



*The Assembly Public Safety Committee  
Hon. Reginald Byron Jones-Sawyer, Sr., Chair*

*The Assembly Committee on Accountability and Administrative Review  
Hon. Cottie Petrie-Norris, Chair*

# Joint Informational Hearing

# **Armed and Prohibited Persons System**

Tuesday, January 31, 2023

1:30 p.m. – 4:00 p.m.

Room 437, State Capitol

Sacramento, CA 95814

**JOINT INFORMATIONAL HEARING**  
Assembly Committees on Public Safety & Accountability and Administrative Review  
**Armed and Prohibited Persons System**

**AGENDA**

Tuesday, January 31, 2023  
1:30 p.m. to 4:00 p.m.  
State Capitol, Room 437

**I. Welcome and Opening Remarks**

Reginald Byron Jones-Sawyer Sr., Chair, *Assembly Committee on Public Safety*

Cottie Petrie-Norris, Chair, *Assembly Committee on Accountability and Administrative Review*

**II. Overview of the Armed and Prohibited Persons System**

Anita Lee, *Principal Fiscal and Policy Analyst*, Legislative Analyst's Office

**III. Annual Report to the Legislature on the Armed and Prohibited Persons System by the California Department of Justice**

John Marsh, *Chief of the Division of Law Enforcement*, California Department of Justice

Michael Redding, *Special Assistant Attorney General*, California Department of Justice

**IV. Local Implementation of the Armed and Prohibited Persons System**

Sarah Tunncliffe, *Sergeant*, City of Irvine Police Department

Thomas Dillon, *Sergeant*, City of San Diego Police Department

Nicole Crosby, *Chief Deputy City Attorney*, Office of the San Diego City Attorney

**V. Gun Violence Prevention Advocates**

Julia Weber, *Consultant*, Giffords Law Center to Prevent Gun Violence

Steve Lindley, *Program Manager*, Brady Center to Prevent Gun Violence

**VI. Public Comment**

**JOINT INFORMATIONAL HEARING**  
Assembly Committees on Public Safety & Accountability and Administrative Review  
**Armed and Prohibited Persons System**

**SPEAKER BIOGRAPHIES**

**Panel 1: Overview of the Armed and Prohibited Persons System**

**Anita Lee**, *Principal Fiscal and Policy Analyst*, Legislative Analyst's Office

Anita Lee is the Principal Fiscal and Policy Analyst for judicial branch, Department of Justice, state law enforcement, and gambling issues for the non-partisan Legislative Analyst's Office (LAO). In her role, she provides the California Legislature with objective analysis and recommendations regarding the state's budget and policies in these areas. Prior to the LAO, she worked extensively on structural governance reform with a wide range of nonprofit, research, advocacy, and government entities. Ms. Lee holds a Master's degree from the University of Chicago's Harris School of Public Policy and a Bachelor's degree in political science and a minor in public policy from the University of California Berkeley.

**Panel 2: Annual Report to the Legislature on the Armed and Prohibited Persons System by the California Department of Justice**

**John Marsh**, *Chief of the Division of Law Enforcement*, California Department of Justice

John Marsh is Chief John Marsh began his law enforcement career in 1994 as a Police Officer with the Woodland Police Department. In 1999, Chief Marsh joined the Department of Justice as a Special Agent assigned to the Bureau of Narcotic Enforcement, San Francisco Regional Office.

In 2006, Chief Marsh promoted to Special Agent Supervisor for the Bureau of Firearms. In this role, he created and implemented a statewide Gun Show Interdiction Program, which focused on the illegal trafficking of firearms into California from out-of-state gun shows. Chief Marsh was the Public Information Officer for the Bureau in which he testified before the State Senate and Assembly and represented the Bureau on local, state, and national news outlets regarding its enforcement activities. In 2010 he received the Attorney General's Award for Excellence in Supervision.

In 2011, Chief Marsh promoted to Special Agent in Charge over the Northern California Regional Offices with the Bureau. In 2013, Chief Marsh promoted to Assistant Director with the Bureau, responsible for the implementation of the program, which included hiring, managing of the Bureau's budget, and developing training programs for Special Agents. In 2015, Chief Marsh promoted to the Director of the Bureau of Investigation where he managed the Bureau's budget. In 2018, Chief Marsh promoted to the Assistant Chief of the Division of Law Enforcement and in December 2021 promoted to the Chief of the Division. In his current position, he oversees the operations of the Office of the Chief and

provides policy direction to the four bureaus within the Division: Bureau of Firearms, Bureau of Forensic Services, Bureau of Gambling Control, and Bureau of Investigations. Chief Marsh holds a Bachelor of Science degree in Criminal Justice from California State University, Sacramento

**Michael Redding**, *Special Assistant Attorney General*, California Department of Justice

Michael Redding is a legal and policy advisor on law enforcement, firearms, and criminal justice. Prior to joining Attorney General Bonta's office he served as the Assistant United States Attorney for the United States Attorney's Office for the Eastern District of California, in the Narcotics and Violent Crime Unit. In addition to prosecuting criminal cases, he helped organize violence-reduction strategies with local police law enforcement and sought to bring a focus on Domestic Violence to the office's prosecution of violent crime. Before becoming an AUSA, Michael served as a Deputy District Attorney in San Mateo County, prosecuting felony and misdemeanor cases and creating a more collaborative domestic violence court. Michael graduated with his bachelor's degree from University of Notre Dame and received his Juris Doctor from Harvard Law School.

### **Panel 3: Local Implementation of the Armed and Prohibited Persons System**

**Sarah Tunnicliffe**, *Sergeant, Threat Management Unit*, City of Irvine Police Department

Sergeant Sarah Tunnicliffe has been with the Irvine Police Department since 2008 and was promoted to the rank of Sergeant in 2017. Since 2019 she has been supervising the Threat Management Unit, which includes the handling of all Gun Violence Restraining Order cases for the City of Irvine.

**Thomas Dillon**, *Sergeant*, City of San Diego Police Department

Sergeant Thomas Dillon has been a law enforcement officer with the San Diego Police Department for over 14 years. During his tenure, he has worked several patrol commands as an officer, detective and as a sergeant. Sergeant Dillon served as a terrorism liaison unit for the department and completed the California Office of Emergency Service Homeland Security Specialist certification process. Sergeant Dillon is currently assigned as the Chief's Office Administrative Sergeant overseeing the law enforcement Gun Violence Restraining Order program. Sergeant Dillon holds a bachelor's degree in criminology and criminal justice studies.

**Nicole Crosby**, *Chief Deputy City Attorney*, Office of the San Diego City Attorney

Nicole Crosby, Chief Deputy City Attorney, manages the Government Affairs & Accountability Unit at the San Diego City Attorney's Office. She created and supervises the City's Gun Violence Response Team, the state model for reducing gun violence in our neighborhoods, hailed by both the Governor and Attorney General. She specializes in helping the communities' vulnerable elders and homeless connect with city and county services. As an Assistant District Attorney under then-San Francisco District Attorney

Kamala Harris, she focused on protecting the most vulnerable victims of domestic violence. She has focused on developing civil solutions against unlicensed institutions that take advantage of seniors and dependent adults. She works to ensure homeless individuals suffering from mental illness and addiction have the shelter and protection they deserve. Nicole is a current member of the US Attorney's Project Safe Neighborhoods and served on the SD Unified School District Multi-Agency Task Force. Nicole earned her bachelors of arts in political science and Italian while at UC Davis and earned a law degree from Golden Gate University.

#### **Panel 4: Gun Violence Prevention Advocates**

**Julia Weber**, *Consultant*, Giffords Law Center to Prevent Gun Violence

Julia Weber, JD, MSW, is a consultant at Giffords Law Center to Prevent Gun Violence, and previously served as Implementation Director at Giffords from 2020-2023, and as a fellow, from 2018-2020, working nationally with jurisdictions on implementing gun violence prevention laws with a focus on domestic violence, extreme risk protection orders, and court procedures. From 1999-2017, she served as co-counsel to the Judicial Council of California's Family and Juvenile Law Advisory Committee drafting legislation, developing and providing training for judges and court staff, and providing legal information to the judicial branch and legislators on family law, intimate partner violence and child abuse, firearms prohibitions, access to justice, court coordination, the California Law Enforcement Telecommunications System (CLETS), and the Armed Prohibited Persons System (APPS). During 2021-2022, she led Giffords' sponsorship of SB 320 (Eggman) which created the country's most robust approach to domestic violence civil firearms relinquishment procedures. In addition to providing training nationally, Ms. Weber teaches domestic violence law each fall at Golden Gate University School of Law as an adjunct professor and serves as Director of the National Center on Gun Violence in Relationships at BWJP.

**Stephen Lindley, *Program Manager*, Brady Center to Prevent Gun Violence**

Stephen Lindley is the Program Manager in Los Angeles for Brady Center to Prevent Gun violence. He is a 27-year law enforcement veteran. During these 27 years, Stephen worked for the National City Police Department (San Diego County) and for the California Department of Justice. He worked a variety of assignments including internal affairs, homicide, sexual predator apprehension, the Attorney General's Protection Detail, oversaw the California Department of Justice's Bureau of Firearms, and later the Departments' Division of Law Enforcement with its 1,100 agents and professional staff. Stephen served as the Chief of the Bureau of Firearms for more than eight years, during which he testified in over 80 firearm-related legislative hearings, collaborated on more than 100 firearm-related bills, and assisted in authoring and implementing California's landmark Ammunition Background Check Initiative.

Stephen has a Bachelor's degree in Criminal Justice, a Master's degree in Business, a postgraduate certificate in epidemiology from Johns Hopkins University, he is a part-time high school teacher in Corona, California, and is a member of the Board of State and Community Corrections, California Violence Intervention and Prevention Executive Steering Committee.

JANUARY 31, 2023

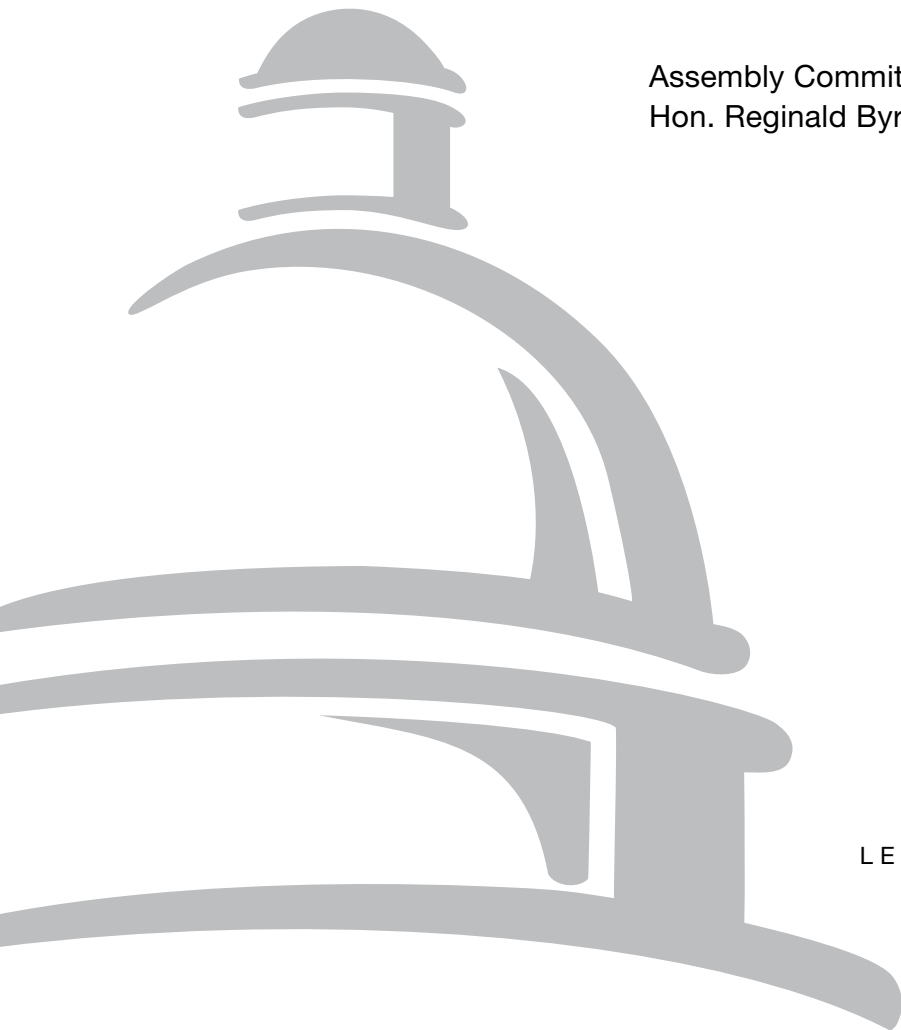
# Overview of Enforcement of Firearm and Ammunition Laws

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PRESENTED TO:

Assembly Committee on Accountability and  
Administrative Review  
Hon. Cottie Petrie-Norris, Chair

Assembly Committee on Public Safety  
Hon. Reginald Byron Jones-Sawyer, Sr., Chair



LEGISLATIVE ANALYST'S OFFICE

# Overview of California Firearm and Ammunition Laws

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## Restrictions on Firearm and Ammunition Possession

- Under federal and state law, certain individuals are not allowed to have firearms. These “prohibited persons” include individuals (1) convicted of felonies and some misdemeanors (such as assault and battery), (2) found by a court to be a danger to themselves or others due to mental illness, and (3) with a restraining order against them. In California, individuals who are not allowed to have firearms are also not allowed to have ammunition.

## Regulation of Firearm and Ammunition Sales

- Both federal and state law include various regulations related to firearm sales. State law also includes various regulations related to ammunition sales. Major examples include:
  - **Licenses to Sell.** Individuals and businesses (or dealers) selling firearms and ammunition are generally required to be licensed after meeting various conditions (such as not being a prohibited person).
  - **Background Checks for Purchases.** Firearm and ammunition sellers are generally required to request background checks from federal and state databases before completing sales to ensure that purchasers are not prohibited persons. Sellers also are required to collect and report certain information to the California Department of Justice (DOJ).
  - **Other Regulations.** Other state regulations include: limits on the type of firearms or ammunition that can be bought or possessed, a ten-day waiting period before a seller may give a firearm to a buyer, and requirements related to the reporting of the loss or theft of firearms or ammunition.





# Overview of California Firearm and Ammunition Laws

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*(Continued)*

## Removal of Firearms From Prohibited Persons

- ***DOJ Enforcement Teams.*** DOJ maintains a database of individuals who have legally bought or registered a firearm with the state. DOJ agents use this information to remove firearms from such individuals who subsequently become prohibited persons.
- ***Court Processes.*** State law requires that the courts inform individuals—including those convicted of an offense or subject to a civil restraining order that makes them a prohibited person—that they must relinquish their firearms, such as by turning them over to local law enforcement or giving them to a licensed firearm dealer for storage. Probation officers or the individuals themselves are required to report on whether this occurred.



# Funding of Regulation and Enforcement of State Firearm and Ammunition Laws

## Summary of Funding for Department of Justice Bureau of Firearms

(In Millions)

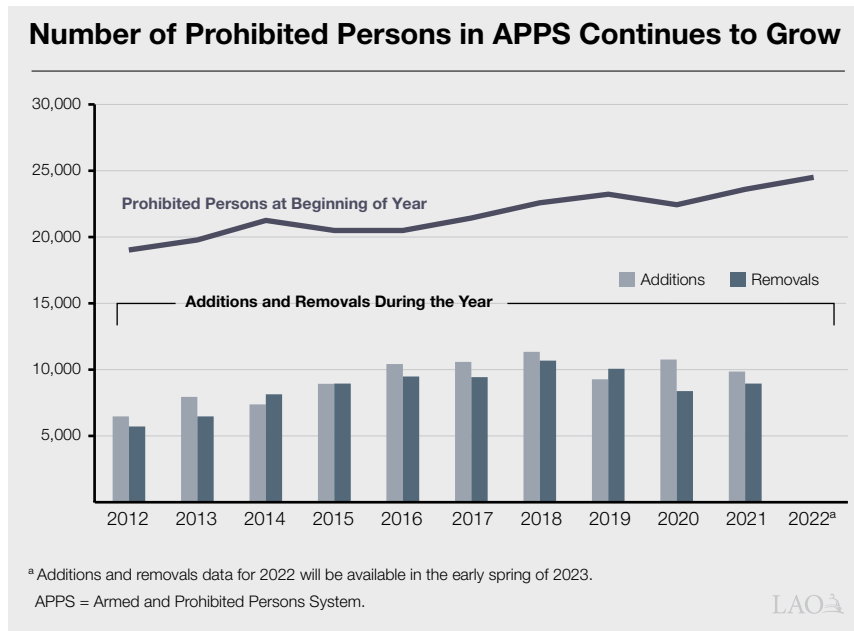
	2018-19	2019-20	2020-21	2021-22	2022-23
General Fund	—	\$18.6	\$17.2	\$28.9 <sup>a</sup>	\$22.0
Dealers Record of Sale Special Account	\$20.0	14.5	14.6	15.8	20.6
Firearms Safety and Enforcement Special Fund	10.3	7.4	8.5	9.1	11.3
Ammunition Safety and Enforcement Special Fund	2.2	1.1	0.8	1.4	1.0
Firearm Safety Account	0.3	0.3	0.3	0.3	0.4
Reimbursements	—	—	—	—	0.3
<b>Totals</b>	<b>\$32.8</b>	<b>\$41.9</b>	<b>\$41.5</b>	<b>\$55.5</b>	<b>\$55.7</b>

<sup>a</sup> Includes one-time \$10 million for grants to county sheriff offices for the removal of firearms and ammunition from prohibited persons.

- **DOJ Primarily Responsible for Regulation and Enforcement.** DOJ’s Bureau of Firearms (BOF) is primarily responsible for the regulation and enforcement of the state’s firearm and ammunition laws. This includes conducting background checks, licensing firearm and ammunition vendors, and administering various other firearms and ammunition programs.
- **At Least Half of DOJ Costs Supported by Fee Revenue.** State law authorizes DOJ to charge various fees related to firearms and ammunition that are deposited into one of various state special funds to support BOF programs and activities. For example, an individual purchasing a firearm currently pays fees totaling \$37.19—which are deposited into three different funds (including \$31.19 to the Dealers Record of Sale Special Account). Between 2012-13 and 2019-20, BOF was generally supported only by fee revenues.
- **Remaining Costs Supported by General Fund.** As shown in the above figure, BOF received \$51.9 million in support in 2022-23—\$19.9 million (or 38 percent) from the state General Fund and \$32 million (or 62 percent) from various special funds. Most of the General Fund is used to support DOJ enforcement teams primarily responsible for investigating the illegal purchase or possession of firearms and ammunition, as well as seizing them from prohibited persons.



## Armed and Prohibited Persons System (APPS)

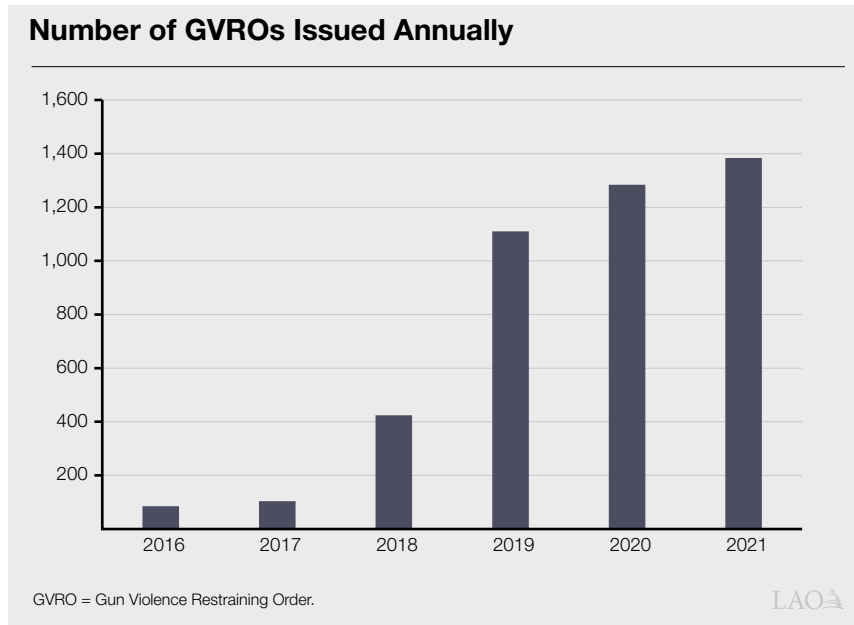


- DOJ maintains APPS, which is a database that includes all individuals who legally purchased or transferred firearms, as well as all known firearms associated with each individual. As of January 1, 2022, there were nearly 3.2 million firearm owners in the APPS database.
- The APPS database includes a “Prohibited Armed Persons File,” which consists of individuals who subsequently become prohibited from owning or possessing firearms. This list is used by law enforcement to identify prohibited persons who might have firearms. As of January 1, 2022, there were 24,509 prohibited persons in this file.
- As shown in the figure, the number of prohibited persons in APPS continues to grow. This is generally due to more individuals being added than removed in most years. For example, 9,848 individuals were added in 2021 but only 8,937 were removed—leading to an increase of 911 individuals between 2021 and 2022.
- Of the prohibited persons removed in 2021, 60 percent were removed because they were no longer prohibited, 36 percent were removed due to firearms seizures or lawful transfers, and 4 percent were removed because they were deceased.



## Gun Violence Restraining Orders (GVROs)

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- The courts can issue criminal and civil protective orders that prohibit individuals from purchasing or possessing firearms or ammunition. Examples of civil protective orders include GVROs and domestic violence restraining orders.
- State law authorizes law enforcement and certain private citizens—such as an immediate family member or employer/coworker—to seek GVROs when there is concern that an individual poses a significant and/or immediate danger to themselves or others. Temporary or emergency GVROs last about 21 days. Lengthier GVROs of one to five years may follow after a court hearing.
- As shown in the above figure, DOJ data indicate that the number of GVROs issued has increased annually—reaching nearly 1,400 GVROs issued in 34 counties in 2021.



# Recent Funding Provided for Enforcement of Firearm and Ammunition Laws

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## Additional Resources for DOJ

- Chapter 2 of 2013 (SB 140, Leno) provided \$24 million (available for three years) from fees deposited into the Dealer Record of Sale Special Fund to address the growth of prohibited persons in APPS.
- Various actions were taken to stabilize the level of funding available to support BOF activities. This included addressing operational shortfalls (where expenditures exceed revenues) in a couple of DOJ fee-supported special funds.
  - The 2019-20 budget package included \$17.5 million ongoing General Fund to support APPS enforcement teams. This amount included (1) \$11.9 million to shift existing support for the teams from three special funds to the General Fund and (2) \$5.6 million in increased support for the teams.
  - Chapter 736 of 2019 (AB 1669, Bonta) enabled DOJ to increase the total fee charged when purchasing a firearm from \$25 to \$37.19—an increase of \$12.19 (or 49 percent).

## Grants to Local Law Enforcement

- Funding has been provided in recent years for grants to county sheriff offices for activities related to seizing firearms and ammunition from prohibited persons.
  - The 2019-20 budget package included \$3 million General Fund (available through June 2022) for the Gun Violence Reduction Pilot Program. This program awarded grants to four counties: Alameda (\$1 million), San Diego (\$1 million), Ventura (\$750,000), and Santa Cruz (\$250,000).
  - The 2021-22 budget package included \$10 million General Fund (available for two years after award) for the Gun Violence Reduction Program. To date, this program has awarded grants to ten counties totaling \$5 million in December 2021 and to five counties totaling \$2.8 million in November 2022.
- The 2022-23 budget package included \$25 million General Fund (available through June 2027) for competitive grants for local law enforcement agencies to support gun buyback programs.



# Recent Funding Provided for Enforcement of Firearm and Ammunition Laws

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## Other Actions

- The 2022-23 budget package included \$40 million General Fund (available through June 2025) for trial courts to enforce court orders removing firearms and ammunition from prohibited persons. Courts are to prioritize removals stemming from domestic violence restraining orders, GVROs, and other civil orders. Each court receiving funding is required to partner with at least one law enforcement agency within the county and to use at least 30 percent of its funding for law enforcement costs.
- The 2021-22 budget package included \$1 million (available through June 2024) for the San Diego City Attorney's Office to conduct GVRO trainings statewide. This was in addition to funds provided to the office as part of the 2018-19 budget package (\$50,000) and the 2019-20 budget package (\$250,000).





C A L I F O R N I A

DEPARTMENT OF JUSTICE

# ARMED AND PROHIBITED PERSONS SYSTEM REPORT 2021

**ANNUAL REPORT TO THE LEGISLATURE**  
**SB 94 LEGISLATIVE REPORT**  
**CALENDAR YEAR 2021**



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## EXECUTIVE SUMMARY

### ***The Armed and Prohibited Persons System and Legislative Reporting Requirements***

In 2006, the State of California became the first and only state in the nation to monitor individuals who legally purchased or acquired firearms and later became prohibited from owning or possessing them. The Armed and Prohibited Persons Systems (APPS) database cross-references firearms purchasers against other records for individuals who are prohibited from owning or possessing firearms. The Department of Justice Bureau of Firearms (Bureau) utilizes Crime Analysts, Special Agents, and Special Agent Supervisors to locate and seize firearms from prohibited persons identified through the APPS database, thereby preventing and reducing incidents of violent crime.

The authority and specifications for this public reporting initiative were established in Senate Bill (SB) 140 (Stats. 2013, ch. 2), which sunset in 2019, and were reestablished with further specifications under SB 94 (Stats. 2019, ch. 25) in 2019. SB 94, which added section 30012 to the Penal Code, requires the Department of Justice (Department) to report specified information related to the APPS database, including the number of individuals in the APPS database and the degree to which the backlog in the APPS database has been reduced or eliminated. In this report, the term “backlog” is used in accordance with the definition created by SB 94 and codified in Penal Code section 30012, subdivision (a)(4): the number of cases for which the Department did not initiate an investigation within six months of the case<sup>1</sup> being added to the APPS database or a case for which the Department has not completed investigatory work within six months of initiating an investigation.

Prior to SB 94 going into effect, the Department communicated to the Department of Finance (DOF) and to the Legislature that the current firearms database systems did not have the capability required to collect and report on the backlog as it has now been defined in statute and certain other metrics newly required by SB 94. In response, the Department worked with DOF to submit a Budget Change Proposal (BCP) requesting funding to support the upfront planning and analysis costs to determine how to create an updated database system that would be able to yield the requested data and have the improved capability of working with the APPS database. The Department has received the resources for the analysis phase of the modernization project. Once the analysis is complete, and additional funding secured, the Department will be able to begin the upgrade process for the APPS database and other firearms IT systems.

### ***COVID-19 Impact on APPS Enforcement***

For the first six months of 2021, California remained under the constraints of the Governor’s [Stay Home Order](#) that was implemented early in the COVID-19 pandemic. During that time, APPS enforcement efforts continued at the same reduced level that they had in 2020. Because APPS work requires extensive face-to-face interaction with the public, the Bureau was forced to scale back APPS efforts in order to protect both Bureau personnel as well as the public. Nonetheless, agents still faced exposure to COVID-19 in the course of duty and in some instances were required to quarantine, further impacting APPS enforcement.

Firearm and ammunition sales began to surge at the beginning of the pandemic in 2020 and continued through 2021. To reduce face-to-face interactions during the Governor’s Stay Home order, agents focused on identifying prohibited persons who were denied ammunition purchases because the

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<sup>1</sup> Within the APPS database a case refers to one individual; therefore, the terms ‘case’ and ‘individual’ will be used interchangeably in this report.

attempt to purchase ammunition strongly suggests the possession of a firearm. These types of investigations are generally labor-intensive and may take longer than typical APPS investigations because closing a case requires numerous hours of surveillance followed by enforcement actions. However, they maximize investigative efficiencies in other ways, by providing up-to-date intelligence which facilitates locating prohibited persons and search warrants, where necessary. Ammunition denial investigations often lead to a higher seizure rate but a lower case closure rate because such investigations tend to require more time for surveillance and enforcement following an initial contact as compared to a non-ammunition denial investigation. For example, agents may initiate 10 regular APPS investigations in one shift, whereas ammunition denial investigations may require the team to devote an entire shift or more to one such investigation. Nevertheless, these cases were an efficient way for the Bureau to continue to protect the public by disarming prohibited individuals while also minimizing public contact in light of COVID-19. In 2021, there were 195 APPS investigations involving denied ammunition eligibility checks, of which the Bureau investigated and closed 123, resulting in 110 firearms seized.<sup>2</sup> The remaining cases are still under investigation.

As pandemic restrictions were lifted and businesses began to reopen, the Bureau progressively increased APPS enforcement efforts to pre-pandemic levels. By the end of 2021, monthly productivity had returned to pre-pandemic levels.

To make up for the decline in productivity resulting from COVID-19 restrictions and safety measures, agents conducted four large-scale regional sweeps in the latter half of 2021. During these APPS sweeps, agents from around the state concentrated their enforcement efforts within an entire region in an effort to increase APPS case closures. These four sweeps covered large areas of California and were instrumental in reinvigorating enforcement efforts, while significantly contributing to the overall closure of cases in the second half of 2021 alone. The sweeps were successful not only due to the quantity of cases agents worked, but also due to continued collaboration with local law enforcement partners. Despite reduced APPS enforcement in the first six months of 2021, the regional sweeps conducted in the second half of the year helped boost case closures so that APPS productivity for the 2021 calendar year increased compared to that in 2020.

While these large-scale regional sweeps were an effective tool to boost enforcement efforts following the easing of pandemic-related restrictions, they involve inordinate travel and overtime, placing pressure on agents and their families. As such, while the APPS team is committed to public safety and proud of this accomplishment, continuously maintaining this level of enforcement activity in subsequent years is not sustainable long term. However, these regional sweeps helped the Bureau strengthen and establish relationships with local law enforcement partners that in the future will also support APPS enforcement efforts. As discussed later in this report, the Department's awarding of \$4.9 million to 10 county sheriff's departments in December 2021—through the Department's Gun Violence Reduction Program—was intended to increase local law enforcement's resources and capacity to help the Department close APPS cases.

In addition to the COVID-19 pandemic, 2021 was a year filled with other challenges. Large wildfires that spread across the state limited agents' ability to work cases in certain regions during wildfire months. Furthermore, continued surges in firearm and ammunition sales strained Bureau resources due to the legislative mandate to complete background checks within a 10-day timeframe. Despite extraordinarily demanding working conditions, the Bureau continued to work diligently to serve and protect the people of California.

