

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Jim Beall



## PART B

Thursday, April 30, 2015  
9:30 a.m. or Upon Adjournment of Session  
State Capitol - Room 113

Consultant: Brady Van Engelen

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## CALIFORNIA DEPARTMENT OF JUSTICE (0820)

**Departmental Overview.** The Attorney General, as chief law officer of the state, has the responsibility to ensure that the laws of California are uniformly and adequately enforced. This responsibility is fulfilled through the diverse programs of the Department of Justice (DOJ).

The DOJ is responsible for providing skillful and efficient legal services on behalf of the people of California. The Attorney General represents the people in all matters before the Appellate and Supreme Courts of California and the United States; serves as legal counsel to state officers, boards, commissioners and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil laws; and assist district attorneys in the administration of justice. The DOJ also provides oversight, enforcement, education and regulation of California's firearms/dangerous weapons laws; provides evaluation and analysis of physical evidence; regulates legal gambling activities in California; supports the telecommunications and data processing needs of the California criminal justice community; and pursues projects designed to protect the people of California from fraudulent, unfair, and illegal activities.

**Budget Overview.** The Governor's 2015-16 budget proposes \$793.02 million (\$200.99 million General Fund) and 4,852.9 personnel years.

### Expenditures

<b>Program</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Directorate and Administration	\$86,175	\$98,530	\$100,324
Legal Services	\$367,640	\$411,930	\$413,225
Law Enforcement	\$174,203	\$209,384	\$211,057
California Justice Information Services	\$159,226	\$171,996	\$168,740
<b>Totals</b>	<b>\$701,069</b>	<b>\$793,310</b>	<b>\$793,022</b>
<b>Personnel Years</b>	<b>4,155.8</b>	<b>4,802.9</b>	<b>4,852.3</b>

**Issue 1 – Legal Services**

**Governor’s Budget Request.** The 2015-16 budget includes a request for a permanent increase of twenty-nine positions and an increase of \$5.787 million in reimbursement authority (Legal Services Revolving Fund) in order to meet the increasing legal demands from various client departments.

**Background.** The DOJ’s Legal Services Division (division) supports the Attorney General’s mission of serving as the state’s chief legal officer. The division is divided into three elements: (1) civil law, (2) criminal law, and (3) public rights.

The twenty-nine positions are to be located within the civil law division, which represents the state, its officers, agencies, departments, boards, commissions, and employers in civil matters. The positions are requested to support four sections within the Legal Services Division’s civil law element.

The Licensing Section requests nine (9.0) deputy attorney general (DAG) positions, and six (6.0) legal secretaries to support the increased enforcement-related workload to support the 35 boards and bureaus within the Department of Consumer Affairs. In order to support the requested positions, the Licensing Section’s reimbursement authority will need to increase by \$2.765 million.

The Correctional Law Section requests five (5.0) DAG positions, and one (1.0) legal secretary to support the state and its officials in civil-rights litigation arising out of the California Department of Corrections and Rehabilitation (CDCR) operations. The requested positions will require a \$1.35 million increase in reimbursement authority for the Correctional Law Section. The Correctional Law Section currently has 80 DAG positions, 16 supervisors, and 17 paralegal staff.

The Health Quality Enforcement section requests 3.0 DAG positions with 2.0 legal secretaries. The Health Quality Enforcement Section’s largest client, the Medical Board of California, added additional enforcement staff as part of the 2014 budget. Due to new procedures in place, the DOJ anticipates an additional 240 cases per year that will need to be managed by the Health Quality Enforcement section.

The Health, Education and Welfare (HEW) Section is requesting 3.0 DAG positions. The HEW section is responsible for representing the Governor’s Office, the Departments of Health Care Services, Social Services, Public Health, State Hospitals, Education, Developmental Services, Superintendent of Public Instruction, the State Board of Education, and the Commission on Teacher Credentialing (COTC). The major purpose of the COTC is to serve as a state standards board for educator preparation for the public schools of California, the licensing and credentialing of professional educators in the state, the enforcement of professional practices of educators, and the discipline of credential holders in the State of California. COTC cases are initially handled administratively and then through the courts for judicial review.

