

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator John M.W. Moorlach
Senator Jim Beall



Thursday, April 4, 2019
9:30 a.m. or upon adjournment of Session
State Capitol - Room 113

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ISSUES 13-21 HELD OPEN

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Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling (916) 651-1505. Requests should be made one week in advance whenever possible.

PROPOSED FOR VOTE ONLY**0820 DEPARTMENT OF JUSTICE**

1. **Forensic Laboratory Equipment Refresh.** The budget includes \$5.8 million General Fund ongoing to replace inoperative, outdated equipment for the Bureau of Forensic Services (BFS) Criminalistics Laboratory System which provides forensic laboratory support and analysis to cover 500 local law enforcement agencies. BFS equipment replacement has been partially funded by the DNA Identification Fund but as a result of decreasing revenues, BFS has been unable to prioritize the purchase and replacement of equipment. The 2018 Budget Act provided a one-time allocation of \$5.4 million General Fund.
2. **Sex Offender Registration- SB 384 (Wiener and Anderson), Chapter 541, Statutes of 2017.** The budget includes \$17.2 million General Fund and 37 positions in 2019-20, \$15.7 million General Fund in 2020-21, and \$13.2 million General Fund in 2021-23 to provide resources that will implement years two through four of SB 384. Year one funding of \$10 million and 25 positions were provided in the 2018 Budget Act. SB 384 requires the California Sex Offender Registry to transition from a lifetime registration system to a tier-based system for periods of 10 years, 20 years, and life beginning January 1, 2021. There are currently 104,000 sex registrants in the state, all of whom are now required to be assigned into one of the three tiers.
3. **Implementation of Mandates in SB 746, SB 1100, AB 1872, and AB 1968.** The budget includes \$5.2 million Dealers' Record of Sale Special Account spending authority and 10 positions in 2019-20, \$2.7 million in 2020-21, and \$1.7 million in 2021-22 and ongoing to implement SB 746, SB 1100, AB 1872, AB 1968.
 - SB 746 (Portantino), Chapter 780, Statutes of 2018, allows a person who is temporarily prohibited from possessing ammunition to transfer ammunition to an ammunition vendor, in addition to a licensed firearms dealer and requires a new California resident to apply for a unique serial number within 60 days of arrival for any firearm the resident wishes to possess in the state.
 - SB 1100 (Portantino), Chapter 894, Statutes of 2018, increases the age at which a person can purchase a long-gun from a licensed dealer from 18 to 21 years old with certain exceptions.
 - AB 1872 (Voepel), Chapter 56, Statutes of 2018, adds harbor and port police departments to the list of entities exempt from the sale or purchase of unsafe handguns.
 - AB 1968 (Low), Chapter 861, Statutes of 2018, prohibits a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder and who was previously taken into custody, assessed, and admitted one or more times within a period of one year preceding the most recent admittance from owning a firearm for the remainder of his or her life.
4. **Subsequent Arrest Notification (AB 2461).** The budget proposes \$1.18 million Fingerprint Fees Account and six positions in 2019-20 and \$742,000 in 2020-21, and ongoing to implement AB 2461 (Flora), Chapter 300, Statutes of 2018, which requires notification of criminal history information to various agencies including the Department of Social Services and the Medical Board of California.

5. **Crime Prevention/Investigation: Informational Databases (AB 2222).** The budget includes \$135,000 General Fund and one position in 2019-20 and \$126,000 General Fund in 2020-21 and ongoing to the DOJ to implement AB 2222 (Quirk), Chapter 864, Statutes of 2018, which extends the firearms reporting requirement for police and sheriffs' departments to all law enforcement agencies in the state and would require that the report be entered within seven days of the agency being notified of the precipitating event. Law enforcement agencies are also required to report to the DOJ any information necessary to identify and trace the history of a recovered firearm in certain circumstances.
6. **Sexual Assault Investigations Evidence Kits (AB 3118).** The budget includes a one-time allocation of \$194,000 General Fund in 2019-20 to the DOJ to implement AB 3118 (Chiu), Chapter 950, Statutes of 2018, which requires all law enforcement agencies, medical facilities, crime laboratories, and any other facilities that receive, maintain, store, or preserve sexual assault evidence kits to conduct an audit of all untested sexual assault kits in their possession and report their data to the DOJ.
7. **Peace Officers, Video and Audio Recordings, Disclosure (AB 748).** The budget includes \$447,000 General Fund and three positions in 2019-20 and \$412,000 General Fund in 2020-21 and ongoing to the DOJ to implement AB 748 (Ting), Chapter 960, Statutes of 2018, which allows a video/audio recording that relates to critical incidents involving peace officers to be withheld for 45 calendar days if disclosure would substantially interfere with an active investigation.
8. **Cannabis Convictions Resentencing (AB 1793).** The budget includes \$985,000 General Fund in 2019-20 and \$908,000 General Fund in 2020-21 to the DOJ to implement AB 1793 (Bonta), Chapter 993, Statutes of 2018, which requires DOJ to review records in the Automated Criminal History System and identify past cannabis related convictions that are eligible for recall, dismissal, sealing or re-designation pursuant to Proposition 64 (The Adult Use of Marijuana Act).
9. **Major League Sports Raffle Program (AB 888).** The budget includes \$1.26 million Major League Sporting Event Raffle Fund and five positions in 2019-20, \$1.15 million in 2020-21, 2021-22, and 2022-23, and \$609,000 in 2023-24 to the DOJ to provide regulation of the Major League Sports Raffle Program as authorized by AB 888 (Low), Chapter 575, Statutes of 2018, which extends the sunset date of this program from December 31, 2018 to January 1, 2024, increases the fee amounts that can be assessed to registrants, and makes changes to the raffle reporting requirements by eligible organizations.
10. **Price Gouging, State of Emergency (AB 1919).** The budget requests spending authority of \$365,000 Unfair Competition Law Fund and two positions in 2019-20 and \$352,000 in 2020-21 and ongoing to the DOJ to implement AB 1919 (Wood), Chapter 631, Statutes of 2018, which expands the scope of law to include rental housing and resources for enforcement of price gouging in times of disaster.
11. **Theft: Aggregation of Organized Crime (AB 1065).** The budget requests \$327,000 General Fund in 2019-20 and \$149,000 General Fund in 2020-21 to implement the provisions of AB 1065 (Jones-Sawyer) Chapter 803, Statutes of 2018. AB 1065 creates, until January 2, 2021,