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<sup>2</sup> These figures are included within the total number of APPS cases in 2021.

## **APPS Database Analysis**

A comprehensive review of the APPS database reveals the following:

- In 2021, the Department removed 8,937 prohibited persons from the APPS database. At the same time, 9,848 prohibited persons were added to the APPS database. As of January 1, 2022, the APPS database had 24,509 armed and prohibited persons and 1,130 additional armed and prohibited individuals who were incarcerated.
- The Bureau had between 21-36 Special Agents and between 13-14 Special Agent Supervisors working to address the ever-changing number of armed and prohibited individuals in 2021.
- As of January 1, 2022, 54% of prohibited individuals in the APPS database were prohibited due to a felony conviction, 22% were prohibited due to the federal Brady Handgun Violence Prevention Act (18 U.S.C. §§ 921, 922), 21% were prohibited due to a restraining order, 20% were prohibited due to mental health triggering events, 10% were prohibited due to a qualifying misdemeanor conviction, and 5% were prohibited per the conditions of their probation. Persons can be prohibited under more than one category, which is why the total number exceeds 100%.
- In 2021, the Bureau recovered 1,428 firearms. Of these, 826 were firearms identified in the APPS database and 602 were non-APPS firearms, meaning firearms that were not known to be associated with the prohibited person but were in that person's possession.
- In 2021, the Bureau investigated approximately 6,663 individuals who were identified as armed and prohibited persons in the APPS database.
- In 2021, there were 195 armed and prohibited individuals who attempted to purchase ammunition and were denied. Agents and Crime Analysts investigated and closed 123 of these denial cases. The remainder of the denials remain under investigation.

## **Recommendations**

After conducting an examination of the APPS program, the Department recommends the following steps to improve the removal of firearms from prohibited persons:

1. Fund the currently unfunded mandate that all California county courts confiscate or enforce the transfer or legal storage of known firearms from individuals at the time of conviction when an individual becomes prohibited due to a felony or qualifying misdemeanor.
2. Develop and fund a similar statewide county-level firearm confiscation system where firearms are confiscated from an individual at the time they are served with any type of restraining order. These firearms seizures must be documented in the Automated Firearms System (AFS) as required by existing law. These entries into AFS will prevent unnecessary, duplicative efforts by the Department and potentially other agencies.
3. Improve the recruitment and retention of Department sworn personnel by offering compensation that is competitive with other law enforcement agencies. Despite a 12% pay increase that took effect in September 2021, Special Agent pay at the Department has not reached parity with comparable positions statewide.

4. Improve existing coordination and cooperation with local law enforcement agencies through Joint Task Forces with and under the direction of the Department. With additional funding, the Department could create new Joint Task Forces with local law enforcement agencies and improve local law enforcement reporting of firearms in their custody into AFS.
5. Continue with the modernization process of the existing firearms databases. Funding for Phase 1 of the modernization process has been secured. Funding for Stage 2 of the modernization process has been secured. Stage 2 involves the analysis and planning of what will be required to replace the existing systems and implement the recommended technical solution and approach, that will improve overall efficiency, minimize risk, and stabilize employee resources. Additional resources will be required to fund Stages 3 and 4, and the Project Execution Phase which will involve the implementation of the modernization project. The Department looks forward to continuing to work with the Governor and Legislature to fund the implementation of the modernization project.
6. Continue to partner with federal law enforcement agencies and engage with local law enforcement agencies to seize firearms from individuals prohibited only due to the federal Brady Handgun Violence Prevention Act (Federal Brady Act).

The Department has been proactive and made efforts to implement four of the six recommendations outlined above. The Bureau has (1) expanded its recruitment efforts and lowered vacancy rates by hiring Special Agent Trainees and recruiting new Special Agents who have law enforcement experience from state and local law enforcement agencies; (2) worked diligently to create partnerships with local agencies, (3) worked to create partnerships with federal law enforcement agencies; and (4) continued to provide data to information technology professionals in order to make progress in the multi-year firearms database modernization project. However, fully implementing the remaining recommendations will require legislative support and additional resources. Further explanation of these recommendations can be found on page 33.



# ANNUAL REPORT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE

## *The APPS and Legislative Reporting Requirements*

This report presents a statistical summary of the APPS database, as mandated by SB 94, for the period of January to December 2021, as well as additional in-depth analyses of data through the history of the APPS database. It also contains additional statistics to help provide context to the APPS database — particularly in light of the unprecedented COVID-19 pandemic — and the workload that flows in and out of that system.<sup>3</sup>

Penal Code section 30000, subdivision (a) requires the Department to maintain a “Prohibited Armed Persons File.” This file is generated from a larger database known as the Armed and Prohibited Persons System that records all known firearms owners in the State of California and monitors various other databases for prohibiting triggering events (PTE), such as a felony conviction or an active restraining order, to identify those persons within the system who are both armed and prohibited. The APPS program was mandated in 2001 (SB 950, Stat. 2001, ch. 944), then implemented in December 2006.

In 2013, the California Legislature passed SB 140, which appropriated \$24 million dollars over a three-year period to the Department to address the growing number of records in the Armed and Prohibited Persons System. Additionally, SB 140 required the Department to submit annual reports detailing the progress made in reducing the backlog.

The APPS reporting provisions as outlined in SB 140 expired on March 1, 2019. In 2019, SB 94 was passed, which provided updated requirements regarding the mandated reporting of the APPS database statistics. Prior to the passing of SB 94, the Department communicated to the DOF that it did not have the technological capability to report on the new metrics requested in SB 94 and would need a BCP to begin the planning analysis necessary to develop a system that could report on such metrics. Regardless, the new provisions went into effect on June 27, 2019, and are codified at Penal Code section 30012.

See Appendix B for additional legislative history relative to the APPS database.

## *Overview of the Mandated Categories for Statistical Reporting*

Pursuant to Penal Code section 30012, no later than April 1, 2020, and no later than April 1 of each year thereafter, the Department must report annually to the Joint Legislative Budget Committee the following information for the immediately preceding calendar year:

(1) The total number of individuals in the Armed Prohibited Persons System (APPS) and the number of cases which are active and pending, as follows:

(A) (i) For active cases, the Department shall report the status of each case for which the department has initiated an investigation. This information shall include, at a minimum, the number of cases that have not been actively investigated for 12 months or longer, along with a breakdown of the time period that has elapsed since a case was added to the system.

(ii) For purposes of this paragraph, “investigation” means any work conducted by sworn or nonsworn staff to determine whether a prohibited person possesses one or more firearms, whether to remove the person from the database, or whether to shift the person to the pending

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<sup>3</sup> This report will use terms specific to the subject matter at hand. See Appendix A for the Relevant Key Terms and Definitions.

caseload.

(B) For pending cases, the Department shall separately report the number of cases that are unable to be cleared, unable to be located, related to out-of-state individuals, related to only federal firearms prohibitions, and related to incarcerated individuals.

(2) The number of individuals added to the APPS database.

(3) The number of individuals removed from the APPS database, including a breakdown of the basis on which they were removed. At a minimum, this information shall separately report those cases that were removed because the individual is deceased, had prohibitions expire or removed, or had their cases resolved as a result of department firearm seizure activities.

(4) The degree to which the backlog in the APPS has been reduced or eliminated. For purposes of this section, “backlog” means the number of cases for which the department did not initiate an investigation within six months of the case being added to the APPS or has not completed investigatory work within six months of initiating an investigation on the case.

(5) The number of individuals in the APPS before and after the relevant reporting period, including a breakdown of why each individual in the APPS is prohibited from possessing a firearm.

(6) The number of agents and other staff hired for enforcement of the APPS.

(7) The number of firearms recovered due to enforcement of the APPS.

(8) The number of contacts made during the APPS enforcement efforts.

(9) Information regarding task forces or collaboration with local law enforcement on reducing the APPS file or backlog.

This report serves two functions: (1) it addresses the SB 94 mandated reporting; and (2) it provides a comprehensive assessment of the APPS database and the Bureau’s related enforcement activities.<sup>4</sup> The Department undertook this comprehensive assessment by: (1) analyzing historical information such as audit files of APPS data; (2) examining the APPS caseloads and workflow for the immediately preceding calendar year; and (3) reviewing other administrative information.

## **Overview of the APPS Database**

The APPS database contains information on firearms either legally acquired or registered in California and the owners of those firearms. Consistent with legislative mandates, the database is the result of records and information originating in the Dealer Record of Sale (DROS) database and the AFS database. Combined, those records represent all individuals who purchased or transferred firearms legally and all known firearms associated with each individual.

Individuals are entered into the APPS database as soon as they legally purchase or acquire a firearm. They are moved to the Prohibited Armed Persons File within the database if they become prohibited. Prohibited individuals are identified by daily manual queries of the databases that cross-reference the population of known firearm owners against individuals who may have had a PTE within the past 24 hours. New individuals are added daily, creating a constantly changing and growing dataset.

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<sup>4</sup> See Appendix C for a brief overview of the mandated statistical requirements.

Armed and prohibited individuals, while the primary focus of the Department's enforcement efforts, are a subset representing less than one percent of the APPS database. As of January 1, 2022, there were 3,199,394 known firearm owners in the APPS database, of which 24,509 are prohibited from owning or possessing firearms in the Prohibited Armed Persons File. In order for the Department to identify those armed and prohibited individuals, the Department must first identify individuals who have legally acquired a firearm(s) and then identify which of those individuals are also prohibited due to a triggering event.

Between 2013 to 2021,<sup>5</sup> changing laws have introduced new offenses that prohibit firearm ownership and/or possession, placing a growing number of individuals into the Prohibited Armed Persons File. Other factors such as ammunition eligibility checks, mandatory assault weapon registration, and increased firearm sales have also contributed to the surge of identified prohibited individuals. Prohibitions may be due to a felony conviction, domestic violence conviction, a qualifying misdemeanor conviction, mental health-based event, various types of civil or criminal restraining orders, as well as other prohibitory categories. See Appendix E for firearm prohibiting categories.

Within the Prohibited Armed Persons File, cases are separated into two broad categories of "Active" and "Pending."

"Active" cases are those that have not yet been investigated or are in the process of being investigated, but all investigative leads have not yet been exhausted.

"Pending" cases are those that have been thoroughly analyzed and all investigative leads have been exhausted. They are organized into the following sub-categories:

1. Unable to clear: Cases that have been investigated by the Department's agents who have exhausted all investigative leads and remain unable to recover all firearms associated with the prohibited individual. If new information is identified, the case will be moved to Active status.
2. Unable to locate: Cases where the Department's agents have made at least three attempts to contact the individual but have not been able to locate them, even after exhausting all leads.
3. Out-of-state: Cases where the Department's agents have determined that the prohibited person is no longer living in California.
4. Federal Gun Control Act (Federal Brady Act Prohibition Only): Cases where a person is prohibited only under federal law. State, county, and municipal law enforcement have no authority to enforce a prohibition based only on the Federal Brady Act. Persons who have both a statewide and federal prohibition are not listed in this group.
5. Incarcerated: Cases involving incarcerated individuals remain on the Pending list, but the Department still tracks and monitors them. Once released, they are moved to Active status.<sup>6</sup>

The Department verifies new or updated information on all Pending cases regularly. If any additional information becomes available on an APPS case in Pending status (e.g., the firearm(s) associated with the APPS individual are located, records indicate a new address for the individual, or the individual is released from incarceration), the case is evaluated and transitioned back into the Active status.

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5 See Appendix B for a legislative history as related to APPS

6 While technically pending, for the purposes of this report, incarcerated individuals are counted separately and are not included in pending statistics.

The current system includes 11 databases that do not communicate with one another or may only have one-way communication with another firearms database.<sup>7</sup> This requires a Crime Analyst to manually cross-reference records from one database to another while working to compile an individual package for investigation.

Of the 11 databases, only five databases feed into the APPS database for firearm association and prohibition determinations, which include the:

1. Automated Criminal History System (ACHS); established in 1971, it is the repository for state summary Criminal Offender Record Information (CORI).
2. Wanted Persons System (WPS); established in 1971 as the first online system for the Department, it is a statewide computerized file of fugitives for whom arrest warrants have been issued.
3. Automated Firearms System (AFS); created in 1980 to identify lost or stolen firearms and to associate firearms with individuals. It does so by tracking the serial number of every firearm owned by government agencies, handled by law enforcement (seized, destroyed, held in evidence, reported stolen, recovered), voluntarily recorded, or handled by a firearms dealer through transactions. Prior to 2014, most entries in AFS were handguns. Since January 1, 2014, all new legally acquired firearms, both handguns and long guns, are entered into AFS.
4. California Restraining and Protective Order System (CARPOS); created in 1991, it is a statewide database of individuals subject to a restraining order. This system includes Domestic Violence Restraining Orders (DVRO), Gun Violence Restraining Orders (GVRO), and other types of restraining orders.
5. Mental Health Reporting System (MHRS); established in 2012, it is a web-based application used by Mental Health Facilities, Superior Courts, Juvenile Courts, and Law Enforcement Agencies to report firearm prohibiting events related to mental health to the Department.

The APPS database is not an automated system that cross-references across all firearms databases; therefore, prior to creating a complete case package for investigation, Crime Analysts must manually cross-check multiple additional databases. As it stands, the system is extremely cumbersome to operate. When a user retrieves a single case, all information must be verified prior to action being taken by agents. Such verification starts with confirming that the individual's name, birth date, and driver's license number match across all systems. Then, using the Law Enforcement Agency Web (LEAWEB), the Crime Analyst will run a multiple query using the individual's driver's license number. LEAWEB is a California unique database that queries some of California's databases like CARPOS, AFS, ACHS, MHRS, WPS, and the Supervised Release Files, as well as the databases of the California Department of Motor Vehicles (DMV). Each case is highly variable, and the circumstances and information pertinent to each case will determine how a Crime Analyst conducts their research. For example, an individual can be prohibited under multiple categories; the prohibiting category determines which databases a Crime Analyst must use to verify the prohibition is still current and that the case is workable by agents.

## ***Firearms Information Technology Systems Modernization (FITSM)***

The Department initiated the Firearms Information Technology Systems Modernization Project in June 2020 and is currently in the Stage 2 Alternative Analysis Planning stage. The project is currently conducting an analysis of all firearm business processes and supporting systems, which includes market research to ultimately determine a modern solution and the timeline for the implementation of the new firearms systems. The Department hopes to complete the Stage 2 Alternatives Analysis

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<sup>7</sup> See Appendix D for a relational diagram of the Bureau's firearms databases.



by December 2022, and to select vendors to begin implementation by January 2024. The project is expected to identify many positive solutions to various firearms systems, including the APPS database.

The existing firearms systems utilized by the Department, law enforcement agencies, and other firearm stakeholders lack the modern network capabilities the Department needs to comply with legislative mandates and fulfill its commitment to public safety. The systems currently in use were built many years ago — dating as far back as 1980 — and have been modified piecemeal over the years in response to various legislative mandates. Each system uses different logic, meaning inputs cannot be easily transferred from one database to another, and modifications cannot be applied across multiple systems. These problems will persist and prevent the kind of automation that can enhance efficiency, thus causing increased workloads and missed operational opportunities until the Department can develop and implement the FITSM solution.

The complexity of the existing firearms systems can be seen even in the most straightforward of circumstances. In the case of an individual who has only one firearm and is prohibited only by one restraining order, the process would be as follows:

1. The Crime Analyst must confirm the restraining order is effective and that the individual was in fact served by either being present in court or was served by a processor.
2. Once this is verified, the Crime Analyst will try to pull the actual restraining order from an external database, the California Courts Protective Order Registry (CCPOR).
3. CCPOR is meant to be a centralized registry for restraining orders in California; unfortunately, it has not been implemented across all county courts in the state. For courts that do not use CCPOR, the Crime Analyst must contact the court directly to attempt to obtain a copy of the restraining order. Having an original copy can provide valuable additional information like confirming when, where, and how the restraining order was served; the individual's last known address; and whether the individual has already surrendered their firearm.
4. Assuming the individual is still in possession of their firearm, the Crime Analyst must then pull descriptive information for the firearm associated with the individual and run the serial number of the firearm in AFS to confirm the individual is still associated with that firearm. The Crime Analyst may also have to establish there are no extenuating circumstances, such as a situation where the individual is no longer in possession of the firearm, but the databases do not reflect the change. This is sometimes caused by a keying error where a serial number is off by one digit, but all other information coincides. A keying error traditionally happens from data entry made by a firearms dealer, by the public via online reporting, or by law enforcement agencies that seize firearms. In such circumstances, additional administrative work must be done by the Department to remove the association to that firearm from that individual.
5. Although LEAWEB queries the DMV, the query does not automatically pull an individual's identification photo or associated vehicles. To get such information, the Crime Analyst must perform additional, separate steps to pull relevant information, such as the most recently reported place of residence, from DMV registries.
6. Once all information is confirmed, and assuming the information supports investigative efforts, the package is then ready for agents to conduct enforcement actions.

As noted, this outlined process is for the simplest case possible with one prohibition and one firearm. Most cases involve additional factors such as additional firearms, prohibitions, combined federal and state prohibitions and/or criminal history, which make a case package much more difficult to compile.

The Department is supporting planning efforts for the FITSM project that will replace and modernize the existing legacy infrastructure. While funding has been secured to begin Stage 2, which involves an analysis and planning of the required work to complete the effort, future additional funding will be required to begin Stages 3 and 4, to select a vendor and initiate the implementation activities which will bring this project to fruition.

## **Enforcement Teams**

Each Bureau office has its own team of Special Agents for field operations. The Bureau also employs Crime Analysts in each of their six offices throughout the State.<sup>8</sup> The Crime Analysts access the APPS database daily and develop investigative packages of armed prohibited people for each team of agents to contact. Their jobs require crosschecking several databases to confirm addresses, photos, arrest records, and status of armed and prohibited individuals, among other relevant information. Using their knowledge and expertise, they translate vast amounts of data into actionable information that allows the agents to do their investigations efficiently and effectively. The work is time-intensive and requires great attention to detail as any error (typos, accidental variations, incorrect information, etc.) can lead to incorrect decisions or unnecessary investigative contacts. Modernizing the firearms IT systems would allow for more accurate information and bolster the success of operations by ensuring agents and other law enforcement partners are provided the most current information and not placed at unnecessary risk.

Using these investigative packages, Special Agents attempt to locate the firearm(s) associated with each armed and prohibited individual via a consent search, probation or parole search, or a search warrant. Often, the armed and prohibited individual will be in possession of numerous firearms, many of which were not associated with that individual in the APPS database. This could be due to the individual having: long guns purchased before long gun reporting requirements in 2014, firearms loaned to them by another person, firearms imported into California from another state, antique firearms, illegally purchased firearms, ghost guns,<sup>9</sup> or stolen firearms.

Improving partnerships with local law enforcement agencies will help to improve operation efficiency. Often, agents contact an armed and prohibited individual only to find that local law enforcement has already seized the firearm(s) associated with that individual but failed to enter the seized firearm into AFS as required by Penal Code sections 11108.2 and 11108.3. Entering that information would have removed the individual from the APPS database, allowing the Bureau's agents to focus on another case. Currently, the Bureau must reach out to the law enforcement agency to request they update AFS or ask for the police report in order to cross-check the firearms seized and match the associated firearms in the APPS database. Unless that information matches and is verified, the individual cannot be removed from the APPS database. In 2021, 150 APPS investigations conducted by the Bureau involved firearms that were already in local law enforcement custody. The cost of such oversight cannot be recovered, resulting in duplicative efforts by the Bureau that reduce efficiency and waste resources. The Department's proposed plan to increase collaboration would help ensure the timely and accurate input of data by local law enforcement agencies in statewide data systems.

Successful models of operations with local law enforcement have been a force multiplier for the APPS program. For instance, the Contra Costa County Anti-Violence Support Effort Task Force (CASE) is a collaboration between various state, local, and federal agencies. CASE conducted 93 firearms-related investigations and confiscated 62 firearms, 19 of which were APPS firearms.<sup>10</sup> As outlined in

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8 See Appendix F for a map of the various Bureau regional office jurisdictions

9 Ghost guns are firearms made by an individual or group, without serial numbers or other identifying markings. Without a serial number, law enforcement cannot run a trace search on the firearm and the firearm does not have the legal requirements.

10 For more on the CASE task force, refer to page 28

the recommendations, the Department wants to encourage these types of collaborative partnership operations and relationships with local law enforcement agencies.

In an effort to increase these types of successful collaborative efforts, in December 2020, the Bureau established management and supervision of the Tulare County Agencies Regional Gun Violence Enforcement Team, also known as the TARGET Task Force. This is a recent addition to the Bureau task force model and supports the value established through previous task force efforts, including the aforementioned CASE Task Force. In 2021, state and local agencies working with TARGET conducted 169 firearms-related investigations and confiscated 90 firearms, 46 of which were APPS firearms. Like CASE, TARGET is collaboratively working with local, state, and federal partners to conduct APPS investigations as well as other investigations to reduce gun violence.

Additional funding to expand this task force model would allow the Department to expand on this collaborative work. The Department has seen how working with local law enforcement agencies allows the Bureau's agents to conduct more operations and remove additional firearms from prohibited armed persons more efficiently. The Department stands ready to work with the Legislature as well as local, state, and federal law enforcement partners to replicate that success across the state.

## ***Mandated Statistics and Analysis***

Senate Bill 94 mandates the reporting of specific statistics for each calendar year. With 2020 and 2021 being unusual years due to the COVID-19 pandemic, any inferences drawn from comparisons to previous years should be made with caution. The mandated statistics for the current report are the following:

### **The total number of individuals in the APPS Database**

As of January 1, 2022, the APPS database contained 3,199,394 individuals, of which 24,509 were prohibited from owning or possessing firearms.

### **Breakdown of the status of Active APPS cases**

Active cases are those involving individuals who are believed to reside in the state of California, are prohibited from owning or possessing a firearm in the state for one or more reasons, and not yet been investigated or are in the process of being investigated, but all investigative leads have not yet been exhausted. As outlined above, the statutory mandate described in Penal Code section 30012, subdivision (a)(1)(A)(i) requires the Department to report on "the number of cases that have not been actively investigated for 12 months or longer, along with a breakdown of the time period that has elapsed since a case was added to the system." As stated previously, the Department alerted the DOF that it would be unable to provide these metrics without the necessary funding to update the current firearms databases.

### **Status of the APPS database backlog**

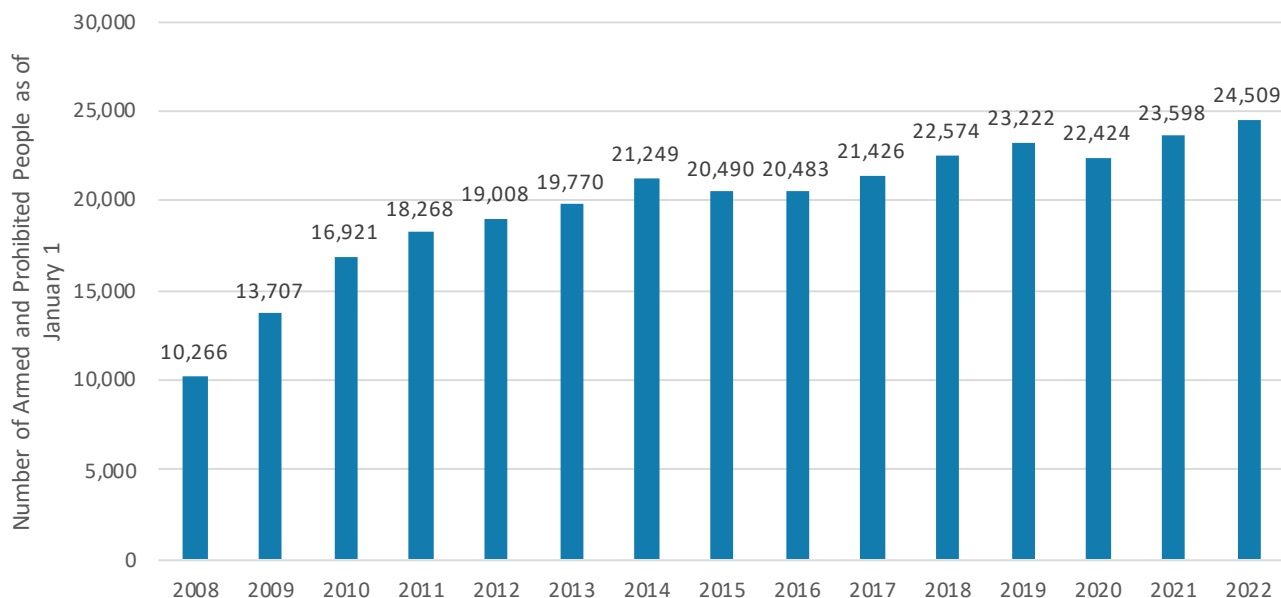
As discussed above, SB 94 defined backlog as the number of cases for which the Department did not initiate an investigation within six months of the case being added to the APPS database or for which it has not completed investigatory work within six months of initiating an investigation on the case. Once the Department receives full funding to complete the firearms modernization project, the new system will be better able to accommodate reporting on the status of the backlog.

## Breakdown of cases in the APPS database

As of January 1, 2022, the APPS database contained 3,199,394 individuals, of which 24,509 were prohibited from owning or possessing firearms. This latter figure is further subcategorized into Active and Pending cases. Active cases are those for which the Department has not yet begun investigations or is in the process of investigating but has not yet exhausted all investigative leads. Pending cases are those investigations that the Department has thoroughly analyzed and exhausted all investigative leads or determined that the person is not within the Department’s jurisdiction. As of January 1, 2022, there were 10,033 Active cases and 14,476 Pending cases. In addition to the Pending category, there are 1,130 incarcerated individuals, who while technically pending, represent a unique population that cannot be investigated until released from incarceration and moved to Active status. Therefore, they are counted separately for the purposes of this report, and are not figured in the Pending case statistics that follow.

Figure 1 shows the number of people in the Prohibited Armed Persons File within the APPS database each year. The number of prohibited people has generally increased since 2008, with only two substantial decreases in 2015 and 2020. The reason for the overall increase is potentially due to the consistent addition of new prohibited people despite efforts by Bureau agents to clear cases, as well as the recent impact of the COVID-19 pandemic that hindered the Bureau’s enforcement efforts.

Figure 1. The number of prohibited people in the APPS database as of January 1 each year<sup>11</sup>



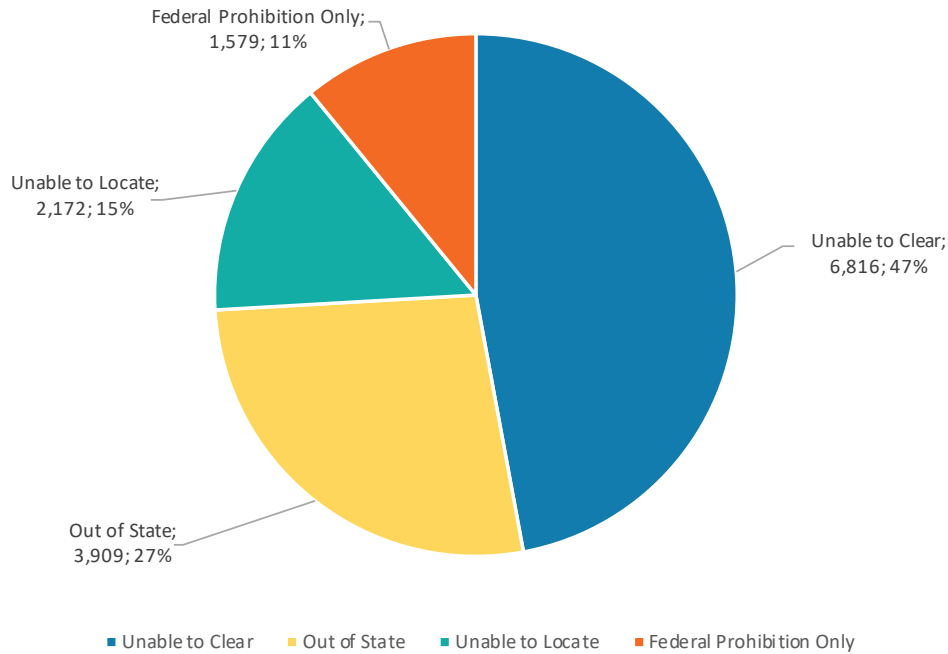
## Breakdown of the status of Pending APPS cases

Prohibited individuals in the APPS database may be assigned a Pending status for one of four reasons: (1) the prohibited person has been investigated and all leads have been exhausted, but agents have been unable to disassociate the individual from all known firearms (Unable to Clear); (2) agents have made at least three attempts to contact the prohibited individual but have not been able to locate

<sup>11</sup> This number excludes individuals who are known to own firearms and are prohibited but are also known to be incarcerated for six months or more. While incarcerated individuals are technically in the Pending status, it is assumed that they are not in possession of firearms while in custody and are therefore treated as a separate population. The Bureau receives state prison incarceration statuses nightly and individuals released from state custody are moved into the Active status.

them, even after exhausting all leads (Unable to Locate); (3) the prohibited individual has moved out of California (Out of State); or (4) the prohibited individual is prohibited due to a Federal Brady Act prohibition (18 U.S.C. §§ 921, 922) alone and the Bureau does not have the jurisdiction to investigate them (Federal Brady Act Prohibition Only). Of the 14,476 Pending cases, 6,816 (47%) were unable to be cleared, 2,172 (15%) were unable to be located, 3,909 (27%) moved out of state, and 1,579 (11%) were prohibited under Federal Brady Act prohibitions only (Figure 2).

Figure 2. Pending APPS cases separated by category as of January 1, 2022



### Breakdown of the number of individuals removed from the APPS Database

In 2021, 8,937 armed and prohibited people were removed from the APPS database. Removals from the Prohibited Armed Persons File occur for three reasons:

1. **Prohibition expired:** An individual’s prohibition expired, which could result from the expiration of restraining orders, the end of a 10-year prohibition that resulted from a qualifying misdemeanor conviction, or the end of a 5-year prohibition that resulted from a mental health event.
2. **Disassociated from all known firearms:** The prohibited person has all of their known firearms disassociated from them, meaning that each firearm attributed to them within the APPS database has been accounted for by the Bureau and disassociated from the prohibited person.
3. **Deceased:** The prohibited person is deceased.

Table 1 reports the number of individuals removed from the APPS database, separated by category.