Historically, the COTC has referred an average of 40 to 50 cases per year. Recently, there has been a significant increase in referrals to the DOJ from the COTC; increasing from 38 cases in fiscal year 2011-12 to 107 cases in fiscal year 2013-14. The COTC has requested that the HEW section prosecute cases within certain timeframes, ranging from 30 days for emergency cases to ten months for low priority cases.

**Staff Comment:** The requested funding and resources reflect an adjustment in reimbursement authority. A commensurate increase in expenditure authority has been made by each department included in this request as part of the Budget Act of 2014. The requested increase in reimbursement authority will allow the DOJ to bill the respective departments for legal resources that have been requested.

**Staff Recommendation:** Approve as budgeted.

## Issue 2 – Cardroom Licensing

**Governor’s Budget Request.** The 2015-16 budget includes a request to augment the Department of Justice’s Bureau of Gambling Control (BGC) budget by \$1.559 million (Gambling Control Fund) and twelve three-year limited-term positions in fiscal year 2015-16, and, \$1.423 million (Gambling Control Fund) in fiscal year 2016-17 and 2017-18 to address the current backlog related to initial and renewal finding of license suitability background investigations for the California Cardroom and Third-Party Providers of Proposition Player Services license applicants.

**Background.** The BGC, which was created in 1998, is the state’s law enforcement authority with special jurisdiction over gambling activities and provides the Gambling Control Commission (commission) with background investigations on gaming license and work permit applications. The investigations, which can be fairly lengthy and exhaustive, provide the commission the information to make administrative actions, and determinations related to the regulation of gambling.

A significant backlog, totaling 2,221 applications now exists within the licensing section. According to the DOJ, the backlog is due to a combination of additional responsibilities being assumed by the BGC, a more complex investigation process, and an increase in the number of applicants.

**Staff Comment:** According to the DOJ, the BGC worked 412 hours in overtime to address the backlog associated with cardroom licensing. According to DOJ’s analysis, it does not appear that existing staff levels can support efforts to reduce the current backlog and process incoming workload in a timely fashion.

**Staff Recommendation:** Approve as budgeted.

**Issue 3 – Initiatives Workload**

**Governor’s Budget Request.** The 2015-16 budget includes a request to augment the Department of Justice’s budget by \$720,000 (General Fund) and four positions to implement the provisions of SB 1253 (Steinberg), Chapter 697, Statutes of 2014.

**Background.** The California Constitution authorizes individuals to place measures to amend statute or the Constitution before the voters after collecting and submitting a specified number of qualified signatures to the Secretary of State. Prior to the circulation of a measure for signatures, the Attorney General is required to prepare a title and summary for the proposed measure, which is a description of the major changes proposed and the estimated fiscal impact that the measure will have on state and local governments. State law specifies the process by which the title and summary must be prepared. Prior to January 2015, the Legislative Analyst Office (LAO) and the Department of Finance (DOF) were required to prepare the fiscal estimate within 25 working days from the day the final version of a proposed initiative was received by the Attorney General. The Attorney General would then have 15 days, upon receipt of the fiscal estimate, to submit the completed title and summary to the Secretary of State. Any substantive changes to the proposed measure by its authors would restart the statutorily mandated time frames. This could result in the LAO and DOF creating an additional fiscal estimate and the Attorney General creating an additional title and summary for the amended measure.

SB 1253, (Steinberg) Chapter 697, Statutes of 2014, made various changes to the above process that went into effect January 2015. Specifically, the legislation:

- Requires the LAO and DOF to prepare the fiscal estimate within 50 days (rather than 25 working days) from the day the proposed initiative is first received by the Attorney General. (The Attorney General still has 15 days from receipt of the fiscal estimate to submit the title and summary to the Secretary of State.)
- Requires the Attorney General to initiate a 30–day public comment period once the authors of the measure request a title and summary. Public comments are submitted through the Attorney General’s website and provided to the authors, but are not publicly displayed during the review period. However, these comments are deemed to be public records, eligible to be viewed upon request under the process outlined in the California Public Records Act.
- Permits the authors of the measure to submit germane amendments to their measure within 35 days of filing the measure without having the statutorily mandated time frames restarted.