the crime of organized retail theft, extends the county jurisdiction, and requires the California Highway Patrol, in coordination with DOJ to convene a regional property crimes task force.

Staff Recommendation: Approve all vote-only items as proposed.

ITEMS TO BE HEARD

0820 DEPARTMENT OF JUSTICE

Issue 12: Update by Attorney General Xavier Becerra

Attorney General. The constitutional office of the Attorney General, as chief law officer of the state, has the responsibility to see 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 Attorney General's responsibilities include safeguarding the public from violent criminals, preserving California's spectacular natural resources, enforcing civil rights laws, and helping victims of identity theft, mortgage-related fraud, illegal business practices, and other consumer crimes.

Under the state Constitution, the Attorney General is elected to a four-year term in the same statewide election as the Governor, Lieutenant Governor, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and Insurance Commissioner. In 1990, California voters imposed a two-term limit on these statewide offices. On January 24, 2017, Xavier Becerra was sworn in as the 33rd Attorney General of the State of California, and is the first Latino to hold the office in the history of the state. He was appointed by Governor Brown as a replacement for former Attorney General Kamala Harris, who was elected to the United States Senate.

Department of Justice. The Attorney General oversees more than 4,500 lawyers, investigators, sworn peace officers, and other employees at DOJ. DOJ is responsible for providing 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 assists 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.

DOJ Budget Overview. The Governor's budget proposes an increase of \$39 million, or four percent, over the revised amount for 2018-19. Overall, the total proposed budget to support DOJ operations in 2019-20 is roughly \$1 billion (see table from LAO below). About half of the proposed spending supports the department's Division of Legal Services, while the remainder supports the Division of Law Enforcement and the California Justice Information Systems Division. Of the total amount proposed for DOJ operations in 2019-20, nearly one-third—\$331 million—is from the General Fund. This is an increase of \$37 million, or 13 percent, from the estimated 2018-19 amount. This increase reflects various proposals to provide additional General Fund support including: (1) the state's forensic laboratories, (2) the continued implementation of the state's new tiered sex offender registry, and (3) the recovery of firearms from persons who are prohibited from owning them.

Total Operational Expenditures for the Department of Justice

(Dollars in Millions)

	2017-18 Actual	2018-19 Estimated	2019-20 Proposed	Change From 2018-19	
				Amount	Percent
Legal Services	\$437	\$507	\$517	\$10	2.0
Law Enforcement	216	274	289	15	5.4
California Justice Information Services	188	214	228	14	6.4
Totals	\$841	\$996	\$1,034	\$39	3.9

Source: LAO

Staff Recommendation. This is an informational item. No action is necessary at this time.

Issue 13: Bureau of Firearms Workload and Armed Prohibited Persons System (APPS) BCPs

Governor's Budget. The budget includes two proposals associated with the Bureau of Firearms (BOF):

1. **BOF Workload.** The Governor's Budget includes \$6.875 million Dealer Record of Sale (DROS) authority in 2019-20 and 63 positions (a combination of new positions, converting temporary positions to permanent positions, and positions with authority but no funding) in the DOJ's Bureau of Firearms, and \$6.41 million DROS authority in 2020-21 and ongoing to maintain time-sensitive firearms workloads. The positions would be placed in the Background Clearance Unit, Phone Resolution Unit, DROS Quality Assurance Team, Reporting and Quality Assurance Section, and Armed Prohibited Persons Section.
2. **APPS BCP.** The budget also separately proposes 26.0 positions and \$5,601,000 (\$16,901,000 General Fund, -\$11,300,000 Dealer's Record of Sale Account) in fiscal year 2019-20, and \$4,656,000 (\$15,956,000 General Fund, -\$11,300,000 Dealer's Record of Sale Account) in 2020-21 and ongoing to conduct Armed and Prohibited Persons System (APPS) investigations.

Background on Bureau of Firearms

The BOF within DOJ is primarily responsible for the regulation and enforcement of the state's firearm and ammunition laws. This includes conducting background checks for individuals seeking to purchase firearms, licensing firearm and ammunition vendors, conducting vendor compliance investigations, ensuring lawful possession of firearms and ammunition, and administering various other firearms and ammunition programs. BOF engages in various activities related to these responsibilities. For example, BOF has Armed and Prohibited Persons System (APPS) investigation teams who are primarily responsible for investigating the illegal purchase or possession of firearm and ammunition, as well as seizing them from individuals who are prohibited from owning or possessing them.

The BOF is tasked with administering 35 legislatively mandated programs that directly affect the citizens of California (individuals and firearms dealers) and state and local law enforcement agencies. According to the DOJ, the BOF has absorbed the costs of 44.0 positions in order to process critical workloads and maintain an acceptable level of public safety services.