*Table 1. Individuals removed from the APPS database in 2021 separated by reasons for removal*

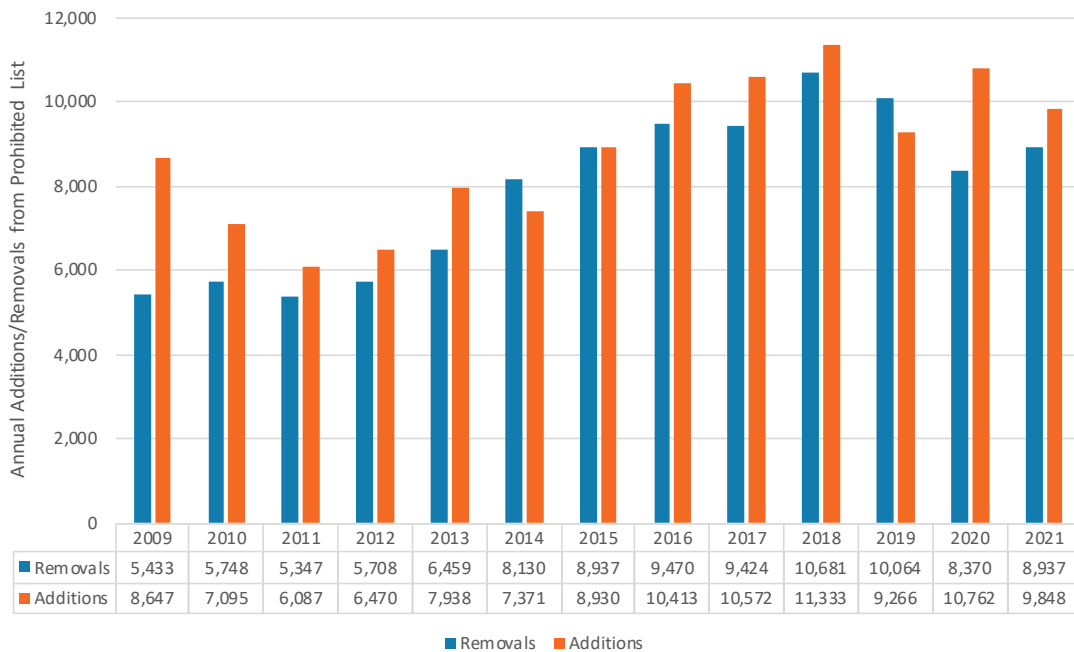
Reason for Removal	Number of Individuals Removed
Prohibition expired/no longer prohibited	5,365
Disassociated from all known firearms	3,221
Deceased	351

In instances where the Bureau is unable to locate the prohibited person or disassociate all known firearms from the prohibited person, despite having exhausted all leads, the Bureau cannot remove the individual from the APPS database and must instead assign them to the Pending category. Despite Bureau efforts, this often results from the inherent difficulty of confiscating firearms from individuals who are unwilling to surrender their firearms regardless of their prohibited status.

Of the 8,937 prohibited people removed from the APPS database this year, 3,221 removals were the result of enforcement efforts<sup>12</sup> – 397 more removals compared to 2020. Agents removed a higher number of prohibited individuals in the latter half of the year, with an average of 290 removals per month from July through December compared to an average 247 removals per month from January through June.

This pattern of removals more closely resembles the pattern from 2018 and 2019 in which a higher percentage of removals occurred in August through October. The greatest number of monthly removals in 2021 occurred in June and November, each exceeding 300 prohibited individuals disassociated from all firearms in those months.

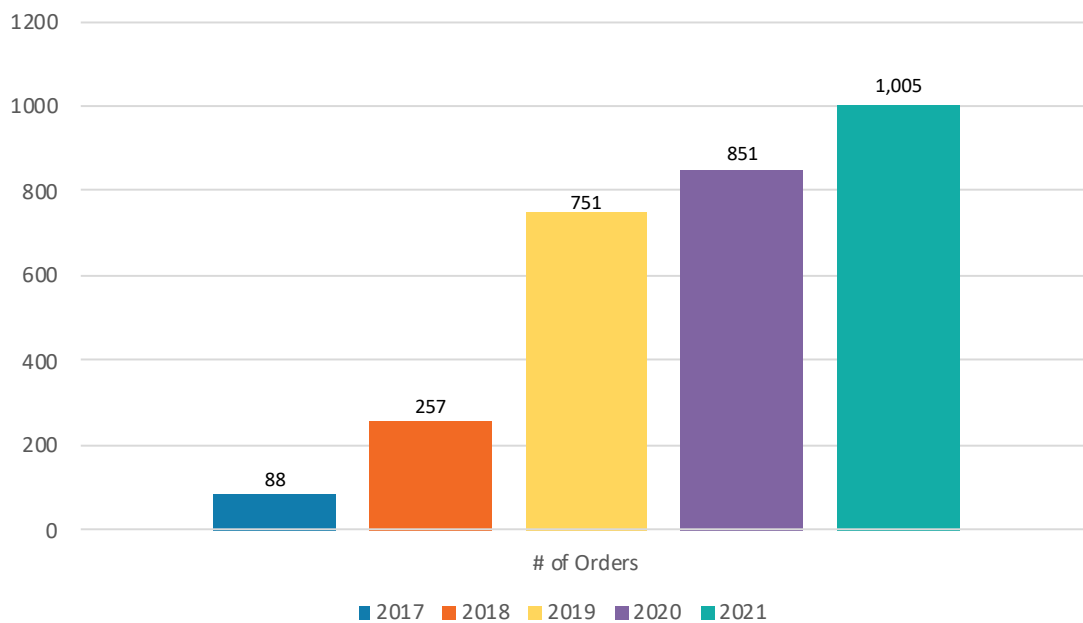
*Figure 3. The yearly removals and additions from the APPS list as of January 1, 2022*



<sup>12</sup> Note that not all 3,221 individuals who were disassociated from their firearms resulted in firearm seizures by the Bureau. In some cases, Bureau investigations determined that local law enforcement agencies already seized the firearms but failed to record the recovery, the individual attempted to report the firearm lost/stolen, or the individual is in the process of lawfully selling or gifting the firearm to a friend or relative. For a breakdown of prohibition categories as a percentage of prohibited people see Figure 5 below.

The past few years have seen an increase in prohibited individuals with Gun Violence Restraining Orders (GVROs) being entered into the APPS database (Figure 4). In 2016, with implementation of Assembly Bill 1014, California became one of the first states to enact a red flag law. The law initially allowed law enforcement officers and family members of a person they believed was a danger to themselves or others to petition the court to prohibit that person from possessing firearms under a GVRO. In 2020, Assembly Bill 61 expanded authorization to petition the court for a GVRO to employers, coworkers, and school employees. GVROs assist law enforcement in recovering firearms from individuals who have shown a probability to commit violence with a firearm or preventing those individuals from obtaining firearms in the first place. The Department views GVROs as a critical tool that saves lives, and the Bureau prioritizes GVRO-related APPS subjects for investigation. Law enforcement agencies are increasingly implementing GVROs as they recognize the positive impact on public safety. As such, the Department applauds these efforts to enhance public safety through the GVRO process.

Figure 4. Number of GVROs Issued by Year<sup>13</sup>



Restraining orders were a potentially effective means of removing people from the APPS database in 2021. Of the 3,221 individuals who were disassociated from all known firearms, 1,527 (47%) were prohibited, at least in part, because of restraining orders. Of the 5,365 people who had their prohibitions expire in 2021, 23 (<1%) individuals were prohibited, in part, due to restraining orders. Of the 351 people who became deceased in 2021, 49 (14%) were prohibited, in part, due to restraining orders. Restraining orders also seem to be highly effective at disassociating all firearms from prohibited people. As of January 1, 2022, three people who were prohibited due to restraining orders were designated Pending in comparison to the 1,527 people prohibited due to restraining orders who were disassociated with all known firearms. As such, restraining orders provide a potentially efficient way of seizing all of a prohibited person’s known firearms before their prohibitions expire.

In 2021, the months before California reopened from various COVID-19 restrictions showed fewer case closures than in the months after California’s reopening. Bureau agents closed fewer cases on average in the first half of 2021, with 230 individuals disassociated from all known firearms per month between January and May. Meanwhile, Bureau agents increased the number of closures to an average of 290

<sup>13</sup> This figure was created using CARPOS data, representing the GVROs currently in the database at a point in time. The counts for GVROS in 2016 and 2017 were extracted on 2/9/2018, on 1/19/2019 for the 2018 GVROs, on 1/29/2020 for the 2019 GVROs, on 1/20/2021 for the 2020 GVROs, and on 2/03/2022 for the 2021 GVROs.

individuals disassociated from all known firearms per month, an increase of 60 individuals per month, from July through December. June was separated because the Governor’s emergency order was lifted halfway through the month, however, it was one of the most efficient months with 336 individuals disassociated from all known firearms. Results suggest that Bureau agents experienced difficulties closing cases due to the COVID-19 pandemic again in 2021 as in 2020.

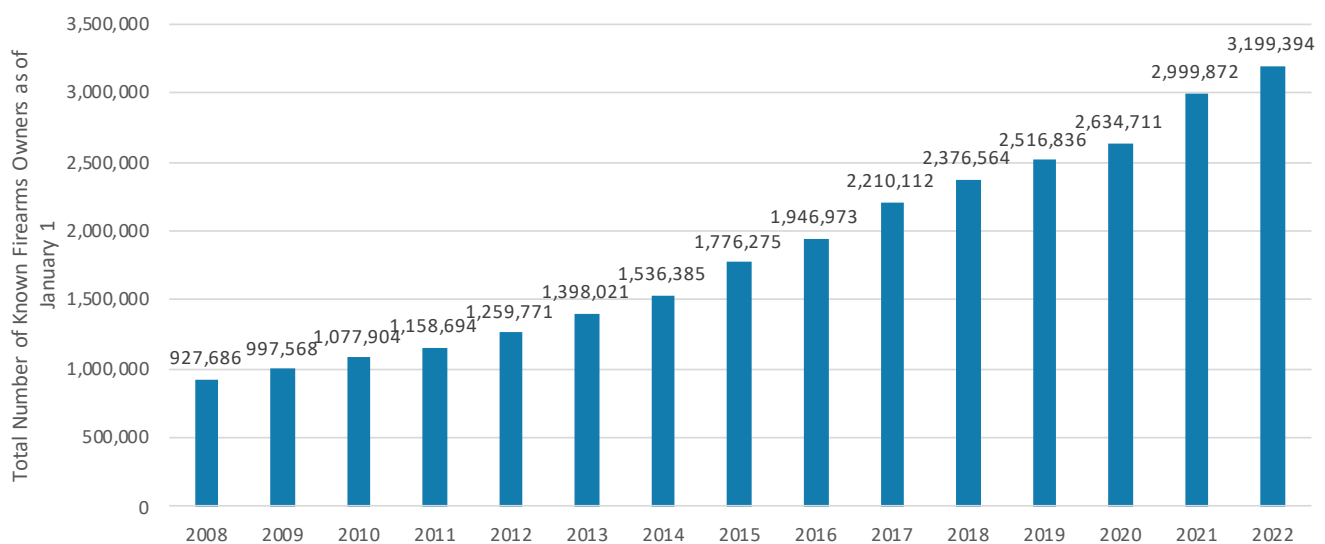
The second half of 2021 saw substantially more case closures also in part because of the four large-scale regional sweeps that were performed in collaboration with local law enforcement agencies in the second half of the year. These sweeps were effective but increased the number of case closures above typical monthly numbers. It is important to note that the sweeps were possible, in part, because California lifted pandemic-related restrictions.

### The number of people in the APPS database before and after the relevant reporting period

The relevant reporting period runs from January 1, 2021, through December 31, 2021. The APPS database is a compiled list of all individuals who legally purchased or were transferred a firearm in California. It further categorizes individuals as either persons armed but not prohibited, armed and prohibited, and incarcerated and known to have possessed a firearm prior to incarceration. To account for late additions or removals from the system, the state of the APPS database was analyzed as of 1:30 AM on January 1, 2022. At that time, the APPS database system contained 3,199,394 individuals, including 3,173,755 armed and not prohibited individuals, 1,130 incarcerated individuals, and 24,509 armed and prohibited individuals.

The number of people in the APPS database has increased by 199,522 from the 2,999,872 people in the database as of January 1, 2021. The growth over 2021 was consistent with the 5-year average annual increase of 197,856 individuals and consistent with the pattern of yearly growth of armed individuals in the APPS database since 2008 (Figure 4). The APPS database is highly dynamic, and newly armed and prohibited people continue to be added as many others are removed.

Figure 5. The total number of people in the APPS database per year





## Breakdown of why each person in the APPS database is prohibited from possession of a firearm

Persons become prohibited in the APPS database for several reasons. The following categories cover the typical types of events that can trigger a firearm prohibition.

- An individual may become prohibited under the Federal Brady Act. Note, some individuals prohibited because of the Federal Brady Act may not be prohibited under California state law (e.g., a dishonorable discharge in the military).
- An individual may be prohibited from owning or possessing a firearm as a condition of their probation.
- Individuals with felony convictions are prohibited from owning firearms.
- A juvenile who becomes a ward of the court may be prohibited.
- Mental health crises involving involuntary commitment may trigger a temporary prohibition.
- Some misdemeanor convictions may prohibit owning a firearm.
- Individuals may be temporarily prohibited due to restraining orders.
- Individuals may be temporarily prohibited due to a felony warrant.
- Individuals may be temporarily prohibited due to a misdemeanor warrant.
- Individuals may be prohibited due to offenses or triggering events occurring in other states.

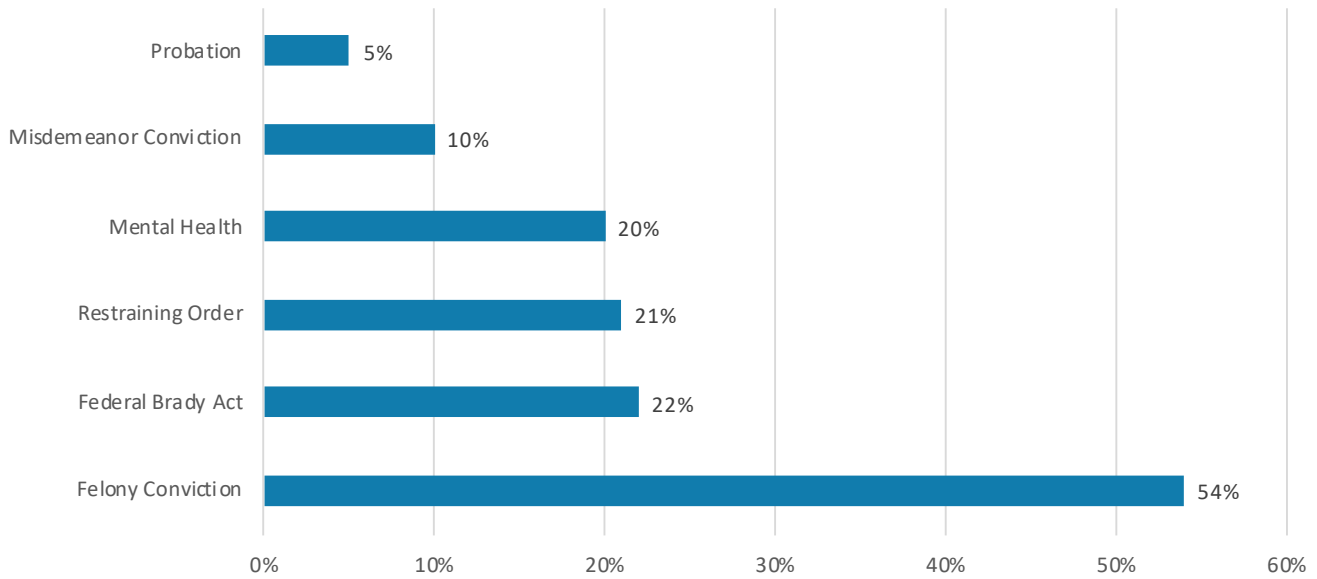
Many individuals are prohibited under several categories (Figure 5). As of January 1, 2022, there were 12,696 (54%) people prohibited due to a felony conviction, 5,130 (22%) prohibited due to the Federal Brady Act,<sup>14</sup> 4,912 (21%) were prohibited due to restraining orders, 4,754 (20%) due to mental health prohibitions, 2,469 (10%) due to a qualifying misdemeanor conviction, 1,219 (5%) due to terms of their probation, 411 (2%) due to a felony warrant, 137 (1%) due to misdemeanor warrants, 20 (<1%) due to juvenile prohibitions, and 54 (<1%) due to other reasons.<sup>15</sup>

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14 This figure includes individuals who may be prohibited under more than one category, including a Federal Brady Act prohibition. These are not solely Federal Brady Act cases.

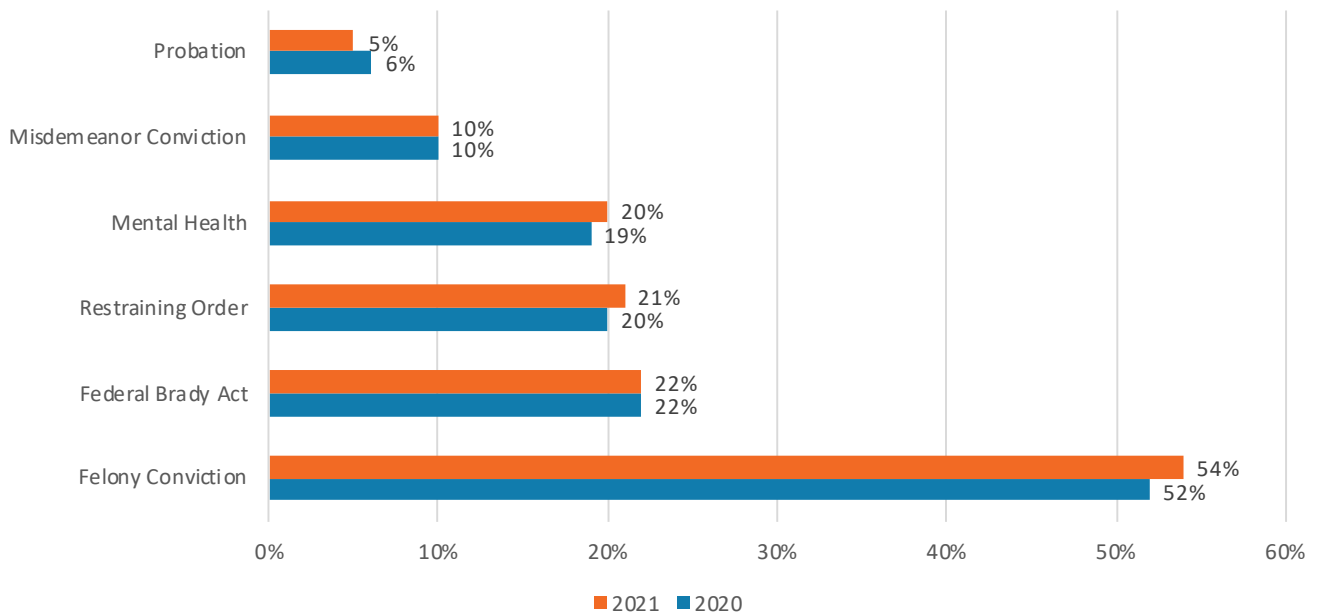
15 See Appendix E for a list of Firearm Prohibiting Categories.

Figure 6. Prohibition categories as a percentage of prohibited people<sup>16</sup>



The distribution among these categories is largely consistent with that in 2020. Overall, felony convictions were the only prohibition that saw greater than a 1% change, accounting for 2% greater prohibition reasons in 2021 than in 2020. Probation prohibitions fell 1% compared to 2020. Mental health and restraining orders accounted for 1% more compared to that in 2020. See Figure 6 for a complete comparison.

Figure 7. Prohibition categories as a percentage of prohibited people in 2021 and 2020



<sup>16</sup> Many cases have more than one prohibition, so the numbers do not equal 100%.

## Number of Agents and other staff hired for enforcement of the APPS

As of January 2021, the Bureau had 75 authorized permanent Special Agent Trainee, Special Agent, Special Agent Supervisor and Special Agent in Charge positions, with 50 filled and 25 vacant. By December 2021, there were 76 authorized positions, of which 53 were filled and 23 were vacant. As Table 2 shows, the number of filled and vacant positions fluctuates throughout the year reflecting the quick turnover rate of these positions. This illustrates the Department's challenges in hiring and retaining agents despite having the authorized positions to fill. In an effort to address the ongoing challenges with staffing, specifically recruitment at the Special Agent and Special Agent Supervisor classifications, the Bureau has continued recruiting Special Agent Trainees. While this approach may ultimately benefit the Bureau by increasing the total number of Special Agents, it can be challenging in the short term due to the time and resources it takes to educate and train a Special Agent Trainee to perform at the level of a Special Agent.

In December 2021, the Bureau had 36 filled Special Agent positions (not including Special Agent Trainees). In 2021, the Bureau hired 17 Special Agents and one Special Agent Trainee. Twenty sworn personnel left the Bureau due to inter-departmental transfers, and/or promotions, and one Special Agent promoted from within the Bureau to a Special Agent Supervisor position.<sup>17</sup> From July 1, 2021, to January 1, 2022, there was a decrease of three authorized Special Agent positions as they were reclassified to Special Agent Trainee positions, which was offset by an increase of two authorized Special Agent positions due to Special Agent Trainees promoting in place to Special Agents, for a total decrease of one authorized Special Agent position.<sup>18</sup>

A number of enforcement support staff assist Special Agents; these individuals are a significant asset to the Bureau. In 2021, one support staff separated from the enforcement teams. The Bureau is actively recruiting to fill this position.

The fluctuation in Special Agent staffing levels due to transfers and promotions affected the quantity of agents that were able to initiate and complete enforcement work in 2021.

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<sup>17</sup> Agent staffing temporarily fell in July 2021, as the Department's Division of Law Enforcement took on significant, additional statutorily-mandated workload.

<sup>18</sup> Due to AB 2699, the Department was given one additional Special Agent position to investigate illegal firearms transactions.

Table 2: Bureau of Firearms authorized positions for the relevant reporting period

Bureau Positions	1/1/2021			7/1/2021			1/1/2022		
	Filled	Vacant	Total Authorized	Filled	Vacant	Total Authorized	Filled	Vacant	Total Authorized
Special Agent	33	22	55	21	25	56	36	19	55
Special Agent Supervisor	13	2	14	13	2	15	14	1	15
Special Agent-in-Charge	2	1	3	2	1	3	2	1	3
Special Agent Trainee	2	0	2	2	0	2	1	2	3
<b>Total</b>	<b>50</b>	<b>25</b>	<b>75</b>	<b>38</b>	<b>38</b>	<b>76</b>	<b>53</b>	<b>23</b>	<b>76</b>

The Bureau will continue to face challenges in recruiting Special Agents as long as its compensation is not competitive with compensation packages offered by other law enforcement agencies.

While the 12% pay increase for Special Agents that went into effect on September 1, 2021, was a step in the right direction, Special Agent monthly base salary at the Department continues to lag behind comparable positions at other law enforcement agencies.

While the Bureau had no retirements of sworn personnel in 2021, in forthcoming years the Division of Law Enforcement (which includes the Bureau), faces a substantial staffing shortfall as a result of projected retirements.

Table 3: Projection of Retirement Eligibility within the Division of Law Enforcement<sup>19</sup>

Division of Law Enforcement - SA/SAS/SAC Retirement Eligible Counts			
Fiscal Year	Classification	Employees Eligible to Retire	Cumulative Fiscal Year Total
21-22	Special Agent	21	48
	Special Agent Supervisor	19	
	Special Agent in Charge	8	
22-23	Special Agent	27	57
	Special Agent Supervisor	21	
	Special Agent in Charge	9	
23-24	Special Agent	30	65
	Special Agent Supervisor	26	
	Special Agent in Charge	9	
24-25	Special Agent	37	76
	Special Agent Supervisor	28	
	Special Agent in Charge	11	
25-26	Special Agent	42	85
	Special Agent Supervisor	31	
	Special Agent in Charge	12	
26-27	Special Agent	51	99
	Special Agent Supervisor	36	
	Special Agent in Charge	12	

Until additional bargaining unit contracts are amended to increase agent salaries to competitive levels, as requested in the Recommendations section, the Bureau can expect to continue to face challenges in the recruitment of agents for the Bureau’s currently authorized positions.

### Number of contacts made during APPS enforcement efforts

The Bureau’s agents and Crime Analysts are continuously working to research and develop viable APPS investigations to determine which leads will potentially provide the greatest possible number of positive results. Cases are pursued until all investigative leads are exhausted. Individuals are then either: (1) disassociated from all of their firearms and removed from the APPS database; or (2) moved to the Pending category due to the existence of no further leads and are labeled “unable to clear.”

During the course of an investigation, Bureau agents may need to make repeated contacts with a prohibited individual in order to close a case. These repeated contacts occur because the APPS individual may (1) not be home at the time of the initial contact; (2) have moved and failed to update their address with the Department of Motor Vehicles; (3) have moved out of state; (4) claim the firearm(s) was already seized by local law enforcement or has been reported as lost or stolen; (5) be

<sup>19</sup> The data in Table 3 was provided on February 17, 2022 by the Department’s Office of Human Resources Data Analytics Unit and is based on vacancies and headcounts as of January 2021. The projected cumulative fiscal year totals increase each year as additional employees become retirement eligible, and the projection assumes the prior years’ employees have not yet retired.

uncooperative and not forthcoming with information about the firearm(s), requiring further interviews and contacts; (6) claim to have given their firearm(s) to another person outside of the legal firearms transfer process, requiring agents to track down the firearm(s) and/or verify the provided information. However, due to extenuating circumstances brought on by the COVID-19 pandemic, the normal door-to-door protocol was shifted to minimize the potential risk of exposure by reducing points of contact.

In total, agents made nearly 21,000 contacts in 2021. With an average of 30 Bureau agents (not including supervisors) employed during 2021, that represents an average of 58 contacts per month per agent. Overall, the monthly average number of contacts in 2021 increased compared to 2020. The increased number of contacts is encouraging considering that COVID-19 remained a significant impact on enforcement efforts throughout the year. As in previous years, agents required an average of three separate contacts, which consisted of in-person interviews, in order to close one APPS case.

Special Agent Supervisors are not included in these calculations because, although supervisors are involved in all field operations, their work focuses on being vigilant and available to make quick decisions for the safety of the team. In the course of an investigation, Special Agents take the lead on investigations and contacts with the APPS individual. Supervisors ensure the team adheres to Department policy, follows officer safety protocols, and uses proper investigative methods so that no violations of constitutional rights occur in the course of the investigation.

### **Number of firearms recovered**

In 2021, the Bureau's Special Agents seized 826 APPS firearms, and 602 non-APPS firearms. See Figures 7 and 8 for a breakdown of the type of APPS and non-APPS firearms recovered. Non-APPS firearms refers to firearms that were not listed as being possessed by an APPS individual, but are confiscated from APPS individuals by the Bureau's agents during investigations. Together, APPS and non-APPS firearms resulted in 1,428 total firearm seizures (Figure 9). Bureau agents closed 6,663 APPS investigations due to enforcement efforts in 2021.<sup>20</sup> This number does not reflect the number of times Bureau agents attempted to locate an APPS individual or had to visit third-party residences; it only captures the total number of closed cases.<sup>21</sup> The following graphs detail the number of firearms seized due to APPS enforcement in 2021, categorized by the type of firearms seized.

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20 Not all cases closed are removed from the APPS. They may remain in the Pending category.

21 Cases can also be closed when 1) agents or criminal analysts find the individual is deceased, 2) the individual has moved out of state and out of the Department's jurisdiction, 3) a criminal analyst corrects a data discrepancy, and the individual is cleared.