**LAO Recommendation.** LAO's review of this proposal notes that they concur that there will be a need for additional resources to address the modified public comment process in accordance with SB 1253. However, it is unclear to what extent SB 1253 will impact DOJ's workload. The LAO recommends that the Legislature approve \$114,000 from the General Fund and the AGPA position to support DOJ's new responsibilities related to public comment. The LAO notes that the DOJ should be able to manage within its existing resources until the impacts of SB 1253 become clearer.

**Staff Comment.** Staff concurs with the LAO that the requested funding and positions may be premature. If there is an increase in workload in the future, the DOJ can submit a budget request for additional resources.

**Staff Recommendation:** Approve LAO's recommendation.

**Vote.**

#### Issue 4 – Registry of Charitable Trusts Enforcement Program

**Governor's Budget Request.** The 2015-16 budget includes a request for 13.0 positions (9.0 permanent and 4.0 limited-term) and increased expenditure authority of \$2.126 million (Registry of Charitable Trusts Fund) in 2015-16, \$2.051 million (Registry of Charitable Trusts Fund) in 2016-17, and \$1.650 million (Registry of Charitable Trusts Fund) in 2017-18 and ongoing to implement the provisions of AB 2077 (Allen), Chapter 465, Statutes of 2014.

**Background.** Current statute requires that charitable corporations, unincorporated associations, trustees, and other legal entities, which hold or solicit property for charitable purposes, are required to file a registration statement, articles of incorporation, and an annual financial report with the Attorney General's (AG) Public Rights Division. Statute provides the AG's office with broad supervisory and responsibilities over charitable organizations that are subject to the enforcement of charitable trusts.

AB 2077, among other things, allows for the funds that are deposited in the Registry of Charitable Trusts to be used, upon appropriation by the Legislature, for the purposes of maintaining and operating the registry of charitable trusts, enforce the regulations established by the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act), and to provide public access of reports filed with the AG via the internet. Prior to the passage of AB 2077 the AG's office was not authorized to use funds deposited in the Registry of Charitable Trusts to enforce registration and reporting requirements associated with the Act.

The AG's automated mailing system has identified over 50,000 charitable organizations that are delinquent, but have registered with the AG's office. The AG's office notes that the automated system in use does have the capacity to distribute notices to delinquent organizations; it does not have the staffing capacity to address workload associated with follow up, which can include phone calls, emails, and follow up letters.

The AG has also noted that the automated system has the capacity to automatically generate notices to the estimated 130,000 entities in the state that are unregistered. The AG's office has reached the 130,000 unregistered charitable organizations by information received from the Secretary of State's office, which transmits information related to newly formed California non-profit public benefits corporations to the AG's office each month. The AG's office estimates that approximately 41,500 of the 130,000 unregistered charitable organizations are active in California, and have noted that they will direct their resources initially towards the active organizations that are operating in the state. Similar to the delinquent notification process, the AG's office has noted that they do not have capacity to conduct workload associated with the follow up of notices distributed to unregistered charitable organizations.

**Staff Comment:** Staff does not have any issues or concerns with this request.

**Staff Recommendation:** Approve as budgeted.

**Vote.**

#### Issue 5 – Controlled Substance Utilization Review and Evaluation System (CURES)

**Background.** The Department of Justice maintains the Controlled Substance Utilization and Review System (CURES), an electronic database of prescription drugs issued by doctors. In 1996, the Legislature initiated the development of the CURES system in an attempt to identify solutions addressed while utilizing an antiquated system of triplicate copying.

The implementation of CURES represented a significant improvement over the state's prior utilization of a triplicate copying system, however, it did not address the need for providing healthcare practitioners and pharmacists with access to timely information to proactively diminish and deter the use of controlled substances. To address this issue with CURES the DOJ initiated the Prescription Drug Monitoring Program (PDMP), which allows prescribers and dispensers to access data at the point of care. The PDMP system is utilized by the DOJ to collect and store data on the prescription of controlled substances (Schedule II through Schedule IV). State law mandates that the DOJ assist law enforcement and regulatory agencies with the diversion and resultant abuse of controlled substances.