BOF Generally Supported by Fee Revenue since 2012-13. State law authorizes DOJ to charge various fees related to firearms and ammunition that are deposited into one of several state special funds to support BOF programs and activities. For example, an individual purchasing a firearm currently pays fees totaling \$25—a \$19 fee deposited into the DROS Special Account, a \$5 fee into the Firearms Safety & Enforcement Special Fund (FS&E), and a \$1 fee into the Firearm Safety Account. State law also authorizes DOJ to administratively increase some of these fees to account for inflation as long as the fee does not exceed DOJ's regulatory and enforcement costs. (DOJ last administratively increased the \$19 fee deposited into the DROS Special Account in 2004.) In 2018-19, BOF received \$36.2 million from several special funds to support its various activities—nearly \$12 million was for the support of the APPS investigation teams. This includes \$5.8 million from the DROS Special Account and \$5.5 million from the FS&E.

Operational Shortfalls and potential insolvency of DROS. Currently, both the DROS Special Account and the FS&E Special Fund are experiencing operational shortfalls as the expenditures from these funds exceed their revenues. For example, about \$20.6 million in revenues is estimated to be deposited into

the DROS Special Account in 2018-19 to support about \$24 million in expenditures. Similarly, about \$7.7 million in revenue is estimated to be deposited into the FS&E Special Fund in 2018-19 to support about \$11.3 million in expenditures. In order to address these shortfalls in the current year, each fund will draw from its fund balance (or unspent funds) that has accumulated in prior years. (When the fund balance has been used up, the special fund will become insolvent.) The DROS Special Account has experienced operational shortfalls since 2012-13, while the FS&E Special Fund began experiencing operational shortfalls in 2017-18.

Background on APPS

The State of California is the first and only state in the nation to establish an automated system for monitoring known firearm owners who might fall into a prohibited status. The Armed and Prohibited Persons System (APPS) provides California with a proactive tool to seek out and remove firearms from those who are prohibited from possessing them, and to thereby prevent and reduce incidents of violent crime. The Department of Justice's Bureau of Firearms (BOF) uses Criminal Intelligence Specialists (CIS) and sworn Special Agents to locate and disarm prohibited persons identified through APPS.

APPS went into effect in 2006, and over the course of its existence, the number of known firearms and firearm owners in California has steadily increased. By 2013, a significant backlog of known armed and prohibited persons had accumulated in APPS. That year, the California Legislature passed SB 140 (Leno), Chapter 2, Statutes of 2013, which provided the DOJ with \$24 million dollars to address the growing 2013 backlog. The bill also mandated annual reports detailing the progress made in reducing the 2013 backlog.

APPS Methodology. As people legally purchase or acquire firearms they are entered into APPS, and only if they become prohibited are they then moved into the Armed and Prohibited File within the system. In order for the DOJ to know who is armed and prohibited, the DOJ must first know about the armed population and then address individuals as they have a prohibiting triggering event. Prohibited persons may be prohibited for several reasons. The specific categories of triggering events that can lead to a firearm prohibition are the following:

- An individual may become prohibited under the Federal Brady Handgun Violence Prevention Act. Note, some individuals with a Brady prohibition may not be prohibited under California state law (for example, being prohibited for a dishonorable discharge from the military).
- An individual may be prohibited from owning a firearm as a condition of 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 order.
- 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.

Within the Armed and Prohibited File, the cases are further separated into the two broad categories of Active and Pending. Active cases are those cases that have not yet been investigated or are in the process of being investigated but all investigative leads have not yet been exhausted. Pending investigations are those investigations that have been thoroughly analyzed and all investigative leads have been exhausted. Pending cases include the sub-categories of Unable to Clear, Unable to Locate, Out-of-State, Federal

Gun Control Act (Federal Brady Prohibition Only), and Incarcerated. Unable to clear cases are ones that have previously been investigated by DOJ firearms agents and all investigative leads have been exhausted, but the individual still has one or more firearms associated with them. If new information is identified, the case will be moved to active status.

APPS-related databases. Prohibited individuals are identified by daily queries of five databases that effectively cross-reference the population of known firearms owners against individuals who may have had a prohibiting triggering event within the past 24 hours. There are five databases cross-referenced by APPS for firearm association and prohibition determinations: (1) Automated Firearms System (AFS), (2) California Restraining and Protective Order System (CARPOS), (3) Mental Health Reporting System (MHRS), (4) Automated Criminal History System (ACHS), and (5) the Wanted Persons System (WPS).

Current Status. As of January 1, 2019, there were 2,516,836 known firearm owners in APPS, of which 23,222 are prohibited from owning firearms in the Armed and Prohibited File. Of the 23,222 cases, 9,404 are labeled as “active” cases. And of the 9,404 “active” cases, 538 remain from the 2013 backlog. The DOJ defines their backlog as cases that had not been investigated as of July 1, 2013 when SB 140 went into effect. All of these 538 investigations were targeted to be completed by March 31, 2019.

Interaction with local law enforcement. Local law enforcement agencies are provided monthly information regarding the armed and prohibited persons in the agency’s jurisdiction. Given this access, once the armed and prohibited person is identified, DOJ and local agencies could coordinate to confiscate the weapons. However, at the present time, many agencies are relying on assistance from DOJ’s criminal intelligence specialists and special agents to work APPS cases. When local agencies do confiscate weapons, they are required to send DOJ a notice so that the individual can be removed from the list. DOJ previously stated that its special agents have trained approximately 500 sworn local law enforcement officials in 196 police departments and 35 sheriff’s departments on how to use the database during firearms investigations. The department stated it also conducted 50 training sessions on how to use the vehicle-mounted California Law Enforcement Telecommunications System terminals to access the database.

Firearms regulation funding. Every individual purchasing a firearm in California is required to pay a \$25 fee. That fee is the total of three separate state fees. A \$19 background check fee is payable to the Dealer Record of Sale Special Account (DROS), which currently funds the APPS program, \$5 is payable to the Firearms Safety and Enforcement Special Fund (FS&E) and a \$1 firearm safety device fee is paid to the Firearms Safety Account (FSA). All of these funds go primarily toward supporting firearm safety and regulation within the Department of Justice.

