that it was not reporting early terminations of conservatorships, but it believed that the former conservator had the responsibility to provide the court with a firearm report form. Further, the court supervisor stated that the court rarely orders early terminations. Regardless of the reason why the probate division chose not to report early terminations, state law requires the court to notify Justice of any early terminations. Therefore, if the probate division continues its practice of not reporting these early terminations, it will not be in compliance with state law.

We also reviewed 15 determinations that the probate division stated was its practice to report to Justice. For all 15 cases, we found a firearm report form in the case file, which indicated that the court had made a report to Justice. Although our testing indicated that the probate division did report to Justice for these cases, the division's procedures regarding mental health cases do not inform staff about when or how they should complete and submit a firearm report form to Justice. Instead, the court supervisor explained that when they assume a position, staff are trained by shadowing other staff until they are considered knowledgeable.

In August 2013, after we discussed San Bernardino Court's lack of reporting in both its criminal and its probate divisions with the court's district manager, the court developed new procedures to ensure that staff report the required determinations to Justice. Specifically, the court developed procedures for its criminal division to ensure that staff print a firearm report form to mail to Justice when there is a determination relating to mental incompetence. Additionally, the court revised its probate procedures for staff to report early terminations of conservatorships to Justice. Implementing and following the procedures for each division will reduce the risk of San Bernardino Court failing to report a prohibited person with mental illness to Justice.

In August 2013, after we discussed San Bernardino Court's lack of reporting in both its criminal and its probate divisions with the court's district manager, the court developed new procedures.

[11] An early termination of a conservatorship can occur if the individual petitions the court for a status hearing before the scheduled termination date and the court determines that the individual no longer needs to be conserved.

The Santa Clara Superior Court Should Improve Its Reporting of Mental Health Determinations

According to information Justice provided us, the Santa Clara Superior Court (Santa Clara Court) reported a relatively consistent number of mental health determinations to Justice's mental health unit during the three-year period we reviewed. Although it has procedures for reporting mental health determinations, Santa Clara's largest criminal courthouse, the Hall of Justice (criminal division), did not consistently report all of its determinations to Justice. In the criminal division, we reviewed 15 determinations that state law requires the court to report to Justice, and we found that only eight of the cases had a firearm report form in the file indicating that the court had reported the individual to Justice. For the seven determinations where we did not a find a firearm report form in the file, we found that one determination was recorded in Justice's mental health database, indicating that the court reported to Justice despite not keeping a report form in the case file. The director of Criminal and Traffic (criminal division director) and a court manager explained that the staff tasked with processing reports to Justice may not always receive the necessary information to notify them that a firearm report form should be sent to Justice. However, after we shared the results of our testing, Santa Clara Court's criminal division director provided us with new reporting procedures for staff and stated that supervisors or managers will monitor a weekly report that will allow them to ensure that all court determinations are reported to Justice.

After we shared the results of our testing, Santa Clara Court's criminal division director provided us with new reporting procedures for staff.

Santa Clara Court's probate division also did not report all required types of court determinations to Justice. More specifically, the probate division did not notify Justice about any of its determinations where the court terminated an individual's conservatorship early. According to the director of the civil division, the court was not reporting early terminations of conservatorships because the court orders did not contain language specifically terminating all the terms of the original conservatorship. However, she explained that the court would now begin working with the public defender and the judicial officers to ensure that the orders to terminate a conservatorship will include language to remove firearm prohibitions. Additionally, the probate division did not report court determinations that committed an individual to a mental health facility for an extended period after an initial involuntary hold. The director stated that the court would now begin reporting these court-ordered commitments to a mental health facility even though they believe that the mental health facilities are already reporting these individuals to Justice.

Our testing indicated that the probate division reported individuals to Justice if it was its practice to report that type of determination. We reviewed 15 determinations at the probate

division. For 14 conservatorship cases we reviewed, we found a firearm report form in the case file, indicating that the court reported the determination to Justice. We reviewed one additional determination, which was a court-ordered commitment to a mental health facility. As previously discussed, the court had not reported this determination because it believed that reporting responsibility belonged to the mental health facility.

Finally, we noted that the probate division could improve the accuracy of the report forms it submits to Justice. The written procedures and practices for the probate division do not include verification of all information on the firearm report form, which we found led to inaccurate reports. For example, for three of 14 conservatorship cases we reviewed, the scheduled termination date for an individual's conservatorship was incorrect by two weeks to eight months. According to a court clerk, when the probate division receives a petition for an appointment or reappointment of a conservatorship, the county counsel provides the probate division with a firearm report form, and the counsel has already completed the subject information and the scheduled termination fields of the form. However, a judge may continue a case for several weeks, and the termination date for the conservatorship may change from the original planned date. Even though this may happen in some cases, the court clerk who sends the firearm report form to Justice verifies only the subject name and the case number before sending the form. Incorrect termination dates may result in Justice prolonging or prematurely ending a person's state prohibition on possessing a firearm.[12] After we discussed this issue with Santa Clara Court, the director of the civil division stated that court staff will implement a review process and obtain the correct termination date before submitting a report to Justice.

Courts' Incomplete Reporting Results in a Lack of Critical Information at Justice

The gap in court practices results in unreported individuals with mental illness, and Justice will be less likely to identify that these individuals are prohibited from possessing firearms and confiscate the firearms they do possess. For the 28 prohibiting court determinations we tested with no evidence of reporting at the three courts we visited, we performed procedures at Justice to determine the effect of the courts' failure to report. Unreported court determinations that were associated with firearm owners hinder Justice's ability to identify individuals with mental illness

The gap in court practices results in unreported individuals with mental illness, and Justice will be less likely to identify that these individuals are prohibited from possessing firearms and confiscate the firearms they do possess.

[12] When Justice determines an individual is prohibited from owning a firearm, it applies federal prohibitions to that individual if the duration of the federal prohibition is longer than California's prohibition. We discuss this subject in Chapter 2.

who should have their firearms confiscated. Further, unreported determinations may also affect whether an individual can pass a background check as a firearm purchaser.

For some individuals, another entity besides the court had already reported a mental health prohibiting event to Justice, or the court itself had reported a previous event. Nevertheless, state law requires courts to report mental health determinations to Justice, and the courts cannot rely on other entities to do this. Relying on other entities risks that an individual will go unreported and that an individual with court findings related to mental health will go unidentified. In fact, in four of the 28 unreported cases, we found that at the time courts failed to report a mental health determination to Justice, the individual subject to the court determination did not have another mental health prohibiting event recorded in Justice's Automated Criminal History System or its mental health database. Therefore, there was no information related to mental health prohibitions that would have prevented these individuals from passing a background check if they attempted to purchase a firearm following their court determination. As we mention in the Introduction, the focus of this audit is on mental health prohibiting events; therefore, we reviewed these individuals' histories only for mental health events. However, it is possible that some other event not related to mental health prohibited these individuals from possessing firearms.

In two additional cases, Los Angeles Court's Criminal Justice Center and San Bernardino Court's criminal division failed to report determinations that were related to firearm owners.

In two additional cases, Los Angeles Court's Criminal Justice Center and San Bernardino Court's criminal division failed to report determinations that were related to firearm owners. However, in each of these cases, another entity had already reported a mental health prohibiting event for the individual to Justice. Therefore, although the courts failed to notify Justice of their mental health determination, these individuals should have already been identified as armed prohibited persons. If these individuals had not had a prior prohibiting event, the courts' failure to report could have led Justice to fail to determine that these individuals were prohibited from possessing a firearm. When we examined these two individuals in Justice's Armed Prohibited Persons System (APPS database), we were not able to find them identified as armed prohibited persons because Justice's review is limited to firearm records from 1996 to present, which is after these individuals obtained their firearms. We discuss this matter further in Chapter 2.

Courts Are Not Always Timely in Submitting Reports to Justice

In addition to the visited courts not always reporting all their required mental health determinations to Justice, we found that the reports the courts did make were not always submitted to Justice in a timely manner. As discussed in the Introduction,

state law requires courts to immediately report certain mental health determinations to Justice. However, the law does not define *immediately*. Consequently, courts we visited had differing interpretations of what the law meant by that.

On average, for the items we tested, none of the court divisions we visited that kept a record of the date they sent reports met their own definitions of *immediately*. For instance, Santa Clara Court's criminal division interpreted *immediately* as called for in state law to mean two to three business days or as soon as possible. However, we found that for the items we tested, the average time Santa Clara Court took to process and submit firearm report forms was more than four business days. In one instance, court staff did not report a determination to Justice until 13 business days after the court determination date. Similarly, Santa Clara Court's probate division exceeded its interpretation of *immediately* by two business days on average. Further, Los Angeles Court's Criminal Justice Center defined *immediately* as within two court days, which is generally equivalent to business days, but exceeded that definition by six days on average for the items we tested. For one particular determination, the Criminal Justice Center staff did not complete the firearm report form until 28 business days after the court determination date. A senior administrator at the Criminal Justice Center noted that our calculation does not distinguish between the dates the findings were made in the courtroom and the dates the findings were received in the clerk's office. Although that is true, when discussing how soon courts must report to Justice, state law does not distinguish between the time of the determination and when the clerk's office receives information from the courtroom.

For one particular determination, the Los Angeles Court's Criminal Justice Center staff did not complete the firearm report form until 28 business days after the court determination date.

Other court divisions did not keep records that allowed us to assess the timeliness of their reports to Justice. Although San Bernardino Court's probate division defined *immediately* as within seven days, we could not calculate the number of business days it took for San Bernardino Court's probate division to submit firearm report forms. This was because instead of recording the date of completion on the firearm report form, San Bernardino Court's staff recorded only the date of the court determination. The probate division did not keep any additional record of when a firearm report form was mailed to Justice. Los Angeles Court's Mental Health Courthouse used the same two-court-day definition its Criminal Justice Center used to define *immediately*. However, we were unable to determine when Los Angeles Court's Mental Health Courthouse submitted firearm report forms to Justice because the Mental Health Courthouse does not keep a copy of the firearm report form it submits to Justice. The courthouse also does not separately track the date it mails a report form to Justice.

In October 2013 the governor signed legislation that will change the reporting requirements for mental health firearm prohibitions effective January 1, 2014. Beginning on that date, state law will

require that courts report their determinations electronically and will include revised timelines for both courts and mental health facilities to report prohibiting events to Justice. Specifically, state law will no longer require courts and mental health facilities to report immediately. Instead, it will require the courts to report to Justice as soon as possible but not later than two court days after the prohibiting determination. However, the new requirement for mental health facilities to report to Justice will be a shorter period of time: within 24 hours of a prohibiting event. In effect, this change to the law will place less urgency on prohibition reports from courts than on those from mental health facilities.

The director of AOC's Office of Governmental Affairs commented that the AOC believes that courts require at least two court days because orders from court proceedings are typically not available for processing immediately after the proceedings. He stated that unlike mental health facilities, courts operate on limited business hours and are not staffed around the clock and on weekends. Coupled with broad understaffing due to unprecedented budget cuts, he believed any shorter deadline would be impractical in light of typical demands on court staff. Further, he noted that many courts currently lack electronic reporting capabilities. Although this may be true at some courts, it does not reflect capabilities and processes that courts may develop in response to a change in state law. We question a change to state law that provides courts more time to report than mental health facilities. Existing law requires reports to be submitted immediately regardless of where the report originates. Having the deadline for reporting be the same for courts and mental health facilities seems appropriate, especially considering that both types of entities will be able to electronically report and that it is important for public safety that prohibiting events be reported promptly, no matter where they originate.

Any delay in the reports courts make can unnecessarily delay the amount of time it takes Justice to identify armed persons with mental illness and prolong the amount of time to confiscate the firearms that these prohibited individuals possess.

Further, we found that none of the court divisions where we were able to assess the timeliness of reporting were reporting to Justice within two court days. Therefore, these courts will need to adjust their current practices once this legislation takes effect. Any delay in the reports courts make can unnecessarily delay the amount of time it takes Justice to identify armed persons with mental illness. This delay can also prolong the amount of time before Justice can confiscate the firearms that these prohibited individuals possess.

Justice Does Not Conduct Outreach to All Mental Health Facilities Regarding Requirements to Report

In addition to courts, mental health facilities are an essential provider of the information Justice uses to identify individuals who are prohibited for mental health reasons from owning firearms.

Although Justice must rely on mental health facilities to report individuals with mental illness so that it can determine whether they are prohibited from being armed, Justice has not contacted all of the facilities in the State that treat prohibited persons. In fact, Justice does not verify that the list of mental health facilities it uses for outreach includes all facilities that should be reporting firearm prohibitions. Additionally, Justice does not contact mental health facilities that stop submitting reports regarding persons with mental illness to determine whether those facilities require training or whether another problem is preventing them from reporting. Without ongoing monitoring of reporting levels, Justice cannot effectively identify which mental health facilities are not reporting persons who have mental illness. Finally, Justice has only offered training to the facilities that appear on its incomplete outreach list.

Justice Is Not Aware of All Relevant Mental Health Facilities and Does Not Regularly Update Its List of Facilities to Ensure That It Is Complete

Justice uses an outreach list containing the names and contact information for mental health facilities to communicate with these facilities regarding the requirement to report mental health information relevant to firearm prohibitions. As we discuss in the Introduction, state law requires that mental health facilities that provide treatment to patients who have been placed under an involuntary hold immediately report these individuals to Justice.[13] According to information Justice's assistant bureau chief provided, 96 percent of the reports Justice receives about individuals with mental illness come from mental health facilities. In the past, Justice has periodically sent information bulletins to the mental health facilities on its outreach list to remind them of the reporting requirement and to inform them about trainings that Justice offers on the method for submitting information. However, this list of mental health facilities was missing 22 facilities that were approved to provide treatment to the types of individuals that mental health facilities must report to Justice. As a result, Justice did not communicate with these facilities about its expectations for reporting or which individuals the facilities should report.

Justice's outreach list of mental health facilities was missing 22 facilities that were approved to provide treatment to the types of individuals that mental health facilities must report to Justice.

Justice's outreach list is likely missing these mental health facilities because Justice does not check with the relevant approval authority for such facilities and thereby ensure that it knows about facilities in the State that may need to report. State law requires that individuals who are placed under an involuntary hold because they

[13] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which mental health facilities must report individuals. Specifically, facilities will no longer be required to report immediately but will be required to report within 24 hours.

are gravely disabled or because, as a result of a mental disorder, they are a danger to themselves or others must be held and treated in an approved mental health facility. The California Department of Health Care Services (Health Care Services) currently approves these facilities. Before June 2013 the most recent entity that had this approval responsibility was the California Department of Social Services (Social Services). Social Services maintained a list of the facilities that it approved for this purpose and, according to its chief of mental health treatment licensing, it updated the list when counties provided Social Services with new information. However, Justice did not contact Social Services to inquire about any new mental health facilities that should be reporting prohibited persons. We compared the list of facilities from Social Services to the list Justice uses to conduct outreach and matched facilities by name and address.[14] For 22 facilities on the Social Services list, we could not find a corresponding facility name and address on Justice's outreach list.

The assistant bureau chief reported that Justice created the initial list of mental health facilities in the early 1990s by working with the Department of Mental Health (which had approval responsibility for these facilities before Social Services), but in recent years, Justice's efforts to update the list have been limited to contacting known facilities or contacting facilities brought to its attention through law enforcement or legislative meetings and contacts. Further, Justice's mental health unit manager reported that he generally adds facilities to the list when the facilities contact his unit for an identification number they can use to report individuals with mental illness. Despite this assertion, we found that three of the 22 facilities that were missing from Justice's outreach list had reported individuals with mental illness to Justice in 2012, indicating that Justice has not always used this approach to update its list.

Justice does not believe that it is responsible for identifying new mental health facilities with these patient types.

Although communication with the facilities missing from its outreach list could benefit Justice's efforts to identify and confiscate firearms from armed prohibited persons, Justice does not believe that it is responsible for identifying new mental health facilities with these patient types. Reports about these individuals would assist Justice in identifying armed persons with mental illness because without this information, Justice may not know whether a firearm owner is now prohibited. Despite this, Justice's assistant bureau chief stated that it is not Justice's responsibility to notify newly licensed mental health facilities about the requirement to report

[14] The list of facilities we obtained from Social Services and used for this analysis was last updated in 2011. When we began our review, Justice's list was last updated in July 2012. Justice does not remove closed facilities from its list because the facilities could have records. Therefore, we would expect Justice's list to include all facilities from Social Services' list.

prohibited persons information. He noted that Justice is only a repository for reported information, and its responsibility is limited to administering the reporting forms and system. Although we located no state law specifically requiring Justice to maintain a list of all mental health facilities, the law expressly requires that Justice determine the information it needs to identify persons who have been admitted for inpatient treatment and are a danger to themselves or others because of a mental disorder and to request that information from mental health facilities. Based on the type of individuals that state law requires mental health facilities to report to Justice and statements by the chief of mental health treatment licensing at Health Care Services, we believe that the list Health Care Services now maintains represents the facilities from which Justice should receive reports.

Justice's incomplete outreach list may well have a negative impact on its efforts to identify armed persons with mental illness.

Justice's incomplete outreach list may well have a negative impact on its efforts to identify armed persons with mental illness. The mental health facilities missing from Justice's outreach list did not receive the latest information bulletin that Justice sent to facilities in 2012 regarding the requirement to report patient information to Justice through a specific electronic system. Therefore, there is a risk that the mental health facilities missing from the outreach list that have not initiated contact with Justice on their own may be unaware of how to report individuals or even the need to report. Further, if the missing mental health facilities do not report required information to Justice, then individuals who should be prohibited from possessing a firearm will not be identified, and Justice will not be able to confiscate any firearms that these individuals possess.

Justice Does Not Track Facility Reporting or Follow Up When Reporting Levels Change

In addition to not identifying all mental health facilities that may need to report individuals with mental illness, Justice is not doing all it can to ensure that it receives complete information from those facilities that do report to its mental health database. According to its mental health unit manager, Justice conducts no ongoing tracking of reporting levels from facilities. Such reports would allow Justice to identify potential problems, such as a large drop in reports from a specific facility. Because the reports that Justice receives from mental health facilities are an essential component for identifying armed prohibited persons, we would expect Justice to track reporting levels to identify any trends indicating inadequate reporting. The mental health unit does track when a facility has repeatedly submitted incorrect reports so that Justice can offer

the facility additional training. However, the mental health unit manager indicated that no similar tracking exists for the level of reporting Justice receives from facilities.

Because it does not track facility reporting over time, Justice is unaware when mental health facilities stop reporting individuals with mental illness, and its own efforts to identify prohibited persons suffer as a result. Our analysis of the mental health database indicated that 146 facilities submitted more than 100 prohibition reports each to Justice during 2012, but four of these facilities stopped submitting reports by the end of the year. In addition to those four facilities, 10 more facilities had decreases in their reporting levels of more than 50 percent from the first quarter of 2012 to the last quarter of the year. Some of these facilities were submitting hundreds of reports during the first half of the year before their report total fell. There may be valid reasons for the decrease in reports, but if Justice does not follow up directly with these mental health facilities, it cannot know whether persons with mental illness are going unreported or if some other factor caused the facility to stop reporting these individuals.

When it does not track the level of reporting from mental health facilities, Justice may also be missing an opportunity to offer training to facilities that need it.

When it does not track the level of reporting from mental health facilities, Justice may also be missing an opportunity to offer training to facilities that need it. The assistant bureau chief confirmed that Justice does not know why some facilities stop reporting or have a significant drop in their reporting level. He acknowledged that there could be several reasons why a facility would stop reporting, including staff turnover at the facility, a lack of knowledge transfer from one facility staff to another, or possibly the recent change in reporting requirements wherein state law now requires electronic reporting. In each of these cases, additional training might assist a facility that stopped reporting or had a significant drop in its reporting level. However, without tracking facility reporting levels, Justice cannot identify these facilities and offer such training or assistance. Such assistance would be a reasonable response to the requirement, discussed previously, that Justice determine the information it needs to identify individuals with mental illness and request that information from mental health facilities.

According to its manager, Justice's mental health unit is not required to follow up with mental health facilities that stop submitting reports. Also, Justice's assistant bureau chief said he did not believe that tracking facility reporting levels over time and contacting facilities that have a drop in reporting levels were Justice's responsibility because Justice lacks statutory authority and funding. Further, he noted that Justice has no authority to penalize a mental health facility for not providing a required report. Despite this, Justice is in a unique position to know whether a facility has stopped reporting

or has had a significant drop in its reporting level and to request that the facility provide reports about prohibited persons. A decrease in facility reporting could mean that Justice is left unable to identify armed prohibited persons.

Justice's Training to Mental Health Facilities Informs Facilities as to Which Patients to Report and How to Submit a Report

Although Justice has not offered these trainings or distributed its information bulletins to all relevant mental health facilities, its training materials and information bulletins contain content to inform the facilities about the requirement to report individuals with mental illness and the method for this reporting. Justice offers both statewide and individual facility training opportunities to mental health facilities. Since the APPS database was implemented in November 2006, Justice has conducted two statewide trainings for mental health facilities on the requirement to report individuals with mental illness and the reporting method. The interim manager of the training unit (interim manager) indicated that the first of the two statewide trainings took place in 2007, and it focused on the requirement to report using a paper-based system. Justice offered the second statewide training in 2012, ahead of the requirement that facilities report using the online electronic reporting system (online reporting system). During this training, Justice emphasized the process for using the online reporting system. In addition to statewide trainings, Justice's training unit also conducts on-site training for mental health facilities that request it for their specific facility. According to the interim manager, Justice receives an average of seven or eight requests for additional on-site trainings from mental health facilities each year.