The California Budget Act of 2011 eliminated all General Fund support of CURES/PDMP, which included funding for system support, staff support and related operating expenses. To perform the minimum critical functions and to avoid shutting

down the program, the department opted to assign five staff to perform temporary dual job assignments on a part-time basis.

In accordance with Health and Safety Code §11165(a), the Department of Justice is under contract with five healing arts boards; Nursing Board, Dental Board, Medical Board, Pharmacy Board, and the Osteopathic Medical Board. The 2012-13 budget provided the DOJ with \$296,000 to manage the CURES program. Funding to support the program is derived from fees assessed on the boards which support the operation and maintenance costs of the CURES program at the DOJ. The DOJ also has approximately \$550,000 in grant funds that can be used for CURES. However, similar to the funding derived from the healing arts boards, the funding can only be used to support the operation and maintenance of the program. DOJ has expressed an interest in utilizing the \$550,000 in grant funds currently available to modernize the Prescription Drug Monitoring Program, which may offset the overall cost of any upgrades.

The 2013-14 budget included authority for the DOJ to work with the partners (governmental and non-governmental) to update California's CURES system. The working title of the new system is CURES 2.0. The CURES 2.0 system proposes to:

- Integrate with health information systems.
- Provide a scalable environment capable of accommodating large increases in usage.
- Provide a method to collaborate and share sensitive communications among DOJ users, medical community users, and law enforcement users.
- Maintain and make available a directory of all system users to enable collaboration.
- Provide law enforcement investigators and prosecutors with a directory of criminal justice system users, DOJ program staff, prescribers, and dispensers.
- Provide a highly secure, responsive, scalable, and reliable system. CURES 2.0
- Provide geospatial and data analytics.
- Streamline PDMP registration process.
- Integrate with health information systems.
- Align data model with national standards.

- Share PDMP data across state boundaries.
- Enable collaboration among PDMP users.
- Employ advanced privacy and security standards.
- Provide prescribers and dispensers with a directory of prescribers and dispensers and DOJ staff.
- Facilitate the secure sharing of reports and other files among law enforcement and prosecutorial officials, and among law enforcement/prosecutorial officials and DOJ staff.
- Allow for interstate information sharing through the Prescription Monitoring Information Exchange (PMIX).

**Staff Comment:** The most recent Independent Project Oversight Report (IPOR), which was issued in December 2014, notes that the dates provided in the Project Management Plan and the Feasibility Study Report (FSR) provided to CalTech did not align. For example, the project had not completed the Systems Requirement Specification (SRS) deliverable, which the FSR noted would be complete by June 30, 2014. This represents at least a six month delay in approving that particular milestone. DOJ has noted that they have re-baselined the project, and full implementation is expected by October 2015, which represents a four month variation from the approved FSR. The IPOR notes that the project is lacking a detailed project schedule.

While the DOJ has submitted a high-level plan and defined some vendor deliverables, this may be a concern. A detailed project schedule enables the project team to assess various project efforts and ensure projects are sequenced, detailed, and completed on track. Furthermore, the project management plan submitted by DOJ does not address many of the risks that have been identified by the vendor, nor does it incorporate identified risks into the overall risk management process.

Like many Information Technology (IT) projects, CURES 2.0 project team is required to submit regular status reports to CalTech. The Project Status Reports (PSR), which are published on the CalTech website, are designed to provide the minimum amount of reportable information to project participants and interested parties, such as Legislative staff. The CURES 2.0 project team has not submitted a PSR since December 2014. Staff would encourage DOJ to submit the PSR's in accordance with CalTech guidelines.