Figure 8. APPS firearms seized in 2021

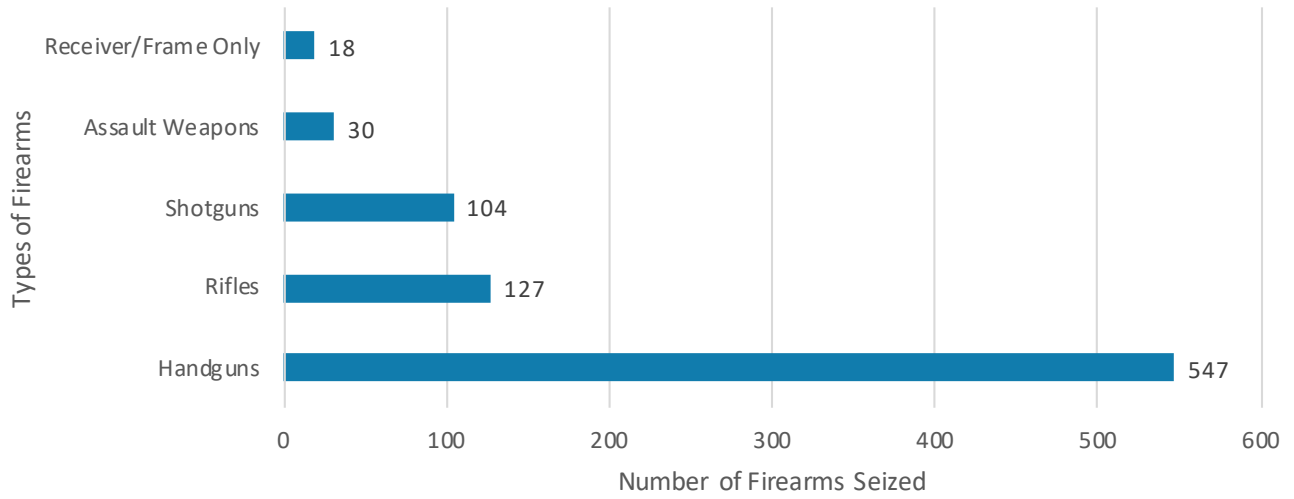


Figure 9. Non-APPS firearms seized in 2021

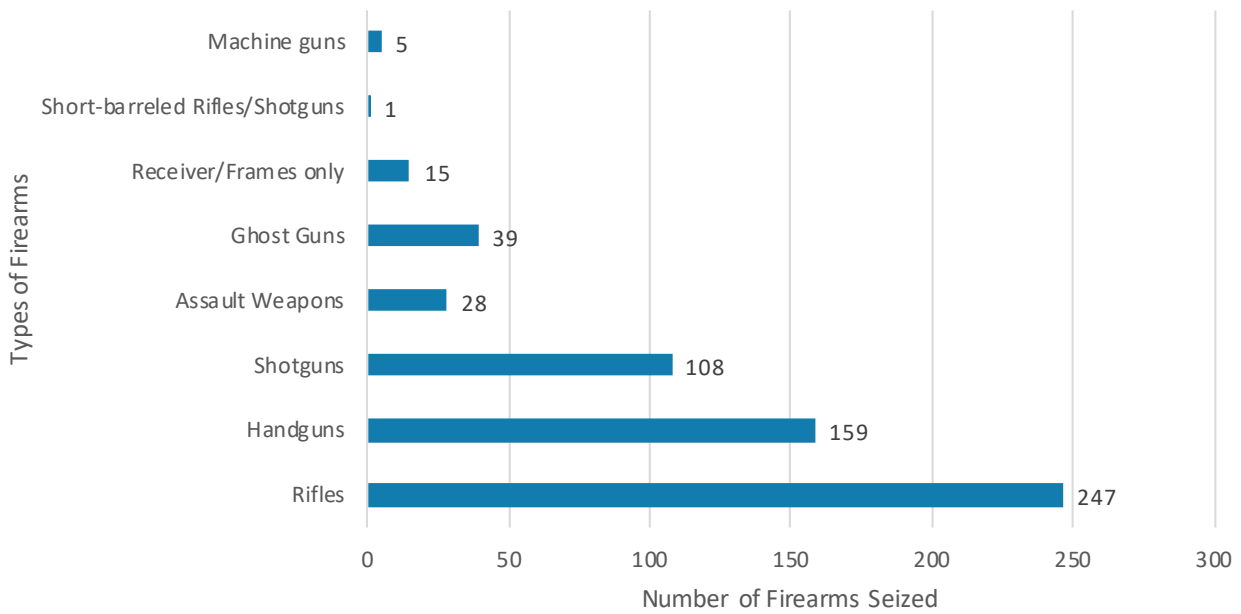
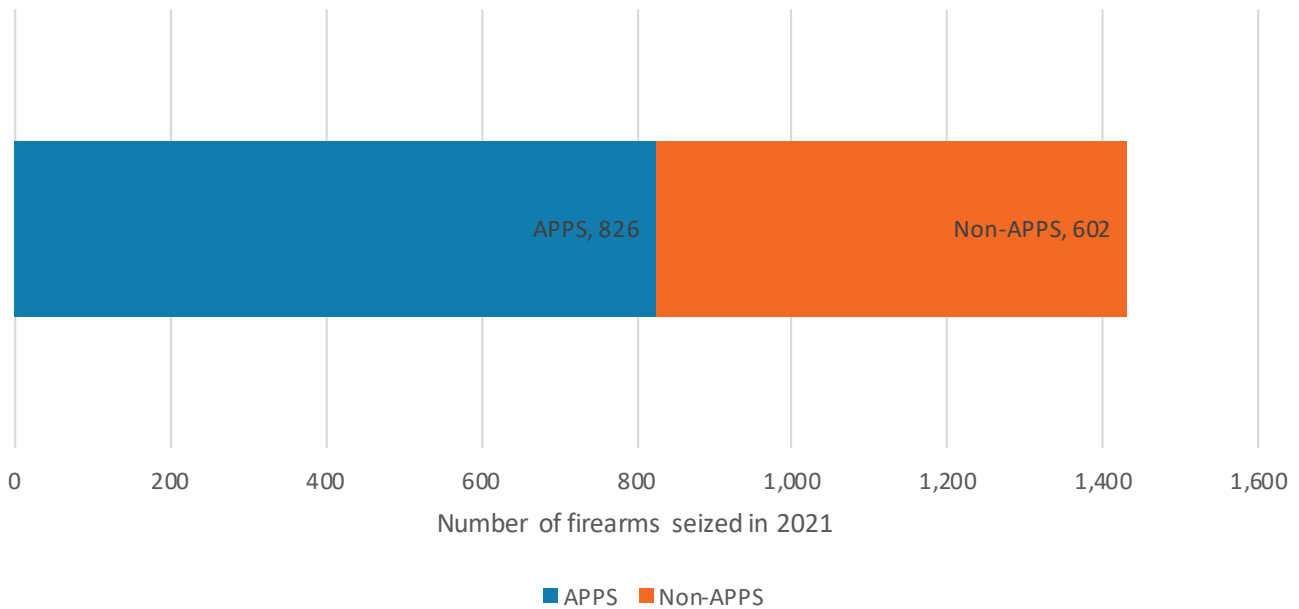


Figure 10. The 1,428 firearms seized in 2021 separated by APPS type



### Number of ghost guns recovered

Ghost guns are firearms constructed by private citizens that do not have a serial number, which means they are not registered and cannot be tracked by APPS or law enforcement. The Bureau’s agents seized a total of 39 ghost guns in 2021, a 44% increase compared to the 27 ghost guns seized during 2020 APPS investigations, and comparable to the 41 ghost guns seized during 2019 APPS investigations. The return to a pre-pandemic number of seized ghost guns supports the argument that the 2020 reduction was, in part, due to reduced enforcement as a result of the rise of the COVID-19 pandemic.

The increase in the number of seized ghost guns indicated the effectiveness of the four sweeps conducted during 2021. Of the 39 ghost guns seized in 2021, nine were seized during the Bureau’s four sweeps. These nine ghost guns account for 23% of all ghost guns seized overall and 75% of the 12 more ghost guns seized in 2021 compared to 2020.

When looking at data from the Unique Serial Number Application process, which shows how many California residents have applied to legally make personally manufactured firearms, there has been a slight decline in applications since 2018 (see Figure 10). However, the number of illegal ghost guns seized by law enforcement agencies in California has continued to rise drastically year after year, as evidenced by Figure 11. This contrast demonstrates that illegal ghost guns represent a growing threat to public safety (see Figure 12), and the Department continues to actively investigate illegal manufacturing and possession of them.

In response to the proliferation of crime and violence involving the use of ghost guns, and the overall increase in ghost gun seizures across the state, the Bureau will be expanding investigative efforts focused on ghost guns. The Department is actively working with law enforcement partners to establish collaborative investigative efforts aimed at addressing ghost gun activity.



Figure 11. Unique Serial Number Applications (USNAs) from 2018-2021

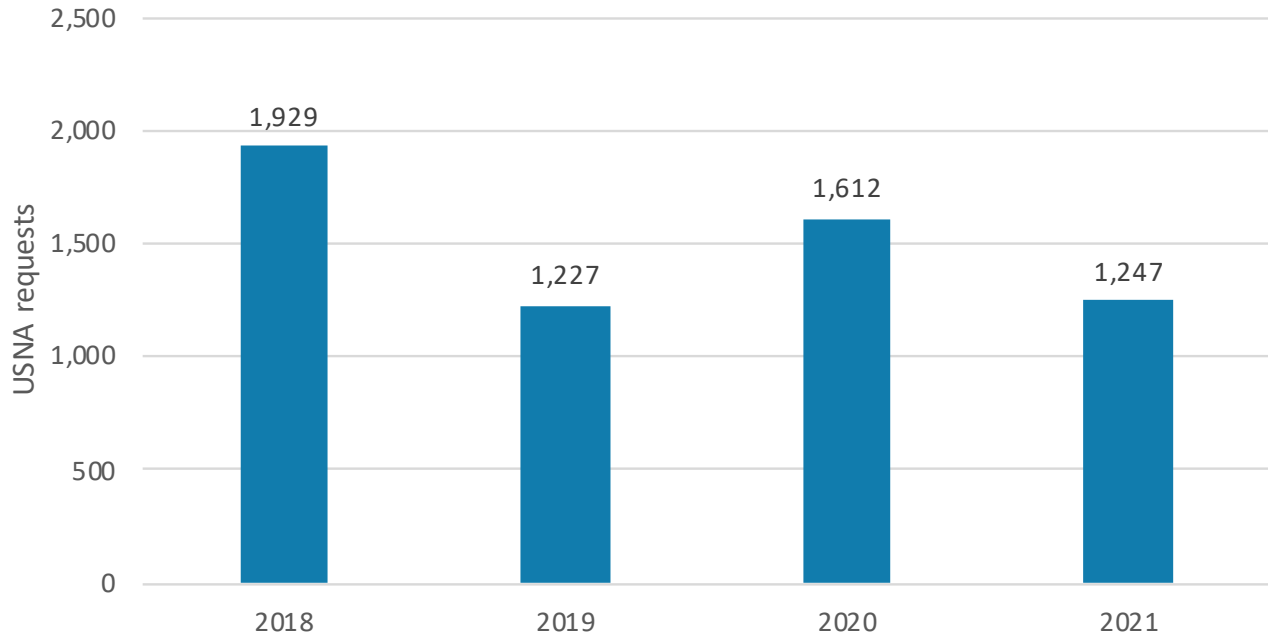
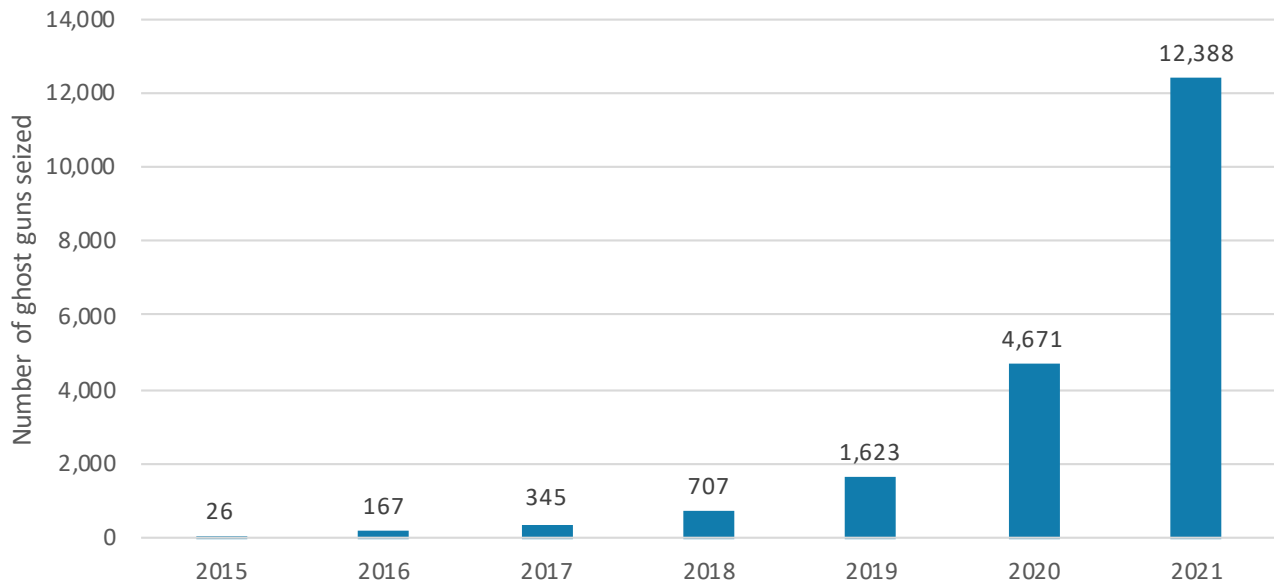
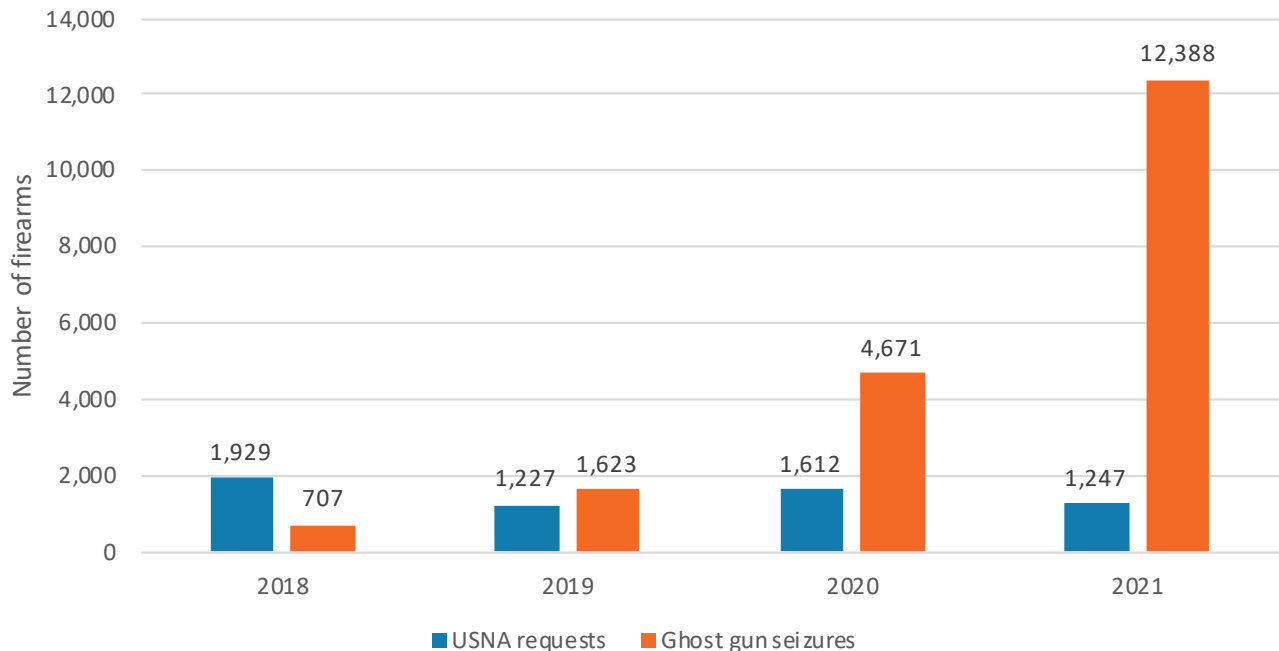


Figure 12. Number of ghost guns seized by law enforcement 2015 – 2021<sup>22</sup>



22 This data comes from reports to the Department of ghost guns seized in California by law enforcement seeking to comply with mandated reporting requirements outlined in Penal Code sections 11108.2 and 11108.3 and includes ghost guns seized by the Department.

Figure 13. The number of unique serial number applications and ghost guns seized 2018-2021



Additionally, effective July 1, 2022, California will become the first state to require a background check for the purchase of a firearm precursor part, which includes unfinished receivers and unfinished handgun frames. Senate Bill 118 (Stats. 2020, ch. 29) and Assembly Bill 879 (Stats. 2019, ch. 730) also created a new licensing structure for vendors to sell firearm precursor parts. In concurrence with the Legislature and Governor, the Department anticipates this law will further help keep firearms out of the hands of people prohibited from owning or possessing them.

### Ammunition recovered

In 2021, Bureau agents recovered 360 large-capacity magazines, 1,321 standard capacity magazines, and 329,826 rounds of ammunition.

### Ammunition purchase eligibility check program

Proposition 63 (The Safety for All Act), as amended by Senate Bill (SB) 1235 (Stats. 2016, ch. 55), was approved by voters in 2016. The intent of Proposition 63 and SB 1235 was primarily to keep prohibited persons from acquiring ammunition in an effort to prevent gun violence. Under the new laws, ammunition must be purchased from or transferred by a licensed California Ammunition Vendor in a face-to-face transaction. Effective July 1, 2019, the law required California Ammunition Vendors to submit eligibility checks for prospective purchasers to the Bureau and obtain approval prior to selling or transferring ammunition. Thereafter, California Ammunition Vendors are required to submit ammunition purchase details to the Bureau. The eligibility checks ensure purchasers are not prohibited from owning or possessing ammunition due to a felony and/or violent misdemeanor conviction/warrant, domestic violence restraining order, or mental health issue.

On July 1, 2019, the Bureau successfully deployed enhancements to the Dealer Record of Sale (DROS) Entry System, which allowed California Ammunition Vendors to submit eligibility checks, and subsequently report ammunition purchases in compliance with Proposition 63.

Monitoring denied ammunition purchases is a smart intelligence gathering policy because it signals to Bureau agents when a person wishes to use firearms they are prohibited from owning, and it often provides more current addresses than those previously available in the APPS database. While the use of ammunition denial data is ancillary to regular APPS investigations, nearly every investigation results in a seizure of firearms and/or ammunition from a prohibited person, and sometimes ghost guns.

In 2021, there were 195 armed and prohibited individuals who attempted to purchase ammunition and were denied through the ammunition eligibility check process. Bureau agents used the intelligence garnered through the ammunition purchase denials to investigate and close 123 of these cases. These investigations resulted in the seizure of 43 APPS firearms (21 handguns, one receiver/frame only, 11 rifles, and 10 shotguns), 67 non-APPS firearms (one assault weapon, three ghost guns, 20 handguns, one receiver/frames only, 27 rifles, and 14 shotguns), 73 large-capacity magazines, 108 standard magazines, and 75,626 rounds of ammunition. The remainder of the denial cases remain under investigation. All seizures resulting from these ammunition purchase eligibility check denials are included in the overall APPS statistics provided in the “number of firearms recovered” section of this report.

### **Task Forces and collaboration with local law enforcement**

As discussed in the Recommendations section, these are the types of programs the Bureau would like to expand. Receiving additional funding to reimburse local law enforcement agencies working with the Bureau in coordinated APPS enforcement activities would make this work possible.

### **Contra Costa County Anti-Violence Support Effort Task Force**

The Bureau currently manages the Contra Costa County Anti-Violence Support Effort (CASE) Task Force, whose primary mission is conducting complex firearms investigations and seizing firearms from prohibited and violent individuals in Contra Costa County. This Task Force consists of representatives from the following agencies:

- California Department of Justice, Bureau of Firearms
- Contra Costa County Probation Department
- Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives
- San Francisco District Attorney’s Office
- California Department of Corrections and Rehabilitation
- California Highway Patrol

The CASE Task Force is a stand-alone task force with a broader overall mission. In 2021, it conducted 93 firearms-related investigations, of which 25 were APPS-related. During these investigations, they conducted 47 probation or parole searches and executed 21 search warrants. As a result of these investigations, the CASE Task Force arrested 40 armed individuals for firearms-related offenses and seized 62 firearms, of which 19 were APPS firearms (eight assault weapons, 11 handguns). The seizure of these 19 APPS firearms is reported with the overall APPS statistics. The 43 firearms seized during non-APPS investigations are not included in seizure totals for this report. Because not all firearms crimes in any county are committed by people in the APPS database, this task force focuses on investigating a broad range of subjects involved in firearms-related crimes — including those

in the APPS database. This is an excellent model for collaboration with local, state, and federal law enforcement agencies on both APPS and non-APPS-related firearms investigations and affords a proactive approach to combating firearm violence.

### **Tulare County Agencies Regional Gun Violence Enforcement Team**

In December 2020, the Bureau assumed management of the Tulare County Agencies Regional Gun Violence Enforcement Team, which is also known as the TARGET Task Force. Due to funding issues, management of this task force was redirected from the Department's Bureau of Investigation. The primary mission mirrors that of the CASE Task Force as the team is designed to investigate crimes involving gun violence and to seize firearms from prohibited individuals in the Tulare County region. Through this task force, the Bureau has increased collaborative efforts and support of local and state law enforcement in the region. This task force consists of representatives from the following agencies:

- California Department of Corrections and Rehabilitation
- California Department of Justice, Bureau of Firearms
- Porterville Police Department
- Tulare County Sheriff's Department
- Visalia Police Department

In 2021, the TARGET Task Force conducted 169 firearms-related investigations, of which 126 were APPS investigations. During these investigations, they conducted 14 probation/parole searches and executed 11 search warrants. As a result of these investigations, the TARGET Task Force arrested 21 armed individuals for firearms-related offenses and seized 90 firearms, of which 46 were APPS firearms (one assault weapon, 36 handguns, 9 rifles/shotguns). The seizure of these 46 APPS firearms is reported with the overall APPS statistics. The 44 firearms seized during non-APPS investigations are not included in seizure totals for this report. Because not all firearms crimes in any county are committed by people in the APPS database, this task force focuses on investigating a broad range of subjects involved in firearms-related crimes — including those in the APPS database. This is an excellent model for collaboration with local, state, and federal law enforcement agencies on both APPS and non-APPS-related firearms investigations and affords a proactive approach to combating firearm violence.

With additional funding, the Bureau would be able to replicate these task force models in strategic areas of the state.

### **Joint sweep investigations**

In addition to participating in the CASE Task Force and TARGET Task Force, the Bureau also conducts collaborative APPS sweeps throughout the state upon request of a local or county law enforcement agency. These sweeps consist of Bureau personnel working together with allied law enforcement agencies in a certain jurisdiction of the state for a period of multiple days conducting APPS investigations. These sweeps became more essential in 2021 as the pandemic stymied investigations involving face-to-face public interactions. As previously mentioned, the Bureau conducted four regional sweeps in the latter half of 2021.

During these regional sweeps, Special Agents collaborated with local law enforcement agencies in a partnership to safely conduct APPS investigations. Although many law enforcement agencies

were unable to participate in the sweeps due to staffing issues, the Bureau still received assistance from multiple agencies throughout the state. Local patrol officers can act as a force multiplier to benefit APPS enforcement by providing additional information regarding the location of APPS subjects, and can assist with marked patrol vehicles. Local officers can also help expedite the transport and booking process of arrested subjects due to their familiarity with individual county processes. If the subject reports a missing or stolen firearm, the local law enforcement agency can work with the subject to promptly report that information into AFS, which may result in the removal of the subject from the APPS database.

The sweeps throughout the state increased APPS investigations while strengthening partnerships with local law enforcement agencies.

In 2021, four regional sweeps cumulatively investigated 1,263 cases, resulting in 55 arrests, and producing 297 firearm seizures, including 214 APPS firearms, 63 non-APPS firearms, 12 ghost guns, and 8 assault weapons.<sup>23</sup>

The Bureau worked jointly with the following agencies on 2021 APPS investigations:

- Alturas Police Department
- California Highway Patrol
- California Department of Corrections and Rehabilitation
- Contra Costa County Probation Department
- Contra Costa Sheriff's Department
- Gardena Police Department
- Federal Bureau of Alcohol, Tobacco, Firearms and Explosives
- Long Beach Police Department
- Los Angeles County Sheriff's Department
- Ontario Police Department
- Orange County Sheriff's Department
- Pasadena Police Department
- Porterville Police Department
- Rialto Police Department
- Redlands Police Department
- Riverside County Sheriff's Department
- Sacramento County Probation Department

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<sup>23</sup> These statistics are included in the total 2021 statewide seizure numbers.

- San Bernardino County Sheriff's Department
- San Diego County Sherriff's Department
- San Joaquin County Sheriff's Department
- San Francisco County District Attorney's Office
- Siskiyou County Sheriff's Department
- Tulare County Sheriff's Department
- Visalia Police Department

Looking forward, the Department expects to foster more partnerships for collaborative sweeps in 2022, particularly as the Gun Violence Reduction Program grant mentioned below allows more local agencies to fund positions that can assist the Department in APPS enforcement.

### **Gun Violence Reduction Pilot Program**

Assembly Bill (AB) 74 provides grant funding to the Board of State and Community Corrections (BSCC) for Gun Violence Prevention Programs. In 2019, funds were disbursed by the BSCC to four counties; Alameda, San Diego, Santa Cruz and Ventura, to be allotted and spent over several fiscal years. San Diego and Alameda Counties each received \$1 million and Ventura and Santa Cruz Counties received \$750,000 and \$250,000, respectively. In 2021, as in previous years, four county Sheriff's departments (Alameda, San Diego, Santa Cruz, and Ventura counties) participated in the Gun Violence Reduction Pilot Program (GVRPP) to investigate and close APPS cases.

In 2020, the Bureau identified a need to implement a standardized process for counties reporting APPS data to the Department and provided the counties with a template to report APPS cases worked by the counties to the Bureau. This year, three of the four counties utilized the template, and one provided information in a similar format. As a result, the Department was able to review these reports much more efficiently and accurately than in the previous year. While the Department identified small errors in their reporting, the Department was able to accurately report on the large majority of cases provided by each sheriff's department.

The Alameda County Sheriff's Office (ACSO) reported working 300 APPS cases in 2021, of which the Department found 242 individuals in the current APPS database. The Department's verified files included 100 (41%) Active cases, 11 (5%) Pending cases, and 131 (54%) cases removed from the APPS database. The Pending cases included one individual with only federal prohibitions, one individual who no longer lives in California, five individuals who could not be located after exhausting all leads, and four individuals whose cases could not be closed due to unaccounted firearms. The removals included 94 individuals whose prohibitions expired in 2021, 11 deceased individuals, and 26 individuals disassociated from all known firearms.

The San Diego County Sheriff's Office (SDSO) reported working 153 APPS cases in 2021, of which the Department found 150 individuals in the current APPS database. The Department's verified files included 85 (56%) Active cases, 45 (30%) Pending cases, and 20 (13%) cases removed from the APPS database. Of the removals, eight (5%) had their prohibitions expire during 2021, 11 (7%) of the individuals were disassociated from all their known firearms, and one person became deceased in 2021. Of the pending cases, 10 (6%) individuals had only federal prohibitions, one individual moved out of California, 29 (19%) were unable to be closed due to unaccounted firearms, and five (3%) of the

individuals were unable to be located.

The Santa Cruz County Sheriff's Office (SCSO) reported investigating 61 cases, of which the Department found 57 individuals in the current APPS database. The Department's verified records included 26 (46%) Active cases, 13 (23%) Pending cases, and 18 cases removed from the APPS database. The 18 (32%) individuals removed from the APPS database were comprised of one deceased individual, eight individuals who were disassociated from all known firearms, and nine individuals who had their prohibitions expire during 2021. The 13 (23%) Pending cases comprised five individuals who were prohibited due to federal prohibitions only, five individuals who had firearms that were unaccounted for and were unable to be closed, and three individuals who were unable to be located.

The Ventura County Sheriff's Office (VCSO) reported investigating 207 cases during 2021, of which the Department found 164 individuals in the current APPS database. The Department's verified records included 28 (17%) Active cases, 70 (43%) Pending cases, and 65 (40%) cases removed from the APPS database. The 65 (40%) individuals removed from the APPS database were comprised of 10 deceased people, 15 individuals who had their prohibitions expire, and 40 individuals who were disassociated from all known firearms. The 70 (43%) pending cases were comprised of eight individuals who were federally prohibited only, five who were incarcerated, 15 who moved out of California, 35 whose cases could not be closed because of unaccounted firearms, and seven who could not be located after exhausting all leads.

## **Gun Violence Reduction Program**

The Legislature expanded the scope of the Gun Violence Reduction Pilot Program by creating the Gun Violence Reduction Program (GVRP). Senate Bill 129 (SB 129), the California Budget Act of 2021, allocated \$10.3 million for the GVRP. Unlike the GVRPP, which is operated by BSCC, GVRP is operated by the Department. Under the program, the Department awards grants to county sheriff's departments to support seizures of firearms and ammunition from prohibited individuals. This is a new and important program for the Department that increases collaboration with local law enforcement partners across the state toward the common goal of enhancing public safety and removing firearms and ammunition from prohibited persons. Collaboration between the Department and local law enforcement agencies has proven a successful model which streamlines APPS enforcement efficiencies.

Sheriff's departments that received GVRP funds were required to submit completed grant proposals to the Department by November 12, 2021. Pursuant to SB 129, the Department will make \$10 million available over two grant cycles. Approximately five million dollars were awarded by January 1, 2022, and another \$5 million will be awarded by January 1, 2023. In following the grant criteria outlined in SB 129, grant applicants were asked to provide clearly defined and measurable objectives for closing APPS cases and reducing the number of prohibited persons in possession of firearms. The sheriff's departments were also required to explain how the grants would enhance existing law enforcement activities and also how the funds would be used for new activities, including innovative techniques and approaches toward APPS enforcement.

In selecting grantees, pursuant to the parameters outlined in SB 129, counties with the highest per capita population of armed prohibited persons that also lacked a Bureau field office were prioritized. Priority was also given to departments that proposed innovative techniques and approaches to APPS enforcement, integrated APPS enforcement into existing operations, and presented a plan with the greatest likelihood of success.

In the first grant cycle, 10 county sheriff's departments were awarded grants to support activities related to seizing firearms and ammunition from individuals prohibited from owning or possessing them. The sheriff's departments of Contra Costa, Lake, Los Angeles, Orange, Sacramento, San Francisco,

Santa Barbara, Santa Clara, Santa Cruz, and Ventura counties received grant funding through the first cycle of the Department's Gun Violence Reduction Program. For more information on awards see Appendix H.

These grantees will report certain statistical information regarding this grant funding to the Department by February 1, 2023. With the vast reach of the areas of responsibility of the grant awardees, the Department anticipates a positive impact on APPS enforcement.

## **Recommendations**

The Department greatly appreciates Governor Gavin Newsom's and the Legislature's interest in sensible firearms regulation and enforcement, and additional financial support toward this effort. As noted throughout this report, the recommendations the Department proposes would help to not only report the information mandated under Penal Code section 30012, but would also improve the efficiency and efficacy of the APPS program. To that end, the Department recommends the following:

1. Fund all California county courts so that they can confiscate or enforce the transfer or legal storage of known firearms at the time of conviction, when an individual is prohibited due to a felony or qualifying misdemeanor. Pursuant to Proposition 63 (2016), the courts and probation departments should focus on obtaining firearms from armed and prohibited persons on the front-end of the process. When an individual's conviction for a crime renders them prohibited, they are supposed to be notified at the time of conviction that they are prohibited from owning and possessing any firearms as well as how to turn over any firearms they have in their possession. This is the best opportunity to ensure prohibited persons are being disarmed. Felons and persons prohibited from possessing firearms by qualifying misdemeanors account for 57% of the Prohibited Armed Persons File in the APPS database, or 14,561 individuals. Given that the number of individuals prohibited due to a felony conviction has increased by 392 from last year suggests that relinquishment regulations are not being effectively implemented. A thorough court-based relinquishment program at the county level would aid in drastically reducing future APPS numbers.
2. Develop and fund a similar county-level firearm confiscation system where firearms are confiscated from the individual at the time they are served with a restraining order(s). Currently, all individuals who are served restraining orders and are in possession of a firearm at the time they are served end up in the APPS database unless local law enforcement agencies seize the firearms from them. If local law enforcement agencies could seize the firearms from these individuals upon service of the various types of restraining orders, it could limit new additions to the Prohibited Armed Persons File in the APPS database by up to 19 percent.
3. Improve the recruitment of Special Agents by making their compensation competitive with other law enforcement agencies. Unlike many other law enforcement agencies, the Department's Special Agents are required to have a college education. However, entry-level Special Agents are paid less than those in law enforcement agencies that do not have this same requirement. While the 12% pay increase for Special Agents that went into effect on September 1, 2021, was a step in the right direction, Special Agent monthly base pay at the Department continues to lag behind comparable positions at other law enforcement agencies. Seizing firearms from prohibited persons is dangerous and difficult work that requires quick decisions and analytical thinking. The agents who do this work should be competitively compensated for their efforts. The Department has moved to a more aggressive hiring model in an attempt at filling Special Agent and Special Agent Supervisor positions at a quicker rate to fill vacancies and keep pace with agent attrition. However, receiving additional funding and contracting for salary increases would greatly improve recruitment of agents for the Department's currently authorized positions.