In addition to offering training, Justice also occasionally sends information bulletins to mental health facilities to remind them of the reporting requirements and to inform them of any changes to the requirements. As of June 2013 three information bulletins had been sent to facilities in the more than six years since the APPS database was implemented. Each bulletin explains the types of patients that mental health facilities must report to Justice and informs the facilities that they can request on-site trainings at any time. Justice sent bulletins in response to a national firearm-related incident, namely the Virginia Tech shootings in April 2007, and in response to changes to its own processes or state law's reporting requirements. Although this may be a reasonable approach, as we indicated earlier Justice has not taken steps to identify all facilities approved to provide treatment to the type of individuals who must be reported to Justice to ensure that its outreach list is complete. As a result, Justice has not notified all applicable mental health facilities of the reporting requirements or changes to those requirements.

In addition to offering training, Justice also occasionally sends information bulletins to mental health facilities to remind them of the reporting requirements and to inform them of any changes to the requirements.

Justice Has Decided That State Hospitals Should Report Using the Online Reporting System

Although Justice has made attempts to establish ongoing electronic information sharing with the California Department of State Hospitals (State Hospitals), these attempts appear to have been unsuccessful and Justice has now requested that State Hospitals use the online reporting system other mental health facilities use. State law requires State Hospitals to maintain records necessary to identify prohibited persons in a central location and to make those records available to Justice when Justice requests this information.[15] Justice and State Hospitals both indicate that information sharing between the two departments has occurred on a more ongoing basis rather than periodically upon request during the three-year period we reviewed.

State Hospitals reports that it uses an information system to identify individuals treated at its hospital facilities who should be reported to Justice. According to State Hospitals' chief of Client Technology Services (client technology chief), until January 2013 State Hospitals sent hard-copy reports to Justice whenever its system identified relevant patients and printed a report on the individual. Subsequently, State Hospitals began reporting to Justice via secure email.

However, Justice has attempted to establish an electronic exchange of information between State Hospitals and itself. Justice's email records show that in April 2011 it was working on an information technology system upgrade and offered to work with the staff (then from the Department of Mental Health) to facilitate an electronic exchange of patient information. In these emails, Justice's assistant bureau chief stated that Justice was hoping to establish an electronic exchange that might be more efficient than the online reporting system that anticipated legislation would soon require other mental health facilities to use. Although representatives from the two departments continued to exchange emails, communication regarding this electronic exchange appears to have ended in October 2012. The assistant bureau chief indicated that after that time the opportunity to establish an electronic exchange as part of the system upgrade had passed.

Justice has attempted to establish an electronic exchange of information between State Hospitals and itself, but communication regarding this electronic exchange appears to have ended in October 2012.

[15] Previously, state law required the Department of Mental Health to maintain these records. Effective June 27, 2012, certain functions of the Department of Mental Health, including oversight of the hospital facilities, were reorganized into the newly created State Hospitals. Further, due to the legislation signed by the governor in October 2013, effective January 1, 2014, State Hospitals will be required to provide this information to Justice electronically and within 24 hours of a request.

Subsequently, State Hospitals attempted to share information electronically. In March 2013 State Hospitals sent a secure email containing information about prohibited persons with mental illness directly to the assistant bureau chief. After receiving the email, the assistant bureau chief informed State Hospitals that he was no longer in a capacity nor had the authority to receive State Hospitals' reports via email. In the same response, he provided instructions on how State Hospitals could access the online reporting system that other mental health facilities use to report individuals with mental illness.

According to the assistant bureau chief, some of the information he received in the March 2013 email from State Hospitals' headquarters was related to persons that individual hospital facilities had already reported to Justice. The assistant bureau chief stated that he informed State Hospitals staff about the duplicate reports during a conference call that occurred shortly after receiving the email. We examined the mental health database for 2012 to determine whether it reflected reports of persons with mental illness associated with state hospital facilities. Justice's mental health database shows that 38 reports of persons with mental illness were associated with Napa State Hospital during 2012. However, summary information State Hospitals provided to us shows that another facility, Metropolitan LA State Hospital, can also treat patients who should be reported to Justice as prohibited persons with mental illness.[16] Justice's mental health database did not show that any reports for Metropolitan LA State Hospital were received during 2012. State Hospitals' client technology chief did not know whether the hard-copy reports sent to Justice by what is now State Hospitals included patient information from this facility, or whether the facility had no patients to report.

In September 2013 State Hospitals' client technology chief reported that State Hospitals has begun using the online reporting system to report individuals to Justice. She stated that State Hospitals will coordinate with the individual state hospital facilities to ensure that all reporting is centralized at the administrative level and that duplicate reports are not sent to Justice. She also said this would not impact the efficiency of State Hospitals' reports to Justice because information in the system that State Hospitals headquarters uses to identify reportable patients is available to individual hospitals and headquarters simultaneously. Such a continual sharing of information about prohibited persons from State Hospitals to

[16] The two state hospital facilities we discuss do not include state hospitals that can treat individuals who have been found by a court to be mentally incompetent or not guilty by reason of insanity. We focus our discussion on the types of individuals that state law requires other mental health facilities to report to Justice, such as individuals determined to be a danger to themselves or others after an involuntary hold.

Both departments could benefit from a formal agreement about the method and frequency of the information sharing, as law does not currently prescribe this level of detail.

Justice does not appear inconsistent with state law. However, both departments could benefit from a formal agreement about the method and frequency of the information sharing, as law does not currently prescribe this level of detail. A formal agreement would help ensure that State Hospitals shares information about prohibited persons on an ongoing basis as Justice has indicated it prefers.

Recommendations

To ensure that it has the necessary information to identify armed prohibited persons with mental illness, Justice should coordinate with the AOC at least once a year to share information about court reporting levels and to determine the need to distribute additional information to courts about reporting requirements and the manner in which to report. In coordinating with the AOC about potential underreporting, at a minimum Justice should consider trends in the number of reports each court sends and the number of reports that it might expect to receive from a court given the court's size, location, and reporting history. Whenever Justice identifies a court that it determines may not be reporting all required information, it should request that the court forward all required case information.

AOC should coordinate with Justice at least once a year to obtain information about court reporting levels. Using that information, AOC should provide technical assistance to the courts that do not appear to be complying with state law's requirement to report prohibited individuals and assist the courts in taking appropriate steps to ensure compliance.

To ensure that it is properly reporting to Justice individuals posing a danger to themselves or others, San Francisco Court should work with the district attorney and the Office of Conservatorship Services to ensure that the court is sufficiently considering whether individuals should be prohibited from possessing a firearm. Where appropriate, the court should include prohibitive language in orders relating to those cases and promptly report these individuals to Justice.

To ensure that it is reporting all required individuals to Justice, Los Angeles Court should, by December 31, 2013, revise its new procedures at the Mental Health Courthouse to discuss quality control steps, such as a supervisory review and other monitoring processes, that would ensure that it is reporting all required determinations. Los Angeles Court should implement the revised procedures so that it reports all types of court determinations state law requires.

To ensure that it is reporting all court determinations that prohibit an individual from possessing a firearm, by December 31, 2013, Los Angeles Court's Criminal Justice Center should revise its court procedures regarding these determinations so that court administrative staff are notified when a finding related to mental competency occurs.

Los Angeles Court should review its compliance with state law's firearm prohibition reporting requirements at each of the other courthouse locations within its court and make the necessary adjustments to courthouse policies and practices so that it fully complies with state law by March 31, 2014.

To ensure that it reports all required prohibited persons to Justice, San Bernardino Court should implement its new procedures for both its criminal and its probate divisions at the central courthouse by December 31, 2013, so that it reports all types of court determinations state law requires.

San Bernardino Court should review its compliance with state law's firearm prohibition reporting requirements at each of the other courthouse locations within its court and make the necessary adjustments to courthouse policies and practices so that it fully complies with state law by March 31, 2014.

To ensure that it reports all required prohibited persons to Justice, Santa Clara Court's probate division should revise its court policies and practices by December 31, 2013, so that it reports all types of court determinations state law requires. Further, Santa Clara Court's criminal division at its Hall of Justice should follow its new reporting and monitoring procedures to ensure that it reports all required determinations to Justice.

Santa Clara Court should review its compliance with state law's firearm prohibition reporting requirements at each of the other courthouse locations within its court and make the necessary adjustments to courthouse policies and practices so that it fully complies with state law by March 31, 2014.

The Legislature should amend state law to specify that all mental health-related prohibiting events must be reported to Justice within 24 hours regardless of the entity required to report.

Los Angeles, San Bernardino, and Santa Clara courts should follow the requirements in state law related to how quickly to report individuals to Justice.

To ensure that it keeps an accurate and up-to-date list of all mental health facilities that are required to report individuals with mental illness, at least twice a year Justice should update its outreach list of mental health facilities by obtaining a list of facilities from Health Care Services.

As soon as it identifies mental health facilities that have not yet received information about reporting requirements and the online reporting system, Justice should send these facilities the related information.

To ensure that it continues to receive information from facilities that currently report individuals with mental illness and that should continue to report such individuals, by January 31, 2014, and at least twice a year thereafter Justice should implement a review of the number of reports it receives from individual mental health facilities. These reviews should focus on identifying any significant drops in a facility's reporting levels and include follow up with facilities that may require additional assistance in reporting.

To ensure that all applicable information from State Hospitals is communicated to Justice, by March 31, 2014, Justice and State Hospitals should establish a written understanding of the method and frequency with which State Hospitals will report prohibited individuals to Justice.

Chapter 2

THE DEPARTMENT OF JUSTICE DID NOT ALWAYS IDENTIFY ALL ARMED PROHIBITED PERSONS AND HAS STRUGGLED TO KEEP UP WITH ITS ARMED PROHIBITED PERSONS WORKLOAD

Chapter Summary

The Department of Justice (Justice) did not always identify armed persons with mental illness about which it had received reports. In some cases, although an individual with mental illness was reported to Justice and was a firearm owner, Justice's staff did not indicate that the individual was an armed prohibited person. In addition, Justice has at times had difficulty processing the information it receives from reporting entities. Its Armed and Prohibited Persons unit (APPS unit) has sometimes had a daily backlog of cases pending review that has exceeded the informal cap that Justice set of 1,200 matches of prohibiting events with firearm owners. With regard to one significant increase in the Armed Prohibited Persons System (APPS database) backlog, Justice reported that the rise in the backlog coincided with a rise in the number of background checks it was required to complete for firearm purchases. Justice's average time to make prohibition determinations for its daily APPS database workload is five days, although some cases have waited much longer for a final determination. In addition to its daily workload, Justice has not finished reviewing a historical backlog of firearm owners—nearly 380,000 as of July 2013—to determine whether any of those individuals are armed prohibited persons. Although Justice plans to complete this review by the end of 2016, it does not appear to be on track to meet this planned deadline, and until this process is complete, Justice will not know the true number of firearm owners who are prohibited from possessing a firearm.

Additionally, Justice needs to make improvements to its controls over the information that it receives from reporting entities. We found instances where Justice had not input reported information that it received into its Mental Health Firearms Prohibition System (mental health database). Further, we found that some key staff decisions, such as the decision to delete prohibition information in databases and the decision that an individual is not prohibited, do not require supervisory approval. If Justice improved its controls over this information, it could better ensure that it is appropriately identifying all armed prohibited persons and is thereby equipped with all the information it needs to ensure public safety through firearm confiscation.

Justice Did Not Always Identify Individuals as Armed Prohibited Persons Even Though They Had Been Reported as Prohibited

We reviewed eight APPS unit staff determinations that an individual was not an armed prohibited person and, considering the individual's mental health history, we found that three of these decisions were incorrect.

Although Justice receives reports about individuals with mental illness that it uses to identify armed prohibited persons, Justice did not always make appropriate decisions with this information. We reviewed eight APPS unit staff determinations that an individual was not an armed prohibited person and, considering the individual's mental health history, we found that three of these decisions were incorrect.[17] In these three instances, the individual was a firearm owner and had a record in Justice's mental health database for a prohibiting event at the time APPS unit staff made their determination. Two of these individuals came back to the attention of the APPS unit at a later date, and at the time of our review in August 2013 were identified as armed prohibited persons. However, one of them remained unidentified for more than one year. In addition, in the third instance, the prohibition was temporary, and Justice's incorrect decision led to an incorrect status for a few days.

In the first two cases, the assistant chief of Justice's Bureau of Firearms (assistant bureau chief) acknowledged that APPS unit staff made incorrect decisions at the time of the determination. He did not know the exact reason why staff made an incorrect decision for one of these cases. However, in the other case, the assistant bureau chief stated that the individual was not identified as prohibited because she used an alias that was not known to Justice when she was admitted to the reporting mental health facility. The assistant bureau chief explained that during their reviews, APPS unit staff did not review the aliases that were available to them through a California Department of Motor Vehicles (DMV) database. Therefore, because staff did not review this woman's aliases in the DMV database, the assistant bureau chief stated that the staff did not know the firearm owner they were reviewing was the same person who had been involuntarily committed to a mental health facility. He stated that Justice is not required to review information in the DMV database because it does not contain prohibiting information or firearm ownership information. He further stated that checking the DMV database would require additional steps for APPS unit staff to review and would slow down the determination process in addition to possibly reducing

[17] To review a high-risk population of determinations by the APPS unit, we identified decisions that the individual was not an armed prohibited person and where the individual's personal identification number was located in the mental health database. This initial step yielded 117 results, which we considered further. However, most of these items were related to expired mental health records that could not have triggered a review during the period we reviewed or cases where the personal identification number matched to the mental health database but the individual's name did not match. After eliminating these items, we focused on eight determinations for review.

staff efficiency. However, because identifying armed prohibited persons is critical, it is important that Justice pursue a cost-effective method of reviewing alias information in the DMV database.

For the third incorrect decision, the individual voluntarily admitted himself to a mental health facility. State law prohibits such individuals from possessing a firearm but only while they are admitted to the facility. In this case, staff determined that the individual was not prohibited but did not document that he was no longer at the mental health facility. After we discussed this case with the assistant bureau chief, Justice contacted the associated mental health facility and obtained confirmation that the man had been released from the facility, but not until four days after the staff made the decision. The assistant bureau chief stated that normal processing for these types of individuals would involve the mental health facility submitting a patient discharge report, which would cause Justice to lift the prohibition for the associated individual. Similarly, staff also did not document a discharge for another of the eight decisions we reviewed and had to contact the facility upon our inquiry. However, in this case, the documentation staff subsequently obtained showed the individual had been released before the staff decision, demonstrating that the staff decision was correct. Still, until we asked about these items, Justice lacked the documentation necessary to show whether its decision was appropriate.

We found that Justice had appropriate prohibition statuses for 12 additional individuals we reviewed, although the information in the APPS database about the individuals was not always accurate.

Further, we found that Justice had appropriate prohibition statuses for 12 additional individuals we reviewed, although the information in the APPS database about the individuals was not always accurate. According to the APPS unit manager, staff are supposed to enter all prohibiting information into the APPS database. However, during our review, we found that one of the 12 individuals we reviewed was missing a mental health prohibition in the APPS database. This missing prohibition would extend the individual's prohibition period by five months. Also, for one individual we reviewed, the APPS database did not identify all of the individual's firearms. In contrast, for another individual, the APPS database showed that the individual was the owner of a specific firearm, when other Justice records showed the individual was no longer in possession of that firearm. It is important that Justice maintain correct prohibition and firearm information in the APPS database, because law enforcement agencies and Justice's staff use the APPS database to identify and disarm armed prohibited persons.

The incorrect prohibition decisions and inaccurate APPS database entries may, in part, be a consequence of the APPS unit managers or supervisors not reviewing prohibition decisions. The APPS unit manager stated that there is no active review of prohibition determinations after staff complete extensive training, including on average three to four months of one-on-one supervision, because there

is not enough staff to double-check the work. Nevertheless, we believe periodic reviews of staff determinations are essential to ensure that the APPS database records Justice relies on to protect the public are complete and accurate.

In addition to our concerns over how Justice's staff were making and documenting certain APPS determinations, we noted a limitation in what the APPS database is identifying—one that does not appear to be fully consistent with state law. As we discuss in Chapter 1, during our testing at two of the three courts we visited, Justice had not identified as armed prohibited persons two individuals who are firearm owners and who had mental health prohibiting events recorded in the mental health database. The assistant bureau chief explained that these individuals were not identified as armed prohibited persons because Justice's review of firearm owners is limited to firearm records from 1996 through the present. He noted that because both of these individuals acquired their firearms in the 1980s, Justice would not have reviewed their prohibition history when their prohibiting event was reported.[18] Still, he said that when individuals who obtained their firearm before 1996 and have prohibiting events come to Justice's attention through other investigations, APPS unit staff will identify the individual as an armed prohibited person. We confirmed that Justice subsequently completed this process for the two individuals we identified and brought to its attention.

Although Justice is generally only reviewing firearm records from 1996 through the present, the state law that establishes the APPS database requires Justice to identify armed prohibited persons in its Consolidated Firearms Information System (CFIS) going back to January 1991. According to the assistant bureau chief, because CFIS was not implemented until 1996, CFIS does not contain firearm records going back to 1991. However, Justice does have firearm records that pre-date 1996, but it considers these records less reliable for the purpose of identifying prohibited persons and thus for conducting prohibition reviews. The assistant bureau chief stated that records before 1996 are extremely unreliable. He explained that before 1996, Justice did not verify the firearm purchaser's information against DMV database information. Further, the assistant bureau chief stated that he believed all parties that were involved in developing the state law understood that CFIS records only went back to 1996. However, such an understanding is not currently displayed in the plain language of state law. Therefore, Justice's effort to implement the APPS database using only firearm information from 1996 to the present appears inconsistent with the requirement in state law to review firearm records going back to 1991.

Justice's effort to implement the APPS database using only firearm information from 1996 to the present appears inconsistent with the requirement in state law to review firearm records going back to 1991.

[18] Justice does review registered owners of assault weapons going back as far as 1989.

Justice Does Not Use All Available Information to Identify Armed Prohibited Persons

Justice does not use all personal identifying numbers existing in its databases to determine whether firearm owners have mental health-related prohibiting events. Further, we discovered Justice does not transfer all mental health reports from its mental health database to the APPS database to aid in the identification of armed persons with mental illness.

As discussed in the Introduction, Justice compares personal identifying information of firearm owners to identify individuals who may have had a mental health-related prohibiting event recorded in the mental health database or in the criminal history system. For example, Justice compares personal identifying information, such as Social Security numbers or the combination of an individual's name and date of birth. However, Justice does not compare certain other identifying numbers recorded in its mental health database and criminal history system. According to the assistant bureau chief, Justice intended to use all available personal identifying numbers to identify armed prohibited persons; however, there was an oversight during the development of the electronic matching process, and not all personal identifying information was included in the matching process. As of June 17, 2013, nearly 32,000 persons in the APPS database had only personal identifying numbers that Justice does not use in its matching process. Consequently, Justice could identify these individuals based only on their names and dates of birth. By not using all personal identifying numbers available, Justice risks not identifying armed persons prohibited from firearm ownership.

As of June 17, 2013, nearly 32,000 persons in the APPS database had only personal identifying numbers that Justice does not use in its matching process.

In addition, Justice is excluding certain mental health reports from the process that matches current firearm owners with the mental health database. Specifically, Justice does not transfer reports stored in the mental health database to the APPS database for persons whose reported dates of birth contain only the birth year. According to the assistant bureau chief, Justice does not transfer these reports because matching firearm owners based on names and birth years would create too many false matches. Further, we found that Justice does not send to the APPS database other information included in these reports that could be used for matching—such as an individual's Social Security number. For example, Justice received a report for an individual in the mental health database on December 30, 2012, which contained the person's birth year and Social Security number. Because Justice does not transfer reports containing only a birth year, this individual's Social Security number was not sent to the APPS database for evaluation. Nearly a month and a half passed before Justice received another report containing the full birth date for this individual and made the determination

that he should be prohibited. As of May 29, 2013, the mental health database contained more than 14,500 reports containing the birth year and a personal identifying number, such as a Social Security number. As a result, these mental health reports have been excluded from the process Justice uses to identify firearm owners in the State who are prohibited from owning or possessing a firearm due to a mental health-related event.

Justice Has Experienced Significant Delays in Processing Its Armed Prohibited Persons System Workload

Justice has faced obstacles throughout the three-year period we reviewed—2010 through 2012—in meeting its workload demands for both the daily and the historical review queues of prohibited persons in the APPS database. During this time, Justice focused staff efforts on addressing a rise in background checks that state law requires when someone attempts to purchase a firearm, which resulted in the APPS unit experiencing a daily backlog that at times exceeded its internal goal of having no more than 1,200 matches pending for initial review at any one time. Although, on average, the APPS unit reviewed its daily APPS database workload within a time frame of five days, a few potential armed prohibited person cases waited more than three years before the APPS unit made a final determination about the person's prohibited status. Further, the APPS unit has also experienced delays in processing a historical backlog of firearms owners—nearly 380,000 as of July 2013—who remain to be reviewed from more than six years ago when it implemented the APPS database.