**Questions for the Department of Justice:**

1. *Please provide the subcommittee with an update on the progress of CURES 2.0.*

2. *Describe efforts made by DOJ to ensure that the healing arts community is prepared to utilize CURES 2.0.*

**Staff Recommendation:** Oversight item, no action necessary.

#### Issue 6 – Bureau of Children’s Justice

**Background.** In 2011, the State Auditor released a report that found that many of California’s child welfare services could be more attentive and responsive to child abuse and neglect, and that county agencies must more consistently inform oversight or licensing entities of child abuse and neglect. Additionally, a report issued in 2013 by the Stuart Foundation, which surveyed the educational, employment, health, and criminal justice outcomes for foster youth in California found there is significant room for improvement. The report noted that students in foster care are older for their grade level than other students; drop out at a higher rate than other at-risk student groups; only 50 percent pass the California high school exit exam in grade 10; about 33 percent change schools at least once during the school year, which is four times the rate of low-socioeconomic status or general populations; and 20 percent are classified with a disability, who have a significantly higher rate of emotional disturbance as well. The report noted that emancipated foster youth are also much more likely to become homeless and to become involved in the criminal justice system as well.

To address many of the disparities noted above, the Department of Justice (DOJ) announced the creation of the Bureau of Children’s Justice (BCJ) in February 2015. When Attorney General Kamala Harris announced the creation of the BCJ, she noted that the mission of the BCJ would be “to protect the rights of children and focus attention and resources of law enforcement and policymakers on the importance of safeguarding every child so that they can meet their full potential”. Attorney General Harris noted the DOJ’s background in issues impacting children’s legal protection, including civil rights, education, consumer protection, nonprofit charities, child welfare, privacy and identity theft, and fraud. The BCJ is staffed with both civil rights and criminal prosecutors, focusing enforcement efforts on several particular areas including:

- California’s foster care, adoption, and juvenile justice systems.
- Discrimination and inequities in education.
- California’s elementary school truancy problem.
- Human trafficking of vulnerable youth.
- Childhood trauma and exposure to violence.

**Staff Comment:** According to the DOJ, resources to support the Bureau of Children’s Justice have been redirected from other activities. At this time, DOJ is not requesting any additional resources to support the newly created bureau.

**Questions for the Department of Justice:**

1. *Please identify where resources are being redirected from to support this effort?*
2. *What role will this effort play in preventing overmedication in the state’s youth foster care system?*

**Staff Recommendation:** Oversight item, no action necessary.

**Issue 7 – Armed Prohibited Person System (APPS)**

**Background.** Beginning in 1999, the California Department of Justice (DOJ)—Bureau of Firearms began to study some of California’s high-profile shootings in an effort to determine if there were remedial measures that could be enacted to curtail instances of gang violence and other similar violent events. The study found that many of the offending individuals were law-abiding citizens when they purchased the firearms, and were subsequently prohibited from gun ownership due to a variety of reasons specified out in California’s Penal Code. Persons prohibited from gun ownership (‘prohibited persons’) are designated as such for various reasons, including for a criminal conviction, juvenile adjudication, addiction to narcotics, defined mental health conditions, restraining or other court orders, or specified terms or conditions related to probation.

At the time of the study, the DOJ lacked the capacity to determine whether or not an individual who had legally purchased a firearm, and subsequently became prohibited from such ownership, was still in possession of a firearm. In addition, even if such a determination could have been made, the DOJ lacked the authority to retrieve that weapon from the prohibited person. SB 950 (Brulte), Chapter 944, Statutes of 2001, provided the DOJ with the authority to cross-reference their database of individuals who own handguns with their database listing of prohibited individuals. The 2002 Budget Act included General Fund support of \$1.0 million for DOJ to develop the Armed Prohibited Persons System (APPS). The database was complete in November 2006, with continued funding to support the program provided from the General Fund. Further legislation, SB 819 (Leno), Chapter 743, Statutes of 2011, allowed the department to utilize funds within the Dealers Record of Sale Account (DROS) for firearm enforcement and regulatory activities related to APPS.

According to the DOJ, there are on average 4,500 newly-identified armed and prohibited persons included in the system on an annual basis. Additionally, it is

estimated that there are approximately 3,900 names that are purged annually because of court dispositions, death, orders that reinstate firearms, or prohibition expiration dates. The DOJ's Bureau of Firearms workload history is provided below.