4. Continue to improve coordination and cooperation with local law enforcement agencies by establishing joint task forces with and under the direction of the Bureau. To expand and improve the existing programs requires additional funding, which the Department would manage. Funds would be managed and disbursed for the purpose of reimbursing local agency overtime for working with the Bureau on the APPS workload. Reimbursement would go toward personnel time and other applicable expenses incurred as a direct result of the involved agency's participation in the joint operations through the execution of a memorandum of understanding with the Bureau. A memorandum of understanding would also include administrative assistance efforts to help identify and reduce APPS firearms in locally managed evidence systems. All participating agencies would be required to assess firearms in their possession and develop a plan approved by the Bureau to ensure all the required entries into the AFS are made in accordance with current state law. This would be a force multiplier for the Bureau that would ensure a statewide coordinated effort and maintain recordkeeping standards to ensure that the data in the APPS database is as current as possible. Expansion of the GVRP grant program, which is expected to bolster existing APPS enforcement by sheriff's departments. Additionally, the participating sheriff's departments would be required to report all data in a manner prescribed by the Department or as required by law as it relates to the seizure of firearms, ammunition, arrests, and all other information relevant to maintain adequate accountability for the APPS database.
5. Modernize the existing firearms databases and automate many of the manual processes to improve overall efficiency, risk mitigation, and stabilization of employee resources. As communicated to the DOF when the Legislature implemented SB 94's current reporting requirements under Penal Code section 30012, the Department cannot fulfill this obligation until it modernizes the firearms databases.

The following systems support the regulation, and enforcement actions relating to the manufacture, sale, ownership, safety training, and transfer of firearms.

- Ammo Processor
- Armed Prohibited Persons System (APPS)
- Automated Firearms System (AFS)
- California Firearms Information Gateway (CFIG)
- California Firearms Licensee Check (CFLC)
- Carry Concealed Weapons (CCW)
- Centralized List (CL)
- Consolidated Firearms Information System (CFIS)
- Dealer Record of Sale (DROS)
- DROS Entry System (DES)
- California Firearms Application Reporting System (CFARS)
- Firearms Certificate System (FCS)

- Assault Weapons Registration (AWR)
- Firearms Employment Application File (FEAF)
- Mental Health Reporting System (MHRS)
- Mental Health Firearms Prohibition System (MHFPS)
- Prohibited Applicant (PA)

This network of systems is incredibly complex and cumbersome to operate and navigate. Despite this monumental challenge, the Department has until recently been able to meet legislative reporting mandates using these outdated databases. These databases are not flexible and were not designed to be adaptable to meet additional demands. The Department has been able to partially adapt and circumvent issues despite using technology that is not equipped with automated processes to meet the specified conditions. Consequently, most, if not all queries must be pulled and cross-checked manually from database to database, hindering efficiency and introducing increased opportunities for error. Working to modify or maintain these legacy systems is no longer cost-effective or a technologically viable option as the databases have become outdated and no longer meet the demands of the Legislature and the Department.

The Department received initial funding to pursue Stage 2 of this effort and is exploring modernization options to find a dynamic solution that would meet existing needs and be adaptable to evolving statutory mandates. However, additional funding will be required to begin Stages 3 and 4 and fully implement this project.

6. Continue working with federal law enforcement partners and engage with local law enforcement agencies to disarm individuals prohibited only under the Federal Brady Act, the portion of the Prohibited Armed Persons File in the APPS database that the Department is tasked with tracking but over which it has no jurisdiction. The Department has partnered with the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in an attempt to reduce this section of the database. The Bureau is pursuing collaborative investigative efforts with the ATF and local law enforcement agencies focused on ghost gun and firearms violence-related criminal activity. The Bureau collaboratively worked several joint firearms investigations with the ATF in 2021, and anticipates scaling those efforts across California with the ATF. As of the publication of this report, the Bureau has three staff cross-designated to enforce federal firearms laws. Additional staff statewide are undergoing the process to become cross-designated with ATF.



## APPENDICES

### APPENDIX A: Relevant Key Terms and Definitions

This section provides definitions to key terms used throughout this report.

**Armed Prohibited Persons System (APPS).** The Armed Prohibited Persons System is a database housed at the Department of Justice which contains a list of all individuals who are both armed (the Department is aware of their ownership of one or more firearms) and prohibited (for one or more reasons they have been designated as not being permitted to own or possess firearms).

**Automated Criminal History System (ACHS).** The repository for the state summary Criminal Offender Record Information (CORI). In addition, the Department transmits CORI to the Federal Bureau of Investigation (FBI).

**Automated Firearms System (AFS).** This system was created in 1980 to identify lost or stolen firearms and connect firearms with persons. The system tracks serial numbers of every firearm owned by government agencies, handled by law enforcement (seized, destroyed, held in evidence, reported stolen, recovered), voluntarily recorded in AFS, or handled by a firearms dealer through transactions. Prior to 2014, most entries in AFS were handguns. Now, all newly acquired firearms, both handguns and long guns, are entered into AFS.

**Backlog.** The number of cases for which the Department did not initiate an investigation within six months of the case being added to the APPS database or has not completed investigatory work within six months of initiating an investigation on the case.

**Brady Handgun Violence Prevention Act.** The Federal Brady Act, codified at 18 U.S.C. § 922(g), makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms or ammunition, to include any person:

- convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- who is a fugitive from justice;
- who is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substances Act, codified at 21 U.S.C. § 802);
- who has been adjudicated as a mental defective or has been committed to any mental institution;
- who is an illegal alien;
- who has been discharged from the Armed Forces under dishonorable conditions;
- who has renounced his or her United States citizenship;
- who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or
- who has been convicted of a misdemeanor crime of domestic violence.

Under 18 U.S.C. § 992(n), it is also unlawful for any person under indictment for a crime punishable by imprisonment for a term exceeding one year to ship, transport, or receive firearms or ammunition. Further, 18 U.S.C. § 922(d) makes it unlawful to sell or otherwise dispose of firearms or ammunition to any person who is prohibited from shipping, transporting, receiving, or possessing firearms or ammunition. The Department refers to these prohibitions as Federal Brady Act prohibitions. Since these individuals are only prohibited due to federal law, the Department lacks jurisdictional authority to investigate these individuals, unless they also have a California prohibition. On January 1, 2022, there were 24,509 armed and prohibited persons in the APPS database (10,033 active and 14,467 pending). Of the 14,467 pending cases, 1,579 are Federal Brady only cases.

**Bullet Button.** A product requiring a tool to remove an ammunition feeding device or magazine by depressing a recessed button or lever shielded by a magazine lock.

**Bullet Button Weapon.** A semiautomatic, centerfire or rimfire pistol with an ammunition feeding device that can be readily removed from the firearm with the use of a tool that has one or more specified features identified in Penal Code section 30515 and is included in the category of firearms that must be registered.

**California Restraining and Protective Order System (CARPOS).** A statewide database of individuals subject to a restraining order.

**Cleared.** All cases in which the individual has died, the prohibition has expired or been reduced (e.g., the expiration of a temporary restraining order), or the individual has been disassociated from the firearm(s) such as selling, transferring, or turning over their firearm(s).

**Closed.** Any investigation that has been fully investigated and the individual has been cleared from APPS, or all investigative leads are exhausted and the individual remains in APPS with a pending status (see definition of pending and sub-statuses definitions).

**Consolidated Firearms Information System (CFIS).** This system consolidates numerous internal firearm applications within the California Justice Information Services Division (CJIS), the technology division within the Department. These applications include the Armed Prohibited Persons System (APPS), Assault Weapon Registration (AWR), Centralized List (CL), Carry Concealed Weapon (CCW), Dealers' Record of Sale (DROS), and Prohibited Applicant (PA).

**Contacts.** An attempt to locate an APPS individual at a potential current address. During face-to-face contact, agents will attempt a consent search if there are no search conditions due to parole or probation status. Sometimes consent is denied, and agents will leave the premises. If probable cause is developed at the scene, a search warrant will be requested and served that day.

**Dealers' Record of Sale (DROS).** This application is completed by firearms purchasers in California and is sent to the Department by licensed firearms dealers, which initiates the 10-day waiting period. The Department uses this information for a background check and the documentation of firearms ownership.

**Ghost Gun.** Ghost guns are firearms made by an individual, without serial numbers or other identifying markings.

**Mental Health Reporting System (MHRS).** This is a web-based application used by Mental Health Facilities, Superior Courts, Juvenile Courts, and Law Enforcement Agencies to report firearm-prohibiting events related to mental health to the Department.

## Statuses:

**Active.** Individuals believed to reside in California who are prohibited (state, federally, or a combination of state and federally prohibited) from owning or possessing firearms, and have not yet been investigated or are in the process of being investigated, but all investigative leads have not yet been exhausted.

**Pending.** Individuals previously investigated, but that cannot be currently investigated for one or more reasons. The cases are those that have been thoroughly analyzed and all investigative leads have been exhausted. These individuals fall into one of the following sub-categories:

**Incarcerated.** These individuals are in state or federal prison. While they are incarcerated, these individuals are not in Active status. Although technically under Pending status, incarcerated individuals are treated as a separate population for the purposes of this report because it is assumed that they are not in possession of firearms while in custody and cannot be investigated until they are released. Once the Department has received notification that they have been released, the individual is moved to the Active status.

**No Longer Residing in California (Out-of-State).** Individuals who were a resident of California, but now no longer live in this state.

**Unable to Clear (UTC).** These cases have previously been investigated by Bureau Special Agents and all investigative leads have been exhausted. The individual still has one or more firearms associated with them. If new information is identified, the case will be moved to Active status.

**Unable to Locate (UTL).** These cases have previously been investigated by a Bureau Special Agent, but the agent is unable to locate the individual. It could be that the individual no longer lives at the address on file, family and friends are not able to provide useful location information, etc. If new location information is identified, the case will be moved to active status.

**Federal Brady Act Prohibition Only.** Cases where a person is prohibited only under federal law. State, county, and municipal law enforcement have no authority to enforce a prohibition based only on the Federal Brady Act (see definition for Brady Handgun Violence Prevention Act for a list of federal prohibitions). Persons who have both a statewide and federal prohibition are not listed in this group.

**Individuals having both state and federal prohibitions.** If APPS database individuals have a combination of state and federal firearm prohibitions, then the Department has jurisdictional authority to investigate the matter related to the state prohibitions (e.g., felons, individuals with California restraining orders, qualifying misdemeanor convictions, and California mental health prohibitions).

**Wanted Persons System (WPS).** This system was established in 1971 as the first online system for the Department. It is a statewide computerized file of fugitives for whom arrest warrants have been issued.



## **APPENDIX B: Legislative History Relative to APPS**

The following provides a brief overview of the legislative history affecting the Department's Armed and Prohibited Person program from 1999 to present. These legislative changes have exponentially increased the volume of prohibited individuals as the Legislature continues to increase the type and length of prohibitions. Other legislative changes with a substantial impact include evolving statutory and legal definitions as well as increases in the overall regulation of the various types of firearms, ammunition, and parts.

**1999:** APPS was conceptualized by the Legislature as a result of the proliferation of gun violence across the state and the nation.

**2001:** APPS was created in 2001 by Senate Bill (SB) 950 in response to high-profile murder cases involving people prohibited from owning firearms.

**2006:** The APPS database went into effect.

**2013:** SB 140 passed the Legislature and appropriated \$24,000,000 from the Dealer Record of Sale Special Fund to the Department for three years to reduce the volume of pending APPS investigations.

**2014:** Effective January 1, 2014, a new California law (Assembly Bill 809, Stats. 2011, ch. 745) mandated the Department collect and retain firearm transaction information for all types of firearms, including long guns.

**2015:** After a 2013 audit by the Bureau of State Audits, the Bureau of Firearms finished manually inputting all of the cases into the APPS database.

**2016:** SB 140 funding expired. Effective January 1, 2016, AB 1014 created the new prohibitory category of the Gun Violence Restraining Order.

**2018:** Effective January 1, 2018, AB 785 added Penal Code section 422.6 (Criminal Threats) to the list of prohibiting misdemeanors. Effective July 1, 2018, AB 857 required the Department to begin issuing serial numbers for firearms manufactured by unlicensed individuals after a successful background check of the owner. The background checks associated with this process identified additional prohibited persons.

**2019:** Effective July 1, 2019, SB 1235 and Proposition 63 required ammunition to be sold only to an individual whose information matches an entry in the Automated Firearms System and who is eligible to possess ammunition, with some exceptions. It also required ammunition vendors to electronically submit to a database known as the Ammunition Purchase Records File, and thus to the Department, information regarding all ammunition sales and transfers.

Additionally, AB 3129 prohibited a person from ever possessing a firearm if that person is convicted of a misdemeanor violation of Penal Code Section 273.5 regarding the willful infliction of corporal injury resulting in a traumatic condition upon a spouse, cohabitant or other specified person. SB 746 required new California residents to, within 60 days of becoming a resident, apply for a unique serial number or other identifying mark for any un-serialized firearm the resident manufactured or otherwise owns and intends to possess in California. SB 1100 prohibited the sale, supplying, delivery or giving possession or control of any firearm by a licensed dealer, with some exceptions, to any person under 21 years of age. SB 1200 expanded the definition of ammunition for the purposes of the Gun Violence Restraining Order law.

SB 94 provided updated requirements regarding the mandated reporting of the APPS database statistics. It required the Department to report no later than April 1, 2020, and no later than April 1 of each year thereafter, to the Joint Legislative Budget Committee and the fiscal committees of each house of the Legislature on information related to the APPS database, as listed in Penal Code section 30012.

**2020:** Effective January 1, 2020, AB 1968 subjected individuals who have been taken into custody, assessed and admitted to a designated mental health facility twice within a one-year period, because they are a danger to self or others as a result of a mental health disorder, to a lifetime firearms prohibition subject to a petition for, and hearing on, a reinstatement of firearm ownership rights.

Additionally, AB 164 prohibited a person from possessing a firearm if that person is prohibited in another state and allows the Department and state and local law enforcement agencies to investigate and pursue these cases. AB 12 increased the maximum duration of a gun violence restraining order from one year to between one and five years. It also allows for law enforcement officers to file a petition for gun violence restraining orders in the name of the law enforcement agency in which they are employed. AB 61 expanded the list of individuals who may request a gun violence restraining order.

## APPENDIX C: Mandated Statistics – At a Glance<sup>24</sup>

**[1] The total number of individuals in the APPS database and the number of cases which are active and pending.** The Armed and Prohibited Persons System has 3,199,394 individuals as of January 1, 2022. Of those individuals, 24,509 are prohibited from owning or possessing firearms, with 10,033 of those cases being Active and 14,467 of them being Pending.

**[A][i] For Active cases, the number of cases that have not been actively investigated for 12 months or longer, along with a breakdown of the time period that has elapsed since a case was added to the system.** The APPS database is an outdated system that does not have the capability to track the time elapsed between a case entering the APPS database to when a case was last worked. As a result, the Department does not have the ability to gather and report the requested information.

**[B] For Pending cases, the Department shall separately report the number of cases that are unable to be cleared, unable to be located, related to out-of-state individuals, related to only federal firearms prohibitions, and related to incarcerated individuals.** Of the 14,467 prohibited persons designated as Pending cases, 6,816 (47%) were unable to be cleared, 2,172 (15%) were unable to be located, 3,909 (27%) moved out of state, and 1,579 (11%) were prohibited under federal prohibitions only. Additionally, there are 1,130 incarcerated individuals.

**[2] The number of individuals added to the APPS database.** Between January 1, 2021 and January 1, 2022, there were 9,848 additional known firearm owners who became prohibited. In the same time period, there were 8,937 individuals removed from the prohibited category. This resulted in the total number of armed and prohibited individuals increasing by 911.

**[3] The number of individuals removed from the APPS database, including a breakdown of the basis on which they were removed.**

*Table 1: Removals of Prohibited Persons in 2021 Separated by Reason for Removal*

Reason for Removal	Number of Individuals Removed
Prohibition expired/no longer prohibited	5,365
Disassociated from all known firearms	3,221
Deceased	351

**[4] The degree to which the backlog in the APPS has been reduced or eliminated.**

Penal Code section 30012, subdivision(a)(4) defines “backlog” as being cases for which the Department did not initiate an investigation within six months of the case being added to the APPS database or has not completed investigatory work within six months of initiating an investigation on the case. The APPS database does not have the technological capability of tracking the amount of time a case has been in the system. Gathering this information would require that a Crime Analyst review each individual APPS entry, one-by-one and review the notes in each file. Lacking a more efficient way of gathering this information, the Department will be unable to provide these statistics until upgrades are made to the APPS database.

<sup>24</sup> The numbers and letters below correspond to the subdivision number in Penal Code section 30012.



**[5] The number of individuals in the APPS before and after the relevant reporting period.**

*Table 3: The Total number of Individuals in APPS Before and After the Reporting Period Separated by Status*

Status	Before Reporting Period	After Reporting Period
Armed and Not Prohibited	2,999,872	3,173,755
Armed and Prohibited	23,598	24,509
Incarcerated	1,218	1,130

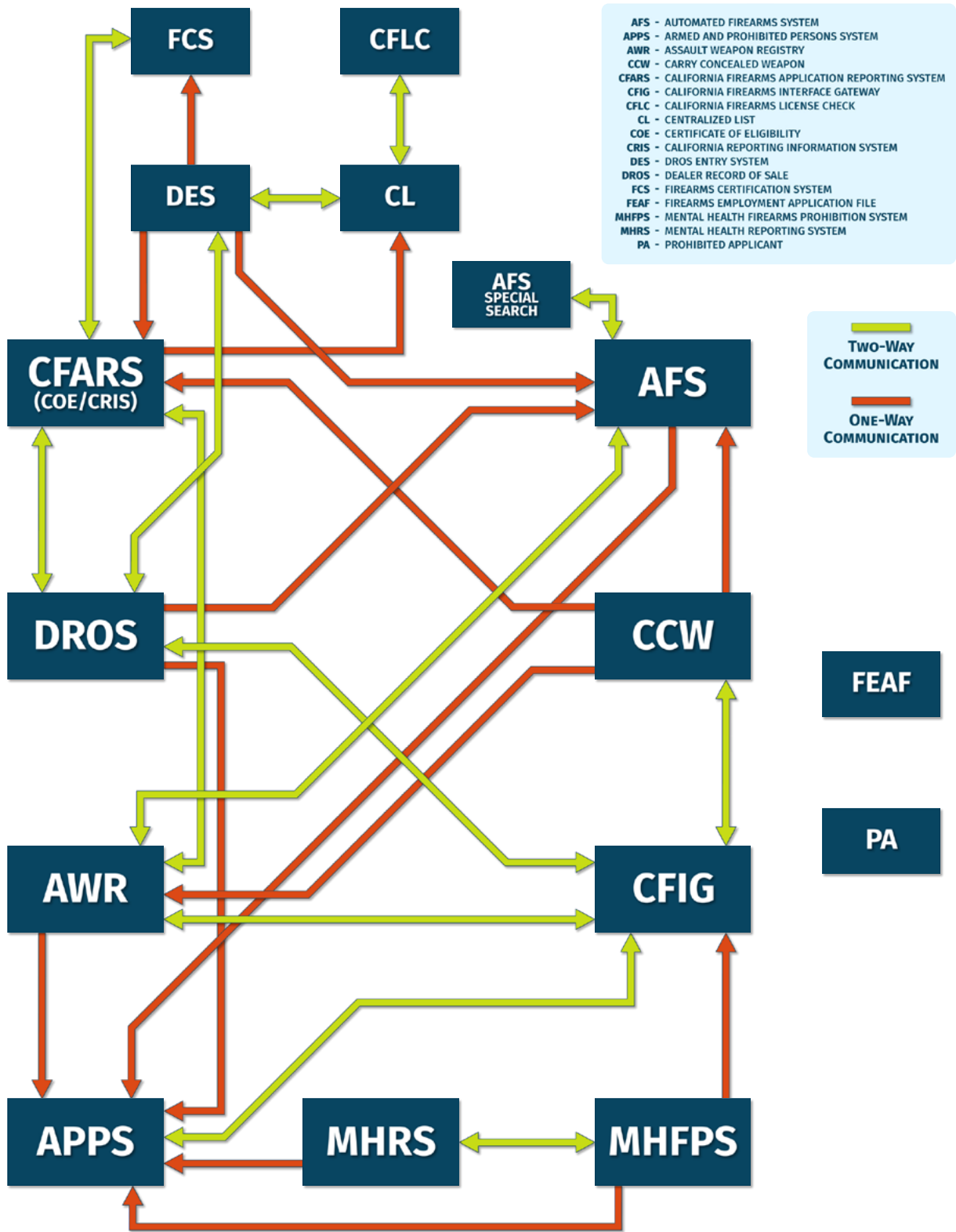
**[6] The number of Agents and other staff hired for enforcement of the APPS.** In 2021, the Bureau hired 17 Special Agents, one Special Agent Trainee and one support staff for APPS enforcement. Additionally, two existing Special Agent Trainees promoted into the Special Agent ranks. The Department also saw the separation of 20 Special Agents during 2021 due to inter-departmental transfer and/or promotion and had one Special Agent promote from within to Special Agent Supervisor position, leaving the Department with a net increase of three filled Special Agent positions. The Department also saw the separation of one support staff for APPS enforcement resulting in a net change of zero in support staff.

**[7] The number of firearms recovered due to enforcement of the APPS.** In 2021, Bureau Agents recovered 826 APPS firearms (i.e., firearms known in the APPS database), and 602 non-APPS firearms not associated with APPS individuals, for a total of 1,428 firearms recovered.

**[8] The number of contacts made during the APPS enforcement efforts.** In 2021, agents made nearly 21,000 contacts based on an average of three contacts per individual per case while working APPS investigations.

**[9] Information regarding task forces or collaboration with local law enforcement on reducing the APPS file or backlog.** The Department takes pride in its collaborative efforts with law enforcement partners. These efforts include leading the Contra Costa County Anti-Violence Support Effort (CASE) Task Force along with the recent addition of the TARGET Task Force, its partnership with the Los Angeles County Sheriff's Department on Dual Force operations, joint APPS sweeps with specific jurisdictions based on workload, and most recently the Gun Violence Reduction Program in which the Department has awarded grant funding to county sheriff's departments to support activities related to conducting APPS investigations.

## APPENDIX D: Relational Diagram of the Bureau of Firearms Databases



# APPENDIX E: Firearms Prohibiting Categories



## CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS FIREARMS PROHIBITING CATEGORIES



### State and federal law make it unlawful for certain persons to own and/or possess firearms, including:

- Any person who has been convicted of, or has an outstanding warrant for, a felony under the laws of the United States, the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 23515, or who is addicted to the use of any narcotic drug
- Any person who has been convicted of an offense enumerated in Penal Code sections 29900 or 29905
- Any person who is ordered to not possess firearms as a condition of probation or other court order listed in Penal Code section 29815, subdivisions (a) and (b)
- Any person who has been convicted of, or has an outstanding warrant for, a misdemeanor listed in Penal Code section 29805 (refer to List of Prohibiting Misdemeanors)
- Any person who is adjudged a ward of the juvenile court because he or she committed an offense listed in Welfare and Institutions Code section 707(b), an offense described in Penal Code section 1203.073(b), or any offense enumerated in Penal Code section 29805
- Any person who is subject to a temporary restraining order or an injunction issued pursuant to Code of Civil Procedure sections 527.6 or 527.8, a protective order as defined in Family Code section 6218, a protective order issued pursuant to Penal Code sections 136.2 or 646.91, a protective order issued pursuant to Welfare and Institutions Code section 15657.03, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order, as specified above, that includes a prohibition from owning or possessing a firearm
- Any person who is subject to a Gun Violence Restraining Order (GVRO)
- Any person who is found by a court to be a danger to himself, herself, or others because of a mental illness
- Any person who is found by a court to be mentally incompetent to stand trial
- Any person who is found by a court to be not guilty by reason of insanity
- Any person who is adjudicated to be a mentally disordered sex offender
- Any person who is placed on a conservatorship because he or she is gravely disabled as a result of a mental disorder, or an impairment by chronic alcoholism
- Any person who communicates a threat to a licensed psychotherapist against a reasonably identifiable victim that has been reported by the psychotherapist to law enforcement
- Any person who is taken into custody as a danger to self or others under Welfare and Institutions Code section 5150, assessed under Welfare and Institutions Code section 5151, and admitted to a mental health facility under Welfare and Institutions Code sections 5151, 5152, or certified under Welfare and Institutions Code sections 5250, 5260, and 5270.15
- Any person who is addicted to the use of narcotics (state and federal)
- Any person who has been convicted of, or is under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year (federal)
- Any person who has been discharged from the military under dishonorable conditions (federal)
- Any person who is an illegal alien (federal)
- Any person who has renounced his or her US Citizenship (federal)
- Any person who is a fugitive from justice (federal)



## CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS FIREARMS PROHIBITING CATEGORIES



### MISDEMEANORS

**Firearm prohibitions for misdemeanor violations of the offenses listed below are generally prohibiting for ten years from the date of conviction, but the duration of each prohibition may vary. All statutory references are to the California Penal Code, unless otherwise indicated.**

- Threatening public officers, employees, and school officials (Pen. Code, § 71.)
- Threatening certain public officers, appointees, judges, staff or their families with the intent and apparent ability to carry out the threat (Pen. Code, § 76.)
- Intimidating witnesses or victims (Pen. Code, § 136.1.)
- Possessing a deadly weapon with the intent to intimidate a witness (Pen. Code, § 136.5.)
- Threatening witnesses, victims, or informants (Pen. Code, § 140.)
- Attempting to remove or take a firearm from the person or immediate presence of a public or peace officer (Pen. Code, § 148(d).)
- A person who reports to a person that a firearm has been lost or stolen, knowing the report to be false (Pen. Code, § 148.5(f).)
- Unauthorized possession of a weapon in a courtroom, courthouse, or court building, or at a public meeting (Pen. Code, § 171b.)
- Bringing into or possessing a loaded firearm within the state capitol, legislative offices, etc. (Pen. Code, § 171c.)
- Taking into or possessing loaded firearms within the Governor's Mansion or residence of other constitutional officers (Pen. Code, 171d.)
- Supplying, selling or giving possession of a firearm to a person for participation in criminal street gangs (Pen. Code, § 186.28.)
- Assault (Pen. Code, §§ 240, 241.)
- Battery (Pen. Code, §§ 242, 243.)
- Sexual Battery (Pen. Code, § 243.4.)
- Assault with a stun gun or taser weapon (Pen. Code, § 244.5.)
- Assault with a deadly weapon other than a firearm, or with force likely to produce great bodily injury (Pen. Code, § 245.)
- Assault with a deadly weapon or instrument, by any means likely to produce great bodily injury or with a stun gun or taser on a school employee engaged in performance of duties (Pen. Code, § 245.5.)
- Discharging a firearm in a grossly negligent manner (Pen. Code, § 246.3.)
- Shooting at an unoccupied aircraft, motor vehicle, or uninhabited building or dwelling house (Pen. Code, § 247.)
- Inflicting corporal injury on a spouse or significant other (Pen. Code, § 273.5.) (Convictions on or before 12/31/2018.)
- Willfully violating a domestic protective order (Pen. Code, § 273.6.)
- Drawing, exhibiting, or using a deadly weapon other than a firearm (Pen. Code, § 417.)
- Inflicting serious bodily injury as a result of brandishing (Pen. Code, § 417.6.)
- Making threats to commit a crime which will result in death or great bodily injury to another person (Pen. Code, § 422.)
- Interference with the exercise of civil rights because of actual or perceived characteristics of the victim (Pen. Code, § 422.6.)
- Bringing into or possessing firearms upon or within public schools and grounds (Pen. Code, § 626.9.)
- Stalking (Pen. Code, § 646.9.)



## CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS FIREARMS PROHIBITING CATEGORIES



- Carrying a concealed or loaded firearm or other deadly weapon or wearing a peace officer uniform while picketing (Pen. Code, §§ 830.95, 17510).
- Possessing a deadly weapon with intent to commit an assault (Pen. Code, § 17500.)
- Criminal possession of a firearm (Pen. Code, § 25300.)
- Armed criminal action (Pen. Code, § 25800.)
- Possession of ammunition designed to penetrate metal or armor (Pen. Code, § 30315.)
- Unauthorized possession/transportation of a machine gun (Pen. Code, § 32625.)
- Driver of any vehicle who knowingly permits another person to discharge a firearm from the vehicle or any person who willfully and maliciously discharges a firearm from a motor vehicle (Pen. Code, § 26100, subd. (b) or (d).)
- Firearms dealer who sells, transfers, or gives possession of any firearm to a minor or a handgun to a person under 21 (Pen. Code, § 27510.)
- Purchase, possession, or receipt of a firearm or deadly weapon by a person receiving in-patient treatment for a mental disorder, or by a person who has communicated to a licensed psychotherapist a serious threat of physical violence against an identifiable victim (Welf. & Inst. Code, § 8100.)
- Providing a firearm or deadly weapon to a person described in Welfare and Institutions Code sections 8100 or 8103 (Welf. & Inst. Code, § 8101.)
- Purchase, possession, or receipt of a firearm or deadly weapon by a person who has been adjudicated to be a mentally disordered sex offender or found to be mentally incompetent to stand trial, or not guilty by reason of insanity, and individuals placed under conservatorship (Welf. & Inst. Code, § 8103.)
- Bringing firearm related contraband into juvenile hall (Welf. & Inst. Code, § 871.5.)
- Bringing firearm related contraband into a youth authority institution (Welf. & Inst. Code, § 1001.5.)
- Theft of property less than \$950.00, if property taken was a firearm (Pen. Code, § 490.2)
- Criminal storage of a firearm (Pen. Code, §§ 25100, 25135 or 25200)
- Various violations involving sales and transfers of firearms (Pen. Code, § 27590, subd. (c).)