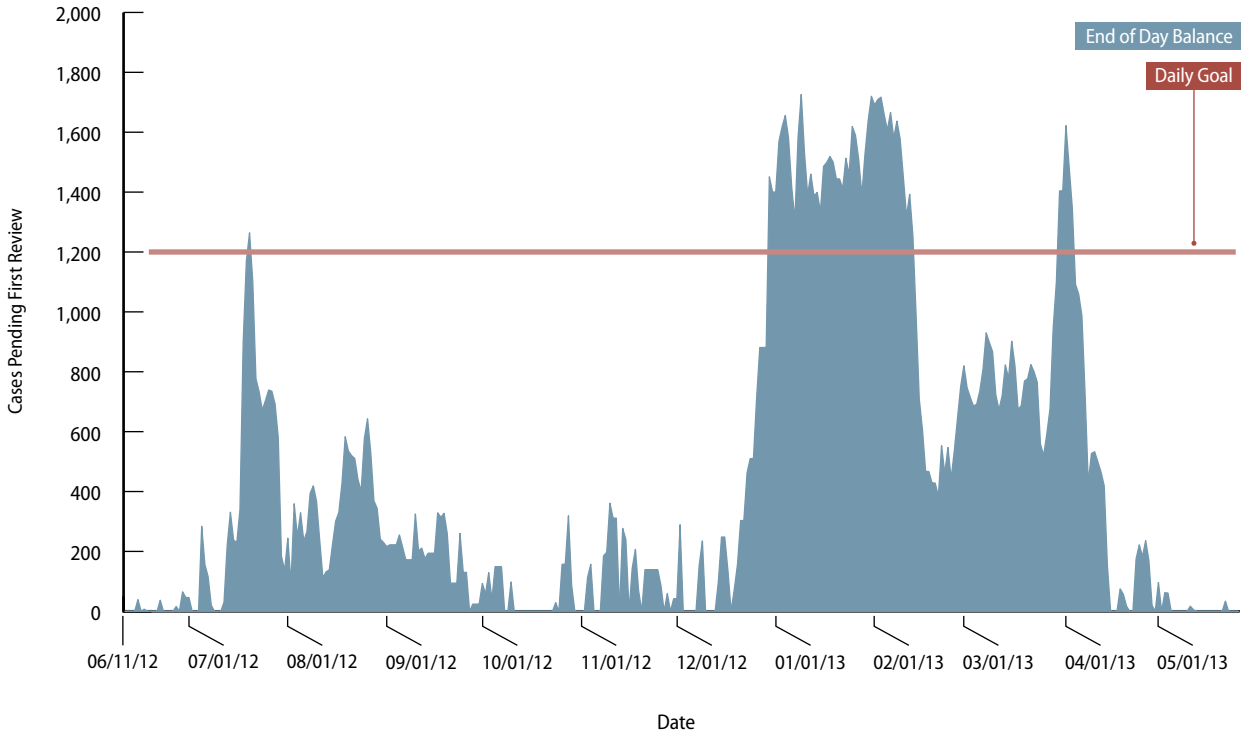
Justice Has at Times Had a High Daily Backlog of Unreviewed Prohibiting Events That Have Been Matched With Firearm Owners

Justice has two main processing queues it reviews to determine whether a firearm owner should be prohibited from owning a weapon: a daily queue and an historical queue. As we discuss in the Introduction, data from the APPS database that identifies whether an armed person is prohibited are the result of a matching process between CFIS and several supporting databases, including the mental health database and the Automated Criminal History System (criminal history system). This match links prohibiting events with firearm owners, and then Justice's APPS unit staff (of which there were 10 during our audit) review these matches and determine whether the individual is prohibited from possessing a firearm. Matches remain in the daily queue until an APPS unit staff member completes an initial review of the individual. APPS unit staff may not make a final determination about each match's

prohibiting event the first time they review the person's prohibition history. Therefore, the daily queue indicates the number of matches Justice has not yet reviewed at all.

Justice decided to informally cap at 1,200 the number of matches in the APPS database daily queue that were waiting for initial review. Despite its goal, Justice has at times exceeded this number of matches in the daily queue. During late 2012 and early 2013, for example, there was a backlog of more than 1,200 matches pending initial review. The APPS unit manager, who has been in her position since May 2012, tracks statistics from a daily report showing the number of matches that are still pending review at the end of each day. Based on her data, we found that in the 350 days from mid-June 2012 through May 2013, Justice had not reviewed all matches in the daily queue on 265 of those days. Of the 265 days with cases awaiting staff review, Justice exceeded its 1,200 goal for the maximum number of matches awaiting review 52 times. As shown in Figure 3, the amount of the daily backlog varied each day, and there was a sustained and significant increase in the backlog that began at the end of December 2012.

Figure 3
Backlog of Prohibiting Event Matches to Firearm Owners Waiting for Initial Review
Mid-June 2012 Through May 2013



Source: California State Auditor's analysis of records kept by the manager of the Department of Justice's Armed and Prohibited Persons unit.

A Justice official stated that in the latter part of 2012 California and the nation experienced a voluminous increase in gun sales and the associated background check workload, concurrent with public perception of impending changes in firearm laws after the Newtown shootings.

This sustained and significant increase in the APPS database daily backlog occurred directly following a rise in Justice's Dealers' Record of Sale (DROS) background check workload after the shootings at an elementary school in Newtown, Connecticut, on December 14, 2012. The assistant bureau chief stated that in the latter part of 2012, California and the nation experienced a voluminous increase in gun sales and the associated background check workload. He stated that this rise in gun sales was concurrent with the public perception of impending changes in firearm laws after the Newtown shootings.

Justice has 10 days after receipt of a completed application or fee to complete a background check to determine whether an individual seeking to purchase a firearm is prohibited from possessing, owning, purchasing, or receiving a firearm.[19] The DROS processing unit conducts these background checks. The assistant bureau chief reported that in response to that rise in background checks, Justice temporarily redirected APPS unit staff to assist with DROS background checks until Justice could hire additional DROS staff. According to the assistant bureau chief, DROS background checks will always take priority over the daily queue reviews because subjects in the APPS database are already in possession of firearms, whereas Justice assumes that DROS purchasers are attempting to obtain a firearm for the first time or are attempting to re-arm themselves after their firearms have been confiscated. However, we believe that although it is essential for Justice to meet its 10-day DROS deadline, the identification of armed prohibited persons is also important and that identification will assist Justice as it scales up confiscation efforts that we describe later in the chapter.

Although in April and May 2013 Justice had more success in reviewing the entire APPS database daily queue by the end of every workday, it could again face similar challenges to processing the daily queue. The assistant bureau chief stated that in 2013, Justice used a budget change proposal (proposal) to hire and train new DROS unit staff, and the APPS unit manager stated that her staff have returned to reviewing the daily queue. As of late August 2013 Justice had hired 11 of the 20 DROS staff the proposal funded. Further, the positions are for only a two-year limited term period. Therefore, Justice could develop backlogs in the daily queue in the future if the volume of DROS background checks exceeds the DROS unit's resources.

In May 2013 Justice was appropriated new funding for the purpose of increasing its efforts to remove firearms from armed prohibited persons. As Justice broadens its focus to include a greater emphasis

[19] In October 2013 the governor signed legislation, effective January 1, 2014, that will require Justice to notify firearm dealers to delay the transfer of a firearm under certain circumstances, thereby extending the period of time Justice can take to complete a background check for firearm purchases in those circumstances.

on confiscation of firearms from armed prohibited persons, it will become even more important that it have timely information about who is an armed prohibited person. The APPS unit manager stated that prohibiting event matches should not remain in the APPS database daily queue for longer than two days. However, her records show that even though the unit uses a first-in, first-out approach to its work on the queue, the APPS unit was not meeting this two-day deadline during the time Justice shifted these staff to the DROS workload during late 2012.

Further, by setting its goal for the APPS database daily queue at no more than 1,200 matches, Justice may allow matches to wait too long before their first review by an APPS unit staff member. Although there were periods where Justice exceeded its goal, Justice kept the number of matches waiting in the queue under 400 for 61 percent and under 600 for 71 percent of the period shown in Figure 3 on page 47. A goal that is closer to these levels could assist Justice in meeting the APPS unit manager's stated expectation that matches wait no more than two days for an initial review. Performing a first review of matches' prohibiting events in a timely fashion is a critical step to knowing whether Justice should confiscate a firearm from an individual. In the future, it will be important for Justice to manage its staff to meet both its DROS and its APPS unit priorities and to inform policy makers if it cannot effectively meet both of its mandates.

Performing a first review of matches' prohibiting events in a timely fashion is a critical step to knowing whether Justice should confiscate a firearm from an individual.

On Average, the APPS Unit Reaches Its Decisions Within a Reasonable Time Frame, Although in Some Cases It Does Not Reach a Decision for Long Periods of Time

We found that, on average, Justice reviews potential armed prohibited persons and reaches a decision about whether to prohibit the individual from possessing a firearm within a reasonable amount of time. During the three-year period we reviewed, APPS unit staff made prohibition determinations for their daily workload an average of five days after the potential armed prohibited person came into the daily queue. As described previously, the unit follows a first-in, first-out policy. Thus, some of this five-day average includes time the case waits for an APPS unit staff member to begin a review.

However, we did observe that some cases take years to resolve. The APPS unit manager reported that in some cases, staff need to hold their decisions because they do not have complete information about the individual they are reviewing. These delayed decisions are tracked in individual queues assigned to the staff member in the APPS unit who originally reviewed the case. Although the average amount of time that cases wait for a final determination was relatively small, it

took the APPS unit much longer to reach a final conclusion for some cases. Our review of the APPS database showed that in the case of four individuals, it took the APPS unit more than three years to reach a determination that the individual was an armed prohibited person. In the most extreme case, the APPS unit did not reach a decision until five years after the individual was first matched. The APPS unit manager was not able to explain the specific reason why staff could not reach a decision more quickly for these individuals. However, the assistant bureau chief noted that it is not uncommon for Justice to be waiting for a superior court (court) to submit final case information. He stated that without this information, staff cannot reach a final conclusion about whether a person should be prohibited. Further, speaking about another case for which staff could not promptly reach a conclusion, the APPS unit manager noted that it is possible for staff to experience a delay because they must contact mental health facilities for information.

In addition to these individuals, we found that as of June 17, 2013 (the date we obtained data from the APPS database), Justice had not yet made a prohibition determination for more than 1,600 potential armed prohibited person cases, and these cases had been waiting for a decision for an average of a little more than 1,000 days. This does not necessarily represent 1,600 separate events, because one individual can have multiple events waiting for a determination. Also, because these are cases where APPS unit staff have not yet made a determination, it is possible that some of these cases will ultimately be determined "not prohibited."

It took Justice more than three years to reach decisions to prohibit four individuals, and the APPS unit manager could not explain the cause of the delay.

It appears reasonable that in some cases, Justice may not be able to reach a determination about an individual's prohibited status because an outside entity has not sent additional needed information. However, Justice's documentation of its efforts to resolve these cases could be improved. As described earlier, it took Justice more than three years to reach decisions to prohibit four individuals, and the APPS unit manager could not explain the cause of the delay. When it does not keep adequate documentation of why it could not more quickly reach determinations about some individuals, Justice leaves itself vulnerable to questions about the efficiency of its decision-making process. If staff documented key events in their efforts to resolve long-outstanding cases, Justice would be able to demonstrate that it had made sufficient effort to bring such cases to a final determination. Following its current practices, Justice cannot demonstrate such effort.

Additionally, the APPS unit manager confirmed that no formal policy exists to direct APPS staff to periodically review the cases that have been waiting the longest for a determination. The manager explained that she does informally direct her staff to address those individuals as their highest priority. Although informally reminding staff to address the longest pending cases is a good practice, Justice would

benefit from formalizing this expectation into a written policy. Such a policy could clearly define how often, at a minimum, Justice's staff should revisit the individuals who have remained pending more than a certain number of days and how often the staff should perform follow-up work to attempt to reach a final determination about those individuals.

Justice Has Experienced Delays in Reviewing a Historical Backlog of Firearm Owners for Prohibiting Events

In addition to the backlog and delays that Justice's APPS unit has experienced in the daily queue, Justice has also faced difficulty in remaining on pace to complete, by the end of 2016, its review of a historical backlog of individuals. According to the assistant bureau chief, the historical backlog was initially about one million firearm owners and consists of persons who registered an assault weapon since 1989 or acquired a firearm since 1996 and who have not yet been reviewed for prohibiting events since Justice implemented the APPS database in November 2006. As part of the fiscal year 2006–07 budget process, Justice received funding for staff to perform the daily and historical APPS database reviews. According to the assistant bureau chief, based on the number of positions received, Justice and the California Department of Finance (Finance) agreed that Justice would eliminate the backlog by the end of 2016. Justice's records show that, as of July 2013, nearly 380,000 persons still remained in the historical backlog.

Justice's records show that, as of July 2013, nearly 380,000 persons still remained in the historical backlog, and it does not appear that Justice will clear its entire backlog until 2019.

Although Justice reduced the historical backlog to almost 380,000 in July 2013, we observed that the pace of Justice's historical reviews during our audit period may not be sufficient to meet the 2016 goal it agreed upon with Finance. We reviewed the past three complete years of its processing of these individuals and found that the highest annual number of historical reviews Justice processed between 2010 and 2012 was nearly 43,000 individuals in 2010. However, we observed that in the first half of 2013, Justice has been processing the historical backlog at an accelerated pace. If Justice continues its pace through the remainder of 2013, we estimate that it will review nearly 68,000 individuals for the entire year. Still, even assuming that Justice would be able to maintain the increased pace, it does not appear that Justice will clear its entire backlog until 2019.[20] Calculated another way, to meet its goal, Justice would need to process almost 104,000 individuals per year from 2013 through the end of 2016.

[20] We made this calculation using the number of persons remaining in the backlog in January 2013, which was nearly 415,000, and the estimated processing pace for 2013.

Although Justice asserts that it will eliminate the historical backlog on schedule, its staff admit they may face challenges. When we inquired about whether Justice has benchmarks to measure its progress in reducing the historical backlog, the assistant bureau chief could not provide any, but he stated that Justice plans to make every effort to complete the historical backlog by 2016 while maintaining the highest standard of public safety by addressing future DROS backlogs as the priority. This may require occasionally using APPS unit staff. He noted that all APPS unit staff are funded through the DROS Special Account—the state fund supported by firearm purchase fees. Further, because Justice's stated expectation is that staff clear the daily APPS database queue before working on the historical backlog, an increase in the number of potentially prohibited persons in the daily queue could also delay work on the historical backlog.

Although it has not updated its estimate in recent years, Justice expects that about 6 percent of the remaining historical backlog, which would have been about 23,000 persons as of July 2013, will be determined to be armed prohibited persons. The assistant bureau chief stated that this estimate was developed before the APPS unit was staffed in 2006. He speculated that the estimate was based on a review of firearm owners and prohibition information and stated that a professor of statistics had confirmed this estimate. Nevertheless, because the historical backlog remains a lesser priority, Justice may be unable to meet its goal and identify all prohibited persons in the historical backlog by the end of 2016. Further, as more time passes, it may become more difficult for Justice to locate these persons and confiscate their firearms.

As more time passes, it may become more difficult for Justice to locate these persons and confiscate their firearms.

The Time It Takes to Fully Process Reports From Mental Health Facilities Has Decreased Although Facilities Still Do Not Report Immediately

Effective July 1, 2012, in an effort to streamline the reporting process, state law altered the way in which mental health facilities are required to report prohibiting events to Justice. As we discuss in the Introduction, state law requires mental health facilities to report certain persons with mental illness to Justice immediately after they are admitted to the facility.[21] In July 2009, in an effort to facilitate immediate reporting, Justice made an online electronic reporting system (online reporting system) available to mental health facilities. Until July 1, 2012, use of this online reporting system was voluntary, and facilities had the option to mail paper report forms

[21] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which mental health facilities must report individuals. Specifically, facilities will no longer be required to report immediately but will be required to report within 24 hours.

to Justice instead. However, state law now mandates that mental health facilities submit to Justice electronically all required reports regarding persons with mental illness.

The time it takes for a report from a mental health facility about a person with mental illness to enter Justice's mental health database and be available for review has decreased since the requirement to report electronically took effect. Since July 1, 2012, the quarterly average number of days that it takes Justice to input a mental health report has dropped to zero. According to a data processing manager within Justice, the online reporting system usually processes submitted information into Justice's mental health database within a few minutes. As Table 3 shows, Justice's recent processing times are an improvement from the first quarter of 2010, when it took Justice an average of four days to enter a report into the mental health database. In fact, Justice's processing time had already reached a quarterly average of one or zero days in the first half of 2012, even before the electronic reporting requirement was effective.

Table 3
Mental Health Facility Reporting Time and Department of Justice Processing Time 2010 Through 2012

	QUARTER IN WHICH THE DEPARTMENT OF JUSTICE (JUSTICE) RECEIVED THE REPORT	AVERAGE NUMBER OF DAYS	
		BETWEEN PROHIBITING EVENT AND JUSTICE'S RECEIPT OF THE REPORT	BETWEEN JUSTICE'S RECEIPT OF THE REPORT AND ITS ENTRY IN THE MENTAL HEALTH FIREARMS PROHIBITION SYSTEM
2010	First Quarter	17	4
	Second Quarter	14	2
	Third Quarter	15	2
	Fourth Quarter	19	3
2011	First Quarter	17	2
	Second Quarter	17	1
	Third Quarter	20	1
	Fourth Quarter	15	3
2012	First Quarter	15	0
	Second Quarter	17	1
	Third Quarter	11	0
	Fourth Quarter	8	0

Source: California State Auditor's analysis of data obtained from Justice's Mental Health Firearms Prohibition System, as of May 29, 2013. See the "Assessment of Data Reliability" on page 13 in the Introduction to the report regarding the electronic data used in this table.

— = Required electronic reporting began July 1, 2012.

Although the time it takes for mental health facilities to report to Justice has decreased since the electronic reporting requirement took effect, mental health facilities are still not reporting immediately as state law requires. Before the electronic reporting requirement, when facilities could choose to report either electronically or by paper, it took facilities on average 14 to 20 days to submit reports to Justice for each quarter during 2010 and 2011. Although there has been only a limited time since the requirement took effect and other factors could have affected reporting times, we noted that facilities' reporting times have improved. Nevertheless, even though the amount of time it takes facilities to report has fallen since July 1, 2012, facilities still took an average of eight days in the fourth quarter of 2012 to report persons with mental illness to Justice.

Justice Has Not Always Adequately Processed the Mental Health Prohibiting Information It Receives

Justice's mental health unit has not entered all the firearm prohibition reports that entities submitted from 2010 through 2012 into its mental health database. We found that, as of July 2013, Justice had not entered three of the 15 paper reports that we reviewed from reporting entities. We expected that Justice would enter all the reports it received into the database, because this information enables it to identify and maintain accurate prohibiting event information needed to identify prohibited persons. The unentered reports included two reports from mental health facilities—one requesting a previous report be deleted because of inaccurate information and the other a paper report that Justice received after July 1, 2012, the date that the statutory electronic reporting requirement took effect. The third unentered report was from a court identifying an individual who the court determined was mentally incompetent.

The current mental health unit manager has only been in his position since January 2013 and could not explain why unit staff had not processed the facility deletion request and the court report. He speculated that staff may have thought the court report was a duplicate report because the court had already reported the same individual several times on other dates. Further, regarding the facility deletion request, he noted that after we brought the unprocessed report to his attention, he contacted the facility to obtain more information and then processed the deletion. If Justice does not process all court reports it receives, it risks failing to identify a prohibited person. In addition, the unprocessed deletion request could result in improperly preventing an individual from owning a firearm.

If Justice does not process all court reports it receives, it risks failing to identify a prohibited person.

However, Justice intentionally did not enter the paper mental health facility report it received after the required date for facilities to begin submitting these reports electronically. The mental health unit manager stated that Justice did not enter the report because the law requires facilities to submit the information electronically. We selected six additional mental health facility reports from Justice's paper files to review whether Justice was consistent in its practice of not entering these paper facility reports. We found that neither Justice nor the reporting facility entered information related to these reports into the mental health database for five of the six additional mental health facility paper reports. Because neither Justice nor the facility entered information related to these individuals, Justice had no record of these specific mental health prohibiting events and therefore could not consider them for applying a prohibition. After we discussed what we found, the assistant bureau chief reported that Justice plans to go back through the mental health unit's files and ensure that all reports it received from mental health facilities after July 1, 2012, are entered into the mental health database.

Justice's assistant bureau chief acknowledged that one of the individuals reported on a form that Justice did not enter had no other mental health prohibiting events in Justice's records and that the failure to enter this report would have allowed this individual, who was not a firearm owner, to purchase a firearm. He further reported that the individuals on the remaining unentered reports had already been reported to Justice for other prohibiting events logged in the mental health database. We also confirmed that these individuals had been reported previously to Justice. Nevertheless, Justice's failure to enter these reports means that it did not keep a complete record of the reasons why these individuals were prohibited and could not ensure that it applied all applicable prohibitions, and related prohibition time periods, to each armed prohibited person. Therefore, there is the potential for the prohibition period to be shorter than it should be when, in fact, the period should have been extended.

We could not verify that Justice has followed up with mental health facilities that submitted paper reports after the electronic reporting requirement became effective in July 2012. According to the mental health unit manager, Justice's process for handling these specific reports is to notify the mental health facility of the law's requirements and then notify Justice's Training Information and Compliance Section that the facility staff needs training. However, Justice's staff were unable to provide documentation that showed they performed these actions. Thus, Justice cannot demonstrate that it did all it could to identify prohibited persons and to assist mental health facilities in reporting appropriately.

We could not verify that Justice has followed up with mental health facilities that submitted paper reports after the electronic reporting requirement became effective in July 2012.

We observed that reports that Justice's mental health unit received between late May 2013 and mid-July 2013 were not entered into the mental health database until early August.

Further, for a recent period of almost two months, Justice's mental health unit had no staff assigned to enter reports about prohibiting events, and as a result, many reports were not entered. According to the mental health unit manager, the retired annuitant responsible for entering reports left his position in late May 2013, and the only other staff member in the mental health unit transferred out of the unit earlier that month. As a result, we observed that reports that Justice's mental health unit received between late May 2013 and mid-July 2013 were not entered into the mental health database until early August. Subsequently, the assistant bureau chief informed us that according to his research, the unentered reports totaled 1,700. The assistant bureau chief stated that when he discovered the unentered reports, he took immediate action to resolve the backlog within 24 hours. He further asserted that Justice has entered all the reports into the mental health database, and it checked the individuals identified in the mental health reports against its databases to confirm that none of them had purchased firearms. We reviewed two reports that we observed were not initially entered and confirmed that they were subsequently entered.

The assistant bureau chief also reported that a previous manager of the mental health unit had a quality control process whereby she would periodically check whether staff had appropriately entered received reports. He stated that the process for doing these reviews likely broke down over time as the mental health unit switched office locations and there was turnover among staff and mental health unit management. The assistant bureau chief acknowledged that a quality control review adds significant value and stated that it would be implemented if Justice received the resources necessary to carry out such a process. Nevertheless, it is Justice's responsibility to ensure that it carries out its duties appropriately.