**Armed Prohibited Persons  
Workload History**

<b>Fiscal Year</b>	<b>Armed and Prohibited Persons Identified</b>	<b>APPS Investigations Processed</b>
2007-08	8,044	1,620
2008-09	11,997	1,590
2009-10	15,812	1,763
2010-11	17,606	1,700
2011-12	18,668	1,716
2012-13	21,252	2,772
2013-14	22,780	4,156
2014-15	17,479	7,573

In 2013, the Legislature, in coordination with the DOJ, determined that there was a significant workload resource gap. At that time, it was estimated that approximately 2,600 offenders were added to the APPS list annually, creating a significant backlog in the number of investigations. According to the DOJ, each special agent is capable of conducting 100 APPS investigations over a one year period. During fiscal year 2012-13, the Bureau of Firearms (bureau) had authority for twenty-one agents. Therefore, the bureau was capable of conducting roughly 2,100 investigations on an annual basis with the special agent authority of twenty-one agents, which would add 500 possible armed and prohibited persons to the backlog each year.

To address the workload resources required to both reduce the growing backlog, and actively investigate incoming cases in a timely fashion, the Legislature passed SB 140, (Leno), Chapter 2, Statutes of 2013. SB 140 provided DOJ with \$24.0 million (Dealer's Record of Sale Account) in order to increase regulatory and enforcement capacity within DOJ's Bureau of Firearms. The resources provided in SB 140 were provided on a three-year limited-term basis, which, according to the DOJ, was adequate time to reduce the overall number of Armed and Prohibited Persons. Ongoing cases could be managed with resources within DOJ's Bureau of Firearms.

Additionally, the measure included reporting requirements due annually to the Joint Legislative Budget Committee. From those reporting requirements the Legislature has learned that some progress has been made. At the beginning of 2014 there were 21,249 names in the APPS database; by December 2014 there were 17,479 names in the APPS database, a net reduction of 3,770 names. As of December 31, 2014 the DOJ has hired 18.0 agents for the enforcement of the APPS program. The report also notes that the DOJ has recovered a significant portion of firearms due to APPS enforcement;

recovering over 3,000 firearms, 275,000 rounds of ammunition, 300 high-capacity magazines, and made over 135 arrests. Additionally, the DOJ has collaborated with over 65 local law enforcement agencies to further reduce the APPS backlog.

**Staff Comment:** While progress reducing the number of individuals currently on the Armed and Prohibited Persons list has been made, there is certainly room for improvement. As noted in a letter by Senate Republican Leader Bob Huff to Senate President Pro Tem Kevin de León “In the six-year period prior to SB 140, DOJ confiscated an average of 1,672 firearms per year. In 2014, after an additional \$24 million was provided, DOJ confiscated 3,288 guns, a net increase of only 1,616 firearms seized out of over 40,000 thought to be illegally held”. Additional concerns raised by Senator Huff, and other Legislators, include expenditures exceeding 40 percent of the funds while also not hiring sufficient staff to end the backlog; devising an expenditure plan to eliminate the backlog; and including the breakdown of why each individual in APPS is prohibited from possessing a firearm in future reports.

In addition to concerns raised by Senator Huff and his colleagues, this subcommittee may wish to seek clarity on the retention and recruitment of agents by the DOJ’s Bureau of Firearms to address the APPS backlog. According to the AG’s most recent APPS report, there were 18.0 agents hired. However, the Brady Campaign submitted a Public Records Act request, and has learned that between July 2013 and December 2014 there have been approximately 45.0 agents hired, many of whom may have transferred within the DOJ to other departments, where the agent would not be subject to a limited-term position.

#### **Questions for the Department of Justice:**

- 1. Does the Department of Justice have a long-term expenditure plan to reduce the APPS backlog? If yes, please describe.*
- 2. In the annual report issued to the Legislature, the DOJ notes that “recruitment shortcomings will be mitigated with the Department of Justice Special Agent Academy scheduled for Spring 2015”. Please provide some detail as to how many special agents are anticipated to join the Bureau of Firearms.*
- 3. Beyond recruitment and retention shortcomings, are there additional hurdles that have limited the investigative capacity of the Bureau of Firearms?*
- 4. Please describe what actions are taken by the Bureau of Firearms, subsequent to an individual demanding a warrant be issued prior to DOJ entry? Are local authorities notified about the investigation and that a warrant has been demanded by the individual?*

**Staff Recommendation:** Oversight item, no action necessary.