### **The following misdemeanor conviction results in a five year prohibition:**

- Every person who owns or possesses a firearm or ammunition with knowledge that he or she is prohibited from doing so as a result of a gun violence restraining order (Pen. Code, § 18205).

### **The following misdemeanor convictions result in a lifetime prohibition:**

- Inflicting corporal injury on a spouse or significant other (Pen. Code, § 273.5 for convictions on or after 1/1/2019, per Pen. Code, § 29805(b), and a "misdemeanor crime of domestic violence" (18 U.S.C., § 921(a)(33)(A), 922(g)(9).)
- Assault with a firearm (Pen. Code, §§ 29800, subd. (a)(1), 23515, subd. (a).)
- Shooting at an inhabited or occupied dwelling house, building, vehicle, aircraft, housecar, or camper (Pen. Code, §§ 246, 29800, subd. (a)(1), 17510, 23515, subd. (b).)
- Brandishing a firearm in presence of a peace officer (Pen. Code §§ 417, subd. (c), 23515, subd. (d), 29800, subd. (a)(1).)
- Two or more convictions of Penal Code section 417, subdivision (a)(2) (Pen. Code § 29800, subd. (a)(2).)

**Note:** The Department of Justice provides this document for informational purposes only. This list may not be inclusive of all firearms prohibitions. For specific legal advice, please consult with an attorney licensed to practice law in California.

**APPENDIX F: Bureau of Firearms Regional and Field Offices**



## **APPENDIX G: Case Studies**

To better explain how APPS investigations are developed and to showcase some significant seizures, the Bureau identified eight specific examples. The following examples are summary conclusions of actual investigations conducted throughout the state.

### **Ammunition eligibility check identifies prohibited individual in Woodland Hills**

In December 2020, an individual attempted to purchase ammunition and was flagged as prohibited through the ammunition eligibility check process. This information was forwarded to the Bureau's Los Angeles Field Office for investigation. Special Agents reviewed the case and found the individual was prohibited from owning and possessing firearms due to a felony conviction.

As a result of the attempted purchase of ammunition, coupled with investigative follow-up and surveillance, a search warrant was obtained for the subject's residence in Woodland Hills.

In February 2021, Special Agents, with the assistance of Los Angeles County Sheriff's Department personnel, executed the search warrant at the individual's residence without incident. The search of the residence resulted in the seizure of a non-serialized 9 mm caliber semiautomatic handgun (ghost gun), a non-serialized .223 caliber assault weapon (ghost gun), along with ten ammunition magazines, and 500 rounds of ammunition. The individual was arrested and booked into Los Angeles County Jail on firearms related charges.



## **Ammunition eligibility check identifies prohibited individual in Simi Valley**

In January 2021, an individual attempted to purchase ammunition and was flagged as prohibited through the ammunition eligibility check process. This information was forwarded to the Bureau's Los Angeles Field Office for investigation. Special Agents reviewed the case and found the individual was prohibited from owning and possessing firearms due to a prohibition pursuant to Welfare and Institutions Code section 5150. Additionally, the individual was listed in the APPS database as illegally being in possession of two firearms.

Based on the individual's attempt purchase ammunition and identification in the APPS database, coupled with investigative follow-up and surveillance, a search warrant was obtained for the subject's residence in Simi Valley.

In February 2021, Special Agents, with the assistance of Los Angeles County Sheriff's Department personnel, executed the search warrant at the individual's residence without incident. The search of the residence resulted in the seizure of a short-barreled rifle, two additional rifles, one shotgun, seven ammunition magazines, approximately 2,000 rounds of ammunition, and metal knuckles.





## **APPS investigation leads to the seizure of multiple firearms in Lincoln**

Through the APPS database, the Bureau identified an individual prohibited from owning and/or possessing firearms or ammunition due to a prohibition pursuant to Welfare and Institutions Code section 5150. Additionally, the individual was listed in the APPS database as illegally being in possession of seven firearms.

In February 2021, Special Agents conducted a consent search at the individual's residence in Lincoln. The search of the residence resulted in the seizure of an un-serialized AR-15 fully automatic machine gun (ghost gun) with an attached suppressor, one un-serialized AR style short barreled fully automatic machine gun (ghost gun), two shotguns, three handguns, one large capacity drum magazine (60 round), one large capacity rifle magazine, 11 handgun magazines, and approximately 7,000 rounds of ammunition.



## **Ammunition eligibility check identifies prohibited individual in Hollister**

In March 2021, an individual attempted to purchase ammunition and was flagged as prohibited through the ammunition eligibility check process. This information was forwarded to the Bureau's Fresno Regional Office for investigation. Special Agents reviewed the case and found the individual was prohibited from owning and possessing firearms and ammunition due to a felony conviction. Additionally, the individual was listed in the APPS database as illegally being in possession of a firearm.

Based on the individual's attempt to purchase ammunition and identification in the APPS database, coupled with the investigative follow up and surveillance, a search warrant was obtained for the individual's residence in the City of Hollister.

On May 4, 2021, Special Agents executed the search warrant at the individual's residence without incident. A search of the residence resulted in the seizure of 15 handguns, 11 shotguns, 24 rifles, 28 large capacity ammunition magazines, and approximately 16,000 rounds of ammunition. All APPS firearms were located unsecured in the residence.

The subject was arrested and booked into the San Benito County Jail for firearms related charges.



## Intercepted “fuel filter” silencer leads to seizure of firearms from convicted felon in Paso Robles

In July 2021, Special Agents were contacted by the U.S. Department of Homeland Security regarding an individual that purchased a “fuel filter” silencer through the mail. The “fuel filter” silencer was a fully assembled monocoil silencer that was designed to be directly attached to a firearm to reduce the noise produced by the firearm when fired. The individual that purchased the silencer was found to be a convicted felon.

Based on the above information coupled with investigative follow up and surveillance, a search warrant was obtained for the individual’s residence in Paso Robles.

On July 22, 2021, Special Agents executed the search warrant at the individual’s residence without incident. A search of the residence resulted in the seizure of two ghost gun assault weapons with one being a short-barreled rifle, five ghost handguns, 11 rifles, two shotguns, five large capacity magazines, 21 standard capacity magazines, miscellaneous guns parts, and 4,320 rounds of ammunition.

The individual was arrested and booked into the San Luis Obispo County Jail on assault weapons charges and being a felon in possession of firearms.



## Gun show investigation reveals felon purchasing “ghost guns” firearm parts in Highland

In September 2021, Special Agents conducted an enforcement operation at a gun show venue in Southern California. During the operation, Special Agents observed an individual determined to be a convicted felon purchase an AR15 upper receiver, a complete pistol ghost gun kit, and a gun magazine. The individual was subsequently contacted and found in possession of the items as well as an additional gun magazine. The individual was arrested for being a felon in possession of magazines, and was transported to the San Bernardino County Jail where he was booked.

Following the arrest, Special Agents responded to the individual’s residence in Highland and obtained a search warrant. The search warrant was executed without incident and resulted in the seizure of one shotgun, three ghost gun handguns, one .22 caliber handgun, one ghost gun short barrel rifle, one AR 15 upper receiver, one completed pistol lower receiver, three standard capacity magazines, five large capacity magazines, approximately 350 rounds of ammunition, eight firearm jigs, and various gun manufacturing tools and dyes.



## **Prohibited subject arrested for being a felon in possession of “ghost guns” in Redlands**

In September 2021, the Bureau identified an individual attempting to conduct an illegal transfer of several firearms to himself. The individual was determined to be prohibited from possessing firearms and/or ammunition due to a misdemeanor conviction of assault with a deadly weapon. This information was forwarded to the Bureau’s Riverside Regional Office for investigation.

Based on investigative follow up, agents obtained a search warrant for the individual’s residence located in the City of Redlands.

In October 2021, Special Agents executed the search warrant at the individual’s residence without incident. The search of the residence resulted in the seizure of five handguns, three shotguns, nine rifles, one ghost gun handgun, three ghost gun assault weapons, 16 magazines, one silencer, and approximately 8,100 rounds of ammunition.

The subject was arrested and booked into the San Bernardino County Jail for firearms related charges.



## Prohibited APPS subject found in possession of assault weapons in Fresno

Through the APPS database, the Bureau identified an individual prohibited from owning and/or possessing firearms or ammunition due to a prohibition pursuant to Welfare and Institutions Code section 5150. The individual was listed in the APPS database as illegally being in possession of three firearms.

Through the ammunition eligibility check process, Special Agents determined the individual had recently, and just prior to becoming prohibited, purchased similar caliber ammunition as his listed firearms. Special Agents subsequently obtained a search warrant for his residence in Fresno.

On November 18, 2021, Special Agents executed the search warrant at the individual's residence without incident. A search of the residence resulted in the seizure of two assault weapons with one being un-serialized (ghost gun), three AR-15 lower receiver firearms (two ghost guns), one polymer 80 handgun lower receiver, two handguns, 26 standard magazines, 28 large capacity magazines, jigs and firearm parts (used to manufacture firearms), and approximately 6,654 rounds of ammunition.

The individual was arrested and booked into the Fresno County Jail for firearms related charges.



## APPENDIX H: Gun Violence Reduction Program Awards

### GUN VIOLENCE REDUCTION PROGRAM FISCAL YEAR 2021-22

APPLICANT	SUMMARY OF AWARD	AWARD
Contra Costa County Sheriff's Office	Recover firearms and ammunition from domestic abusers and other prohibited persons in community via monthly compliance checks of persons on the monthly APPS report, training of sworn personnel, and collaboration with State and other local law enforcement agencies.	\$332,205
Lake County Sheriff's Office	Reduce the number of armed prohibited persons in Lake County via a combination of the following: increasing the frequency of APPS contacts and investigations, creating a notification program between the Sheriff's Office, the courts, and the District Attorney, coordinating with State and local law enforcement, training of sworn personnel, and performing APPS sweeps within the county.	\$277,373
Los Angeles County Sheriff's Office	Utilize funding to put an MOU in place between the Sheriff's Office and DOJ, to maintain the integrity of the currently-existing Major Crimes Bureau (MCB) APPS Task Force in conjunction with a well-established database, to do the following: significantly reduce APPS entries, allow for continued use of DOJ's APPS database, conduct weekly APPS operations, create APPS policies and procedures, increase field operations, improvement in APPS case files, and increased APPS-related communication with patrol station and dispatch center personnel.	\$843,630
Orange County Sheriff's Office	Enhance partnership with DOJ to improve the collection of firearms and ammunition from prohibited persons in the county via collaborative and/or independently-run APPS operations with or without DOJ, and through the designation of an APPS enforcement team to collaborate with DOJ, the courts, the District Attorney, and Probation Department, to conduct frequent probation/parole compliance checks of persons on the APPS list.	\$316,285
Sacramento County Sheriff's Office	Reduce gun violence in California by seizing firearms from prohibited persons via the enhancement of efforts between the Sheriff's Office and the DOJ, including the seizure of firearms from prohibited persons on the same day they become prohibited, daily hand-in-hand work with the DOJ, and entering of firearms stored at the Sheriff's property warehouse into the Automated Firearms System (AFS).	\$887,275

San Francisco County Sheriff's Office	Enforce the prohibitions on firearm possession by persons who have a Domestic Violence Restraining Order or Domestic Violence Criminal Protective Order issued against them via the following: establishment of a county-level firearm confiscation system, reducing the APPS backlog through county-level partnering, recovering firearms through enforcement of firearms possession by persons with restraining orders, contacts made during restraining order contacts, court order compliance, domestic violence and elder abuse incidents involving a firearm, and implementation of a Domestic Violence Firearms Compliance Unit.	\$301,554
Santa Barbara County Sheriff's Office	Ensure that prohibited persons in the county are complying with the prohibition against owning, accessing, or possessing firearms and ammunition by investigating and seizing firearms, arresting and assisting in the prosecution of persons on the APPS list who violate laws and regulations; the creation of an APPS team that will collaborate with DOJ, ATF, the Probation Department, and local police to locate and remove firearms from prohibited persons; and via collaboration with the courts, background checks of APPS prohibited persons, and education of Sheriff's Office staff.	\$539,660
Santa Clara County Sheriff's Office	Utilize an innovative, multi-prong strategy to remove prohibited persons from the APPS database via the following actions: proactively working off of the APPS list to identify prohibited persons targets and subsequent intelligence gathering, reviews of all new cases of domestic violence, obtaining persons of interest for investigation, collaboration with the District Attorney, and rapid response to social media posts (threats to harm others/self, in writing or video).	\$512,255
Santa Cruz County Sheriff's Office	Reduce the number of persons on the APPS list by 35% over the next two years by conducting investigations of persons on the APPS list, seizing illegally-possessed firearms and ammunition, establishing a Gun Relinquish program in collaboration with the courts and District Attorney, specialized training of deputies, and the destruction of firearms.	\$291,596
Ventura County Sheriff's Office	Reduce the number of persons in the APPS database through intensive investigation and a focus on the recovery of firearms, sharing of APPS persons information with other California Sheriff's Offices to reduce APPS statewide, additions and improvements to the APPS investigation case management system, development of a Pre-APPS program, and creation of an APPS Coordinator.	\$652,575





## 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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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, CPA  
State Auditor

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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.<sup>1</sup> 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.

<sup>1</sup> 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.<sup>2</sup> 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).

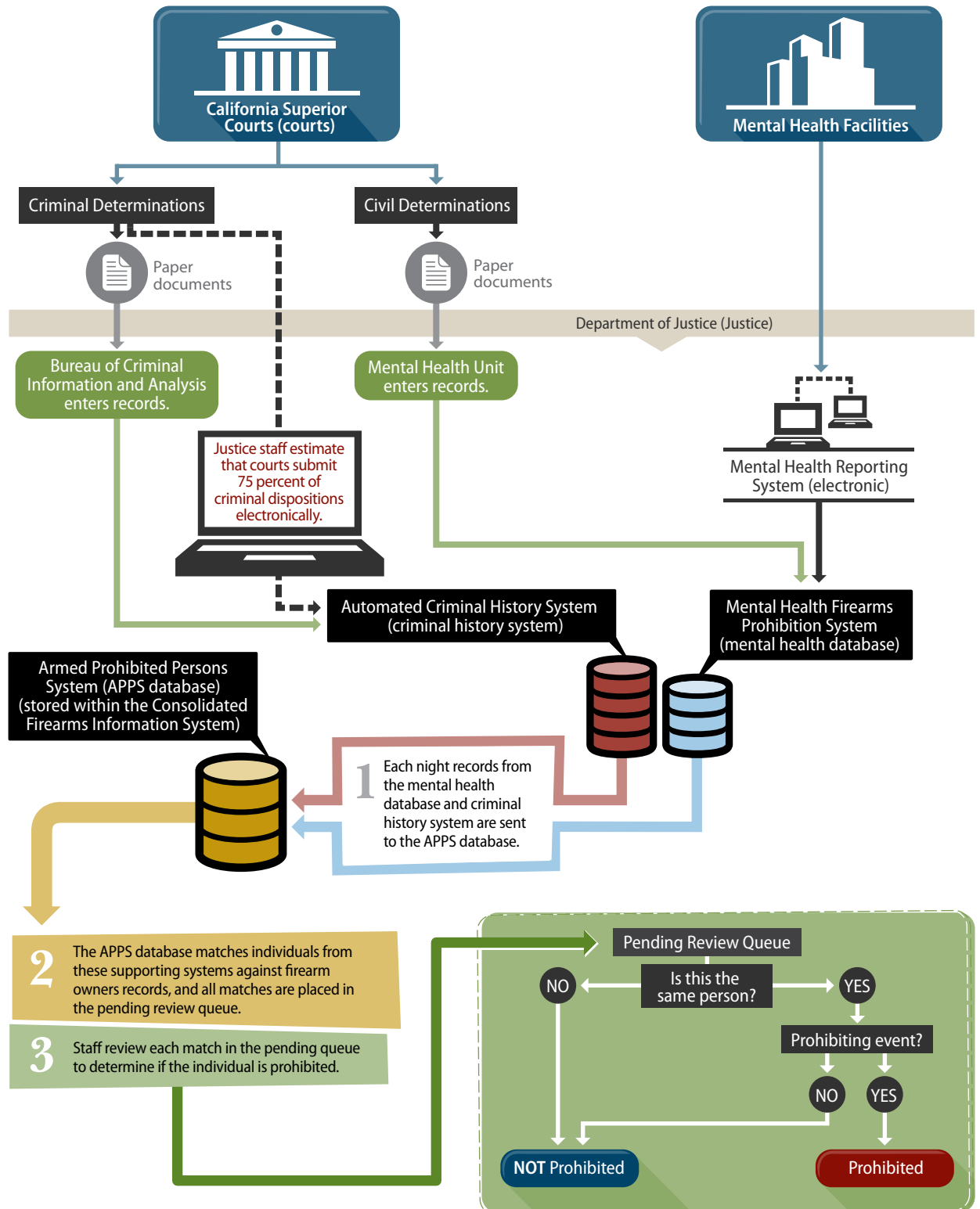
Not all determinations that courts report to Justice result in an individual being prohibited from possessing a firearm. Some determinations will reverse or lift a previous prohibition. For example, a court determination that an individual requires a conservatorship because of a mental illness can result 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

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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

<sup>3</sup> 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*.

<sup>4</sup> 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.<sup>5</sup> 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.

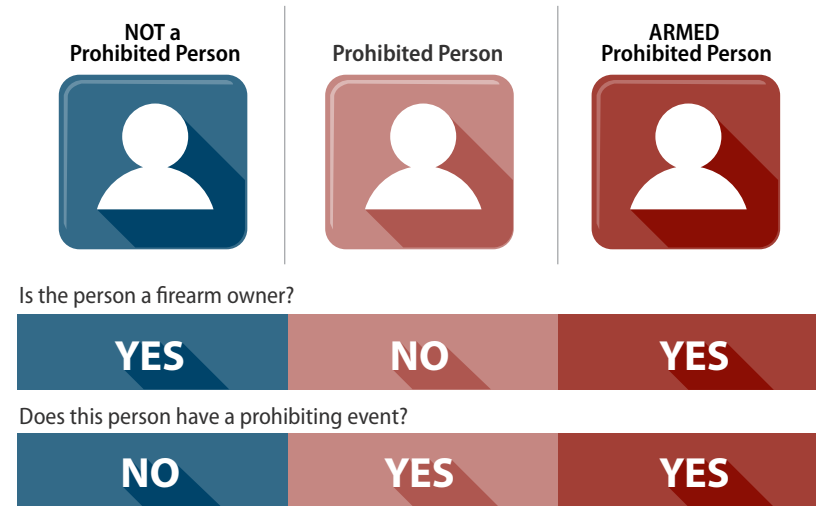
Staff in the APPS unit manually review each person in the pending review queue to determine whether the automated check has matched the correct individual. For example, the automated check will match an individual with a recent prohibiting event with someone in CFIS who has the same personal identification 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,

<sup>5</sup> 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.	<ul style="list-style-type: none"> <li>• Reviewed Justice's relevant policies and procedures and compared them to the requirements in state law.</li> <li>• 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.</li> <li>• 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.</li> <li>• Interviewed Justice staff to determine whether Justice makes any effort to reach out to superior courts (courts) that do not report mental health determinations.</li> </ul>
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.	<p>At Justice we performed the following steps:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Reviewed mental health facility outreach documents that communicate facility reporting requirements to determine if the outreach documents inform facilities about their reporting duties.</li> <li>• 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.</li> <li>• 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.</li> <li>• Reviewed email communications and interviewed Justice's staff to understand Justice's attempts to request that State Hospitals share information about prohibited persons.</li> </ul> <p>At State Hospitals we performed the following steps:</p> <ul style="list-style-type: none"> <li>• Interviewed staff to determine how often State Hospitals reported prohibited persons to Justice.</li> <li>• Interviewed staff to determine whether State Hospitals reported information to Justice electronically.</li> <li>• Determined which hospital facilities reported electronically in 2012 and whether those facilities are the only ones that treat patients that should be reported.</li> </ul>

AUDIT OBJECTIVE	METHOD
<p>4 Examine Justice's practices to determine the following:</p> <p>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).</p> <p>b. The length of time it takes Justice to process reports identifying prohibited persons with mental illness and to update applicable databases.</p> <p>c. Whether Justice has a backlog in processing and updating the APPS database and the extent, source, and reasons for any backlogs.</p> <p>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.</p>	<ul style="list-style-type: none"> <li>• Interviewed staff to understand processes and controls regarding receiving and processing reports from courts, mental health facilities, and local law enforcement.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• Obtained and reviewed the Bureau of Firearms' and Bureau of Criminal Information and Analysis' record retention schedules and interviewed applicable staff.</li> </ul> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul> <ul style="list-style-type: none"> <li>• Interviewed Justice's staff to determine whether backlogs exist in the APPS database and what may cause backlogs.</li> <li>• Determined how Justice prioritizes the APPS database review queue.</li> <li>• Documented the circumstances that led to the historical backlog of firearm owners and Justice's efforts to reduce this backlog.</li> <li>• 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.</li> </ul> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Determined when Justice first made electronic reporting available to facilities.</li> </ul>
<p>5 For a sample of courts, conduct the following:</p> <p>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.</p>	<p>We visited selected locations at three courts: Los Angeles, San Bernardino, and Santa Clara. At each court, we performed the following procedures:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Interviewed staff at the courts to determine how they understand the law's requirement to report to Justice immediately.</li> </ul>

AUDIT OBJECTIVE	METHOD
<p>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.</p>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>
<p>c. Identify the courts' monitoring policies and control processes to determine whether they adequately ensure that courts comply with reporting requirements.</p>	<ul style="list-style-type: none"> <li>Identified monitoring policies and controls over reporting during our review of court policies, procedures, and practices described in step 5(a).</li> <li>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.</li> </ul>
<p>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.</p>	<ul style="list-style-type: none"> <li>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.</li> <li>Interviewed staff at Justice regarding its efforts and process to remove firearms from known prohibited persons.</li> <li>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.</li> <li>Reviewed legislation, signed into law in May 2013, that appropriated additional funding to Justice for the purpose of confiscating firearms from armed prohibited persons.</li> </ul>

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 <sup>§</sup>
Mariposa	No	2
Mendocino	Yes	30
Modoc	No	17
Mono	No	1
Napa	No	Unable to determine <sup>§</sup>
Nevada	No	Unable to determine <sup>§</sup>
Plumas	No	14
Riverside	Yes <sup>  </sup>	10 <sup>†,  </sup>
San Benito	No	0
San Francisco	No	15 <sup>#</sup>
San Joaquin	No	74
Shasta	No	Unable to determine <sup>§</sup>
Sierra	No	0
Solano	No	200*
Stanislaus	No	7
Trinity	No	11
Tulare	No	Unable to determine <sup>§</sup>
Yolo	No	24 <sup>†</sup>
Yuba	No	24
<b>Total number of reportable determinations:</b>		<b>2,304**</b>

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

***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.***

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.<sup>6</sup> 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 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.

<sup>6</sup> 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.

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

*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.*

*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.*

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.<sup>7</sup> 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 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.<sup>8</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

### **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

*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.*

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

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***

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.<sup>9</sup> 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.

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

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

<sup>9</sup> 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.<sup>10</sup> 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.

<sup>10</sup> 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.<sup>11</sup> 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.*

<sup>11</sup> 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 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.<sup>12</sup> 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.*

<sup>12</sup> 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.

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

***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.***

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.<sup>13</sup> 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 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

***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.***

<sup>13</sup> 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.<sup>14</sup> 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.

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

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

<sup>14</sup> 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. 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

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

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.<sup>15</sup> 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.*

<sup>15</sup> 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.<sup>16</sup> 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

<sup>16</sup> 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.

*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.*

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

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.<sup>17</sup> 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

<sup>17</sup> 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.

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

***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.***

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.<sup>18</sup> 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.***

<sup>18</sup> 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.

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

*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.*

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.

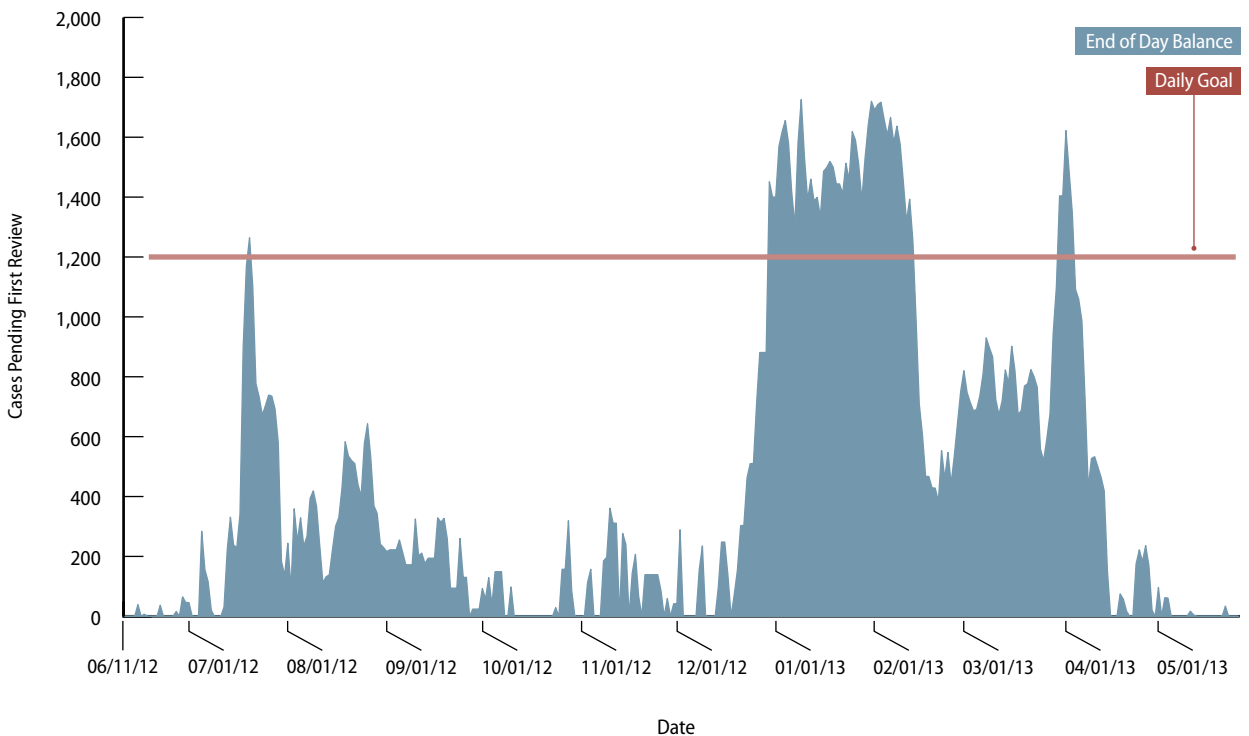
### ***Justice Has at Times Had a High Daily Backlog of Unreviewed Prohibiting Events That Have Been Matched With Firearm Owners***

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.<sup>19</sup> 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

<sup>19</sup> 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.

***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

***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.***

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 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

***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.***



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.

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.<sup>20</sup> 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.

***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.***

<sup>20</sup> 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.<sup>21</sup> 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

<sup>21</sup> 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.<sup>22</sup>

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

<sup>22</sup> 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.<sup>23</sup> 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.***

<sup>23</sup> 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.<sup>24</sup> 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,

<sup>24</sup> 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.

*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.*

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.

### **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.

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

***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.***

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**

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.

*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.*

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, 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.



October 2013

**KAMALA D. HARRIS**  
Attorney General

State of California  
**DEPARTMENT OF JUSTICE**



BUREAU OF FIREARMS  
4949 Broadway  
SACRAMENTO, CA 95820  
Public: (916) 227-4010  
Email: [Stephen.Lindley@doj.ca.gov](mailto:Stephen.Lindley@doj.ca.gov)

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.

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Page 2

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

Elaine M. Howle, State Auditor  
October 10, 2013  
Page 3

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

Elaine M. Howle, State Auditor  
October 10, 2013  
Page 4

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*

Elaine M. Howle, State Auditor  
October 10, 2013  
Page 5

*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.*

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**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;

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Page 7

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.*

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**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 its 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 meet 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.



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**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.

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**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.

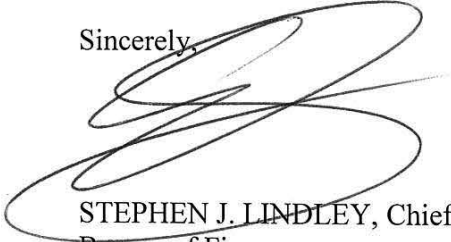
Elaine M. Howle, State Auditor  
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Changing the standard of review would require a change to the statutory scheme, and this function rests solely with the legislature.

\* \* \* \* \*

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.

EDMUND G. BROWN JR.  
GOVERNOR

# State of California HEALTH AND HUMAN SERVICES AGENCY



DIANA S. DOOLEY  
SECRETARY

October 10, 2013

Elaine M. Howle, State Auditor  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814  
Attn: Karen McKenna

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

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,

A handwritten signature in black ink, appearing to read "Mark Beckley", is written over a horizontal line.

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.

Ms. Elaine M. Howle  
October 9, 2013  
Page 2

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,

A handwritten signature in black ink, appearing to read "Steven Jahr", with a long horizontal line extending to the right.

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

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*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,

A handwritten signature in black ink, appearing to read "Sherrri R. Carter".

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.

Elaine M. Howle, CPA  
California State Auditor  
October 9, 2013  
Page 2 of 3

**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:**

① 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 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

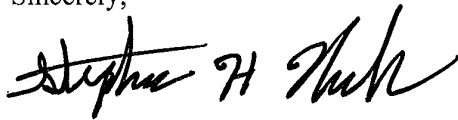
**RESPONSE:**

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.

Ms. Elaine M. Howle, CPA  
October 8, 2013  
Page 2

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.

- ② 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.
- ③ 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.
- ④ 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.

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.