As we discuss in the Introduction, Justice can also receive information about mental health prohibiting events from court reports that Justice inputs into its criminal history system. The unit responsible for processing these reports is the Bureau of Criminal Information and Analysis (criminal information unit). We reviewed nine reports that we obtained from case files at the Los Angeles Superior Court's (Los Angeles Court) Clara Shortridge Foltz Criminal Justice Center (Criminal Justice Center) and found that Justice appropriately entered seven of the reports that we reviewed for the period of 2010 through 2012.[22]

For the remaining two reports, we could not determine whether Justice failed to enter the report or the Los Angeles Court's Criminal Justice Center did not send Justice the report even though there

[22] We tested criminal history items only from Los Angeles Court because it was the only one of the three courts we visited that submitted paper reports.

was a copy of the report in the court's case file. It is the criminal information unit's practice to enter a court's reported information into Justice's criminal history system to update the individual's arrest and prosecution record (RAP sheet) and then to create an archived scanned image of the paper report the court sent. According to the criminal information unit's program manager (criminal information unit manager), these two steps would show that Justice received and entered the record. However, for these two reports, Justice did not have a corresponding RAP sheet entry or scanned report image. The criminal information unit manager stated that if Justice had received the reports, it would have updated and archived those documents.

When we asked the Los Angeles Court whether it had sent the two reports to Justice, an administrator at the Criminal Justice Center stated that the court did submit the reports. Once we brought to her attention that Justice did not have a record of the reports, she stated that the court would resend them. Because both entities claimed to have followed their processes for submitting and processing the criminal history reports, we cannot determine which entity is responsible for the information that was missing from Justice's criminal records. Regardless, when criminal history information is incomplete, Justice's records will not reflect the current firearm prohibition status of all individuals.

As part of our testing of mental health and criminal history records, we also reviewed the length of time it takes Justice to enter paper reports into its databases. State law does not identify a time period within which Justice is to enter the firearm prohibition reports into its databases. However, Justice's mental health unit manual states the expectation that all reports from mental health facilities and courts should be entered within one to two days of Justice receiving the report. For the period from 2010 through 2012, we found that for the 12 mental health reports we reviewed that were entered in the mental health database, staff took an average of three business days to make the entries.[23] Separately, the criminal information unit has adopted a policy to enter criminal history reports within 90 calendar days. It based this time frame on a 1985 court decision that ordered Justice to enter criminal history reports into the criminal history system no more than 90 days after receipt. For the seven criminal history reports we reviewed in the same three-year period, we found that the criminal information unit entered them into the criminal history system between 29 and 65 days after receipt. Although we understand that this unit is the central repository for all arrest and disposition information in the State, the unit's time to process mental health-related reports is significantly longer than the average processing time we found in the mental health unit. Because it is

Although the criminal information unit is the central repository for all arrest and disposition information in the State, the unit's time to process mental health-related reports is significantly longer than the average processing time we found in the mental health unit.

[23] The mental health reports we reviewed were from mental health facilities, courts, and local law enforcement.

important for Justice to review information about prohibiting events as quickly as possible, we believe a review of whether the criminal information unit can prioritize the entry of reports it receives about court mental health determinations is warranted.

Justice's Mental Health Unit Did Not Retain All Required Records and It Lacks Sufficient Controls Over Electronic Record Deletions

Justice did not keep its paper records in accordance with the time period it identified as necessary on its record retention schedule. The *State Administrative Manual* requires every state agency to establish time periods for retaining its documents. Further, the California Department of General Services' *Record Management Handbook*, which supplements information in the *State Administrative Manual*, directs the agency to determine the immediate and future usefulness of the records to the agency as well as to the entire state government. Justice developed a retention schedule that required the mental health unit to keep most types of mental health facility and court-reported information it received for the current year plus six months. Thus, information it received in 2012 should be retained until July 1, 2013. The retention schedule also states that the mental health unit will keep law enforcement reports for a six-month period. However, with the exception of law enforcement reports, the mental health unit did not maintain paper reports of firearm prohibitions in accordance with its record retention schedule. For example, we found during our search for these items in April 2013 that Justice had not kept mental health facility or court reports it received from January 2012 through July 2012. Justice's assistant bureau chief stated that once the information from a paper document is entered into the mental health database, Justice considers the electronic record the official record, and there is no longer a need to keep the paper document. However, as we discussed previously, Justice has not ensured that it performs quality control reviews of the entries into its mental health database.[24] In such a situation, retention of paper records could serve as a secondary record of prohibiting information.

Justice does not know why it did not retain until July 1, 2013, all paper records received during 2012, as its retention schedule states it should have.

In general, Justice does not know why it did not retain until July 1, 2013, all paper records received during 2012, as its retention schedule states it should have. The current mental health unit manager indicated that staff may not have correctly understood the retention schedule. He further stated that there have not been any requests for information regarding these reports that would require double-checking the original documents Justice received. However,

[24] The lack of original documents also limited our testing of the reports that staff in the mental health unit enter into the mental health database, as we describe in the Scope and Methodology.

prematurely destroying the paper records also means that Justice cannot perform its own quality control review of the entries to the mental health database.

Additionally, although the assistant bureau chief stated that the electronic record of a prohibition is the official record, Justice lacks sufficient internal controls to ensure that staff modifications to electronic records in the mental health database are appropriate. Justice's staff can delete most records from the mental health database without obtaining supervisory approval. The mental health unit's manual discusses when records should be deleted, such as when a court releases an individual from his or her firearm prohibition (including early terminations of conservatorships), and when removing previous law enforcement reports so that the mental health database reflects only the most recently reported prohibition. According to the mental health unit manager, there is no report that he or anyone else reviews that identifies the database records that staff delete, but he trusts his staff to know which database records should be deleted. Although some deletions are appropriate, such as deletions related to the restoration of firearm rights by a court, unless Justice conducts a supervisory review to verify whether deletions are appropriate, Justice has no means to determine whether staff are appropriately modifying firearm prohibition records.

According to the mental health unit manager, there is no report that he or anyone else reviews that identifies the database records that staff delete.

Justice Does Not Have Current, Reliable System Documentation

Another important task that Justice has yet to accomplish is updating necessary system documentation of the APPS database and the mental health database, as the *State Administrative Manual* requires. System documentation provides critical information—such as a data dictionary that describes the data elements stored in the system—which enables staff to efficiently and effectively develop, modify, and use the system. When we asked for such system documentation, Justice responded that it did not have up-to-date documentation for these systems.

Not having current, reliable documentation causes inefficiencies that could be costly. Justice experienced this during the audit when we attempted to obtain information about data contained in the APPS database and the mental health database. Lacking current, reliable documentation, Justice had to gather several individuals who had knowledge about these systems and review programming source code to respond to our inquiries. It took several meetings and multiple follow-up discussions to resolve questions that could have been answered easily if Justice had maintained current system documentation. This condition is made more serious by staff turnover, which we also observed during the audit.

Specifically, when a key employee left during the audit, Justice lost a wealth of undocumented system knowledge, although Justice continued to consult with this employee to answer some of our questions. Information technology employees often have unique skills that are in high demand, and as a result, Justice leaves itself vulnerable by relying on the undocumented system knowledge of employees who may not be there to consult in the future. Until it develops current, reliable system documentation for the APPS database and the mental health database, Justice may experience the loss of efficiency and effectiveness when troubleshooting or modifying these databases.

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Justice Implements Federal Prohibitions

The law that required Justice to establish the APPS database sets forth the manner in which Justice should identify and record information, and the guidance from the APPS unit's manual is consistent with the requirements. For example, the law requires Justice to determine whether an individual who is prohibited by state or federal law owns or possesses a firearm and prescribes the specific information that must be entered into the APPS database, such as the basis of the firearm prohibition and a description of the owned or possessed firearm. We found that the manual provided staff direction to enter the required information into the APPS database. In addition, we found that the mental health unit's manual and the criminal information unit's procedures contain guidance for how staff should process the information and that the guidance is consistent with state law's requirement that Justice identify armed prohibited persons.

We also observed that Justice acts to comply with federal laws relating to background checks for firearm purchases and federal prohibitions on firearm possession. The Brady Handgun Violence Prevention Act, enacted in 1993, mandates that a firearm purchaser must be checked against the National Instant Criminal Background Check System (NICS) records. The checks are to ensure that the individual does not have a criminal record or is not otherwise ineligible to make a purchase. Further, the California Penal Code authorizes Justice to participate in the NICS program, and Justice performs these background checks when requested by firearm dealers in the State. In addition to receiving prohibiting information from NICS, Justice also communicates prohibiting events that occur in California to NICS if the event also has a federal prohibition. Further, when it determines an individual is prohibited from owning a firearm, Justice applies federal prohibitions to that individual if the duration of the federal prohibition is longer than California's prohibition. Although state law applies mental health prohibitions that are generally limited in duration, many

types of mental health prohibiting events we reviewed during this audit may establish a lifetime prohibition under federal law. According to Justice's assistant bureau chief, the application of federal prohibitions as part of Justice's armed prohibited persons program is a natural extension of accessing NICS as the California Penal Code authorizes.

The federal prohibition generally remains even after the state prohibition ends. Federal firearm prohibitions related to mental health include, among other things, an individual whom the court has found to be incompetent to stand trial or who has been involuntarily committed to a mental institution. For example, an individual whom a California court has placed under conservatorship due to mental illness, because he or she lacks the capacity to manage his or her own affairs, is prohibited from owning a firearm until his or her federal ownership rights are restored. Federal rights restoration is necessary even when California courts have restored an individual's rights under state law through a certificate or court order stating that the individual may possess a firearm or other deadly weapon. Therefore, although Justice processes court reports that restore an individual's firearms rights under state law, the individual remains on the armed prohibited persons list and is prevented from purchasing a firearm in the future because of the federal prohibition.

Federal firearm prohibitions related to mental health include, among other things, an individual whom the court has found to be incompetent to stand trial or who has been involuntarily committed to a mental institution.

The federal government has decided to restore firearm rights through state restoration processes, provided that the state processes meet federal requirements. According to information published by the United States Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the United States Attorney General has the authority to grant relief from the federal firearm prohibitions, and the United States Attorney General delegated this authority to the ATF. However, the information states that, since October 1992, the ATF has not had funding to investigate or act upon applications for relief that applicants submit. As an alternative, states have the ability to provide relief from the federal prohibitions if the state's restoration program meets the requirements of the NICS Improvement Amendments Act of 2007.

According to Justice's assistant bureau chief, federal authorities do not recognize California's restoration of firearm rights because California's restoration process does not include all elements the federal government requires of a restoration process. However, Justice could not provide us an analysis or support for why it believes that federal authorities do not recognize California's firearm rights restoration processes. In response to our questions, the assistant bureau chief submitted a specific request to the ATF in July 2013 to verify Justice's understanding that the ATF will not recognize the California restoration process for individuals

who were previously held involuntarily at mental health facilities. According to the assistant bureau chief, as of September 2013, the ATF has not responded to the request.

Justice continues to apply federal prohibition time periods to individuals whose rights have been restored under state law. As a result, individuals in California who have had their firearm rights restored under state law remain indefinitely prohibited under federal law from possessing or purchasing a firearm. Although this issue may be of interest to policy makers, without clear guidance about how the California restoration process fails to meet federal criteria, Justice is unable to inform these policy makers with certainty about what legislative change may be required to completely restore firearm rights.

Justice Is Making Efforts to Confiscate Firearms From Individuals on the Armed Prohibited Persons List

Although Justice indicates that its enforcement agents work daily on confiscating firearms from prohibited persons, Justice had completed three statewide confiscation sweeps since the beginning of 2011.

After Justice identifies armed prohibited persons who have a mental illness, it stores that information in the APPS database. A Justice report as of July 2013 shows that more than 20,800 prohibited persons were in the APPS database, representing more than 42,000 firearms. This count reflects individuals who were prohibited for any reason, not just those who were prohibited because they had a mental illness. Although Justice indicates that its enforcement agents work daily on confiscating firearms from prohibited persons, Justice had completed three statewide confiscation sweeps since the beginning of 2011. A May 2013 press release noted that Justice enforcement agents confiscated nearly 4,000 firearms from prohibited persons over the previous two years. However, as we discuss in the Introduction, Justice has indicated that a lack of resources has hampered its efforts to remove firearms from the individuals it identifies as armed and prohibited. In May 2013, to address this need, the governor signed into law a $24 million appropriations bill to advance Justice's efforts to confiscate firearms by addressing a backlog of armed prohibited persons in the APPS database. In addition to providing funding, the new law requires Justice to annually report to the Legislature the progress made in several areas, including the number of agents hired for enforcement and the number of firearms recovered. These reports are to begin no later than March 1, 2015, and are to focus on statistics for the preceding calendar year.

As of late June 2013 Justice reported that it had 33 enforcement agents working to confiscate firearms from individuals on the armed prohibited persons list. These officers work out of six regional field offices located around the State, and they target specific geographic areas when they confiscate firearms.

Justice investigates individuals on the armed prohibited persons list before attempting confiscation. According to the assistant chief over enforcement in the Bureau of Firearms, each individual on the armed prohibited persons list is reviewed to ensure that information about his or her firearms, address, and the reason for prohibition are correct and up to date. He stated that sometimes agents will identify multiple addresses where an individual may be living and the agents must carry out investigative work in the field to determine the person's actual location. As of August 2013 he noted that by transferring staff within Justice, Justice has already filled about one-third of the approximately 30 new enforcement agent positions that it plans to fill with the appropriation. He stated that new hires for the remaining positions would likely complete the examination processes in October 2013 and begin training for their positions at that time.

As discussed in Chapter 1, before this audit many required reporters were unaware that they should send information to Justice about individuals with mental illness, and Justice itself had not done all that it should to obtain this critical information. Further, Justice has not implemented certain essential controls, such as supervisory reviews, to ensure that it correctly handles decisions about prohibited persons. If Justice and the courts take the corrective actions we recommend, Justice will likely see an increase in the number of reports it receives, which will put further pressure on Justice's efforts to confiscate firearms from armed prohibited persons with mental illness. Any increase in the level of reporting will assist Justice in identifying armed prohibited persons that it would not have known about otherwise. This increase in the number of reported persons could assist Justice in stopping persons with mental illness from obtaining or possessing a firearm. However, for those persons who are currently armed and prohibited, any improvements made to the reporting and identification of armed prohibited persons will not ultimately improve public safety without a corresponding focus on the confiscation of firearms.

Recommendations

To ensure that it makes correct determinations about whether an individual is an armed prohibited person, by January 31, 2014, Justice should implement quality control procedures over APPS unit staff determinations. These procedures should include periodic supervisory review of staff determinations to ensure that staff decisions correctly identify all armed prohibited persons.

To maximize Justice's ability to identify armed prohibited persons, Justice should pursue a cost-effective method of reviewing alias information in the DMV database.

To ensure that its implementation of reviews of armed prohibited persons is consistent with state law, Justice should seek legislative change to confirm whether its practice of reviewing firearm records only back to 1996 is appropriate.

To reduce the risk that it may not identify an armed prohibited person, Justice should revise its electronic matching process to use all personal identifying numbers available in its databases.

To ensure that timely information is available for its efforts to identify armed prohibited persons and confiscate their firearms, Justice should manage staff priorities to meet both its statutory deadline for firearms background checks and its internal deadline for initially reviewing potential prohibited persons. Justice should report annually to the Legislature about the backlog of unreviewed potential prohibited persons and what factors have prohibited it from efficiently reviewing these persons.

To ensure that potential armed prohibited person cases do not wait too long for their first review by the APPS unit, by December 31, 2013, Justice should revise its goal for the daily queue to a more challenging level of no more than a maximum of 400 to 600 cases. Justice should monitor its performance against this goal and manage staff priorities as needed to meet it.

To ensure that it can adequately demonstrate that it has made efforts to address outstanding APPS database cases, Justice should require APPS unit staff to document key efforts to resolve these cases and retain this documentation.

To ensure that it regularly follows up and attempts to resolve APPS database cases that remain outstanding, by December 31, 2013, Justice should establish a specific time interval for how long cases can remain pending for review before becoming a higher priority for follow-up work and how often, at a minimum, its staff should perform follow-up work on these higher priority cases. Justice should establish a written policy that addresses both of these expectations.

To ensure that it meets its goal of eliminating the historical backlog of reviewing firearms owners by the end of 2016, Justice should manage its staff resources to continually address the backlog, and should notify the Legislature if it believes that it will not be able to fully process this backlog by its goal date. To help guide this effort, Justice should establish benchmarks that will indicate whether it is on track to meet its goal.

To ensure that it processes all reports it receives about persons with mental illness, by January 31, 2014, Justice's mental health unit should develop and implement quality control procedures over staff entry of reports into the mental health database. These procedures should include periodic supervisory review to ensure that all reports are entered correctly. Additionally, Justice should conduct a supervisory review of all staff decisions to delete records from the database before their deletion.

To ensure that mental health determinations reported to its criminal information unit are quickly available for review, Justice should assess whether the criminal information unit can prioritize the entry of reports regarding mental health determinations without a negative effect on the entry of all other criminal information into its system.

To ensure that information about individuals with mental illness does not go unexamined, Justice should document its effort to offer training to mental health facilities that continue to report on paper, and it should ensure that individuals whom these facilities report on paper are promptly entered into the mental health database.

To ensure that it retains appropriate records related to mental health firearms prohibitions, by March 31, 2014, Justice should review its record retention schedule for documents used by the mental health unit and adjust any retention periods it determines are inappropriate. Justice should then ensure that its mental health unit follows its retention schedule.

Justice should update and maintain its system documentation for the mental health and APPS databases to ensure that it can efficiently and effectively address modifications and questions about these databases.

To ensure that it fully supports its decision to apply federal prohibition terms to individuals, Justice should review all applicable federal and state laws and continue to seek clarification from the ATF and any other appropriate federal agencies to determine whether California's firearms restoration process meets federal criteria and, if not, why it does not. Justice should issue a report to the Legislature, within one year, detailing the results of its review and, if applicable, communicate why California's restoration process does not meet federal criteria and the impact that it has on prohibited persons who live in California.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Date:	October 29, 2013
Staff:	Karen L. McKenna, CPA, Audit Principal Bob Harris, MPP Myriam K. Arce, MPA, CIA Kelly Chen Richard S. Marsh, MST
Legal Counsel:	Stephanie Ramirez-Ridgeway, Sr. Staff Counsel
IT Audit Support:	Michelle J. Baur, CISA, Audit Principal Lindsay M. Harris, MBA

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF FIREARMS
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SACRAMENTO, CA 95820
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October 10, 2013

Elaine M. Howle, CPA*
State Auditor
Bureau of State Audits
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: BSA Report 2013-103

Dear Ms. Howle,

The Department of Justice (DOJ) has reviewed the Bureau of State Audits' (BSA) draft report titled "*Department of Justice - Mentally Ill Prohibited Persons*" and appreciates the opportunity to respond to the report. ①

By way of background, in 1999, due to the proliferation of gang violence and mass shootings in both California and across the nation, DOJ began studying high profile shootings to identify ways to reduce the number of these violent events. The study revealed an important similarity in the cases—the shooter was often a law-abiding citizen when he or she purchased or acquired their firearm but subsequently became prohibited from possessing firearms due to a mental health determination, a criminal conviction, or becoming the subject of a restraining or protective order. DOJ soon realized that if it had the means (e.g., funding for personnel and database enhancements) and the legal authority to immediately determine whether persons who lawfully purchased firearms subsequently became prohibited from owning, the violence could be curtailed.

Accordingly, DOJ sponsored Senate Bill 950 (Brulte/Scott, 2001). This bill was ultimately signed into law and authorized DOJ to cross-reference its database of persons who own handguns as reflected in DOJ's Consolidated Firearms Information System (CFIS) with its databases of persons who are prohibited by law from doing so. In 2003, DOJ obtained spending authority to build the Armed Prohibited Persons System (APPS) database. In November 2006, development was completed and the APPS database was implemented. California is the only state in the nation with a program like APPS.

At the time of implementation, APPS immediately identified approximately 6,800 armed and prohibited persons. Since that time, APPS has grown to approximately 21,000 armed and prohibited persons and DOJ has conducted nearly 11,000 investigations, resulting in the seizure of over 12,000 firearms and nearly 1 million rounds of ammunition from armed and prohibited persons throughout California.

APPS grows by approximately 3,000 persons per year, but California local law enforcement does not have sufficient resources to proactively locate and contact armed and

* California State Auditor's comments begin on page 79.

prohibited persons. To address this problem, Attorney General Harris sponsored Senate Bill 819 in 2011 to fund increased enforcement efforts. After its enactment, Attorney General Harris ordered a series of sweeps that successfully took firearms out of the possession of persons prohibited due to their criminal histories or mental health. After the success of these sweeps, Attorney General Harris sought and received additional resources from the Legislature in January 2013, via Senate Bill 140, to hire 36 additional agents for the APPS program. This will enable DOJ to increase enforcement operations in Los Angeles, San Francisco, Sacramento, Fresno and Riverside to 70 special agents dedicated to APPS.

In response to the BSA's specific recommendations identified in the report, DOJ submits the following responses:

CHAPTER 1 RECOMMENDATIONS:

BSA Recommendation:

To ensure that it has the necessary information to identify armed prohibited persons with mental illness, the Department of Justice (Justice) should coordinate with the Administrative Office of the Courts (AOC) at least once a year to share information about court reporting levels and to determine the need to distribute additional information to courts about reporting requirements and the manner in which to report. In coordinating with the AOC about potential underreporting, at a minimum Justice should consider trends in the number of reports each court sends and the number of reports that it might expect to receive from a court given the court's size, location, and reporting history. Whenever Justice identifies a court that it determines may not be reporting all required information, it should request that the court forward all required case information.