History. Beginning in 1996 for handguns and in 2014 for long-guns, firearm ownership records were retained by the Department. Those records represent all those known firearm owners potentially subject to enforcement, if the subject (individual) of the record is also the subject of a prohibiting event. Prohibited individuals are identified by daily queries of five databases that effectively cross-reference the population of known firearms owners against individuals who may have had a prohibiting triggering event within the past 24 hours.

Beginning in 1999, 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 the reasons listed above. At the time of the study, 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.

Previous actions through policy and budget committees. The following documents previous actions taken by the Legislature with respect to APPS in policy and budget committees:

- In 2001, the Legislature created the Prohibited Armed Persons File to ensure otherwise prohibited persons do not continue to possess firearms SB 950 (Brulte), Chapter 944, Statutes of 2001. SB 950 provided DOJ with the authority to cross-reference their database of individuals who own handguns with their database listing of prohibited individuals. SB 950 also mandated that DOJ provide investigative assistance to local law enforcement agencies to better insure the investigation of individuals who continue to possess firearms despite being prohibited from doing so. (Penal Code § 30010.)
- 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. The DOJ established five sworn positions and two support staff positions for the purpose of working Senate Bill 950 cases.
- In November 2006, development was completed and the APPS database was implemented. A 2006-07 BCP gave the DOJ-BOF permanent authority of \$5 million from the General Fund for 12.0 sworn positions and 22.0 support staff positions to perform the APPS workload.
- 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 the Armed Prohibited Persons System.
- In 2012-13, DOJ-BOF received \$1.6 million from the Dealer Record of Sale (DROS) fund to support eight limited-term sworn positions to perform APPS investigations.
- 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. SB 140 provided DOJ with \$24 million from the Dealer's Record of Sale (DROS) account in order to increase regulatory and enforcement capacity within DOJ's Bureau of Firearms. The resources financed in SB 140 were provided on a three-year limited-term basis, which, according to the DOJ, was adequate time to significantly reduce or eliminate the overall number of armed and prohibited persons in the backlog. 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. This regulatory and enforcement capacity was granted prior to a January 1, 2014 law that significantly increased the number of APPS persons added per year.
- During the 2015 budget hearing process, the Legislature expressed concern that half-way through the three years, the department had spent 40 percent of the \$24 million, and the backlog had only been reduced by approximately 3,770. In addition, the Bureau of Firearms had hired 45 agents, as of the date of their update, but had only retained 18 agents. Of the agents that left the bureau,

the vast majority went to other agent positions in DOJ. It is unclear what caused this staff retention issue, whether it was due to the fact that the new positions were limited-term or that more senior agents were permitted to transfer. As a result, some SB 140 funding that was intended to directly address the APPS backlog was instead used to conduct background checks, provide training and to equip newly hired agents subsequently left the bureau.

The 2015 Budget Act provided DOJ's Bureau of Firearms with 22 additional permanent positions dedicated to APPS investigations and required that they be funded utilizing existing resources. In addition, supplemental reporting language required DOJ to provide the Legislature, no later than January 10, 2016, an update on the department's progress on addressing their backlog in the APPS program and hiring and retaining investigators in the firearms bureau.

- As part of the 2016-17 budget, the Legislature approved an on-going increase of \$4.7 million in Firearms Safety and Enforcement Special Fund (FS & E) to provide permanent funding for 22 positions for APPS investigations.

Addition of APPS persons identified in 2014. The up-to-date DOJ's Bureau of Firearms workload history is provided below. According to their fourth APPS legislative report, released in March 2018, department agents have been able to reduce the number of prohibited subjects to 10,226, the lowest amount since January 2008. It should be noted that until recently, the APPS database was based exclusively on handgun transaction records, not long-gun transaction records. According to the DOJ, "approximately half" of all California firearm sales involve long-guns. Effective January 1, 2014, a new California law mandated the DOJ collect and retain firearm transaction information for all types of guns, including long-guns. The impact of this change is that the number of APPS subjects added to APPS changed from approximately 3,000 to 10,000 subjects annually.

2018 Statistics. In 2018, the Department removed a record annual number of 10,681 armed and prohibited persons from the APPS database. The breakdown is as follows:

- Deceased: 271;
- Prohibition expired/no longer prohibited: 6,268;
- Disassociated from all known firearms as a result of enforcement operations: 4,142. It should be noted that not all 4,142 individuals that were disassociated from their firearms resulted in BOF seizures of firearms. In some cases, it is determined through the BOF investigation that a local law enforcement agency already seized the firearm but failed to enter the recovery in AFS, the individual attempted to report the firearm lost or stolen, or the individual is in the process of lawfully selling or gifting the firearm to a friend or relative.

At the same time, an annual record number of 11,333 prohibited persons were added to the APPS database.

Future additions to APPS due to 2016 ammunition regulations. California had enacted legislation designed to keep guns out of the hands of criminals, but until 2016, it had done little to prevent criminals, gang members, and other prohibited people from procuring the ammunition that fuels gun violence. Several cities require vendors to keep records of ammunition sales, leading to the arrest of thousands of armed and dangerous criminals. Similarly, California enacted statewide legislation requiring vendors to record handgun ammunition sales, but this law has been tied up in litigation involving the statutory definition of handgun ammunition. Consequently, as the result of a court injunction preventing

enforcement of the law, any criminal can purchase ammunition, no questions asked. SB 1235 (de León), Chapter 55, Statutes of 2016, replaced the language in Proposition 63 and required vendors to obtain a state license to sell ammunition, log information about ammunition transactions, and screen the ammunition purchaser for any prohibitions at the point of sale. There are three main components to the legislation: vendor licensing, purchase authorization, and purchase information collection. Beginning July 1, 2019, DOJ will need to confirm whether an individual seeking to purchase ammunition is authorized to do so. BOF estimates 13 million ammunition purchases annually.