October 2013

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



## Follow-Up— California Department of Justice

Delays in Fully Implementing Recommendations  
Prevent It From Accurately and Promptly Identifying  
All Armed Persons With Mental Illness, Resulting in  
Continued Risk to Public Safety

Report 2015-504

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INTEGRITY  
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July 9, 2015

2015-504

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

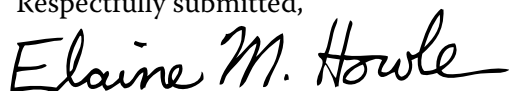
Dear Governor and Legislative Leaders:

This report presents the results of a follow-up audit of the California Department of Justice (Justice) related to recommendations made in 2013 by the California State Auditor (state auditor). In October 2013 the state auditor issued a report titled *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. The 2013 audit report included recommendations aimed at ensuring Justice accurately and promptly identifies firearm owners in the State who are prohibited from owning or possessing a firearm due to a mental health-related event in their life (armed prohibited person).

This report concludes that Justice's delays in fully implementing certain recommendations result in continued risk to public safety. After more than 18 months Justice has not fully implemented seven of the eight recommendations that we reviewed from our 2013 report. For example, Justice continues to have errors related to its determinations of whether or not to prohibit individuals from firearm ownership due to a mental health-related event. In addition, Justice has not taken all steps to ensure that courts and mental health facilities are reporting all individuals for review to determine whether they should be designated an armed prohibited person. Although we recommended that Justice consider trends in court reporting and track reporting levels from mental health facilities, it has not done so. For example, we identified that 91—or 25 percent—of the 361 courthouses had declines of 30 percent or more in the number of prohibited persons reports in 2014; however, Justice had not identified the significant drops in reporting because it had not analyzed trends in court reporting. Similarly, Justice developed procedures to identify significant drops in a mental health facility's reporting levels, but did not always follow them. Because it had not conducted any trend analyses regarding court reports or followed up with mental health facilities that show significant drops in reports each quarter, Justice does not know whether persons with mental illness are going unreported or if some other factor caused the changes in reporting levels.

Additionally, Justice maintains backlogs in its two processing queues because it continues to redirect its Armed and Prohibited Persons unit staff to work on another priority for which there is a statutory deadline. Specifically, during the first quarter of 2015 the backlog in its daily queue was over 3,600 cases, which is six times higher than its goal of having a maximum of 600 or fewer cases in the queue. Further, as of April 2015 its historical backlog was over 257,000 potentially prohibited persons. Based on its current rate of reviewing its historical queue, we estimate that Justice may not meet its goal of clearing the backlog by December 2016. Instead, based on its current pace, we estimate that Justice may not be able to clear the backlog until sometime in 2022. The longer it takes Justice to review the records in its backlogs, the longer armed prohibited persons keep their firearms, which increases the risk to public safety.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

The California Department of Justice (Justice) has not fully implemented certain recommendations from our October 2013 report that prevents it from accurately and promptly identifying firearm owners in the State who are prohibited from owning or possessing a firearm due to a mental health-related event in their life (armed prohibited person).<sup>1</sup> As we described in our previous report, Justice attempts to identify these 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. This identification process is critical for Justice to complete promptly so that it can confiscate firearms from armed prohibited persons and ensure public safety.

This follow-up audit focused on certain recommendations we made to Justice related to the accurate and timely identification of armed prohibited persons as well as its process for reaching out to courts and mental health facilities. In our October 2013 report we reported that Justice did not correctly identify three of eight persons we reviewed as armed prohibited persons nor did its Armed Prohibited Persons System (APPS database) always contain accurate information. We noted that of an additional 12 individuals prohibited from firearm ownership, Justice had omitted a mental health prohibition in the APPS database for one and for another Justice staff did not identify all of the individual's firearms in the APPS database. As a result of these errors, we recommended that Justice implement quality control procedures over its Armed and Prohibited Persons unit (APPS unit) staff determinations. Although Justice has partially implemented this recommendation, it needs to do more to ensure that it identifies all prohibited persons. Specifically, Justice developed and implemented quality control procedures for review of its staff determinations that individuals are prohibited from owning a firearm; however, it did not implement similar procedures over its staff determinations that individuals are not prohibited from owning a firearm. Despite our previous finding that APPS unit staff inaccurately identified some individuals as being *not* prohibited from firearm ownership, Justice interpreted our recommendation to be limited to determinations over individuals who are prohibited from firearm ownership. When we discussed our concern with Justice, it agreed that it is important to perform reviews of all staff determinations and in April 2015 took steps to put new procedures in place to do so.

<sup>1</sup> *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 (October 2013).

### Audit Highlights . . .

*Our follow-up audit of the California Department of Justice's (Justice) progress in addressing certain issues we raised in our 2013 report highlighted the following:*

- » *Although Justice has partially implemented our recommendation that it implement quality control procedures over its Armed and Prohibited Persons unit (APPS unit) staff determinations, Justice needs to do more to ensure that it identifies all armed prohibited persons.*
  - *It implemented a review process of its staff determinations that individuals are prohibited from owning a firearm, but did not do so for staff determinations that individuals are not prohibited from owning a firearm.*
  - *Justice does not have desk procedures or a checklist to assist the APPS unit staff in making correct prohibition determinations, as well as entering and reviewing information into the Armed Prohibited Persons System (APPS database).*
- » *Justice's daily processing queue—a queue that contains the daily events from courts and mental health facilities—during the first quarter of 2015 was over 3,600 cases, which is six times higher than its revised goal of no more than 600 cases.*
- » *Justice is unlikely to complete its review of events in the historical queue—a backlog of certain persons who have not yet been reviewed since Justice implemented the APPS database in November 2006—by its December 2016 goal.*
- » *Justice is not conducting trend analyses of mental health determinations made by the courts as a means to potentially identify instances of nonreporting or underreporting.*

Further, in our follow-up review of Justice's quality control procedures over its staff determinations that an individual is prohibited from firearm ownership, we identified two errors in the 10 cases we reviewed. Specifically, in one case we found that an APPS unit staff had incorrectly prohibited an individual from firearm ownership because the APPS unit staff member had not reviewed all pertinent information, such as the individual's Social Security number and address. When Justice makes this type of error, it inappropriately infringes upon an individual's right to own and possess firearms. In the other case, we determined that the APPS unit staff had not included all weapons belonging to the individual in the APPS database as required. Ensuring the APPS database contains accurate information is important because Justice agents who confiscate weapons from the armed prohibited persons use this information when planning firearm confiscations. These errors may have occurred because Justice does not currently have desk procedures or a checklist to assist the APPS unit staff in making correct prohibition determinations, as well as entering and reviewing all pertinent information into the APPS database.

Additionally, in our previous report we noted that Justice had backlogs in its two processing queues: a daily queue and a historical queue. During late 2012 and early 2013, Justice had a backlog of more than 1,200 matches pending initial review in its daily queue—the queue that contains the daily events from courts and mental health facilities that indicate a match and may trigger a prohibition for an individual to own a firearm. Because a backlog in this queue means that Justice is not reviewing these daily events promptly, we recommended that Justice establish a goal of no more than 400 to 600 cases in the daily queue. However, during this follow-up audit, we found that Justice's daily queue during the first quarter of 2015 was over 3,600 cases; this is six times higher than its revised goal of no more than 600 cases. Just as it did during the previous audit, Justice continues to cite its need to redirect staff to another Bureau of Firearms (bureau) priority, which has a statutory deadline, as the reason for this backlog. We believe that, if Justice had a statutory deadline on the initial processing of the matches in the APPS database, it would encourage Justice to avoid redirecting APPS unit staff. The chief of the bureau believes that seven days would be a reasonable time frame to complete an initial review of matches.

Furthermore, when we conducted this follow-up audit, we found that Justice is unlikely to complete its review of events in the historical queue by its December 2016 goal, a goal that we discussed in our October 2013 report. The former assistant bureau chief explained that the backlog in Justice's historical queue (historical backlog) 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. In our previous report we reported that as of July 2013, Justice's historical backlog was nearly 380,000 persons; now as of April 2015—over a year and a half later—its historical backlog is still over 257,000 potentially prohibited persons. Based on Justice's annual averages of reviewing the historical backlog since 2010, we estimate that Justice will not complete its review of the historical backlog until 2018 based on Justice's most productive year or 2022 based on Justice's current pace. The longer it takes Justice to review the records in historical backlog the longer armed prohibited persons keep their firearms, which increases the risk to public safety.

In our October 2013 report we also reported that many courts were not aware of a state law requiring them to report individuals to Justice when the courts make certain mental health determinations because Justice had not reached out to the courts to discuss reporting requirements and confirm instances of nonreporting or underreporting. As a result, we recommended that Justice coordinate with the Administrative Office of the Courts at least once per year to share information about court-reporting levels, including the trends in the number of reports each court sends. We also recommended that when 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. When we reviewed the changes Justice implemented since the previous audit, we determined that Justice was not conducting a trend analysis as we recommended. If Justice had conducted such an analysis, it would have found that 25 percent of the courthouses had a significant decline in the number of prohibited person reports in 2014. By not considering such trends, Justice cannot ensure that it has the necessary information to identify all armed prohibited persons with mental illness.

This audit focused on relevant actions Justice has taken related to selected recommendations we made in our October 2013 report. During our follow-up audit, we updated our evaluation of the status of these recommendations, and we noted conditions that indicate a need for additional recommendations to Justice. For example, Justice needs to better manage its competing priorities to ensure that it reviews potentially armed prohibited persons promptly. Additionally, it needs to implement quality control procedures over all of its determinations, regardless of whether the APPS unit staff determine that an individual is prohibited or not prohibited from firearm ownership. We believe that by fully implementing the recommendations from our prior report and fully implementing the additional recommendations we present in this report, Justice can ensure that it fulfills its responsibility of identifying armed prohibited persons.

**Recommendations*****Legislature***

To ensure that Justice fairly balances competing responsibilities and avoids redirecting APPS unit staff to competing priorities, the Legislature should require Justice to complete an initial review of cases in the daily queue within seven days.

***Justice***

To ensure that it accurately identifies all prohibited persons, Justice should implement its plan to develop a checklist by July 2015 and desk procedures by September 2015 to aid its analysts in making correct prohibition determinations.

To ensure staff can promptly address the daily queue and the historical backlog, by July 2016 Justice should identify and implement strategies, including pursuing funding, to staff its bureau operations to the level it needs.

**Agency Comments**

Justice agrees with our recommendations and outlined steps that it will take to implement them.

# Introduction

## Background

State law, enacted in 2001, mandated that the California Department of Justice (Justice) create a database to match information related to persons in the State who are prohibited from owning or possessing a firearm (prohibited persons) with its records of firearm owners to determine whether these individuals are prohibited from owning their firearms.<sup>2</sup> Justice implemented this database, commonly known as the Armed Prohibited Persons System (APPS database), in November 2006. The purpose of this database 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 (prohibiting event). Justice refers to these individuals as *armed prohibited persons*.

As we described in our October 2013 report, although different qualifying events can cause someone to become prohibited from owning a firearm, the scope of this audit is limited to prohibitions related to mental health.<sup>3</sup> 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 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. Additionally, state law requires local law enforcement to report to Justice any time a licensed psychotherapist reports that a patient has made a threat against an individual.

## Process of Reporting Mental Health Firearm Prohibiting Events to Justice and Identifying Prohibited Persons

The Armed and Prohibited Persons unit (APPS unit) within Justice's Bureau of Firearms (bureau) is responsible for identifying armed persons with mental illness from a daily list of individuals who may meet the criteria. As of May 2015 the APPS unit employed

<sup>2</sup> 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.

<sup>3</sup> *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 (October 2013).

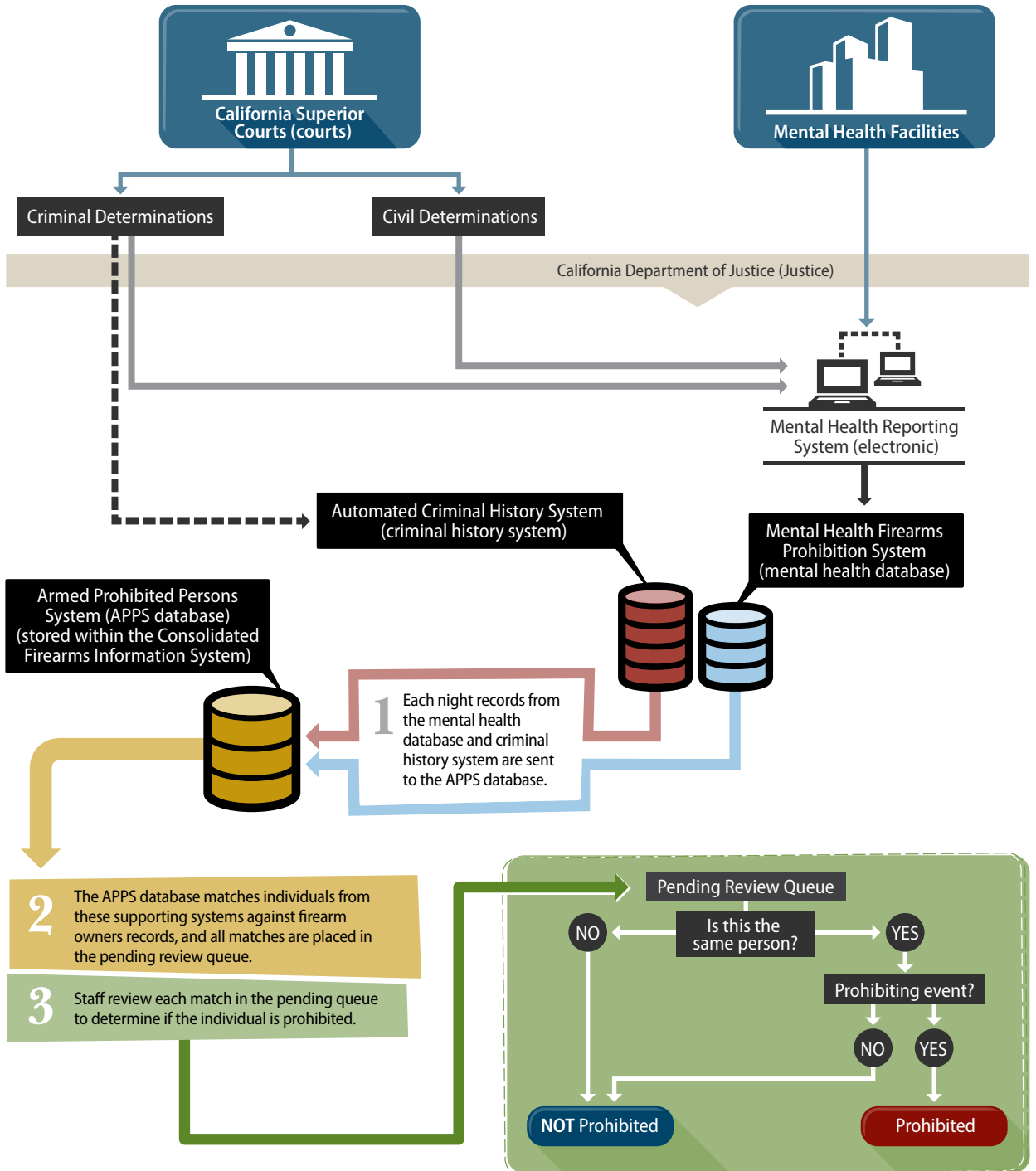
eight staff, one quality control staff, and a manager.<sup>4</sup> As Figure 1 shows, Justice has an automated process that it runs each night, which matches the records in the Mental Health Firearms Prohibition System (mental health database) and the criminal history system with information in Justice's CFIS, which contains records of firearm owners in California since 1996 and of assault weapon owners since 1989. Specifically, Justice's automated process compares personal identifying information within the two systems, 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 daily queue for APPS unit staff to review.

Staff in the APPS unit manually review each person in the pending daily and historical queues to determine whether the automated check has matched the correct individual. The APPS database matches prohibiting events with firearm owners, and then Justice's APPS unit staff review these matches and determine whether the individual is actually prohibited from possessing a firearm. Matches remain in the daily queue until an analyst completes an initial review of the match. 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 it does not incorrectly label firearm owners 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 identify that individual as prohibited in the APPS database and update his or her information, including address and firearm ownership information. In addition, the historical queue is a backlog of individuals who have not yet been reviewed for prohibiting events since Justice implemented the APPS database in November 2006.

The APPS database identifies individuals who own firearms and whether they have a prohibition. State law 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. Effective January 1, 2014, state law specifies that when firearm

<sup>4</sup> There are two quality control staff positions, but as of May 1, 2015, one of the quality control positions is vacant.

**Figure 1**  
**The Process of Reporting Mental Health Firearm Prohibiting Events to the California 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.

Note: As described in the Background, local law enforcement agencies report whenever a licensed psychotherapist reports that a patient has made a threat against an individual. These reports are submitted manually and electronically through the Mental Health Reporting System. According to the manager of the mental health unit, Justice only expects to receive 500 of the reports submitted by local law enforcement agencies during 2015 compared to thousands of reports submitted by the courts and mental health facilities.



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 requirements is a misdemeanor. According to the assistant bureau chief, the Justice agents that conduct firearm seizures will investigate whether any other firearms owners reside in the residence during their investigations. Further, the APPS unit is not responsible for background checks for firearm purchases. Another bureau unit, the Dealers' Record of Sale processing unit, is responsible for completing these background checks.

### Scope and Methodology

This follow-up audit focused on certain recommendations we made to Justice in our October 2013 report related to the accurate and timely identification of prohibited persons as well as its process for reaching out to courts and mental health facilities.

**Table 1**  
**Selected Recommendations in the California State Auditor's Report 2013-103**  
**and the Methods Used to Follow Up On Them**

RECOMMENDATION	METHOD
<p>1 To ensure that it makes correct determinations about whether an individual is an armed prohibited person, by January 31, 2014, the California Department of Justice (Justice) should implement quality control procedures over Armed and Prohibited Persons unit (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.</p>	<ul style="list-style-type: none"> <li>• Reviewed Justice's quality control procedures over its APPS unit staff determinations identifying individuals as prohibited from firearm ownership (prohibition determinations).</li> <li>• Reviewed the prohibition determination review logs from June 2014 to March 2015, which staff use to track decisions identifying individuals as prohibited from firearm ownership to select test items.</li> <li>• Selected 10 cases from the prohibition logs to identify whether Justice staff determined that individuals were prohibited from firearm ownership correctly and that those determinations contain all pertinent information.</li> <li>• Interviewed staff to determine why Justice had not implemented quality control procedures for staff determinations that individuals are not prohibited from firearm ownership.</li> </ul>
<p>2 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.</p>	<ul style="list-style-type: none"> <li>• Interviewed key staff to determine how Justice manages its staff priorities.</li> <li>• Obtained documentation to demonstrate actions Justice has taken to manage its staff priorities.</li> <li>• Reviewed the data compiled by the APPS unit manager from January 13, 2015, through March 25, 2015, of the Armed Prohibited Persons System (APPS database) daily queue to determine whether Justice is effectively managing staff priorities.</li> <li>• Reviewed and analyzed Justice's report to the Legislature to determine if it has reported about the backlog of unreviewed potential prohibited persons and what factors have prohibited it from efficiently reviewing these persons.</li> </ul>

RECOMMENDATION	METHOD
<p>3 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.</p>	<ul style="list-style-type: none"> <li>• Obtained documentation that demonstrates whether Justice is tracking the APPS database daily queue for the review of potential armed prohibited persons to monitor its goals to have no more than 600 cases in the queue at any one time.</li> <li>• Reviewed and analyzed data compiled by the APPS unit manager from January 13, 2015, through March 25, 2015, of the APPS database daily queue.</li> <li>• Assessed whether Justice has met its revised goal for the daily queue.</li> <li>• Determined the steps Justice intends to take to work toward meeting its goal for the daily queue.</li> </ul>
<p>4 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.</p>	<ul style="list-style-type: none"> <li>• Reviewed reports that demonstrate Justice's progress on eliminating the historical backlog.</li> <li>• Determined Justice's projected completion date for the historical backlog, based on Justice's progress eliminating the historical backlog.</li> </ul>
<p>5 To ensure that it has the necessary information to identify armed prohibited persons with mental illness, Justice should coordinate with the Administrative Office of the Courts (AOC) at least once a year to share information about superior court (court) reporting levels and to determine the need to distribute additional information to courts about reporting requirements. 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.</p>	<ul style="list-style-type: none"> <li>• Interviewed Justice staff to determine whether it monitors the trends in court reporting of prohibited persons, and makes any effort to reach out to courts that do not report or are potentially underreporting prohibited persons.</li> <li>• Reviewed quarterly reports for 2013 quarter four through 2014 to determine the number of courts that reported prohibited persons to Justice and identify the associated trend in court-reporting levels.</li> <li>• Determined what actions Justice has taken to receive reports from courts that had a significant drop in their reporting levels.</li> </ul>
<p>6 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 California Department of Health Care Services (Health Care Services).</p>	<ul style="list-style-type: none"> <li>• Determined whether Justice's outreach list of mental health facilities was complete by obtaining an independent listing of mental health facilities, which Health Care Services maintains, and comparing it to the list Justice uses for outreach activities.</li> <li>• Interviewed Justice's management to determine the reason for any errors in Justice's list.</li> </ul>
<p>7 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.</p>	<ul style="list-style-type: none"> <li>• Identified new mental health facilities since 2013.</li> <li>• For any new mental health facilities identified, determined what, if any, outreach Justice conducted to inform the facilities about reporting requirements.</li> </ul>
<p>8 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.</p>	<ul style="list-style-type: none"> <li>• Interviewed Justice staff to determine whether it monitors the trends in mental health facility reporting of prohibited persons, and makes any effort to reach out to facilities that are potentially underreporting prohibited persons.</li> <li>• Reviewed Justice's tracking sheet of quarterly reports for 2013 quarter four through 2014 to determine the number of mental health facilities that reported prohibited persons to Justice and the trend in facility reporting levels.</li> <li>• Interviewed Justice staff and reviewed key documents to determine what actions Justice has taken to receive reports from facilities that had a significant drop in their reporting levels.</li> </ul>

Sources: Recommendations made in the report by the California State Auditor titled *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 (October 2013), and information and documentation identified in the table column titled *Method*.

### **Assessment of Data Reliability**

In performing this audit, we relied on electronic data extracted from Justice's APPS database and mental health database. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. Consistent with our previous audit issued in October 2013, 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 identifying the daily backlog, forecasting Justice's completion of the historical backlog, and identifying trends in court and mental health facility reporting. Although these determinations may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

## Audit Results

### **Although the California Department of Justice Has Implemented Quality Control Procedures Over Some of Its Prohibition Determinations, It Needs to Do More**

In our October 2013 report we reported that the California Department of Justice (Justice) did not always properly identify persons in the State who are prohibited from owning or possessing firearms (prohibited persons) nor did its Armed Prohibited Persons System (APPS database) contain accurate information.<sup>5</sup> Specifically, we reported that Justice should have identified three of the eight persons we reviewed as prohibited based on their mental health history.

Further, we reported that although Justice had reached appropriate determinations for 12 additional individuals prohibited from firearm ownership, the information in the APPS database about the individuals was not always accurate. Of these 12 individuals, Justice had omitted a mental health prohibition in the APPS database for one and for another Justice staff did not identify all of the individual's firearms in the APPS database. We also reported that the errors may have been, in part, a consequence of the Armed and Prohibited Persons unit (APPS unit) managers or supervisors not reviewing prohibition decisions. Thus, we recommended that by January 31, 2014, Justice should implement quality control procedures over its APPS unit staff determinations. We specified that these procedures should include periodic supervisory review of staff determinations to ensure that these determinations correctly identify all firearm owners in the State who are prohibited from owning or possessing a firearm due to a mental health-related event in their life (armed prohibited persons).

Justice has partially implemented our recommendation to implement quality control procedures over its APPS unit staff determinations. In response to the audit recommendation, Justice developed and implemented quality control procedures over its determinations that individuals were prohibited from owning firearms. Justice also added two quality control positions to its APPS unit to fulfill the audit recommendation to perform supervisory reviews of staff determinations. As part of the quality control procedures for prohibition determinations, APPS unit staff maintain manual logs of individuals who they identified as being prohibited from firearm ownership (prohibition logs). At the end of each workday, the staff submit the prohibition logs to the quality control staff. The quality control staff are responsible for reviewing at least 10 percent of each analyst's daily prohibition log activity to ensure

<sup>5</sup> *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 (October 2013).

***Although Justice implemented supervisory reviews of prohibition decisions, it did not do the same for staff determinations where APPS unit staff concluded that the firearm owner did not meet the criteria to be an armed prohibited person.***

staff made correct determinations relative to the firearm prohibition criteria and the quality control staff note their review on the prohibition logs. We reviewed the totals of the monthly prohibitions the APPS unit manager compiled based on the prohibition logs from June 2014 to March 2015 and found that, on average, quality control staff reviewed 21 percent of the APPS unit staff prohibition determinations, which exceeded Justice's goal of 10 percent.

Although Justice implemented supervisory reviews of prohibition decisions, we found that it did not implement the same type of review procedures of staff determinations where APPS unit staff concluded that the firearm owner did not meet the criteria to be an armed prohibited person. Our previous report described that in three of the eight determinations we reviewed, Justice incorrectly determined individuals should not be prohibited from firearm ownership when they should have been prohibited. However, Justice focused its quality control procedures on reviewing staff determinations of prohibited individuals exclusively. Justice explained that it only implemented quality control reviews of staff determinations to prohibit firearm ownership because it interpreted the California State Auditor's recommendation to be limited to those prohibition determinations. It is critical that Justice review its staff decisions that an individual is not an armed prohibited person because of the grave risk to public safety if it fails to properly identify armed individuals with mental illness who could potentially be involved in fatal shootings.

When we discussed our concern with Justice, it agreed that it is important to perform reviews of staff determinations both identifying individuals who are and are not prohibited from firearm ownership. Consequently, in April 2015 Justice requested that its information technology unit create an automated report that would generate a sampling of prohibited and nonprohibited persons determinations for the quality control staff to review.

Justice continues to have errors in its determinations of whether or not to prohibit individuals from firearm ownership related to mental health. Specifically, Justice staff did not use all available information to determine whether an individual should be prohibited from firearm ownership nor did it always ensure the APPS database contains updated information. Because Justice has not yet implemented quality control procedures for staff determinations that an individual was not a prohibited person, we focused our review on the accuracy and effectiveness of Justice's decisions to prohibit individuals from firearm ownership. In our review of 10 APPS unit staff determinations to prohibit individuals from firearm ownership, we identified two errors. In one case an analyst incorrectly prohibited an individual. In that case, the individual had the same name and date of birth as another individual who had prohibiting mental health events. However, the analyst failed to use other identifying information such as the

Social Security number and address of the individual that would have led her to make the correct determination. According to the APPS unit manager, the analyst could not remember why she had not used all available information. When we brought this concern to Justice's attention, it immediately corrected the mistake and changed the individual's status in the APPS database to *not prohibited*. As a result of this error, although Justice had not yet seized the individual's firearm, it inappropriately designated this individual as being an armed prohibited person for two months. When Justice incorrectly determines that an individual should be prohibited from firearm ownership, it inappropriately infringes upon a person's right to own and possess firearms.

In the other case, although the analyst correctly prohibited the individual, we found that she had not updated the information in the APPS database to include all weapons belonging to this person. In October 2014 Justice implemented a policy that requires staff to update or review all information, including weapons, in the APPS database if the date of the last review exceeded one year. When we asked the APPS unit manager about the error, he stated that the error was an oversight by the analyst due to a training issue. Specifically, he stated that the analyst did not know that a voluntary registration was an ownership record, which should be included in the APPS database. The APPS unit manager stated that he had a meeting with staff to address the issue and will create new procedures for voluntarily registered firearms by the end of July 2015. Finally, the APPS unit does not have desk procedures or a checklist to assist the analysts in conducting their reviews of potentially prohibited persons. Desk procedures or a checklist could assist staff to ensure they review all necessary information to make correct determinations and accurately update the APPS database. If Justice had desk procedures or a checklist in place, the analysts may not have made these two errors. After we discussed this concern with Justice, it decided to implement these items. As of June 2015 Justice expects the checklist will be complete in July 2015 and the desk procedures will be complete in September 2015. Ensuring that information contained in the APPS database is accurate is important because Justice agents who confiscate weapons from armed prohibited persons use information in the APPS database when planning firearm seizures.

*In another case, although the analyst correctly prohibited the individual, she had not updated the information in the APPS database to include all weapons belonging to this person.*

### **Justice Continues to Redirect Staff to Another Priority, Which Adversely Affects Its Ability to Promptly Review Prohibiting Events Matched With Firearm Owners**

In our October 2013 report we noted that Justice's APPS database has two main processing queues that staff use to review and determine whether a firearm owner should be prohibited from

***We previously reported that Justice had experienced significant delays in processing its APPS database daily queue and recommended that Justice monitor its performance against a revised goal of 400 to 600 cases in the daily queue.***

owning a weapon: a daily queue and a historical queue.<sup>6</sup> The APPS database matches prohibiting events with firearm owners, and then Justice's APPS unit staff review these matches and determine whether the individual is actually prohibited from possessing a firearm. Matches remain in the daily queue until an analyst completes an initial review. We also reported that during late 2012 and early 2013, Justice had a backlog of more than 1,200 matches pending initial review. At that time Justice had established a goal to maintain no more than 1,200 matches in the APPS database daily queue. Also, the former APPS unit manager stated that prohibiting event matches should not remain in the APPS database daily queue for longer than two days. By leaving a large number of matches unreviewed each day, Justice may not be able to conduct a timely initial review of these matches. Without a timely review of the matches, Justice agents cannot conduct timely confiscations. Therefore, we recommended that by December 31, 2013, Justice revise its goal for the daily queue to a more challenging level of no more than a maximum of 400 to 600 cases, so that matches do not wait too long for an initial review.

We also previously reported that Justice had experienced significant delays in processing its APPS database daily queue. At the time of our previous audit, Justice redirected staff from the APPS unit, focusing its efforts on addressing a rise in background checks, required by state law, of individuals attempting to purchase a firearm (Dealers' Record of Sale). This staff redirection resulted in an excessive backlog of the matches in the APPS database daily queue. The Dealers' Record of Sale unit processes these background checks, and state law requires Justice to complete them within 10 days of receipt of a completed application or fee for firearm purchases. However, there is no similar statutory time requirement for the completion of APPS unit staff determinations. Justice reported that it temporarily redirected APPS unit staff to assist with the Dealers' Record of Sale processing unit to perform background checks until Justice could hire additional staff. Therefore, we recommended that Justice monitor its performance against a revised goal of 400 to 600 cases in the daily queue and manage staff priorities as needed to meet that goal. Additionally, we recommended that Justice manage staff priorities to meet both its statutory deadline for firearm background checks as well as its internal deadline for initially reviewing potential prohibited persons. We also recommended that Justice report annually to the Legislature about the backlog of unreviewed potential prohibited persons and what factors have prevented it from efficiently making determinations regarding these persons' right to own a firearm.