DOJ Response:

The Department of Justice (DOJ) agrees with this recommendation, and did, on August 27, 2013, issue an information bulletin to the 58 superior courts to reiterate state-mandated responsibilities regarding the reporting of persons prohibited from owning/possessing firearms to DOJ. DOJ will also work with the AOC to establish regular meetings to discuss underreporting within the state's court system. To facilitate this relationship and obtain the necessary information, DOJ will pursue enhancements to the Mental Health Reporting System (MHRS) to provide on-demand reports which specifically track reporting by each superior court. The on-demand reports will facilitate DOJ's ability to analyze court reporting activities so that DOJ is able to identify which courts are possibly underreporting.

While DOJ cannot compel courts to submit mental health determinations, DOJ will take the following actions to monitor and encourage timely submission of mental health determinations: (1) DOJ will process quarterly reports for each superior court to determine possible underreporting of mental health determinations; (2) DOJ will immediately notify both the AOC and the presiding judge of superior court of our findings regarding possible

underreporting; (3) DOJ will seek a timely explanation from the AOC and the presiding judge of the individual court about the suspected underreporting; (4) DOJ will offer training to court employees regarding the timely reporting of mental health determinations to DOJ; and (5) DOJ will keep records of its communications with the AOC and the presiding judge regarding the suspected underreporting.

BSA Recommendation:

To ensure that it keeps an accurate and up-to-date list of all mental health facilities that are required to report individuals with mental illness, at least twice a year Justice should update its outreach list of mental health facilities by obtaining a list of facilities from the Department of Health Care Services.

DOJ Response:

DOJ agrees with this recommendation and, after reviewing the BSA's draft audit report, contacted by phone the 22 facilities BSA identified that had not submitted mental health determinations to DOJ. We learned that five of these facilities had changed their name but were continuing to report to DOJ under their prior name, thus leading to confusion as to the correct facility submitting the report. As for the other 17, while approved to provide treatment to reportable individuals, 12 did not believe they have a reporting requirement because they do not conduct the type of assessment that often leads to a mental health determination. We are awaiting return phone calls from the remaining five facilities identified by BSA. ②

DOJ will also send a letter to the director of DHCS (1) requesting an updated list of statewide mental health facilities and advising DHCS of the statutory provisions regarding state mandated mental health facility reporting requirements, and send a letter seeking an updated list of statewide mental health facilities on the first day of every January and June thereafter; (2) recommending that DHCS incorporate information about state mandated mental health facility reporting requirements into its mental health facility licensing materials and conditions to ensure that both newly-licensed and existing mental health facilities are immediately informed of their responsibilities under California law; and (3) recommending that DHCS provide DOJ with the contact information of any newly-licensed mental health facility within 30 days of its licensure.

BSA Recommendation:

As soon as it identifies mental health facilities that have not yet received information about reporting requirements and the electronic reporting system, Justice should send these facilities the related information.

DOJ Response:

DOJ agrees with this recommendation and will continue notifying statewide mental health facilities of the state's reporting requirements by working with DHCS to identify known mental health facilities operating within the state. Accordingly, as mentioned above, DOJ will

contact DHCS and advocate that information about state mandated mental health facility reporting requirements be incorporated into the training materials and licensing conditions given to newly-licensed mental health facilities, as well as any information that is given to existing mental health facilities upon the renewal of their licenses, if applicable.

BSA Recommendation:

To ensure that it continues to receive information from facilities that currently report individuals with mental illness and that should continue to report such individuals, by January 31, 2014, at a least twice a year Justice should implement a review of the number of reports it receives from individual mental health facilities. These reviews should focus on identifying any significant drops in a facility's reporting levels and include follow up with facilities that may require additional assistance in reporting.

DOJ Response:

DOJ agrees with this recommendation and will request needed system enhancements to the mental health database to obtain court and mental health facility reporting statistics via on-demand reports. Currently, DOJ's ability to generate this information is limited to writing complex computer programs to extract the information each time it is needed. DOJ will begin the work to enhance the Mental Health Database to include the reporting requirements discussed above as quickly as possible. In the interim, DOJ will immediately contact DHCS to identify all known facilities and forward letters advising each of the reporting requirements.

While DOJ cannot compel mental health facilities to submit mental health determinations they are statutorily required to provide (see Welf. & Inst. Code, §§ 8103, subds. (f)(2)(B), (g)(2)(B), 8105, subd. (b)), DOJ will take the following steps to monitor and encourage the timely submission of mental health determinations: (1) DOJ will process quarterly reports for each mental health facility to determine possible underreporting of mental health determinations; (2) DOJ will immediately notify both DHCS and the mental health facility of our findings regarding possible underreporting; (3) DOJ will seek a timely explanation from DHCS and the mental health facility about the suspected underreporting; (4) DOJ will offer training to mental health facility employees regarding the timely reporting of mental health determinations to DOJ; and (5) DOJ will keep records of its communications with DHCS and the mental health facility regarding the suspected underreporting. And, similar to our proposed relationship with AOC, DOJ will seek regular meetings with DHCS to discuss underreporting mental health facilities.

DOJ will evaluate its available resources in an effort to determine whether additional staffing will be needed to fully implement this recommendation.

BSA Recommendation:

To ensure that all applicable information from State Hospitals is communicated to Justice, by March 31, 2014, Justice and State Hospitals should establish a written understanding

of the method and frequency with which State Hospitals will report prohibited individuals to Justice.

DOJ Response:

DOJ agrees with this recommendation and will work with the state hospitals to establish regular meetings to discuss the timely reporting of mental health determinations. DOJ will send a letter to the Director of the Department of State Hospitals to discuss the method and frequency with which state hospitals can report prohibited persons to DOJ. ③

CHAPTER 2 RECOMMENDATIONS:

BSA Recommendation:

To ensure that it makes correct determinations about whether an individual is an armed prohibited person, by January 31, 2014, Justice should implement quality control procedures over APPS unit staff determinations. These procedures should include periodic supervisory review of staff determinations to ensure that staff decisions correctly identify all armed prohibited persons.

DOJ Response:

DOJ agrees with this recommendation and will evaluate its current resources in an effort to determine whether additional staffing will be needed to fully implement this recommendation. DOJ anticipates that to meet minimum quality control standards of at least 10% of all APPS reviews, DOJ would need to conduct an additional 10,500 reviews annually. To accomplish this minimum standard, DOJ would likely need to hire additional staff.

BSA Recommendation:

To maximize Justice's ability to identify armed prohibited persons, Justice should pursue a cost-effective method of reviewing alias information in the DMV database.

DOJ Response:

DOJ agrees with this recommendation and will seek a cost-effective method to appropriately utilize the alias information in the DMV database.

BSA Recommendation:

To ensure that its implementation of reviews of armed prohibited persons is consistent with state law, Justice should seek legislative change to confirm whether its practice of reviewing firearm records only back to 1996 is appropriate.

DOJ Response:

DOJ agrees with this recommendation and will pursue legislative clarification to the statute to reflect the correct date of 1996. However, DOJ believes that its current practice is consistent with state law. Specifically, while Penal Code section 30000 requires DOJ to cross-reference persons who have ownership or possession of a firearm after January 1, 1991 by utilizing the information contained in the Consolidated Firearms Information System (CFIS), this database was not implemented until 1996, and thus there are no records available via CFIS going back to January 1, 1991. DOJ does, however, review assault weapon registrations going back to 1989 as those records contain verifiable identification information (i.e., a thumbprint), while the historical DROS information (i.e., pre-1996) does not.

BSA Recommendation:

To reduce the risk that it may not identify an armed prohibited person, Justice should revise its electronic matching process to use all personal identifying numbers available in its databases.

DOJ Response:

The DOJ agrees with this recommendation and has already submitted a management change request to the Hawkins Data Center to correct this system development oversight.

BSA Recommendation:

To ensure that timely information is available for its efforts to identify armed prohibited persons and confiscate their firearms, Justice should manage staff priorities to meet both its statutory deadline for firearms background checks and its internal deadline for initially reviewing potential prohibited persons. Justice should report annually to the Legislature about the backlog of unreviewed potential prohibited persons and what factors have prohibited its ability to efficiently review these persons.

DOJ Response:

DOJ agrees with this recommendation and will evaluate its current resources to accomplish the legislative priorities it identifies. In addition, DOJ will, in compliance with the provisions of Senate Bill 140, provide a report to the legislature in March 2015 regarding our efforts to eliminate the APPS backlog.

DOJ is deeply committed to its responsibility to timely process Dealer's Record of Sale (DROS) transactions, as well our obligation to timely determine who is armed and prohibited. DOJ has consistently met its statutory obligations to complete DROS background checks within the 10-day statutory time frame (see Pen. Code, §§ 26815, 28220) despite being inundated with work due to record-breaking increases in firearm sales within California. Historically, DOJ will see an increase in firearm sales following certain triggering events: state and national elections;

threats of new and restrictive gun laws; catastrophic events, such floods, fires, and earthquakes; and gun violence, such as the riots following the Rodney King verdict, the Aurora theater shooting, and the Sandy Hook Elementary School shooting. Sales of firearms are volatile, and DOJ makes every effort to manage its resources to address workload fluctuations.

For example, during the time period discussed in the audit (December 2012), DOJ processed over 125,000 DROS background checks. This represented an 88% increase over the same period in 2011 when DOJ processed nearly 67,000. In fiscal year (FY) 2012/2013, DOJ processed 949,602 DROS background checks, a 40% increase over the prior FY where DOJ processed nearly 677,000 DROS background checks. Such workload increases are impossible to predict and are not easily addressed given the state's complex and lengthy civil service hiring process. Consequently, redirecting both resources and workload priorities is DOJ's only option for responding to gun purchase trends while also working to eliminate the APPS backlog.

BSA Recommendation:

To ensure that potential armed prohibited person cases do not wait too long for their first review by the APPS unit, by December 31, 2013, Justice should revise its goal for the daily queue to a more challenging level, of no more than a maximum of 400 to 600 cases. Justice should monitor its performance against this goal and manage staff priorities as needed to meet it.

DOJ Response:

DOJ agrees with this recommendation and will continue to utilize its resources to maximize public safety by keeping firearms out of the hands of prohibited persons and subsequently disarming those who have been identified as having them. As reflected in the audit finding, DOJ often must redirect its resources and priorities based on actual workload due to fluctuations in the sales of firearms. Also as indicated in the audit finding, DOJ has received additional personnel resources through the state budget process needed to address the increase in DROS and has therefore redirected APPS staff back to APPS workload. Accordingly, DOJ has and will continue to monitor and adjust APPS processing goals as necessary.

It is important to remember that DROS background checks must be completed within 10 days of receipt of a completed application or fee to determine whether an individual seeking to purchase a firearm is prohibited from possessing, owning, purchasing, or receiving a firearm.

BSA Recommendation:

To ensure that it can adequately demonstrate that it has made efforts to address outstanding APPS database cases, Justice should require APPS unit staff to document key efforts to resolve these cases and retain this documentation.

DOJ Response:

DOJ agrees with the recommendation and will take immediate action to require APPS personnel to document their key efforts to resolve APPS cases and require such documentation be retained with the person's APPS file. Specifically, DOJ will (1) require each APPS analyst to document the date, time, agency and person contacted in its efforts to obtain needed information on each APPS case; (2) require the APPS unit supervisor to develop a master spreadsheet for the unit analyst to access and record this information electronically; (3) require the APPS unit supervisor to review the spreadsheet weekly; (4) require the APPS unit manager to review the spreadsheet monthly to ensure that resolution goals are being met by DOJ staff.

BSA Recommendation:

To ensure that it regularly follows up and attempts to resolve APPS database cases that remain outstanding, by December 31, 2013, Justice should establish a specific time interval for how long cases can remain pending for review before becoming a higher priority for follow-up work and how often, at a minimum, its staff should perform follow-up work on these higher priority cases. Justice should establish a written policy that addresses both of these expectations.

DOJ Response:

DOJ agrees with this recommendation and will, by December 31, 2013, establish a written policy that addresses both the length of time a case can remain "pending for review" and how often staff should perform work on these cases. However, DOJ's ability to meet specific timeframes for resolving these cases is dependent on DOJ's acquisition of certain records from outside sources over which DOJ has no authority. Thus, while DOJ may enact a specific time interval for escalation, other government agencies may not be on the same schedule, and thus may not provide the information to DOJ within our preferred time period.

BSA Recommendation:

To ensure that it meets it goal of eliminating the historical backlog reviewing firearms owners by the end of 2016, Justice should manage its staff resources to continually address the backlog, and should notify the Legislature if it believes that it will not be able to fully process this backlog by its goal date. To help guide this effort, Justice should establish benchmarks that will indicate whether it is on track to meets its goal.

DOJ Response:

DOJ is committed to eliminating the APPS historical backlog by 2016. As previously indicated, DOJ will continue to monitor and respond to workload fluctuations impacting APPS processing. Additionally, DOJ will establish realistic goals as necessary to complete the backlog by 2016.

BSA Recommendation:

To ensure that it processes all reports that it receives about persons with mental illness, by January 31, 2014, Justice's mental health unit should develop and implement quality control procedures over staff entry of reports into the mental health database. These procedures should include periodic supervisory review to ensure that all reports are entered correctly. Additionally, Justice should conduct a supervisory review of all staff decisions to delete records from the database before their deletion.

DOJ Response:

DOJ agrees with this recommendation and will develop quality review guidelines for staff.

BSA Recommendation:

To ensure that mental health determinations that are reported to its criminal information unit are quickly available for review, Justice should assess whether the criminal information unit can prioritize the entry of reports regarding mental health determinations without a negative effect on the entry of all other criminal information into its system.

DOJ Response:

DOJ agrees with this recommendation and will assess its resources to prioritize the entry of mental health determinations while maintaining or exceeding the current ACHS update time frames.

BSA Recommendation:

To ensure that information about individuals with mental illness does not go unexamined, Justice should document its effort to offer training to mental health facilities regarding the electronic reporting requirement and it should ensure that individuals whom these facilities report on paper are promptly entered into the mental health database.

DOJ Response:

DOJ agrees with this recommendation and will continue to offer training to mental health facilities regarding the reporting requirements. DOJ has offered such training since 1991, and began providing training on the electronic reporting requirements in 2010. DOJ will document all training it provides to mental health facilities. DOJ will continue its efforts to ensure all mental health reports are updated into MHFPS in a timely manner. (4)

BSA Recommendation:

To ensure that it retains appropriate records related to mental health firearms prohibitions, by March 31, 2014, Justice should review its record retention schedule for documents used by the mental health unit and adjust any retention periods it determines are inappropriate. Justice should then ensure that its mental health unit follows its retention schedule.

DOJ Response:

DOJ agrees with this recommendation and will review and update its record retention schedule to reflect actual document handling and destruction activities and train mental health unit staff to ensure the schedule is followed.

BSA Recommendation:

Justice should update and maintain its system documentation for the mental health and APPS databases to ensure that can efficiently and effectively address modifications and questions about these databases.

DOJ Response:

DOJ agrees with this recommendation and will review and update its system documentation for both MHFPS and APPS databases.

BSA Recommendation:

To ensure that it fully supports its decision to apply federal prohibition terms to individuals, Justice should review all applicable federal and state laws and continue to seek clarification from the ATF and any other appropriate federal agencies to determine whether California's firearms restoration process meets federal criteria and if not, why it does not. Justice should issue a report to the Legislature, within one year, detailing the results of its review and, if applicable, communicate why California's restoration process does not meet federal criteria and the impact that it has on prohibited person who live in California.

DOJ Response:

DOJ agrees with this recommendation and will continue to make efforts to confirm with the federal government regarding whether California's firearm restoration process meets the requirements of the NICS Improvement Amendment Act of 2007. DOJ, however, has independently determined that California's firearm restoration process does not meet the federal criteria because the standard of review for appeals of decisions denying the restoration firearm rights due to mental health determinations is a "substantial evidence" standard (see *People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1553) rather the federally-required "de novo" standard.

(5)

Changing the standard of review would require a change to the statutory scheme, and this function rests solely with the legislature.

* * * * *

Again, thank you for the opportunity to review and comment on this draft audit report. If you have any questions or concerns regarding this matter, you may contact me at the telephone number listed above.

Sincerely,

STEPHEN J. LINDLEY, Chief
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General

cc: Nathan R. Barankin, Chief Deputy Attorney General
Elizabeth L. Ashford, Chief of Staff
Larry Wallace, Director, Division of Law Enforcement
Andrew J. Kraus III, CPA, Director of Office of Program Review and Audits
Steve Buford, Assistant Bureau Chief, Bureau of Firearms
Kimberly Granger, Deputy Attorney General IV, Bureau of Firearms

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF JUSTICE

To provide clarity and perspective, we are commenting on the Department of Justice's (Justice) response to our audit. The numbers below correspond to the numbers we have placed in the margin of Justice's response.

The draft report Justice reviewed did not include the title of our report because the title includes conclusions we reach about other entities. The title Justice refers to in its response reflects the description of the subject of the audit that was included in the audit scope and objectives approved by the Joint Legislative Audit Committee. ①

Justice's response indicates that it is now conducting the type of research and outreach that we expected it would be conducting before the audit began. However, Justice misstates how we identified the 22 facilities we discuss. We did not identify these as facilities, "that had not submitted mental health determinations to DOJ." As we explain on page 32, we identified these 22 facilities by comparing a list of approved mental health facilities to the outreach list Justice used to communicate with facilities. We compared names and addresses from both lists and found 22 facilities on the list of approved facilities that were not on Justice's outreach list. We recommend on page 40 that Justice obtain a list of approved mental health facilities at least twice a year so that it can keep its outreach list up to date. We also recommend that whenever it identifies facilities that have not yet received information about reporting requirements, Justice should send these facilities this information. The details about these 22 facilities Justice indicates that it has learned may be beneficial to its outreach efforts; however, it did not know this level of detail until we noted that its process for maintaining its outreach list could be improved. ②

Justice outlines encouraging initial steps it will take to implement our recommendation that it develop a written understanding with the California Department of State Hospitals (State Hospitals) regarding how often and by what method State Hospitals will report persons with mental illness. However, as we note on page 38, both departments could benefit from a formal agreement about these issues. As it moves forward with implementing this recommendation, it will be important for Justice to move beyond the discussions it outlines in its response and propose a formal written agreement. ③

④ Justice's response refers to its regular efforts to train mental health facilities, which we discuss on page 35. However, our concern, which we note on page 55, was that Justice could not provide evidence that it followed up with mental health facilities that continued to submit paper reports after the electronic reporting requirement took effect and that it identified them as needing training. Therefore, we have made a slight revision to our recommendation to focus attention on this particular concern.

⑤ At the time of our review, Justice could not provide us an analysis of this issue or support for why it believed that California's firearm restoration process does not meet federal criteria, as we state on page 61. Justice indicates that it has now independently determined why California's firearm restoration process does not meet the federal criteria and indicates that resolving the issue would require a statutory change. As we recommend on page 65, Justice should continue to reach out to the federal government and report to the Legislature, within one year, about the results of its review. Doing so would assist the Legislature in considering any needed changes to state law.

State of California
HEALTH AND HUMAN SERVICES AGENCY

EDMUND G. BROWN JR.
GOVERNOR

DIANA S. DOOLEY
SECRETARY

Aging

Child Support Services

Community Services and Development

Developmental Services

Emergency Medical Services Authority

Health Care Services

Managed Health Care

Managed Risk Medical Insurance Board

Public Health

Rehabilitation

Social Services

State Hospitals

Statewide Health Planning and Development

October 10, 2013

Elaine M. Howle, State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814
Attn: Karen McKenna

To Whom It May Concern;

Enclosed you will find a document and compact disk from California Department of State Hospitals in response to Bureau of State Audits draft report on an audit on the reporting of persons with mental illness to the Department of Justice as requested by the Joint Legislative Audit Committee. If you have any questions or concerns, please feel free to contact me. Thank you.

Sincerely,

(Signed by: Amber Ostrander)

Amber Ostrander
Associate Governmental Program Analyst
916-651-8059
amber.ostrander@chhs.ca.gov

STATE OF CALIFORNIA — DEPARTMENT OF STATE HOSPITALS - SACRAMENTO EDMUND G. BROWN JR., GOVERNOR

ADMINISTRATIVE SERVICES DIVISION
1600 Ninth Street, Suite 150
Sacramento, CA 95814

October 9, 2013

Elaine M. Howle
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: Draft Audit Recommendation

Dear Ms. Howle:

The Department of State Hospitals (DSH) is currently successfully sharing with the Department of Justice (DOJ) the required information about prohibited persons on an ongoing basis. DSH currently monitors its Admissions, Discharges, and Transfers System for reports of patients who must be reported to DOJ, and logs into DOJ's online reporting system to upload those reports as they are generated. DSH concurs with the recommendation that it would be beneficial to implement a formal agreement with DOJ regarding the method and frequency of the information sharing and is working with DOJ on an Interagency Agreement to effectuate this recommendation.

Sincerely,

Mark Beckley
Deputy Director

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director of the Courts

October 9, 2013

Ms. Elaine M. Howle, State Auditor*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Re: Audit Report 2013-103, Department of Justice—Mentally Ill Prohibited Persons

Dear Ms. Howle:

As always we appreciate the opportunity to comment on audit reports that have comments and recommendations concerning the judicial branch. The draft section of the report referenced above that was provided to the Administrative Office of the Courts (AOC) was reviewed and we have no changes to suggest.

We would like to reiterate that the courts do require at least two court days to report to the Department of Justice (DOJ), not the proposed reporting within 24 hours of a prohibiting event. Given the unprecedented budget cuts to the judicial branch, limited business hours and staff, and other resource issues, the shorter deadline is not recommended. Also as indicated to your staff, many courts do not have electronic reporting capabilities; when funding is available for it, reporting capabilities can be addressed. ①

As recommended, the AOC expects to coordinate with DOJ at least once a year to obtain information about court reporting levels and plans to incorporate new DOJ procedures and forms into court training. The AOC will continue to provide technical assistance to the courts in complying with the requirement to report prohibited individuals and will continue to assist the

* California State Auditor's comment appears on page 85.

courts in taking all appropriate steps with the resources they have to ensure compliance with the law.

Thank you for your continued assistance and your staff's continued communications. Please feel free to contact John Judnick, Senior Manager of Internal Audit Services of the AOC, if you have any questions, concerns, or need for additional information.