Staff Comments. Staff notes that there needs to be clarification to the budget summaries for both BCPs. These clarifications are provided below:

Breakdown of requested resources and clarification of resources. Due to the dwindling state of the DROS Special Account since 2013-14, and the historical statewide directive regarding the conservation of the General Fund, the DOJ has attempted to responsibly absorb the costs of maintaining the critical workloads of the BOF program. Per the Budget Change Proposal, the DOJ is requesting the following resources as necessary:

1. ***The BOF requests permanent spending authority to support the ongoing workload of 20.0 positions.*** In 2013-14, BOF received two-year limited-term funding to support 20.0 positions in order to conduct firearms eligibility background checks. The positions were assigned to conduct firearms eligibility background checks and to analyze and interpret criminal history documents to resolve errors and omissions in information. In 2015-16, the two-year limited-term funding expired. To continue operations successfully while meeting California's statutorily mandated 10-day processing time period, DOJ forewent necessary administrative projects in favor of maintaining this critical public safety function.
2. ***The BOF requests permanent position authority and funding from the DROS Special Account, to support the mandated workloads that these 24.0 positions support.*** To address continuously growing BOF workloads resulting from legislative mandates, increased statewide population, and increased gun sales, and to ensure that the DROS workload was being maintained at an acceptable level, DOJ internally established and funded 24.0 temporary-help positions in 2015-16. DOJ absorbed the costs internally by delaying significant departmental projects, and sacrificing necessary technology upgrades and infrastructure maintenance in order to ensure the critical and time-sensitive workloads were processed.
3. ***To fully support the current BOF workloads, an additional 19.0 positions are requested.*** The BOF's workload has continued to grow year over year since the temporary help positions identified above were established.
 - a. Some positions requested in the BOF BCP workload are for APPS. The Administration has noted that the APPS positions requested in the BOF budget proposal are located within the Regulatory Program, not in Enforcement. Regulatory positions, along with the Enforcement teams, are responsible for administering the legislatively mandated programs involving firearm law administration, education, enforcement, dangerous weapons, and firearms related employment.
4. ***In addition to the resources requested in the BOF BCP, 26 positions are being requested to assist with ongoing APPS workload in a separate BCP.*** According to the DOJ they have

temporarily been absorbing the costs for the 26.0 positions outlined in this request. This has required the deferral of numerous information technology upgrades, infrastructure maintenance, and administrative projects.

5. ***The APPS BCP proposes the elimination of DROS funding but not FS& E funding. The DROS funding proposed for elimination is erroneously listed.*** The Governor's budget proposes to change the mix and level of funding for APPS investigation teams. Specifically, the budget proposes to allocate \$16.9 million from the General Fund and eliminate existing DROS Special Account funding of \$5.8 million—instead of \$11.3 million DROS. But APPS investigation teams are funded by \$5.5 million from the FS&E Special Fund—which is not proposed for elimination in 2019-20 and ongoing.
- Total funding in 2019-20 for APPS is therefore \$22.4 million (\$5.5 million from the FS&E Special Fund and \$16.9 million General Fund).
 - According to the Administration, \$5.6 million of the proposed \$16.9 million General Fund support is intended to support 26 new positions to allow APPS investigation teams to address a backlog of cases and the remainder is to backfill the reduction from the DROS Special Account.

LAO Assessment

Special Funds Avoid Insolvency, but Operational Shortfalls Remain. Absent the Administration's proposals, it is likely that the DROS Special Account would have become insolvent in the budget year. This is because the fund would have lacked sufficient resources to address increased costs related to implementing new legislation or increases in existing BOF workload. However, while the administration's proposals help avoid this insolvency, they do not address the ongoing operational shortfalls in the DROS Special Account. Moreover, the Administration's proposals do not address the ongoing operational shortfall facing the FS&E Special Fund.

More Funding Provided to Support APPS Investigation Teams Than Justified. As discussed above, the Administration's budget proposals provide a total of \$22.4 million to support the workload of APPS investigation teams. However, DOJ has only requested and provided sufficient justification that \$16.9 million is needed on an ongoing basis to support existing APPS workload as well as to continue addressing the backlog of cases.

Uncertain Impact of Additional Funding for APPS Investigations in Long Run. DOJ is currently projecting that the backlog may increase due to other new legislation or mandates resulting in an increase in new APPS cases added annually. If APPS workload does not increase as anticipated, it is possible that the proposed 26 new positions would help DOJ nearly eliminate the existing APPS workload in several years. According to DOJ, it would then use these resources to take on investigations it currently leaves unaddressed (such as complex cases) or increase its other enforcement duties (such as increasing attendance at gun shows). While additional resources in either of these scenarios seem appropriate, the *actual* impact of these additional resources in the long run is uncertain.

Impact of Reduction in DROS Special Fund Support for Other BOF Workload Unclear. As discussed above, the Governor's budget includes a \$5.5 million reduction in DROS Special Account funding support for BOF workload not related to APPS investigation teams. At the time of this analysis, the

Administration and DOJ had not provided information on which BOF programs would be reduced. As such, the impacts of the proposed reduction is unclear.