<sup>6</sup> We discuss the historical queue, or backlog, in the next section.

Justice has partially implemented our recommendation to reduce its goal for the daily queue; however, its actions to implement our recommendation to manage its staff priorities are still pending. Although Justice issued a memorandum to staff revising its goal to a maximum of 600 cases, Justice is not meeting that goal. In its one-year update in October 2014 on the status of implementing this recommendation, Justice reported that it had maintained 600 or fewer cases in its daily queue since July 2014. Therefore, at that time, we considered this recommendation fully implemented. However, during this audit when we reviewed data compiled by the current APPS unit manager—who was hired in December 2014—from January 13, 2015, to March 25, 2015, the average daily queue has been over 3,600 cases pending initial review; this is six times higher than Justice’s revised goal. According to the Bureau of Firearms (bureau) assistant chief (assistant bureau chief), the bureau was able to maintain a daily queue with 600 or fewer cases during the summer when it did not have to redirect staff to conduct background checks. However, beginning in November 2014, the Dealers’ Record of Sale transactions increased requiring the bureau to once again redirect APPS unit staff.

The assistant bureau chief told us that the bureau will not be able to meet this revised goal of no more than 400 to 600 cases remaining in the daily queue without additional staff in its Dealers’ Record of Sale unit to process background checks. Based on a staffing analysis the bureau conducted, it believes it needs an additional 13 positions—35 positions in total—within the Dealers’ Record of Sale unit to handle the background check workload without redirecting APPS unit staff. As of May 2015, of the 22 positions authorized for the Dealers’ Record of Sale unit, four positions are vacant. Therefore, the bureau believes it would need to hire 17 additional staff in total—four vacant and 13 new positions—to handle the background check workload. The assistant bureau chief believes that if the Dealers’ Record of Sale unit was fully staffed, the current staffing level in the APPS unit would be sufficient to complete its workload. According to the assistant director of the Administrative Services Division (administrative services), Justice has not sought these additional positions because it currently does not have sufficient funds in its budget to pay for additional positions and is currently unable to access funds from other potential sources. He further indicated that Justice and the bureau are looking internally at other long-term funding options to support the bureau.

Justice’s continued redirection of APPS unit staff to meet the statutory deadlines for the Dealers’ Record of Sale background checks negatively impacts its ability to ensure that APPS database matches do not wait too long for their initial review. We believe that if Justice also had a statutory deadline for the initial processing of the matches in the APPS database, it would encourage Justice to avoid

*Although Justice issued a memorandum to staff revising its goal to a maximum of 600 cases, Justice is not meeting that goal—from January 13, 2015, to March 25, 2015, the average daily queue has been over 3,600 cases pending initial review.*



*Justice has not yet implemented our recommendation to report to the Legislature about the daily queue of unreviewed potential prohibited persons and what factors have prevented it from efficiently reviewing these persons.*

redirecting APPS unit staff. Although during our previous audit the former APPS unit manager indicated that matches in the APPS database should not wait longer than two days for the initial review, the bureau chief believes that seven days is a more realistic time frame. He stated that the volume of events causing an individual to be prohibited is unpredictable. Further, according to the bureau chief, the number of potential prohibited persons increased because of an increase in gun sales and a state law that became effective January 2014—Assembly Bill 809 (Chapter 745, Statutes of 2011)—requiring firearm owners to register long guns, which increases the number of potential matches in the APPS database.

Justice has not yet implemented our recommendation to report to the Legislature about the daily queue of unreviewed potential prohibited persons and what factors have prohibited it from efficiently reviewing these persons. Since May 2013 when the Legislature appropriated new funding to Justice for the purpose of increasing its efforts to remove firearms from armed prohibited persons through Senate Bill 140 (SB 140)—Chapter 2, Statutes of 2013—Justice has broadened its focus to include a greater emphasis on confiscation of firearms. In its six-month and one-year updates on the status of its outstanding recommendations, Justice indicated it would report to the Legislature in March 2015 through its required SB 140 report. However, when Justice submitted that report, it focused solely on the SB 140 reporting requirements and did not include information about the daily queues and the factors that have prohibited it from efficiently reviewing these persons. When we asked Justice why it had not reported information about the daily queues within the SB 140 report as it indicated it would, Justice explained that the information was excluded because of an oversight. It indicated that the bureau and administrative services have noted the oversight and will ensure that it is included in subsequent reports. When Justice delays the timely identification of armed prohibited persons, it cannot conduct timely confiscation of these firearms and, therefore, increases the risk to public safety.

### **At Its Current Pace, Justice Will Not Meet Its Goal of Eliminating the Historical Backlog of Firearm Owners**

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 its review of a historical backlog of individuals by its goal of December 2016. As we discussed in our previous audit, according to the former 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. In fiscal year 2006–07 Justice received funding to address the backlog and, according to the former assistant bureau chief, Justice indicated it could complete the backlog by the end of 2016. We reported that as of July 2013, nearly 380,000 persons remained in Justice’s historical backlog, and we estimated that it would not complete its entire backlog until 2019. As a result, we recommended that Justice manage its staff resources to continually address the backlog, and notify the Legislature if it believes that it will not be able to fully process this backlog by its goal date of December 2016. To help guide this effort, we recommended that Justice establish benchmarks to indicate whether it is on track to meet its goal.

In response to our recommendation, in September 2014, the bureau chief directed his nine APPS unit staff to complete 11,500 historical cases each month for the next 25 months to meet its goal of eliminating the backlog by the end of 2016. He authorized the APPS unit staff to use whatever overtime or resources necessary to achieve this goal on or before the end of 2016.

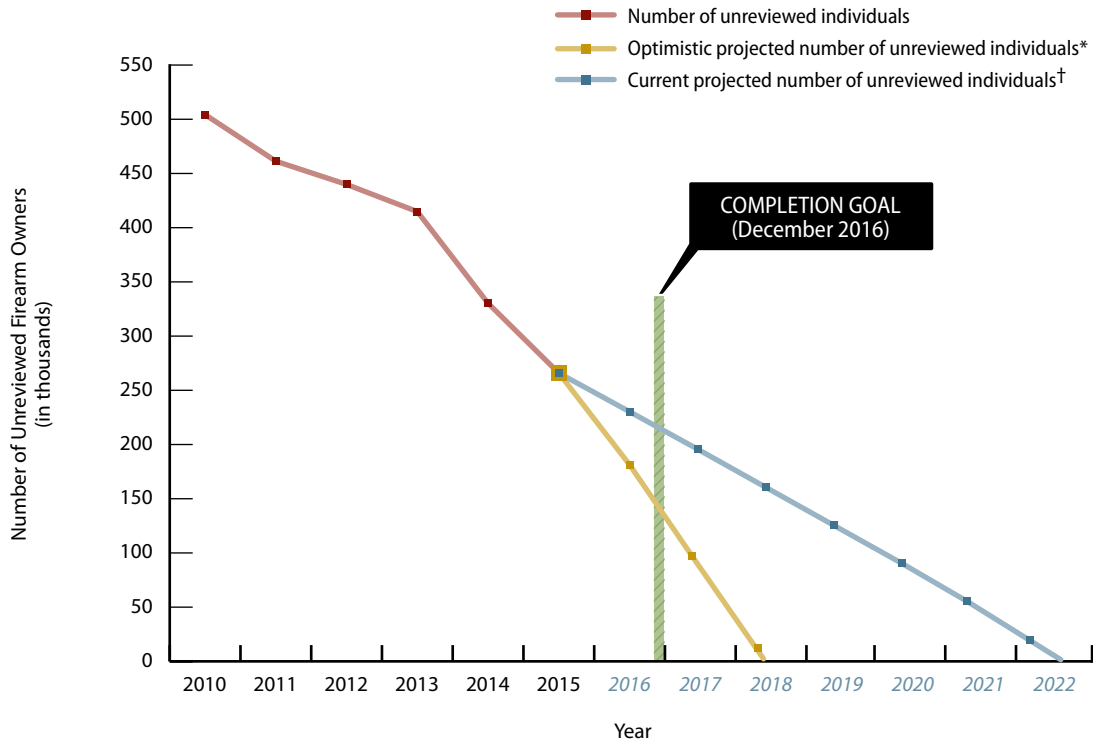
Although it has reduced the historical backlog since our previous report, Justice is still not on schedule to eliminate the backlog by its goal of December 2016. As of April 1, 2015, Justice’s historical backlog of unreviewed firearm owners was 257,115 persons. As shown in Figure 2 on the following page, we projected Justice’s estimated annual reduction of its APPS database historical backlog using its highest annual reduction since 2010—84,546—which occurred in 2013. Even if Justice reduced its backlog at this pace, we estimate that it will not finish addressing the backlog until 2018.

Further, we noted that Justice’s rate of completion significantly slowed in the first quarter of 2015. According to the APPS unit manager, Justice’s progress on the historical backlog had slowed because Justice redirected staff away from the historic backlog due to an increased number of Dealers’ Record of Sale background checks and potential prohibited persons in the daily queue, just as it did during our previous audit in October 2013. He also stated that Justice prioritizes the background checks over the APPS database daily queue and historical backlog because state law requires Justice to conduct these background checks within 10 days. If this slower rate of completion continues, we estimate that Justice may not complete the backlog until sometime in 2022. The longer it takes to review the records in the historical backlog the longer armed prohibited persons keep their firearms, which increases the risk to public safety. Despite Justice’s slowed pace in reviewing the historical backlog, according to the assistant bureau chief, Justice has not reported the status of the historical backlog to the

*Although it has reduced the historical backlog since our previous report, Justice is still not on schedule to eliminate the backlog by its goal of December 2016.*

Legislature because Justice still plans to eliminate this backlog by December 2016. She could not tell us how Justice plans to do this, but indicated that it is exploring all possible options.

**Figure 2**  
**Number of Unreviewed Firearm Owners in the Armed Prohibited Person System Historical Backlog**



Sources: Summary reports from the California Department of Justice's (Justice) Armed Prohibited Persons System.

\* This projection uses Justice's highest annual rate of reduction since 2010, which was 84,546 in 2013.

† This projection uses Justice's 2015 rate of reduction as of April, 2015, which is projected to be 35,108 annually.

**Justice Does Not Know If Courts Are Reporting All Potential Armed Prohibited Persons**

In our October 2013 report we reported that many superior courts (courts) were not aware of a state law requiring them to report individuals to Justice when the courts make certain mental health determinations, as shown in the text box on the following page. The 34 courts we surveyed at that time indicated they had not collectively reported about 2,300 of these determinations over a three-year period. Before our audit, Justice had not reached out to the courts to remind them about the reporting requirements, and it had not followed up with nonreporting courts to confirm that they

had no reportable determinations. We recommended that Justice 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, we recommended that Justice 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. Further, we recommended that whenever Justice identifies a court that it determines may not be reporting all required information, it request that the court forward all required case information.

For its one-year update on the status of implementing recommendations in our 2013 report, we designated its status of the recommendation to monitor court reporting as *fully implemented* because Justice provided procedures that satisfied this recommendation. However, upon further review during this follow-up audit, we determined that Justice had only partially implemented this recommendation. Although Justice had provided the AOC with the number of quarterly reports sent by each court, it has not conducted the trend analysis as we recommended. Following the October 2013 report, Justice developed procedures to identify significant drops in the number of reports provided by each court, and to provide the AOC, at least once per year, with a listing of all courts that are, or are not, in compliance with reporting mental health prohibitions. The procedures Justice developed did not contain criteria for identifying a significant drop. However, during this audit Justice revised its procedures to specify that it considers a reporting drop of 30 percent or more to be significant in the number of reports provided by a facility. When we asked if Justice had implemented its procedures, Justice provided an example of the quarterly court reporting that it had sent the AOC, but acknowledged that it had not considered the reporting trends because of management turnover in its mental health unit. Justice did not provide any further explanation for its failure to conduct an analysis of court reporting trends.

If Justice had considered trends in court reporting, it would have identified that there are significant drops in a specific court's reporting that may indicate that the same courts are not forwarding all cases to Justice for review. For example, we identified that 91— or 25 percent—of the 361 courthouses had declines of 30 percent

### Determinations That Superior Courts Must Report to the California Department of Justice

*An individual has been found by a superior court (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.

or more in the number of prohibited persons reports in 2014. Although these courthouses may have valid reasons for the decrease in reports, if Justice does not identify them for follow-up, it will not know whether persons with mental illness are going unreported or if some other factor caused the facility to stop reporting these individuals.

Because it is not considering such trends, Justice cannot ensure that it has the necessary information to identify all armed prohibited persons with mental illness and, therefore, cannot ensure public safety. Justice's current mental health unit manager—who has held the position since February 2015—stated that Justice plans to implement its revised procedures, which includes sending AOC a list of courts with reporting drops of 30 percent or more, for the quarter ending June 30, 2015.

### **Justice Lacks Sufficient Processes for Updating Its List of Mental Health Facilities**

*In our previous report, we identified 22 mental health facilities that Justice had not contacted about reporting requirements and we recommended that at least twice a year it should update its outreach list of mental health facilities; Justice has only partially implemented this recommendation.*

In our previous report we identified 22 mental health facilities that Justice had not contacted about reporting requirements. Mental health facilities are an essential provider of the information Justice uses to identify individuals who are prohibited from owning firearms for mental health reasons, such as an involuntary hold because they present a danger to themselves or others. Although Justice must rely on mental health facilities to report individuals with mental illness so that it can determine whether the individuals are prohibited from being armed, our 2013 report explained that Justice did not verify that the list of mental health facilities it used included all facilities that should be reporting potential firearm prohibitions. As a result of not having a complete list, Justice did not communicate with those facilities missing from the list about its expectations for reporting or which individuals the facilities should report. Therefore, we recommended that at least twice a year Justice should update its outreach list of mental health facilities by obtaining a list of facilities from the California Department of Health Care Services (Health Care Services)—the entity responsible for approving these facilities. We also recommended that 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.

For its one-year response, we designated its status of the recommendation to update its outreach list as *fully implemented* because Justice provided procedures that satisfied this recommendation. However, upon further review during our follow-up audit, we determined that Justice had only partially implemented this recommendation. Although Justice compared

its list of mental health facilities to the list from Health Care Services, it had not identified all of the differences between the lists. Specifically, Justice's procedures state that twice a year it will obtain a list of mental health facilities from Health Care Services and ensure that all facilities required to report are reporting accordingly. Justice staff identified 16 differences when comparing the information on the lists between July and November 2014, such as incorrect names, addresses, or phone numbers for facilities. However, we identified 10 additional differences that Justice overlooked, including one facility that was missing from its list and nine facilities with incorrect addresses or phone numbers.

Although Justice has procedures to update its list of mental health facilities, the procedures do not include supervisory review to ensure Justice's staff completely updates its list. When we asked Justice how it planned to ensure errors such as those that we found do not occur in the future, the assistant bureau chief stated that the mental health unit plans to change its tracking spreadsheet to allow staff to note discrepancies between the lists. In the event of discrepancies, the analyst will contact the mental health facility and verify the correct information and then indicate the follow-up actions in the comment section of the tracking spreadsheet. The assistant bureau chief also agreed to implement a supervisory review of the updated list to ensure that staff identified discrepancies and took appropriate steps to update the list. When Justice fails to ensure that it has a complete and accurate list of all reporting mental health facilities, Justice increases the risk that it will not identify individuals who should be prohibited from possessing a firearm and will not be able to confiscate firearms that these individuals possess. Also, Justice may not provide important information about reporting requirements to mental health facilities missing from the list.

Additionally, Justice fully implemented our previous recommendation that 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. Justice explained that when a new mental health facility contacts Justice, it sends the facility information on the reporting requirements and how to submit reports. Further, if Justice identifies a new mental health facility through its review of the Health Care Services list, it will send the facility the necessary information. Justice identified six new mental health facilities licensed since February 2013. Although Justice did not maintain documentation that it sent reporting requirement information to these facilities, each new facility had provided it with prohibited persons reports. The mental health unit manager stated that going forward, Justice will maintain documents to show that it sends reporting requirement information to new facilities.

*Although Justice staff identified 16 differences when comparing the information on the mental health facilities lists between July and November 2014, we identified 10 additional differences that Justice overlooked, including one facility that was missing from its list and nine facilities with incorrect addresses or phone numbers.*

### Justice Did Not Always Follow Up With Mental Health Facilities When Reporting Levels Dropped

In our October 2013 report we noted that Justice did not track reporting levels from mental health facilities. Our analysis indicated that 146 facilities each submitted more than 100 prohibition reports 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. We concluded that at that time the facilities with significant drops in reporting may have valid reasons for the decrease in reports, but if Justice does not follow up 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. As a result, we recommended that Justice implement a review of the number of reports it receives from individual mental health facilities at least twice per year. 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.

For its one-year response, we designated its status of the recommendation to follow up with mental health facility reporting levels as *fully implemented* because Justice provided procedures that satisfied this recommendation. However, upon further review during our follow-up audit, we determined that Justice had only partially implemented this recommendation. Although Justice developed procedures to identify significant drops in a mental health facility's reporting levels, Justice did not always follow them. Justice's procedures state that at least twice a year it will review the number of reports received from individual mental health facilities, identify all significant drops, and follow up with the facilities. Although Justice does not have formal criteria for identifying a significant drop, the mental health unit manager stated that, as with the courts, the department considers a reporting drop of 30 percent or more to be a significant drop in the number of reports provided by a facility, and warrants follow-up. As shown in Table 2, Justice identified significant drops in mental health facility reporting each quarter. However, it did not identify all drops of 30 percent or greater. For example, in the fourth quarter of 2014, of the 31 mental health facilities whose reporting dropped more than 30 percent, Justice only identified 23 of them.

The mental health unit manager stated that missing some of the significant reporting drops was an oversight on behalf of the mental health unit staff. Because staff did not identify certain significant drops, they did not reach out to those facilities to investigate the reason for the drop in reporting. The manager also stated that

*Although Justice developed procedures to identify significant drops in a mental health facility's reporting levels per our recommendation, Justice did not always follow them.*

the department will evaluate and implement enhanced quality assurance measures to avoid missing these types of errors in the future. Specifically, the assistant bureau chief stated that Justice will modify its procedures to include a manager's secondary review of the trending report to ensure that staff identified and followed up on all reporting drops.

**Table 2**  
**Number of Significant Reporting Drops in Prohibited Persons Reports for Mental Health Facilities in 2014**

	QUARTER 2	QUARTER 3*	QUARTER 4
Number of significant reporting drops <sup>†</sup>	15	19	31
Number of drops the California Department of Justice (Justice) identified	12	17	23
Significant drops Justice did not identify	3	2	8
Number of facilities Justice contacted	0	12	0

Source: Justice's Mental Health Reporting System.

\* Justice contacted mental health facilities that had a significant drop in reporting in this quarter only.

† Justice defines a significant drop in prohibited event reporting as a change of 30 percent or greater between reporting periods.

Furthermore, Justice's methodology for contacting mental health facilities is incomplete because it does not investigate all reporting drops that occur during the year. For example, Justice only contacted facilities with drops between the second and third quarter of 2014, even though it identified 12 significant drops between quarter one and two. When we discussed our concerns with Justice, the assistant bureau chief indicated that Justice would modify its methodology to follow up on all reporting drops for all four quarters. When it does not reach out to mental health facilities with significant drops in reporting, Justice risks being unable to identify all armed prohibited persons because the mental health facilities may not know about all of the reporting requirements.

## Conclusion

This audit focused on relevant actions Justice has taken related to selected recommendations we made in our October 2013 report regarding the accurate and timely identification of prohibited persons as well as its process for reaching out to courts and mental health facilities. During this follow-up audit, we updated our evaluation of the status of the recommendations as shown in the Appendix beginning on page 27, and we noted conditions that indicate a need for additional recommendations to Justice.



We believe that by fully implementing the recommendations from our prior report and fully implementing the additional recommendations we present in this report, Justice can ensure that it fulfills its responsibility of identifying armed prohibited persons.

## **Recommendations**

### ***Legislature***

To ensure that Justice fairly balances competing responsibilities and avoids redirecting APPS unit staff to conduct Dealers' Record of Sale background checks, the Legislature should require Justice to complete an initial review of cases in the daily queue within seven days and periodically reassess whether Justice can complete these reviews more quickly.

### ***Justice***

To ensure that it accurately identifies all prohibited persons, Justice should implement its plan to develop a checklist by July 2015 and desk procedures by September 2015 to aid its analysts in making correct prohibition determinations.

To ensure staff can promptly address the daily queue and the historical backlog, by July 2016 Justice should identify and implement strategies, including pursuing funding, to staff its bureau operations to the level it needs.

To fully implement our previous recommendation and ensure that it keeps an updated accurate list of all mental health facilities, by July 2015 Justice should implement supervisory review of its analyst's comparison of Justice's mental health facilities list and Health Care Services' list to ensure staff identified and corrected all discrepancies.

To fully implement our previous recommendation and ensure that it investigates all significant drops in mental health facility reporting, Justice should revise its procedure to consider drops between each quarter.

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 the information specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: July 9, 2015

Staff: Tammy Lozano, CPA, CGFM, Audit Principal  
Meghann K. Stedman, MPPA  
Michael Henson  
Veronica Perez, MPPA

Legal Counsel: J. Christopher Dawson, Sr. Staff Counsel

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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## Appendix

### Status of Actions Taken in Response to Selected Recommendations in the California State Auditor's Report 2013-103

As Table A shows, this follow-up audit found that the California Department of Justice (Justice) has not fully implemented several of the selected recommendations we reviewed from our October 2013 report that we believe will ensure it can accurately and promptly identify armed prohibited persons with mental illness. Specifically, these recommendations relate to Justice identifying all firearm owners in the State who are prohibited from owning or possessing a firearm due to a mental health-related event in their life, eliminating its daily and historical backlogs, as well as conducting outreach to potentially nonreporting or underreporting superior courts and mental health facilities.

**Table A**  
Status of Actions Taken in Response to Selected Recommendations in the California State Auditor's Report 2013-103

RECOMMENDATION	STATUS	PAGES WHERE RECOMMENDATIONS AND ACTIONS ARE DISCUSSED
To ensure that it makes correct determinations about whether an individual is an armed prohibited person, by January 31, 2014, the California Department of Justice (Justice) should implement quality control procedures over the Armed and Prohibited Persons unit (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.	Partially Implemented*	11–13
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.	Pending	13–16
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.	Partially Implemented	13–16
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.	Partially Implemented	16–18
To ensure that it has the necessary information to identify armed prohibited persons with mental illness, 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.	Partially Implemented*	18–20

continued on next page . . .

RECOMMENDATION	STATUS	PAGES WHERE RECOMMENDATIONS AND ACTIONS ARE DISCUSSED
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 California Department of Health Care Services.	Partially Implemented*	20–21
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.	Fully Implemented	20–21
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.	Partially Implemented*	22–23

Sources: Selected recommendations made in the report by the California State Auditor (state auditor) titled *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 (October 2013) and the state auditor's analysis of Justice's actions related to the recommendations.

\* The state auditor originally considered these recommendations to be fully implemented based on documentation submitted by Justice that indicated it had fully implemented our recommendation. However, when we conducted our follow-up audit we determined that Justice had not implemented the recommendations as its documentation led us to believe. Therefore, we have changed the status of these recommendations to be partially implemented.

July 2015

**KAMALA D. HARRIS**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



BUREAU OF FIREARMS  
4949 Broadway  
SACRAMENTO, CA 95820  
Public: (916) 227-4010  
Email: [Stephen.Lindley@doj.ca.gov](mailto:Stephen.Lindley@doj.ca.gov)

June 24, 2015

Elaine M. Howle, CPA  
State Auditor  
Bureau of State Audits  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Re: BSA Report 2015-504

Dear Ms. Howle,

The Department of Justice (DOJ) has reviewed the Bureau of State Audits' (BSA) draft report titled "Follow-Up – Department of Justice: Delays in Fully Implementing Recommendations Prevent It From Accurately and Promptly Identifying All Armed Persons With Mental Health Illness, Resulting in Continued Risk to Public Safety" and appreciates the opportunity to respond to the report.

As stated in our initial response to BSA Report 2013-103 titled "*Department of Justice - Mentally Ill Prohibited Persons*," we will start our response with a brief background of the Department's Armed Prohibited Persons System (APPS). 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 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. The APPS program allows the DOJ to take a proactive approach on the prevention of firearm violence.

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

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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 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 July 2013, via Senate Bill 140, to hire 36 additional agents for the APPS program. This has enabled the DOJ to conduct 13,313 APPS investigations from July 1, 2013, to May 30, 2015, and reduced the APPS subject backlog from an estimated 28,000 subjects (if not for the additional resources acquired via SB 140) to 15,797 APPS subjects as of June 19, 2015. That is a net reduction of more than 12,000 subjects.

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 Justice fairly balances competing responsibilities and avoid redirecting APPS unit staff to conduct Dealers Record of Sale background checks, the Legislature should require Justice to complete an initial review of cases in the daily queue within seven days and periodically reassess whether Justice can complete these reviews more quickly.*

##### **DOJ Response:**

DOJ agrees with this recommendation and looks forward to working with the Legislature on drafting language, identifying positions, funding, and information technology enhancements needed to achieve this goal.

##### **BSA Recommendation:**

*To ensure that it accurately identifies all prohibited persons, Justice should implement its plan to develop a checklist by July 2015 and desk procedures by September 2015 to aid its analysts in making correct prohibition determinations.*

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**DOJ Response:**

The DOJ agrees with this recommendation, and is in the final stages of adopting desk procedures and a quick reference checklist that covers the complex aspects of determining if an individual is armed and prohibited. The DOJ estimates the quick reference checklist and desk procedures will be completed, reviewed, and adopted by late July and September 2015, respectively.

**BSA Recommendation:**

*To ensure staff can promptly address the daily queue and the historical backlog, by July 2016, Justice should identify and implement strategies, including pursuing funding, to staff its BOF operations to the level it needs.*

**DOJ Response:**

DOJ is committed to eliminating the APPS historical backlog by December 2016. As previously indicated, the DOJ has continued to monitor and respond to workload fluctuations impacting APPS processing. Additionally, the DOJ did establish realistic goals to complete the backlog by December 31, 2016. However, the unforeseen loss of analytical staff, and the continued high level of firearms sales have forced the DOJ to redirect staff to meet the legislative time frames associated with completing background checks on firearm purchases in California. The DOJ agrees with this recommendation and is currently in the process of implementing a strategy to temporarily redirect staff from other areas of the department to assist with the historical backlog and for adding analytical staffing resources to the BOF to meet workload demands, thereby eliminating the need to redirect staff away from the goal of eliminating the APPS historical backlog by December 31, 2016.

**BSA Recommendation:**

*To fully implement our previous recommendation and ensure that it keeps an updated accurate list of all mental health facilities, by July 2015, Justice should implement supervisory review of its analyst's comparisons of Justice's mental health facilities list and Health Care Services' list to ensure staff identified and corrected all discrepancies.*

**DOJ Response:**

DOJ agrees with this recommendation and will continue notifying statewide mental health facilities of the state's reporting requirements by working with Department of Health Care Services (DHCS) to identify known mental health facilities operating within the state. Accordingly, the DOJ will continue its efforts in contacting DHCS and advocating 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



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existing mental health facilities upon the renewal of their licenses, if applicable, by DHCS (who is the licensing authority). Finally, the DOJ will establish supervisory and management overview of analytical staff's comparisons of mental health facility lists between DHCS and the DOJ to ensure we have identified all operating mental health facilities.

**BSA Recommendation:**

*To fully implement our previous recommendation and ensure that it investigates all significant drops in mental health facility reporting, Justice should revise its procedure to consider drops between each quarter.*

**DOJ Response:**

While DOJ cannot compel mental health facilities to submit mental health determinations they are statutorily required to provide the information (see Welf. & Inst. Code, §§ 8103, subds. (f)(2)(B), (g)(2)(B), 8105, subd. (b)). The DOJ will continue to take the following steps to monitor and encourage the timely submission of mental health determinations: (1) Each quarter the DOJ will review each mental health facility's monthly reports to determine possible underreporting; (2) The DOJ will immediately notify both DHCS and the applicable mental health facility of our findings regarding possible underreporting; (3) The DOJ will seek a timely explanation from DHCS and the applicable mental health facility about the suspected underreporting; (4) The DOJ will offer training to mental health facilities and their employees regarding the timely reporting of mental health determinations to DOJ; and (5) The DOJ will keep records of its communications with DHCS and the applicable mental health facility regarding the suspected underreporting.

DOJ will continue to evaluate its available resources to determine whether additional staffing will be needed to fully implement these recommendations.

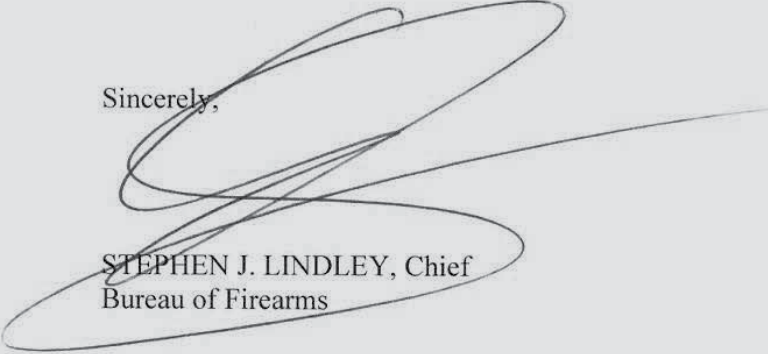
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Again, thank you for the opportunity to review and comment on this draft audit report. If you have any questions or concerns regarding this matter, you may contact me at the telephone number listed above.

Sincerely,



STEPHEN J. LINDLEY, Chief  
Bureau of Firearms

For KAMALA D. HARRIS  
Attorney General

cc: Nathan Barankin, Chief Deputy Attorney General  
Venus Johnson, Associate Attorney General  
Larry Wallace, Director, Division of Law Enforcement  
Tammy Lopes, Director, Division of Administrative Support  
Andrew Kraus, Director of the Office of Program Review and Audits  
Martha Supernor, Assistant Bureau Chief, Bureau of Firearms  
Allison Mendoza, Assistant Bureau Chief, Bureau of Firearms  
Robert Wilson, Deputy Attorney General, Bureau of Firearms