Very truly yours,

Steven Jahr
Administrative Director of the Courts

SJ/JJ
cc: Jody Patel, AOC Chief of Staff
Curtis L. Child, AOC Chief Operating Officer
Curt Soderlund, AOC Chief Administrative Officer
Cory T. Jasperson, Director, AOC Office of Governmental Affairs
John Judnick, Senior Manager, AOC Internal Audit Services

Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE ADMINISTRATIVE OFFICE OF THE COURTS

To provide clarity and perspective, we are commenting on the Administrative Office of the Courts' (AOC) response to our audit. The number below corresponds to the number we have placed in the margin of the AOC's response.

The AOC reiterates its perspective, which we have included on page 30, that because of resource constraints, a shorter deadline for courts to report prohibited persons to the Department of Justice is not recommended. Nevertheless, because it is important for public safety that prohibiting events be reported promptly, we stand by our recommendation that the Legislature amend state law to require each reporting entity to report within 24 hours of a prohibiting event. ①

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SHERRI R. CARTER
EXECUTIVE OFFICER / CLERK
111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014
(213) 974-5401

Superior Court of California
County of Los Angeles

October 9, 2013

Elaine M. Howle, CPA
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Dear Ms. Howle:

RE: Audit of the Reporting of Persons with Mental Illness to the Department of Justice

Thank you for bringing these issues to our attention. The Court acknowledges the procedural deficiencies and has already taken steps to remedy them. Discussions are underway to identify quality control procedures. We will implement these measures by the suggested dates.

Sincerely,

SHERRI R. CARTER
Executive Officer/Clerk

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Superior Court of California
County of San Bernardino

COURT EXECUTIVE OFFICE
303 West Third Street, Fourth Floor
San Bernardino, CA 92415

STEPHEN H. NASH
COURT EXECUTIVE OFFICER

PHONE (909) 708-8747
FAX (909) 708-8784

October 9, 2013

Elaine M. Howle, CPA*
California State Auditor
621 Capitol Mail, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle:

The following is our response to the Audit of Reporting of Persons with Mental Illness to the Department of Justice.

ISSUE:

The San Bernardino Superior Court Did Not Report Findings That Individuals Were Mentally Incompetent.

RESPONSE:

PC1026, PC1370, PC1372 and Mentally Disordered Offender Cases: The court reviewed and revised our current procedures in reporting the mental incompetency cases. These include PC1026, PC1370, PC1372 and Mentally Disordered Offender cases. These changes will ensure full reporting consistent with statutory requirements. It should be noted that these cases are defendants who are incarcerated and if they are found to be incompetent to stand trial, they remain incarcerated at the county mental facility and have no access to weapons. The court has revised our procedures in reporting the mental incompetency cases as well as the return to mental competency cases. The procedures have been communicated to staff in the Criminal Division court wide and follow-up training will be provided to all criminal division staff.

* California State Auditor's comment appears on page 93.

ISSUE:

Incomplete Reporting

RESPONSE:

180 Day Post Certification Cases: The court has implemented procedures for the Probate Division with regard to the 180 day post certification hearings. It should be noted that it is not the court's normal practice for our county to process 180 day post certification cases. Even though it is not a normal practice, we have prepared procedures to ensure required reporting in the event that this practice is used in the future. The procedures have been communicated to staff in the Probate and Guardianship Division.

5350 Conservatorship Early Termination Cases: The court has revised our current procedures to include the 5350 conservatorship early termination in our reporting. The 5350 conservatorship early termination are now being reported. The procedures have been communicated to staff in the Probate and Guardianship Division and follow-up training will be provided to all the Probate and Guardianship Division staff.

Conservatorship Cases: Though we were in full compliance in our reporting to the Department of Justice, we determined that we could provide better documentation by including the date that the Reporting Form BOF4076 was mailed. We have included an additional step in our procedures to note the date the form was mailed in our Case Management System. The procedures have been communicated to staff in the Probate and Guardianship Division and follow-up training will be provided to all Probate and Guardianship Division staff.

ISSUE:

Timeliness of Court's Reporting

RESPONSE:

Currently, the statute states that reporting is required to be reported immediately, although "immediately" is not specifically defined. The court, in meeting this requirement, ensures that
① the reporting is completed within 7 days. In practice, the report (BOF4076) is mailed within 1 day and any electronic reporting is done within the period of downloading, which is within 7 days. In addition, a determination that "Firearms Prohibited" is entered by the Judicial Assistant via minute code.

Elaine M. Howle, CPA
California State Auditor
October 9, 2013
Page 3 of 3

ISSUE:

Recommendations

RESPONSE:

The court has implemented all new and revised procedures and will ensure that we are in full compliance by December 31, 2013. Follow-up training will be provided to staff regarding all new and revised procedures.

The court will ensure that all court locations are in compliance with the revised procedures in reporting of persons with mental illness to the Department of Justice by March 31, 2014. Follow-up training will be provided to all Criminal Division staff regarding these revised procedures.

If you should have any questions regarding this response, please contact me at 909-708-8767.

Sincerely,

STEPHEN H. NASH
Court Executive Officer

SHN:sb

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Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE SAN BERNARDINO SUPERIOR COURT

To provide clarity and perspective, we are commenting on San Bernardino Superior Court's (San Bernardino Court) response to our audit. The number below corresponds to the number we have placed in the margin of San Bernardino Court's response.

Although San Bernardino Court asserts it meets its seven-day definition of *immediately*, as we discuss on page 29, we were not able to calculate the number of days it took the court's probate division to submit reports to Justice because staff only recorded the date of the court determination on the firearm report form and San Bernardino Court did not keep any additional record of when the report form was mailed. Our conclusions on timeliness of reporting were limited to the probate division because, as we state on page 24, we did not find evidence that the criminal division reported any of the 15 court determinations we reviewed. In its response, the court acknowledges that it could better document the date that reports are mailed and plans to note this date in its case management system. ①

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
400 McAllister Street, Room 205
San Francisco, CA 94102-4512
Phone: 415-551-5707
FAX: 415-551-5701

T. MICHAEL YUEN
COURT EXECUTIVE OFFICER

October 8, 2013

Ms. Elaine M. Howle, CPA*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: Response to Audit of the Reporting of Persons With Mental Illness to the Department of Justice

Dear Ms. Howle:

Thank you for the opportunity to provide a response to excerpts pertaining to the San Francisco Superior Court from a draft report of an audit your office performed on the reporting of persons with mental illness to the Department of Justice. The Court makes the following responses to clarify the facts in your report and further explain the roles and responsibilities of the Court in the justice system.

1. The following statement leaves the impression that none of the conservatees have a firearms restriction: *"Therefore, according to the information the court provided, none of the individuals it placed under these conservatorships from 2010 through 2012 were [sic] prohibited from possessing a firearm by the court's conservatorship order, and we did not include them in the table."* In fact, all of the individuals placed under conservatorship from 2010 through 2012 are prohibited from possessing a firearm because all conservatorships in San Francisco arise from a 5150 hold, a 5250 hold, a finding of incompetent to stand trial, or not guilty by reason of insanity and such individuals already possess a reported firearms restriction and a federal prohibition. (1)

   The Court makes orders based upon petitions the District Attorney files on behalf of its client, the Office of Conservatorship Services. These petitions request specific relief from the Court. Historically, the District Attorney and its client, the Office of the Conservatorship Services, have not asked for a firearm prohibition because the individuals already have a firearms restriction arising out of a 5150 hold, a 5250 hold, a finding of not guilty by reason of insanity, or incompetent to stand trial, all of which are reported.

2. The report states "*Therefore, the fact that San Francisco Court did not order a single firearm prohibition during the three-year period we reviewed stands in stark contrast to other courts in the state."* Unlike San Francisco, petitions filed by the District Attorney or by County Counsel in other counties seek a firearms restriction. The Court's orders reflect the relief sought. The Court has already initiated discussions with all parties, including the Public Defender, to have the District Attorney and its client, the Office of Conservatorship Services, review its petition and the relief requested.

* California State Auditor's comments begin on page 97.

The report states: *"Such an effort appears necessary given the differences between the practices at the San Francisco Court and other courts we surveyed."* A court's orders are not a matter of "*practice*" but must be based upon the relief requested by the parties to the case. As noted, the Court has asked the District Attorney's Office and the Office of Conservatorship Services to review their petitions.

3. The report states *"We found, as indicated in survey responses, that even some courts in counties with smaller populations than San Francisco had at least some prohibition orders over the three years we reviewed."* The comparison of smaller and larger counties is not relevant, as the work of courts is determined by what court users file with or present to each court – not population of the county. Thus, what is relevant is the petition presented to each court which forms the basis of the court's ability to act. (2)

4. The report concludes: "*San Francisco Court should work with the district attorney and the Office of Conservatorship Services to ensure that the court is sufficiently considering whether individuals should be prohibited from possessing a firearm.*" The Auditor fails to recognize the separation of powers of the branches of government. The judicial branch cannot dictate to the District Attorney what petitions to bring or what relief it should seek. Moreover, it is unethical and improper for the Court to *"work with the district attorney and the Office of Conservatorship Services"* to achieve a particular result for one party only. Finally, it is improper and unethical for the District Attorney to attempt to collaborate with the Court to ensure that the Court is "*sufficiently considering*" an issue. As mentioned in point number two above, the Court has responsibly and ethically initiated discussions with all parties – not just one as recommended by the Auditor – regarding this matter. (3)

5. The report states: *"Where appropriate, the court should include prohibitive language in orders relating to those cases and promptly report these individuals to justice."* Again, the Court cannot dictate to a party the relief it should seek. The Court previously pointed out to the State Auditor that the Office of the Attorney General did not provide instructions and forms to the San Francisco Court for reporting firearms restrictions until September 5, 2013. The Court immediately implemented use of the forms. (4)

I hope the Court's responses are clear and provide greater insight for your office on the Court's role in the justice system. If you have any questions about our responses, please contact Stella Pantazis, Managing Attorney, at 415-551-3977.

Sincerely,

(Signed by: T. Michael Yuen)

/s/
T. Michael Yuen
Court Executive Officer

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE SAN FRANCISCO SUPERIOR COURT

To provide clarity and perspective, we are commenting on the San Francisco Superior Court's (San Francisco Court) response to our audit. The numbers below correspond to the numbers we have placed in the margin of San Francisco Court's response.

San Francisco Court contends that our statement leaves the impression that none of the conservatees have a firearm restriction. This is incorrect. This sentence, which appears on page 19, clearly states that the court's conservatorship orders did not prohibit these individuals. It does not suggest that these individuals were not prohibited for any other reason. In fact, on page 19 we include the court's managing attorney's perspective that all conservatorships for San Francisco Court arise from prior events that would already prohibit an individual from possessing a firearm. However, as we state on that same page, this does not mean that it may not be appropriate for a firearm prohibition to be imposed as part of the conservatorship order. Finally, in its response San Francisco Court refers to a 5150 hold and a 5250 hold. These are involuntary holds of an individual at a mental health facility under California Welfare and Institutions Code, sections 5150 and 5250. In our report, we refer to these as involuntary holds, as we do in our discussion of San Francisco Court on page 19. ①

Despite the court's assertion, the comparison of San Francisco Court to courts in other counties of the State is relevant when considering whether the fact that San Francisco Court did not order a single firearm prohibition in any of its more than 2,100 conservatorship orders from 2010 through 2012 is indicative of a condition that requires review. ②

Contrary to San Francisco Court's assertion, we do not fail to recognize the separation of powers and our recommendation is neither unethical nor improper. Additionally, San Francisco Court is incorrect in its assertion that our recommendation on page 38 directs the court to, "dictate to the district attorney what petitions to bring or what relief it should seek." Our recommendation also does not direct the court to work with the district attorney and the Office of Conservatorship Services to "achieve a particular result for one party only." Further, we find San Francisco Court's comments puzzling because, as the court indicates in the first page of its response, it has already initiated discussions with the relevant parties to review the petitions that are presented to the court. We acknowledge those efforts on pages 19 and 20, by noting that the managing attorney explained to us that the ③

court had initiated efforts to have the district attorney and the Office of Conservatorship Services revise the petition form that they submit to the court to specifically include the request for a prohibition if warranted. Finally, our recommendation focused on the court working with the district attorney and the Office of Conservatorship Services because those were the entities that the court's managing attorney explained were responsible for submitting petitions to the court. However, we encourage the court to address this issue with as many parties as it determines are necessary.

④ San Francisco Court incorrectly characterizes our recommendation. We do not recommend that the court direct any party to seek the prohibition. On page 38, we recommend that, where appropriate, the court include a firearm prohibition in its conservatorship orders. Further, the court mentions that it did not receive reporting instructions and forms from the Department of Justice (Justice) until September 2013. This information is irrelevant to the more than 2,100 conservatorship orders we discuss on page 19 because, according to the information the court provided, these conservatorship orders did not contain a finding prohibiting the conserved individuals from possessing a firearm as the finding was not requested in the petitions the district attorney and the Office of Conservatorship Services filed with the court. Therefore, even if the court had received instructions and forms from Justice for reporting firearm restrictions, because there was no such restriction requested in the petitions and included in the conservatorship orders, no reporting was required. Moreover, since it is the court's responsibility to comply with state law regarding reporting firearm prohibitions, in the future if it does not believe it has sufficient information to do so, it should follow up with Justice and any other entity, as needed, to ensure it is accurately reporting as state law requires.

Superior Court of California
County of Santa Clara

191 North First Street
San José, California 95113
(408) 882-2700

DAVID H. YAMASAKI
Chief Executive Officer

October 8, 2013

Elaine M. Howle, CPA
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: Superior Court Response – Santa Clara County

Dear Ms. Howle:

We have reviewed the excerpts of a draft report concerning our Court on an audit of the reporting of persons with mental illness to the Department of Justice. Please find enclosed our written responses to the three recommendations.

We look forward to receiving a copy of the final report.

If you have any questions, please do not hesitate to contact me.

Sincerely,

David H. Yamasaki
Chief Executive Officer

Enclosure

Superior Court of California, County of Santa Clara

Responses

Recommendation

To ensure that it reports all required prohibited persons to Justice, Santa Clara Court's probate division should revise its court policies and practices by December 31, 2013, so that it reports all the types of court determinations that state law requires. Further, Santa Clara Court's criminal division at its Hall of Justice should follow its new reporting and monitoring procedures to ensure that it reports all required determinations to Justice.

Response

Agree. Santa Clara Superior Court has begun revising its court policies and practices and will have them completed and implemented on or before December 31, 2013 for the probate division. Santa Clara Superior Court has implemented new reporting procedures at all criminal courthouses. A supervisor at each courthouse location monitors said procedures on a weekly basis to ensure compliance.

Recommendation

Santa Clara Court should review its compliance with state law's firearm prohibition reporting requirements at each of the other courthouse locations within its court and make the necessary adjustments to courthouse policies and practices so that it fully complies with state law by March 31, 2014.

Response

Agree. Santa Clara Superior Court has implemented new reporting requirements at each of the courthouse locations. A supervisor at each courthouse location monitors the procedures on a weekly basis to ensure compliance.

Recommendation

Santa Clara Court should follow the requirements in state law related to how quickly to report individuals to Justice.

Response

Agree. Santa Clara Court agrees to follow the requirements in state law related to how quickly to report individuals to Justice.

cc: Members of the Legislature
Office of the Lieutenant Governor
Little Hoover Commission
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press

CALIFORNIA

California criminal database poorly maintained

By JACK DOLAN, LOS ANGELES TIMES

JULY 17, 2011 | 12 AM

Reporting from Sacramento — The criminal records system California relies on to stop child abusers from working at schools and violent felons from buying guns is so poorly maintained that it routinely fails to alert officials to a subject's full criminal history.

The computerized log exists to provide an instant snapshot of a criminal past, informing police, regulators and potential employers of offenses such as murder, rape and drug dealing in a person's background. But nearly half of the arrest records in the database don't say whether the person in question was convicted.

Information from millions of records buried at courts and law enforcement agencies has never been entered in the system. So a small army of state employees must spend precious time — and millions of dollars each year — chasing paper records to fill in the gaps.

The resulting delays often make it impossible for a police officer to learn immediately whether a driver he or she has pulled over is a convicted felon, or let a gun-shop owner know if it's safe to hand over a weapon.

“There are obviously serious public safety implications if that database is incomplete,” said Dennis Henigan, president of the Brady Center to Prevent Gun Violence, a national gun-control group. “Every record missing from the system could be someone who is too dangerous to buy a gun.”

California has a shoddy system for collecting case results from 58 county courts and hundreds of local prosecutors and police agencies, said Travis LeBlanc, a special assistant attorney general who oversees technology operations in the state Department of Justice.

The final outcome —- guilty, not guilty, case dismissed — is missing for about 7.7 million of the 16.4 million arrest records entered into state computers over the last decade, according to LeBlanc. More than 3 million of those are felony arrests.

Last month, California’s inspector general estimated that 450 inmates who had completed their sentences but were still “a high risk for violence” had been released without supervision from parole agents. In some of those cases, prison officials relying on the faulty database didn’t know the inmates had previous convictions and were supposed to be strictly supervised.

The data hole persists despite more than $35 million in federal grants the state Justice Department has received since 1995 to help plug it, according to department records. And a project to modernize court computers that began in 2001 is still not finished, even as its cost has ballooned from $260 million to as much as $1.9 billion, according to a state audit earlier this year.

“This is completely unacceptable,” said state Sen. Kevin De Leon (D-Los Angeles), a longtime critic of the state’s underperforming computer contracts. “This is about public safety here. There’s no excuse.”

In an interview last week, state Atty. Gen. Kamala Harris said she had spoken with Chief Justice of California Tani Cantil-Sakauye about the longstanding problem with the crime data. The two — who have been in their positions for less than a year — are looking for ways to bring the computer system into the "21st century," Harris said.

The information missing from the state Justice Department's Automated Criminal History System usually takes two to three weeks to obtain but can take even longer, officials said. And the problem doesn't affect only background checks done in California. The state's data are also used by the FBI in criminal checks for gun stores, employers and licensing authorities across the country.

Although California has a 10-day waiting period for gun purchases, and officials say they can stall longer if they still don't have answers, most states have a three-day waiting period. In those states, if a background check isn't complete by the end of the third day, the buyer can legally purchase a gun.

Some large retailers, such as Wal-Mart, wait until they get a final answer before selling a weapon, said Steve Fischer, spokesman for the FBI's Criminal Justice Information Services Division.

"But smaller mom-and-pops, they need that revenue, so they transfer the guns" as soon as the three days pass, Fischer said. If a conviction is discovered after that, the FBI turns the information over to the Bureau of Alcohol, Tobacco, Firearms and Explosives, and "they decide whether to retrieve the gun."

Operations to confiscate guns from people who should not have them are time-consuming, potentially dangerous and rarely a complete success, authorities acknowledge.

Last month California launched its own effort to round up 1,200 firearms from people whose records were clean when they bought the guns but who had since been judged mentally ill or had restraining orders issued against them. Although the roundup was hailed as a victory, officials acknowledge that they know of at least 34,000 guns — 1,600 of them military-style assault weapons — still in the hands of people prohibited from owning them.

Harris said in a statement that her department and local law enforcers don't have the money or manpower to collect them all.

The information delays vex the FBI as it performs background checks on millions of people applying for jobs in public safety or for positions in which they would be responsible for children, the elderly or sensitive financial information, Fischer said.

When conviction information turns up after a job has been filled, it's up to local authorities to decide what to do with it.

"If you're looking at a schoolteacher and they have a 15-year-old DUI, you might overlook that.... If it's a sexual crime, they may be more likely to pursue it," Fischer said.

A record is created in the California database any time someone is arrested and his or her fingerprints are taken. The disposition of the case, which may not be decided for months or years, is supposed to be reported to the Justice Department by the county court, district attorney or local police department.

Some agencies report dispositions electronically. Others send records in hard copy or even by hand-written note, LeBlanc said, causing long delays in getting the information into the computers. Some local agencies never report the outcome of a case — leaving what police call "naked" arrest records.

The state spends millions of dollars a year on labor as it tries to fill in the blanks.

"We have 60 full-time people who identify naked arrests and then seek to fix those histories," LeBlanc said. The employees call courts, send letters to prosecutors and query police departments to find the missing pieces.

Local law enforcement agencies are forced to do the same kind of leg work, and "you're not going to get answers right away," said Capt. Pat McPherson, an investigator for the Los Angeles County district attorney's office. "It takes a long time."

jack.dolan@latimes.com

CALIFORNIA

Jack Dolan

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THE CALIFORNIA CRIMINAL JUSTICE DATA GAP

Mikaela Rabinowitz
Robert Weisberg
Lauren McQueen Pearce*

April 2019

Stanford Law School
Stanford Criminal Justice Center

MEASURES FOR JUSTICE

*Robert Weisberg is the Edwin E. Huddelson, Jr. Professor of Law at Stanford University and Faculty Co-Director of the Stanford Criminal Justice Center; Mikaela Rabinowitz is the Director of National Engagement and Field Operations at Measures for Justice; Lauren McQueen Pearce is the Assistant Director of Data Outreach at Measures for Justice

The Stanford Criminal Justice Center (SCJC) serves as Stanford Law School's vehicle for promoting and coordinating the study of criminal law and the criminal justice system, including legal and interdisciplinary research, policy analysis, curriculum development, and preparation of law students for careers in criminal law. The center is headed by faculty co-directors Robert Weisberg and David Sklansky and executive director Debbie Mukamal. For more information about our current and past projects, please visit our website: law.stanford.edu/criminal-justice-center.

Measures for Justice (MFJ) is a nonprofit, nonpartisan organization that founded in 2011 to develop a data-driven set of performance measures to assess and compare the criminal justice process from arrest to post-conviction on a county-by-county basis. MFJ collects county-level data, cleans and codes them, and runs them through a set of performance Measures. For more information, please visit our website: http://measuresforjustice.org.