LAO Recommendations. *Adopt Alternative to Administration's Budget Proposals.* The LAO recommends an alternative package of adjustments to Governor's proposal. Their proposal does not change the total amount of funding provided or fund sources it is provided from. However, it allocates the funding in a different manner that, along with other recommendations below, addresses the concerns the LAO identified with the Governor's plan. The key components include:

- ***Funding Adjustments for APPS Investigation Teams.*** The LAO recommends the Legislature provide \$16.9 million from the General Fund (declining to \$16 million in 2020-21 and ongoing) to support existing and increased APPS workload. The proposal also recommends approval of the 26 new positions requested to continue addressing the backlog. Their proposal therefore provides DOJ with the level of resources that there is workload justification for. But it also recommends eliminating existing DROS Special Account support of \$5.8 million and FS&E Special Fund support of \$5.5 million for APPS investigation teams, which would both be backfilled with the above General Fund support.
- ***Funding Adjustments for Other BOF Workload.*** The LAO recommends the Legislature provide \$6.9 million to support BOF's increased licensing and administrative workload. In order to support most of these increased costs, the LAO recommends the Legislature appropriate the freed up \$11.3 million resulting from their recommendation—\$5.8 million from the DROS Special Account and \$5.5 million from the F&SE Special Fund—to support this other BOF workload.

Direct DOJ and Administration Report on Solutions to Address Operational Shortfalls. The LAO recommends the Legislature direct DOJ and the Administration to submit a report no later than December 15, 2019, on potential solutions to address the ongoing operational shortfalls facing the DROS Special Account and the FS&E Special Fund. These potential solutions can include changing business processes, one-time investments to improve efficiency, increasing firearm-related fees—such as directing DOJ to administratively increase the DROS fee to account for inflation—and/or statutory or regulatory changes. The Legislature can use this report to determine what steps should be taken to ensure that BOF receives sufficient funding from the appropriate fund sources to address legislatively desired service levels. For example, BOF workload has been completely supported by fee revenue deposited into its special funds since 2012-13. The Legislature could decide to increase fee levels to maintain existing practices of fully covering BOF costs through fee revenue rather than providing General Fund support.

Require APPS Reporting. The LAO recommends the Legislature approve budget trailer legislation directing DOJ to report on key metrics it already reports on (such as the number of APPS cases addressed annually), given that the backlog of APPS cases pending investigation is expected to remain for at least the next few years and could potentially increase. (Although existing state law requires DOJ to submit annual reports to the Joint Legislative Budget Committee on key metrics related to the APPS backlog, the requirement is scheduled to end on March 1, 2019.) This could help the Legislature continue to conduct oversight over the reduction of the APPS backlog and of any additional funding provided to reduce the backlog. Additionally, the LAO recommends that the reporting language specify that once the backlog is eliminated, DOJ should begin reporting on the new or expanded activities the APPS investigation teams engage in. This could help the Legislature determine the extent to which ongoing resource levels should be adjusted in the future.

Staff Recommendation. Hold both proposals open pending presentation of information.

Staff Comments

The AG has the statutory authority to increase with inflation as long as it doesn't exceed costs. DOJ would probably go through the regulatory promulgation process for this. (To the extent that the fee needed to be increased beyond inflation that would require action by the Legislature. At that point, we would need to figure out if it falls within the auspices of Proposition 26 which requires a 2/3rds vote for certain fees/taxes. There are exemptions from the definition of tax. The one exemption of particular note here is the following: "A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof."

- Has DOJ considered adjusting their fees to cover costs and offset insolvency of DROS? (Note that according to statute, it may require a 2/3 vote...it's not clear and I'd need to clarify with Leg. Counsel)
- The numbers of people removed in 2018 (page 12) due to attrition versus enforcement activities suggest that the majority of the removals were not directly due to enforcement. Please explain this.
- What's the ideal timeline for replacement and/or modernization of the APPS database? Has there been a cost-estimate/position estimate?
- What's their vision for coordinating with local law enforcement to address the current workload?
- Will the 2016 ammunition regulations increase the number of APPS subjects added per year? If so, by how much?

Issue 14: Bureau of Gambling Control Oversight

Background. The Bureau of Gambling Control (BGC), within the DOJ, is the state law enforcement authority with special jurisdiction over gambling activities within the state of California and is the entity that conducts background investigations for the California Gambling Control Commission (Commission) on gaming license and work permit applications. The BGC regulates legal gambling activities in California to ensure that gambling is conducted honestly, competitively, and free from criminal and corrupt elements. The Division of Gambling Control (now the BGC) was created on January 1, 1998, with the enactment of the Gambling Control Act (Act). The Act established a comprehensive plan for the statewide regulation of legal gambling. It provides a bifurcated regulatory system whereby the BGC serves in an investigative role and the Commission serves in an adjudicatory role.

The Cardroom Gaming Unit within the bureau is responsible for the bureau's cardroom-related licensing responsibilities. There are four categories of applicants associated with gambling establishments:

1. All persons and/or business entities that have control or ownership interest in a gambling establishment, or third-party providers of proposition player services (TPPPPS).
2. A cardroom key employee license for all persons employed in a supervisory capacity or empowered to make discretionary decisions over the establishment's gambling operations.
3. A work permit is required of all persons employed in a gambling establishment for certain positions such as dealer, waitress/waiter, surveillance, etc.
4. TPPPPS Supervisors and Players.

Businesses or individuals submit applications to either obtain a license or renew a license, along with a processing fee, to the bureau. The bureau is then responsible for conducting background investigations and making recommendations to the Gambling Control Commission on whether licenses should be approved, renewed, or denied. The scope of each background investigation varies depending on the license type, applicant, and the complexity of the applicants' history, but normally includes in-depth research and analysis of each applicant's background through inquiries of various personal, public, and law enforcement sources. Also, the financial aspects of business owners and entities are closely examined to verify that all persons with ownership/control interest in the gambling operation are identified and properly licensed.