Stanford Criminal Justice Center | Stanford Law School | 559 Nathan Abbott Way
Stanford, CA 94305 | www.law.stanford.edu/program/centers/scjc

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EXECUTIVE SUMMARY

"By making mountains of valuable [criminal justice] data available to the public in a comprehensive way, we can build stronger bridges of understanding and trust between the [criminal justice system] and the citizens it serves... In addition to providing greater transparency, this information enables policymakers to craft informed, data-driven public policy."

–Assemblywoman Jacqui Irwin, author of Open Justice Data Act of 2016

CALIFORNIA has long been at the forefront of criminal justice innovation. Moreover, the state has embraced transparency, supporting an array of efforts to support access to and dissemination of criminal justice data. Amid the continuing evolution of California's criminal justice system, these data—and public access thereto—have never been more important for assessing how these changes are being implemented and what benefits they are producing. And yet, in stark contrast to California's culture and history, its criminal justice data are not readily available to the public. What infrastructure exists is not fully set up to promote transparency, nor to understand and evaluate the effects of various reforms and policies, making it difficult for researchers, policymakers, and the public to assess whether laws are having their intended effects and to identify what is working or not.

This report explores the quality and availability of criminal justice data housed by state and local criminal justice agencies across the state. Ultimately, this report highlights three major types of data gaps and explains how these failings affect researchers' and practitioners' work in criminal justice systems in the state and inhibit critical transparency in the largest criminal justice system in America.

KEY FINDINGS

- **CADOJ's data responsibilities are underresourced and thus unduly subordinated to the Department's other responsibilities.**
  - DOJ estimates that up to 60% of arrest records are missing disposition information. Individuals with violent criminal histories may be inadvertently allowed to access firearms, while individuals whose charges have been dismissed are unduly criminalized when these charges appear pending.
  - Unclear and burdensome research request processes preclude local criminal justice agencies and policy research organizations from accessing information, limiting their ability to evaluate policies and to make data informed decisions.

- **CDCR has no formal, publicly available research request process.**
  - Practitioners and researchers report inconsistent information regarding data access and prohibitions on publishing any data that may reflect poorly on the Department.

- **Although court records are presumptively open to the public, rules governing "bulk distribution" of electronic records effectively preclude access for researchers and policymakers.**
  - Policymakers, researchers, and the general public lack basic information about cash bail and pretrial detention to inform decisions about bail policy.

- **Local jurisdictions have widely varying data infrastructure, with some using robust electronic case management systems and others still using paper case files.**
  - The absence of data standards means that different agencies track different information and in different ways. Basic information such as arrests cannot be accurately compared across jurisdictions.
  - Differing interpretations of data sharing laws create disparities in data use and transparency.

INTRODUCTION

"By making mountains of valuable [criminal justice] data available to the public in a comprehensive way, we can build stronger bridges of understanding and trust between the [criminal justice system] and the citizens it serves... In addition to providing greater transparency, this information enables policymakers to craft informed, data-driven public policy."

–Assemblywoman Jacqui Irwin, author of Open Justice Data Act of 2016

CALIFORNIA has long been at the forefront of criminal justice innovation. In 1976, the state was one of the first to shift from indeterminate to determinate sentencing. Throughout the 1990s and early 2000s, California was in the vanguard for tough-on-crime legislation, passing a range of laws designed to fight crime by increasing criminal penalties, including one of the earliest and most punitive "Three Strikes" laws in the entire nation. But then the state shifted course. Growing prison populations led jurisdictions across the country to reconsider some of these tough-on-crime laws and sentence enhancements leading to longer sentences and higher prison populations. In 2011 the United States Supreme Court approved a lower court ruling that the conditions for California's prisoners constituted cruel and unusual punishment, which caused California to pass the first of a series of laws designed to reduce the number of people under correctional supervision, Assembly Bill (AB) 109, Public Safety Realignment. A series of legislative and ballot initiatives have followed that limit the felonies that count toward second and third strikes under the Three Strikes law (Proposition 36), reclassify a range of offenses as eligible for reduced criminal penalties (*e.g.*, Proposition 47 and Senate Bill 1437), and provide for increased opportunities for parole for those determinately sentenced for nonviolent offenses (Proposition 57). At the same time, California has sought to increase transparency in its criminal justice system by launching the Department of Justice's Open Justice portal in 2015 and passing the Open Justice Data Act in 2016. Amid the continuing evolution of California's criminal justice system, these data—and public access thereto—have never been more important for assessing how these changes are being implemented and what benefits they are producing.

The Open Justice Data Act represents one of the most robust efforts to embrace transparency in the country. Likewise, California has a longstanding statutory scheme to support the sharing of Criminal Offender Record Information (CORI) for research and policymaking purposes. ***And yet, in stark contrast to California's culture and history, its criminal justice data are not readily available to the public.*** There is also significant confusion among practitioners and local policy makers about what data can be shared and with whom. This confusion creates daunting barriers to criminal justice data sharing and, in turn, needed criminal justice research. In addition, differing legal interpretations regarding whether court records fall within the CORI statutory

scheme create ambiguity regarding access to criminal court records from California Superior Courts, despite court records being presumptively open to the public.[i] In particular, California Rules of Court are regularly interpreted to limit—and often prevent—the sharing of court records, without any exceptions for bona fide research efforts. This means that researchers and the public are already fighting an uphill battle to access criminal justice data before they even start.

Challenges to criminal justice data access in California are exacerbated—and indeed, often caused—by the state's lack of criminal justice data infrastructure.

What infrastructure exists is not fully set up to promote transparency, nor to understand and evaluate the effects of various reforms and policies, making it difficult for researchers, policymakers, and the public to assess whether laws are having their intended effects and to identify what is working or not.

This means we lack answers to some very basic questions like: Who is getting access to pretrial diversion programs? What percentage of defendants are in jail for failing to pay low bail amounts? Which parole-eligible individuals are released and which are denied? What are the racial and socio-economic disparities across all of these outcomes? Having data on these kinds of metrics makes it much easier to know where to channel resources and reform efforts. Data like these can tell us what works, and when, and where systems may go wrong for too many who are disenfranchised. Data can tell us where there may be opportunities to make the system more efficient, effective, and fair. And making the data publicly available can be the catalyst that enables policymakers and practitioners to come together around evidence-based reforms that bring positive change throughout the state.

The first step toward remedy is identifying the problem: what gaps currently exist in California's data infrastructure? Through interviews with more than two dozen criminal justice researchers and practitioners, this report explores the quality and availability of criminal justice data housed by state and local criminal justice agencies across the state.[1] Ultimately, this report highlights three major types of data gaps and explains how these limitations affect researchers' and practitioners' work in criminal justice systems in the state and inhibit critical transparency in the largest criminal justice system in America.

The report begins with a discussion of data housed by the state's two primary criminal justice agencies, the California Department of Justice (CADOJ) and the Department of Corrections and Rehabilitation (CDCR). This is followed by a section on California criminal courts' data, and then by an overview of criminal justice data collection and dissemination among local (city and county) criminal justice agencies. But first we offer a brief statutory

1 Some respondents were willing to speak openly about their experiences and associated successes and challenges; others requested confidentiality to be able to speak openly about challenges.

background, which is important for understanding what is legally required by agencies throughout the state.

BACKGROUND: CALIFORNIA'S LONGSTANDING COMMITMENT TO CRIMINAL JUSTICE COLLECTION AND DISSEMINATION

California has long been a leader in the area of criminal justice data transparency and has a robust, well-established statutory scheme related to the collection and dissemination of criminal justice data. Since 1955, the California Department of Justice has had the statutory duty to collect criminal justice data from various persons and agencies, including,

> [E]very city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents…[ii]

The Attorney General is also responsible for overseeing California's Criminal Index and Identification (CII) system and appointing an advisory committee "to assist in the ongoing management of the system with respect to operating policies, criminal records content, and records retention."[iii] The committee is chaired by a designee of the Attorney General, and consists of representatives from law enforcement, the judiciary, prosecutors' offices, corrections offices, the public, and others.[iv]

CRIMINAL OFFENDER RECORD INFORMATION (CORI)

Nearly 50 years ago, the California Legislature put in place critical new statutory obligations ensuring that the public and researchers would have meaningful access to accurate criminal justice data to inform policy and practice.

In 1973, the California Legislature enacted the framework governing Criminal Offender Record Information, or CORI.[v] Back then, it recognized the pressing need for "greatly improved," "accurate," "reasonably complete," and "speedy" access to data both for criminal justice agencies and for policy-researching bodies.[2] The information governed by this scheme was to come from "criminal justice agencies," which are defined as "those agencies at all levels of government which perform as their principal functions…activities . . . [r]elate[d] to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders" or "[r]elate[d] to the collection, storage, dissemination or usage of criminal offender record information."[vi] By definition, such agencies include courts, law enforcement, prosecutors, corrections agencies, and

2 *Cal Penal Code* § 13100. The Legislature found and declared, for example, "[t]hat the criminal justice agencies in [California] require, for the performance of their official duties, accurate and reasonably complete criminal offender record information"; "[t]hat the Legislature and other governmental policymaking or policy-researching bodies, and criminal justice agency management units require greatly improved aggregate information for the performance of their duties"; and "[t]hat, in order to achieve the[se] improvements, the recording, reporting, storage, analysis, and dissemination of criminal offender record information in [California] must be made more uniform and efficient, and better controlled and coordinated." *Id.* § 13100.

others. Importantly, the statutory regime explicitly recognized the need for access to data for policy-making and research purposes.

What CORI Is: CORI is broad in scope, covering everything from arrest to court disposition, incarceration, and release. Numerous California statutes govern the handling of CORI by state and local criminal justice agencies.[vii] Section 13102 defines CORI as records and data compiled by any criminal justice agency "for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release."[3]

Who Has Access to CORI: While protecting the identity of individuals, California legislators wisely ensured the CORI data could be made available to researchers. California law specifies which agencies—governmental and otherwise—are entitled to receive CORI, explicitly stating:

> Notwithstanding subdivision (g) of Section 11105 and subdivision (a) of Section 13305, every public agency or bona fide research body immediately concerned with . . . the quality of criminal justice . . . may be provided with such criminal offender record information as is required for the performance of its duties, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom do not identify specific individuals, and provided that such agency or body pays the cost of the processing of such data as determined by the Attorney General.[viii]

Recognizing the vital nature of public access to California's criminal justice data, California took critical new steps to ensure criminal justice data are transparent and accessible when the Legislature passed the Open Justice Data Act of 2016. This legislation added important new provisions to the CORI statutory scheme and now requires the CADOJ to make certain criminal statistics available to the public through an online web portal,[ix] which the DOJ has described as a "first-of-its-kind criminal justice transparency initiative."[x] At the time, then-Attorney General (now U.S. Senator) Kamala Harris explained:

> Data is key to being smart on crime and crafting public policy that reflects the reality of policing in our communities and improves public safety. We must continue the national dialogue about criminal justice reform and promote the American ideal that we are all equal under the law.[xi]

On her part, the author of the bill, Assemblywoman Jacqui Irwin, stated "by making mountains of valuable [criminal justice] data available to the public in a comprehensive way, we can build stronger bridges of understanding and trust between the [criminal justice system] and the citizens it

3 CORI *See* Cal. Penal Code §§ 13100-13326, "[p]ersonal identification," "[t]he fact, date, and arrest charge [and] whether the individual was subsequently released," "[t]he fact, date, and results of any pretrial proceedings," "[t]he fact, date, and results of any trial or proceeding, including any sentence or penalty," "[t]he fact, date, and results of any release proceedings," "[t]he fact, date, and results of any proceeding revoking probation or parole," and so on. *Id.* § 13102(a)-(i); see also *Id.* § 13125 (listing standard CORI data elements for recording).

serves" and that "in addition to providing greater transparency, this information enables policymakers to craft informed, data-driven public policy."[xii]

CALIFORNIA PUBLIC RECORDS ACT (CPRA) AND CRIMINAL JUSTICE DATA

Certain criminal justice data are also publicly available under the California Public Records Act (CPRA). The CPRA provides that "every person has a right to inspect any public record… [¶] [e]xcept with respect to public records exempt from disclosure by express provisions of law…"[xiii]

The Legislature has spoken here. It mandated that state and local law enforcement "shall make public the following information," more commonly referred to as "arrest records":[xiv]

> [t]he full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds[.][xv]

Despite this explicit and longstanding commitment to collecting criminal justice data and ensuring access to those data, criminal justice researchers and practitioners have long expressed concerns about the quality, availability, and accessibility of criminal justice data in the state. Both challenges are discussed in greater detail below.

STATEWIDE CRIMINAL JUSTICE DATA POLICY, INFRASTRUCTURE, AND ACCESS

The two primary State of California agencies with responsibility for collecting and disseminating criminal justice data are the California Department of Justice, or CADOJ, and the California Department of Corrections and Rehabilitation, or CDCR. As noted above, CADOJ in particular has a well-established statutory responsibility for both collecting and sharing these data. This responsibility notwithstanding, many criminal justice researchers and practitioners express concern about the implementation of these mandates and about the comprehensiveness, and accuracy of the data that are collected. Interviews with some former CADOJ employees corroborate those concerns. Such imperfections are detrimental to other state and local agencies, to outside researchers, and to many individuals who have ever been labeled as offenders. For example, more than half of arrest records are missing disposition information, thus hampering law enforcement agencies from accurately identifying individuals who have been convicted of serious and violent offenses. On the other extreme, individuals who have been cleared of criminal charges often do not have dismissals and/or acquittals recorded, leading to potentially dire implications for employment, etc. At the same time, limitations on the circumstances in which researchers and county practitioners can access these—admittedly imperfect—data creates an information vacuum, with no clear mechanism to assess the implications of the various policies that have dramatically changed the state's criminal justice landscape.

CADOJ DATA QUALITY

Former CADOJ staff, including those directly involved in the Department's Open Justice initiative and website, note that both this initiative and the CADOJ's larger data-related obligations have long been underresourced and, as a consequence, have been unduly subordinated to CADOJ's other responsibilities. Justin Erlich and Sundeep Patem, who worked on the Open Justice Initiative under Attorney General Kamala Harris, agreed that the Department has neither the IT staffing expertise nor the general fiscal resources to support the criminal justice data infrastructure needed. Mr. Patem notes that this shortage is exacerbated by the natural tension between career civil servant staff and cycling elected officials. As different attorneys general come in, they tend to shift resources to respond to their own priorities, making it difficult to balance ongoing department operations and new undertakings.

Amid this underresourcing, DOJ has been unable to devote sufficient attention to data standards and efficiency in data-collection processes. Instead of having a centralized system where agencies enter record-level information under standardized terms, DOJ relies on agencies to send information in whatever form they can produce it, using their own local nomenclature. Some agencies even send paper records, which DOJ staff then transcribe into their system. This process of data collection is antiquated and burdensome for all involved and results in large gaps in the state's CORI data, as well as inconsistency in the data that are available.

In a recent memo submitted to Assemblymember Rob Bonta's Office, San Francisco District Attorney George Gascon detailed his concerns about the quality and integrity of CADOJ's criminal history records, noting the critical gaps in these data:

> It is commonly known that the state's criminal history records suffer from pervasive data gaps that undermine their accuracy and reliability, including missing and/or delayed arrest and case dispositions, missing information regarding failures to appear, and missing or incomplete sentencing information. For example, CADOJ estimates that 60% of arrest records are missing disposition information.[xvi]

As DA Gascon notes, these data gaps create myriad challenges for those agencies tasked with the administration of justice. Among the most pressing issues he notes are the inability of the Bureau of Firearms to prevent individuals whose criminal records prohibit them from possessing guns from purchasing firearms, challenges in accurately completing pretrial risk assessments, possible criminalization of individuals whose cases appear pending despite having been dismissed or acquitted, and the systematic underreporting of misdemeanor arrests on Records of Arrest and Prosecution (or RAP sheets).

Criminal justice researchers echoed these concerns, including researchers working directly with local criminal justice agencies and those conducting independent research out of academic institutions or other research organizations. For instance, Dr. Bryan Sykes, a criminologist and demographer at the University of California, Irvine, stated frankly, "The DOJ CORI data are a nightmare," adding that after a lengthy data request process, he finally received his requested data in the form of 767 unique datasets, with a wide variety of different fields, structures, attributes, etc.

CADOJ DATA ACCESS

Despite concerns about the quality and comprehensiveness of CADOJ's CORI data, as the primary source of statewide data on criminal justice system processes, these data are nonetheless of great value to organizations responsible for the administration of justice, including practitioners and researchers. Researchers report mixed experiences accessing these data, with some researchers reporting robust research partnerships with CADOJ and others running into significant challenges. For example, Dr. Mia Bird, a Research Fellow at the Public Policy Institute for California (PPIC) notes that PPIC forged a successful research partnership with CADOJ, CDCR, and the Board of State and Community Corrections (BSCC) to collect CORI data for PPIC's Multi-County Study (MCS), which looks at the impact of realignment and other criminal justice reforms across 11 California counties. "Our experience collecting data from DOJ has been good. We started the [MCS] project as a collaboration with the BSCC and also worked with DOJ and CDCR to get their buy in."

Dr. Sykes, by contrast, expressed a number of concerns about access to CORI data, pointing out that while he was ultimately able to obtain the data he requested, many of the requirements create barriers that prohibit the level of access he believes the state should encourage. In particular, the background check requirement means that "people who are qualified to handle the data may not be allowed to access it," something that should be a concern to all criminal justice researchers given the number of Americans with criminal records. In addition, the tight security protocols for where data will be stored and how they will be accessed is a barrier for all but the most sophisticated and well-resourced organizations.

Despite this, several researchers who believe they can meet requirements related to criminal background checks and data security do report challenges accessing CORI data from DOJ. Several researchers working on broader "data repository" projects have expressed concerns about unclear limitations on what data DOJ will and will not share and why. For example, one group of researchers who are working on a multi-state criminal justice data repository project were told that their data request did not "fall into the parameters of DOJ's data request process." Measures for Justice (MFJ),[4] which collects criminal process data from arrest through post-conviction, was told that it would have to significantly narrow the scope of their request because "[DOJ] want[s] to release as little CORI info as possible."

Although MFJ was able to narrow its request and obtain DOJ approval, staff noted that nothing in state law or DOJ policy prohibits the larger request and pointed out that limiting research in this way greatly reduces what California practitioners and policy makers will learn from the analysis. The former group of researchers has had less success thus far; DOJ representatives did meet with them to discuss a potential collaboration, but the conversation has since stalled and the project has had to "de-prioritize California and focus on states where [they] are making progress."

If research organizations have experienced some hurdles in obtaining CORI data from DOJ, researchers who work for public agencies have experienced even greater challenges. One such researcher described a scenario in which she was denied DOJ data for research projects that may inform operational decisions because government agencies do not qualify as bona fide bodies. However, once the office

4 Two staff from MFJ are co-authors of this paper.

contracted with an academic institution, the principal investigator was able to successfully submit a request for the same data for the same project.

Counties that are trying to establish inter-agency data sharing efforts to promote local public safety also point to challenges regarding the ambiguity regarding the application of data sharing laws. For example, one large California county reports working for several years to set up systems and processes for sharing data across public safety and health departments in order to evaluate their efforts and prioritize data-driven decision. However, as the lead agency notes, the main problem for local practitioners is a lack of clear guidance about what justice and health data can be shared, for what purposes, and by whom. "We are still working on developing what systems we can create. We're trying to understand what can we create in order to share data just at the local level. Sometimes we're discussing state derived data for research, which is regulated by DOJ, so we are trying to understand how to appropriately use state data for research. We have been having conversations with DOJ on sharing data for research and we are exploring sharing data for service delivery to improve health and safety outcomes."

Mr. Patem, who worked on the Open Justice Initiative described above, argues that, while the Department's resourcing limitations also affect access issues, the larger issue is one of organizational culture. As he notes, Attorney General Harris was the first Attorney General in decades to have a pro-transparency mindset. The CADOJ she stepped into had been working for years under leadership that "only put out the minimum required by law." Mr. Patem describes this as a "deeply held cultural" belief within DOJ: increasing transparency often only increases burdens on agencies—"It makes no sense to buy [that] trouble." Mr. Patem also notes this cultural element is crucial to discussions about criminal justice data and resources at CADOJ. "It's not a technology issue... This is a people problem."

Since coming into office in 2017, Attorney General Xavier Becerra has expressed a commitment to improving CADOJ's data quality and access, as well as to working with researchers to support research efforts of mutual interest. CADOJ's Director of Research, Dr. Randie Chance, echoed this commitment, noting that her department is working to establish more partnerships with researchers and to improve processes for collecting criminal process data from the counties to ensure that the state does have the data it needs.

CDCR DATA QUALITY AND ACCESS

Researchers have experienced greater challenges with data from CDCR than with CADOJ. Multiple researchers, including those working in criminal justice agencies and those working for academic institutions or other nonprofit research organizations, identified the key issues as (1) the absence of any formal data request process and (2) CDCR's practice of prohibiting researchers from publishing findings whenever it believes that publication will cast a negative light on the department[5]. One well-known criminologist, who preferred not to be identified, called CDCR a "willful road blocker," noting that even when access is offered, the limits on research publication make the access useless.

Dr. Sykes recalled multiple experiences when he or students he has advised received CDCR data only to the have the Department prevent them from publishing their findings after seeing them. For example, when Dr. Sykes conducted a series of prison population projections in the wake of the

5 Following the publication of this report, CDCR announced the creation of a research request process. This is a very positive first step. To ensure transparency and accountability, CDCR should also establish and publicize clear criteria for approval or rejection of research requests.

Supreme Court decision that led to realignment, CDCR forbade him from publishing anything that included mortality rates of incarcerated individuals, concerned with the optics of acknowledging the number of people who die in prison.