The length of time it takes to conduct such investigations depends on the type of license. For example, the investigations related to business owner license applications can be significantly more extensive than for a regular cardroom employee. These investigations include various inquiries, such as a criminal background check and a review of financial statements.

Previous funding and resources for BGC work. When the BGC was created in 1998, based on a 2000-01 Budget Change Proposal (BCP), the BGC had 20.0 analyst positions to process a projected workload of 1,000 applications (800 owner/key employees and 200 work permits) for the Cardroom industry.

In 2004-05, the BGC was provided five analyst positions, in addition to other classifications, to handle the TPPPPS workload. At that time, it was estimated there would be approximately 1,184 applications (25 TPPPPS companies, 135 owners, 200 supervisors and 824 proposition players) associated with the

TPPPPS industry. Of the 25.0 analyst positions, the Bureau has assigned four analysts to conduct the mandated workload associated with game and gaming activity review.

The unit was provided additional positions and funding on a limited-term basis in recent years to help reduce the backlog—specifically, 12 analytical positions in 2015-16 for three years and 20 additional analytical positions in 2016-17 for three years from the Gambling Control Fund. The 2018 Budget Act provided \$1.6 million from the Gambling Control Fund to support the 12 positions provided in 2015-16 for one additional year. As a result, all of the Cardroom Gaming Unit’s 32 limited-term positions will expire at the end of 2018-19.

Case backlog issues. According to the DOJ, the scope of the background investigations increased due to requests of the Commission, changes in the industry, and/or increased scrutiny due to identified violations within the industry. The DOJ believes that the positions are necessary to continue to reduce the backlog and maintain the ongoing workload associated with California cardroom and TPPPPS license applicants. Below is a workload history that includes the current backlog.

Workload History

Fiscal Year	2012-13	2013-14	2014-15	2015-17	2016-17
Beginning	1,339	2,001	2,588	2,696	2,153
Incoming Cases	2,211	4,594	5,117	5,379	5,566
Closed Cases	1,031	3,259	3,639	4,926	5,561
Abandoned/Other	518	749	1,370	996	167
Cases at Year’s end (Backlog)	2,001	2,588	2,696	2,153	1,991

Staff Comments

Other Cardroom Related Concerns Exist. Stakeholders and certain legislative members have pushed nearly every year for additional augmentations from the Gambling Control Fund, given that the revenues deposited into the fund are licensing fees paid by cardrooms. The Legislature has had larger concerns with the licensing program generally and approved a California State Audit in 2018. The audit is expected to be completed in May 2019 and the audit scope can be found [here](#).

The cardrooms, as well as the cities in which they are located are concerned with DOJ Bureau of Gambling Control regulatory activity in two areas. Cardrooms and the cities in which they are located are concerned that approval of proposed regulatory changes will impact how games are played or what types of games are played, thereby resulting in loss of cardroom revenue and local government revenue. Local governments may receive a share of cardroom revenue which is then used for local services or programs, such as early release and probation recruitment efforts as well as Juvenile Justice and Intervention programs. The two issues are described in more detail below:

1. **Player-Dealer Issue.** There are concerns raised that the DOJ will promulgate new regulations or change existing regulations related to the rotation of the player-dealer position (also known as the Third-Party Providers of Proposition Player Services [or TPPPS] issue). Specifically, [Penal Code 330.11](#) requires that the player who serves as the dealer rotates continuously so that the “house” is not serving as the bank. If played in this manner, the game is not a banked game typically only offered by tribal casinos and is instead just a controlled game. Cardrooms typically

contract with licensed TPPPS companies to provide licensed employees who can serve in this capacity if no one else at the table would like to serve in this role. This enables that games are able to be run continuously. Some tribes and the cardrooms have disagreed on the interpretation of the Penal Code section as well as the use of TPPPS for years.

2. **Blackjack Issue.** Advocates have raised concerns about DOJ's proposed regulations that withdraw approvals of card games that are akin to 21 Blackjack. Specifically, [Penal Code 330](#) lists the types of games—including twenty-one—that are prohibited under state law. The cardrooms are concerned that certain games will no longer be able to be played.

Staff Recommendation. This is an oversight item. No action will be taken at this time.

Staff Comments

Stephanie Shimazu, director of the Bureau of Gambling Control (BGC), said in a Sept. 25 memo that her office “plans to rescind game rules approvals for games too similar to 21/blackjack that are prohibited by state law.” “We will notify cardrooms and defer enforcement for a specified period of time to enable cardrooms to prepare for this action,” she said of the 74 card rooms operating statewide. Shimazu also pledged to promulgate regulations requiring rotation of the player-dealer position for what are known as “California” or “Asian” games, which are versions of blackjack and pai gow poker normally prohibited by state law.

Shimazu's memo is the latest development in a six-year dispute between the tribal and card room gambling industries over game rules and the use of TPPPs. The tribes – who operate 63 licensed casinos employing more than 50,000 workers and annually generating \$9 billion in gross revenues – are threatening to sue state regulators and the card rooms, claiming violation of tribal-state compacts and a 2000 ballot initiative promising them exclusivity to operate casino-style gambling.

Some questions regarding the backlog and positions:

The expectation was that all 32 of the limited-term positions would expire together at the end of 2018-19. This would then allow the Legislature to consider what level of ongoing resources was appropriate as part of the 2019-20 budget. But no BCP was submitted for this purpose as part of the 2019-20 budget.

- Where is the Bureau currently with regards to the case backlog?