Here, too, researchers working for criminal justice agencies expressed similar concerns. When Maria McKee, Principal Analyst for the San Francisco District Attorney's Office requested CDCR data to validate a risk-assessment tool the office hoped to use to inform prosecutorial decision-making, CDCR responded that it was against department policy to provide data for "tool development." When the SF DA's office followed up to obtain a copy of this policy, CDCR declined to produce it and, several years later, the SF DA's office still has not received requested clarification as to what CDCR data can be used and for what purposes. As Ms. McKee pointed out, "It shouldn't matter who is in charge, there should be rules and regulations in place, and publicly available."

Several practitioners also expressed frustration that the combined limitations on data access from CADOJ and CDCR create an additional burden on local criminal justice agencies. Because researchers and policy makers are unable to access basic data from these state agencies, many turn to local agencies for information instead. As one probation chief pointed out, "I know that all criminal justice agencies in California get a lot of [public record requests] and I think that's because of the limited access to data publicly. There are basic things that academic institutions and social justice organizations want to know and, every time they want any information, they need to go through PRAs because of the lack of public data or data access from the State."

Interviewees for this report validate this concern, with several noting that, after delays or denials from CADOJ and/or CDCR, they turned to local data collection instead. "Initially, given that the local data has been aggregated within these state agencies, it didn't make sense for us to go to local agencies, but when it became clear that we were not getting a response from DOJ or CDCR, we decided to reach out to some local jurisdictions. They tend to have much clearer processes for providing data."

CALIFORNIA CRIMINAL COURT DATA

Data from California criminal courts are critical for tracking key elements of the criminal process, including charge filings, bail determinations, pretrial release status, and more. These data are particularly important amid the current debate over bail reform. In 2018, as the Legislature was debating legislation to eliminate cash bail and fundamentally alter the pretrial detention and release process (Senate Bill (SB) 10), a number of legislators noted that limited data on pretrial detention meant that they did not have thorough information upon which to base their votes, and both SB 10 and pending follow-up legislation explicitly require courts to collect a range of data elements to ensure the Legislature could assess implementation. Amid a statewide referendum that will allow voters to uphold or veto SB 10, however, the lack of data continues to be a concern. Below, we provide more information about the availability of court data.

CALIFORNIA RULES OF COURT

In addition to the CORI and CPRA statutes described above, California court records are subject to the California Rules of Court, a set of "rules for court

administration, practice and procedure" developed by the California Judicial Council under the authority granted by the California Constitution.[xvii] As part of this charge, the Judicial Council strives to balance transparency with confidentiality, so that court records are both presumptively open to the public[xviii] and protective of individuals in sensitive situations. Unsurprisingly, balancing these two considerations can lead to disagreement and ambiguity regarding access to this information. One of the core areas of uncertainty is whether or not court records are subject to the CORI statutes discussed above and, as a result, whether or not researchers are allowed access to them.

For example, in a 1994 case, *Westbrook v. County of Los Angeles*, the California Court of Appeal, while limiting access to court records by a business that was selling criminal background information, also made it clear that it did consider court records to fit within CORI laws, indicating that these data would be considered accessible to researchers and policymakers. At the same time, however, a series of rules governing "bulk distribution" of electronic court records has generally restricted research access to these data by setting limits on what information can be provided electronically. In particular, these Rules of Court limit bulk distribution of a court's records to "only its electronic records of a calendar, register of actions, and index."[xix] Limitations on what can be included in electronic calendars, registers of actions, and indices further reduce research access to Court records, despite the research access guaranteed in CORI laws and the presumption of open access to court records.

RESEARCH ACCESS TO CALIFORNIA COURT RECORDS

The bulk distribution and electronic records restrictions described above mean that access to court records for research purposes is even more limited than access to DOJ or CDCR data. As researchers and practitioners agree, these restrictions severely constrain the ability of public agencies and bona fide research bodies to "obtain criminal offender record information as is required for the performance of its duties," as described in California statutes.[xx] One probation chief expressed concern that her department has been trying to get court data for more than two years so that they can improve some of their risk assessment tools. Adding to her frustration is the fact that the reasons why her department cannot access the information have changed over time and, while the court initially cited resource limitations, they now cite direction from the Judicial Council not to share data based on legal prohibitions. Regardless of the reasoning, she notes that it does not seems possible to get the data, despite the clear value for department operations and community safety.

Retired Contra Costa Superior Court Judge Harlan Grossman recalled that Contra Costa County's Racial Justice Task Force (RJTF) was similarly unable to obtain court data to analyze and improve local criminal justice processes. The RJTF, of which Judge Grossman was a member, was established by the County Board of Supervisors in 2016 to examine racial disparities in the local criminal justice system and make recommendations for changes. As part of this process, the RJTF requested superior court data to identify junctures in criminal processing where racial disparities occurred, only to find that they were unable to obtain this information. Although the RJTF did receive aggregate data from the court, Judge Grossman notes that the Task Force was significantly limited in its ability to home in on and address racial disparities.

The implications of California's restrictions on court data have become particularly apparent in light of current debates about the state's policies and practices regarding bail and pretrial detention. As the Legislature debated SB 10 in the summer of 2018, policy makers, practitioners, and others expressed frustration with the limited information about

California's current bail decision-making processes or pretrial detention populations. Anne Irwin, the Executive Director of Smart Justice California, an organization that promotes criminal justice reform, notes that as the Legislature debated and revised the legislation, people on both sides of the bill lacked the data necessary to make an informed decision about it.

> Will SB 10 increase or decrease pretrial incarceration in California? No one could answer that question because the requisite data doesn't exist. It's insane that we contemplated a complete statewide overhaul of pretrial detention without knowing whether the new structure would increase or decrease incarceration.
>
> ***Half the people weighing in insisted that SB 10 would result in big pretrial incarceration increases. The other half just as adamantly insisted that SB10 would result in big pretrial incarceration decreases. But no one could point to the data that informed their impassioned predictions.*** *(emphasis added)*

A recent memorandum on Evaluating SB 10 from four researchers at UCLA's Ralph Bunche Center for African American Studies to the University of California Bail Consortium reaffirms this concern, noting that, "Without the collection of high-quality data, and independent monitoring of equity metrics during implementation, it is unclear to what extent the new law will ensure that implicit biases are not maintained or exacerbated." The memo proceeds to delineate a number of data elements for courts to track, which it notes must be made available for independent evaluation.[xxi]

LOCAL DATA: NO INFRASTRUCTURE, POOR QUALITY DATA

Because of gaps in statewide criminal justice data and challenges to accessing the data that are available, local criminal justice agencies are now the primary source of criminal justice data in California. And yet most of the statewide changes to criminal justice policy that have been implemented in the past decade have required the local agencies that implement those policies to do little-to-no data collection or reporting, nor have they been accompanied by investments in IT infrastructure or data standards.[xxii] As a consequence, California's local criminal justice data infrastructure is inconsistent at best and, in some jurisdictions, almost non-existent. Challenges with data collection are exacerbated by the absence of statewide data definitions and other standards, which means that even where data are collected, they are often inconsistent and difficult to compare.

IT INFRASTRUCTURE

Across the state, researchers and practitioners point to poor local IT infrastructure as the biggest barrier to high quality local criminal justice data. Many agencies have no electronic case management systems (CMS), leaving them reliant on paper case files, excel spreadsheets, and other homegrown processes that do not lend themselves to research, evaluation, or data-driven decision-making. In addition to dozens of agencies having no electronic CMSs, dozens more use archaic systems that cannot be updated in response to changes in criminal justice law and policy, have limited ability to conduct data extracts and analysis, and otherwise lack the capacity to provide meaningful data.

In a 2014 PPIC report assessing the capacity of state and local criminal justice agencies to collect the data required to evaluate realignment efforts, the authors identified technological challenges as a major barrier. Even counties that do have data systems experience a range of challenges in tailoring these systems and extracting data as needed.

> Many county information technology (IT) systems will require improvements to enable the kind of data collection, data linkage, and data extraction we have described. Counties may face one or more of the following technical challenges: (1) they may be using programming languages that are no longer supported or operating on systems that were built by companies that have gone out of business; (2) they may be using systems that were purchased "off the shelf," and hence reliant on vendors and additional funds for system upgrades; or (3) they may be using locally developed systems that may not be integrated across agencies.[xxiii]

One independent researcher who contracts with local agencies to evaluate criminal justice programs pointed to the high degree of variation in data systems and data quality across the state. "I have worked with some agencies that have extremely robust, customizable, web-based data systems that can be used for reporting, evaluation, program management—you name it. But, these are definitely the minority, and I have also worked with a lot of agencies where we had to go in and create tracking logs and review paper case files in order to really evaluate any of their programs." Danielle Dupuy, the Assistant Director of the Bunche Center for African American Studies at UCLA and Co-Director of the Center's Million Dollar Hoods project, spoke of challenges she has seen collecting data from law enforcement agencies across the state.

> For some agencies it's very easy to just put [data] out, but the burden of collection is difficult for some law enforcement agencies. It would be lovely if there could be resources invested in criminal justice data, including data systems and staff with the right expertise, who are trained in and knowledge about data system management, but that is often not the case. Some of the IT people are burdened by the task [of extracting data for analysis] and clearly don't know how to do it. People will tell us that this is not part of their job description, etc. based on resources available. I don't fault them for that.

This variation in data systems exists both across and within county lines. For example, several district attorneys interviewed for this assessment pointed out that their offices have robust data systems, as well as both research and IT staff who help them review their data on an ongoing basis to inform future office decisions. Other DAs bemoaned the underfunded data infrastructure in their offices, with one DA reporting having a case management system that is so old no one in her office knows how to use it; ***several others, who still use only paper case files, reported envying even those offices with outdated case management systems.***

A probation chief who has long promoted better data and transparency reports similar discrepancies among probation departments in different counties, noting that challenges with data infrastructure limit practitioner buy-in for various data initiatives despite a commitment to evidence-based practices and data-informed policy. "I know that CPOC is very committed to data collection and data sharing, but there are a lot of data bills that CPOC opposes because too many departments can't afford to implement them. We don't all have capacity to do that work." Moreover, the Chief notes, even CPOC's own efforts to collect data from probation

departments are limited by their members' data capacity. "The number one problem is that there is no funding for anything data or research-related. Probation departments have to fund this work themselves and different departments have different resources to do that work. Unfortunately, that means that even CPOC can't get the data they want."

DATA STANDARDIZATION

Challenges with IT infrastructure also exacerbate another challenge with local data collection: the absence of standardized definitions for data elements. This issue became particularly apparent in the wake of AB 109, when ***counties needed a common way to define recidivism and the BSCC and CADOJ undertook separate processes to develop definitions, resulting in two different "official" state of California definitions of recidivism.***

Beyond high-profile outcome measures, however, local criminal justice data in California also lack standardization for basic elements, the most obvious being the formatting of statutory codes for arrests, charge filings, and convictions. Ms. Dupuy pointed out that even something as basic as measuring arrest trends is compromised by the lack of standardization. "After we get the data, aside from the format
it comes in, variables are ambiguous as are observations within each variable. Most of the time there is no definition list or codebook; some agencies have them, some do not…I also really wish they had a dropdown for penal code instead of open fields. It is so hard to correctly identify arrest charges because people type in by hand and they do so differently every time, which compromises the accuracy of
the analysis."

Dr. Bird noted that she encountered similar challenges trying to merge and standardize data for probation departments and sheriffs' offices across 12 counties. Despite tracking similar information overall, different agencies record and code the information differently leading to challenges in standardization and the loss of some nuance through the process.

> Probation departments and sheriffs' offices collect very similar things, but not exactly the same, and everyone doesn't code everything the same way. Every sheriff has a slightly different set of data elements and a different way of coding those elements. [In order to do the analysis] for the MCS, we met with every agency individually and then came up with an overarching standardization scheme that could, as best as possible, be used in every county. Doing that meant that we lost some richness in some places, because some agencies have really high levels of specificity that we couldn't measure everywhere.

LOCAL DATA ACCESS

Like state agencies, local criminal justice agencies that want to use data to inform their policies and practices face uncertainty regarding who can use what data, for what purposes, and in what context. As described above, jurisdictions that want to share data either with other criminal justice agencies and/or with researchers and evaluators get conflicting counsel as to whether or not they can do so. For example, a number of the criminal justice practitioners interviewed for this report said that they had been advised by their legal counsel that PC § 13202 allows them to share data for research purposes and noted that they do so regularly in order to evaluate their own initiatives and to contribute to larger research efforts. Similarly, many of the

researchers interviewed described robust and longstanding partnerships with local criminal justice agencies to support both local policy analyses and other research endeavors.

By contrast, other agencies note that their legal counsel has advised that PC § 13202 applies only to CADOJ data and that they are prohibited from sharing this information. For example, one prosecuting agency reported:

> Our data is controlled by Article 6, commencing with Section 13300, of the California Penal Code, referred to as "Local Summary Criminal History Information." There are several provisions in 13300 that provide for our data to be released for research purposes, but they all require that the identity of the subject not be disclosed… Section 13303, which is a part of Article 6, makes it a misdemeanor to furnish the records to anyone not authorized by law to receive the information. As such, we do not have the authority to release local criminal history to [researchers].

In addition to differing interpretations of PC § 13202, local agencies also report different understandings of what information can be shared pursuant to the California Public Records Act, or CPRA. This is particularly true for arrest records. Although these records are explicitly included in CPRA (see discussion on p. 6), different law enforcement agencies differently interpret various CPRA considerations regarding public access, personal privacy, and privileged official business. The two issues that appear to be particularly ambiguous are 1) how CORI statutes and CPRA interact to inform various disclosure and access considerations, and 2) when the public interest is outweighed by greater disclosure versus greater privacy.

In terms of the former, some agencies interpret CORI statutes and CPRA in tandem to support greater data access and facilitate research project. As one district attorney's office noted:

> As relates to the records containing "data elements," that information may only feasibly be obtained from our local criminal history database. Under California law, it is a crime to release any records from such database unless there is an exception under the CPRA. California Penal Code section 13202 provides one such exception. The statute provides in part: "every public agency or bona fide research body immediately concerned with the . . .the quality of criminal justice . . . may be provided with such criminal offender record information as is required for the performance of its duties, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom do not identify specific individuals." …[I]t is our belief that you qualify for this exception.

By contrast, a California sheriff's office came to the exact opposite conclusion.

> The CPRA also provides an exemption for records, the disclosure of which is exempted or prohibited pursuant to federal or state law, and those that may constitute an unwarranted invasion of personal privacy and privileged official business records. (Government Code §§ 6254 (k) and 6276. 12, California Constitution, article I, sections 1 and 28, and Evidence Code § 1040.) This includes including the requested individual level data and information that could be used to identify specific individuals.

Researchers from UCLA's Million Dollar Hoods project, described above, note that they have received widely varying responses to data requests from different local law enforcement agencies even within the same county. While some agencies readily provide detailed data on arrests and other law enforcement processes, others reference a range of case law as prohibiting the sharing of these data or argue that this transparency is not in the public interest. As one police department noted:

> No documents will be produced where "the public interest served by not disclosing the record clearly outweighs the public interest by the disclosure of the record" under California Government Code Section 6255.

So, the questions remain: What data can be shared, by whom, and under what circumstances. As this report demonstrates, it depends whom you ask, which raises a more important question: Why is there no certainty here when so much is at stake for the state's criminal justice system?

IMPLICATIONS OF CALIFORNIA'S CRIMINAL JUSTICE DATA GAPS: A CASE STUDY

In 2015, the Hon. Tani Cantil-Sakauye, Chief Justice of the California Supreme Court, asked the Stanford Criminal Justice Center to undertake a study of the sentencing enhancements in the state's penal code. Like many state officials, the Chief Justice was concerned that, even after the 2011 Realignment law, California had to consider a variety of possible reforms to persuade the federal court that to terminate the population-reduction injunction in *Brown v. Plata*.[6] While the Chief Justice took no position on the policy wisdom or fairness of any particular criminal statutes, she sought information about the degree to which enhancements, and different combinations of base crimes and enhancements, were contributing to crowding pressure in the state's prisons.

SCJC first prepared a comprehensive research memo on the structure of base crimes and enhancements in the Penal Code. It then sought empirical information about the frequency with which felons received particular enhancement sentences. Its premise was that they could thereby calculate the number of years of imprisonment resulting from these enhancements for a particular period of time and then use that measure to estimate what percentage of the prison population at a particular time might be attributable to those provisions.

In theory these data should have been easy to compile. Whenever as person is sentenced for a felony, the trial court produces an Abstract of Judgment summarizing the crime, the enhancements, and the resulting sentences. The data SCJC sought would be the sum of those documents. (And where the documents identify the defendant by demographic factors, at least the correlation between those factors and the sentences could also be measured.) Seeking this data, SCJC reached out to leaders of the California Department of Justice and the Department of Corrections and Rehabilitation on the assumption that these departments receive these abstracts or summaries of them. In both cases, SCJC was told that the available data was either not reliable enough or not digitized in a sufficiently useful form nor were there any immediate plans to resolve these issues. Next, at the Chief Justice's suggestion, SCJC approached particular Superior Courts, hoping that at least some of them could supply the data or give SCJC access to compile it. This effort was also unsuccessful; presiding judges told SCJC that their data was unreliable in form or that they lacked the resources to organize the data or that they did not want to open their files to researchers or a combination of all three.

Finally, since the relevant documentation was also, by definition, in the hands of district attorneys, SCJC approached the elected DAs in several counties. Only one responded favorably: George Gascon of San Francisco. DA Gascon and his research analyst were thus the only source of data for this research. The resulting study (limited to this one County) will soon be released; however its conclusions will be severely limited by the data available, thus undermining the ability of policymakers to assess a critical policy issue. The efforts described here underscore the challenges of getting California criminal justice relevant data for research—in this case research not only for academic purposes but also to serve public institutional goals.

6 *Brown v. Plata* is a federal class action civil rights lawsuit regarding conditions in CDCR. The ruling in this case required CDCR population reductions, leading to 2011 AB 109, Public Safety Realignment.

CONCLUSION

In many ways, California should be a model for criminal justice research. Over the past decade, the state has passed a series of laws that have fundamentally shifted the operations of the criminal justice system. Amid these statewide policy changes, California's 58 counties have significant autonomy regarding implementation, creating a series of natural experiments wherein we have the opportunity to measure and assess the implications of these different approaches. Moreover, the state has a robust network of criminal justice researchers dedicated to the collection of criminal justice data for the purpose of research and policy making, including researchers from academia, independent research organizations, and state and local criminal justice agencies. In addition, California's unique and regularly evolving approach to criminal justice policy and practice has made the state particularly interesting to researchers from around the country. California's statutory commitment to the collection and dissemination of criminal justice data should ensure the collection of these data and ease access thereto for research purposes.

These statutory directives and unique policy context notwithstanding, numerous research efforts have been stymied by gaps in criminal justice data infrastructure, varying interpretation of data sharing laws and regulations, or both. Collectively, these challenges translate to both missed opportunities and concerning roadblocks to transparency. Californian policymakers, practitioners, and citizens can and should know more about how our criminal justice systems are operating. At a minimum, our legislature should begin to address these issues by 1) allocating resources for IT upgrades; 2) establishing data standards for state and local criminal justice agencies; and 3) clarifying what data can be shared, with whom, and in what context. Without these remedies, we will continue to operate in the dark, implementing policy with no meaningful oversight or assessment thereof.

ENDNOTES

i Cal. Rule of Court 2.550(c); *see* also *Sander v. State Bar of Cal.*, 58 Cal. 4th 300, 318-19, 322-23 (2013); Copley Press, 6 Cal. App. 4th at 111-12 (citing *Estate of Hearst*, 67 Cal. App. 3d 777, 782 (1977)).

ii Cal. Penal Code § 13010(a)-(e).

iii *Id.* § 13100.1(a).

iv *Id.* § 13100.1(b), 13100.2.

v *See* Cal. Penal Code §§ 13100-13326.

vi Cal. Penal Code § 13101.

vii *See, e.g.*, Cal. Penal Code §§ 11105, 13202, 13300.

viii Cal. Penal Code § 13202 (emphasis added)

ix Cal. Penal Code § 13010(g). *See* also *Id.* §§ 13012-13014, as describing some required contents of public statistics, including "the personal and social characteristics of criminals and delinquents."

x Kamala, H. (2016). CA DOJ: Open Justice Press Release. Retrieved from https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-releases-new-openjustice-data-showing-racial

xi Kamala, H. (2016). CA DOJ: Open Justice Press Release. Retrieved from https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-releases-new-openjustice-data-showing-racial

xii A.B. 2524, Bill Analysis (2016): Assemble Committee on Public Safety Hearing. Retrieved from http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_2501-2550/ab_2524_cfa_20160328_101057_asm_comm.html.

xiii Cal. Gov't Code § 6253(a)-(b).

xiv *Id.* § 6254(f). "[E]xcept to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation[.]"

xv *Id.* § 6254(f)(1)-(3)

xvi *See* Memorandum: *Criminal Justice Data Quality and Integrity*, submitted from District Attorney George Gascon to Assemblymember Rob Bonta, December 14, 2018.

xvii Cal. Const. Art. VI, § 6, subd. (d)

xviii Cal. Rules of Court 2.550(c) "Unless confidentiality is required by law, court records are presumed to be open."

xix Cal. Rules of Court 2.503(g)

xx Cal. Penal Code § 13202.

xxi *See* Memorandum: *Evaluating SB10*, submitted from Kelly Lytle-Hernandez, PhD, Isaac Bryan, MPP, Danielle Dupuy, MPH, and Terry Allen, MA of the UCLA Ralph J. Bunche Center and the Million Dollar Hoods Project to the University of California Bail Consortium, October 25, 2018.

xxii S.B 10: *Pretrial Release and Detention* (CA, 2018), does require the Judicial Council to identify and define a minimum set of data to be reported by each court, and establishes an initial set of data requirements for the Judicial Council to build on.

xxiii Tafoya, S, Grattet, R, Bird, M. (2014). *Corrections Realignment and Data Collection in California*. San Francisco, CA: PPIC.

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2020, an electronic PDF of APPENDIX TO BRIEF OF AMICUS CURIAE GUN OWNERS OF CALIFORNIA was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

s / Jason Davis

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