Some questions regarding card games:

- a) How long does it typically take to approve a game? What could cause an extended delay?
- b) How many gaming applications (requests to approve games) have been submitted to the BGC in each of the last 5 fiscal years?
 - a. How many were approved each year? How many were rejected? How many are still under consideration?
- c) What is there legal authority/what prompted the process to change regulations that have been in place for about 20 years?
- d) Which card games will be revoked and why?
- e) Has the Bureau of Gambling Control investigated the play of each card game for which its approval will be revoked?
- f) Does the Bureau intend to inform card rooms that they will revoke existing authorization to play card games that have been played lawfully?

- g) If so, how many card clubs will be sent the notifications and where are they located?
- h) Does the Bureau have legal authority to revoke the play of card games that have been approved and played for years? Can you explain this authority?

Some questions regarding player dealers in non-banked games and TPPPS issue:

- a) Has the Bureau been looking into or investigating the use of player-dealer position in the play of card games? When did this start?
- b) Is the intention to propose new regulations changing the rotation of the player-dealer position or rotation of Third Party Proposition Players?

Issue 15: Peace Officer Release of Records (SB 1421) BCP

Governor's Budget. The budget includes three positions and \$477,000 General Fund in 2019-20 and \$442,000 General Fund in 2020-21 and ongoing, for the Division of Law Enforcement (DLE) to implement the provisions of SB 1421 (Skinner), Chapter 988, Statutes of 2018.

Background. Senate Bill 1421 amends Penal Code Sections 832.7 and 832.8, making peace officer and custodial officer investigation and personnel records available for public inspection, pursuant to the California Public Records Act (PRA), when those records relate to reports, investigations, and findings of officer involved incidents, including discharge of a firearm at a person; use of force resulting in death or great bodily injury (GBI); and sustained findings of sexual assault or acts of dishonesty directly relating to the reporting, investigation, or prosecution of crime, or misconduct by a fellow officer. Additionally the bill would authorize redaction where, on the facts of the particular case, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure. The bill would allow the delay of disclosure, as specified, for records relating to an open investigation or court proceeding, subject to certain limitations.

Justification from DOJ. DOJ is expected to review and redact audio or video recordings of investigations before the personnel record information can be disclosed. The Bureau of Firearms (BOF) requires three Associate Governmental Program Analysts (AGPA) to respond to the increased level of PRA requests, to review body camera footage, to format the data, and to redact information that is exempt from disclosure. BOF will also require additional funding for the necessary data delivery supplies. The DLE, Office of the Chief, requests 444 hours of overtime annually for the AGPA classification to handle all other PRA requests outside of BOF.

Staff Recommendation. Hold Open

Staff Comments

The level of required resources is unclear at this time. Does DOJ really need three FTE to handle this workload?

Issue 16: Dispositions Workload Increase

Governor's Budget. The budget includes \$203,000 General Fund and two positions in 2019-20, and \$188,000 General Fund in 2020-21 and ongoing to the DOJ's California Justice Information Services Division to process the increase in dispositions and corresponding criminal history record updates resulting from the passage of AB 865, AB 2599, AB 2942, and SB 1437.

Background. State law requires DOJ to maintain the state's databases of criminal history records. For each individual arrested, state law requires law enforcement agencies, the state courts, and detention facilities to submit certain specified information to DOJ's databases. Such information includes the individual's name, date of birth, and fingerprints, as well as the charges filed, disposition of cases, sentence received, and date of release. DOJ also serves as the state's single point of contact for the exchange of criminal history records with the federal government. Finally, state law authorizes DOJ to provide certain federal and state criminal history information to designated entities (such as peace officers, courts, and county child welfare agency personnel) and/or under specified circumstances (such as if the information is being used for licensing or employment purposes). The following four bills could lead to an increase in criminal history record updates related to increased dispositions:

1. AB 865 (Levine), Chapter 523, Statutes of 2018, requires the court, upon receiving a petition for recall of a sentence from a member of the military suffering from a specified condition, to determine, at a public hearing whether the person qualifies for relief.
2. AB 2599 (Holden), Chapter 653, Statutes of 2018, requires a facility at which an arrestee is detained to, at the request of the arrestee upon release, provides forms for application to seal the record.
3. AB 2942 (Ting), Chapter 1001, Statutes of 2018, authorizes a prosecutor to provide a recall and resentencing recommendation to the court.
4. SB 1437 (Skinner), Chapter 1015, Statutes of 2018, provides a means of vacating the conviction and resentencing a defendant when a complaint, information, or indictment was filed against the defendant that allowed the prosecution to proceed under a theory of first-degree murder or murder under the natural and probable consequences doctrine.

LAO Assessment

Uncertain Ongoing Funding Needed. At this time, the workload associated with the four pieces of legislation enacted in 2018 appear to be either limited-term in nature or uncertain given that it would depend on how certain individuals respond to the legislation. For example, the additional workload resulting from resentences occurring in the implementation of SB 1437 would likely not be ongoing in nature. This is because the resentencing under the legislation only applies to those who were convicted prior to its implementation. The LAO also note that such defendants have a strong incentive to seek resentencing in order to potentially serve shorter sentences—thereby filing resentencing requests that generate increased workload in the near-term. Additionally, the actual number of district attorneys that would recommend the recall and resentence of defendants AB 2942 is uncertain. This makes it difficult to estimate the number of cases that would be filed and adjudicated by the courts, and thus requiring DOJ to update its criminal history records.

LAO Recommendation. In view of the above, the LAO recommends that the Legislature approve the requested \$203,000 for DOJ to process additional criminal history record updates on a two-year, limited-term basis—rather than on an ongoing basis as proposed by the Governor. This would allow

DOJ to track the total amount of workload generated by the four pieces of legislation enacted in 2018 and request additional resources as needed in two years based on actual workload.

Staff Recommendation. Hold Open

Staff Comments

The level of required resources is unclear at this time. LAO recommendation to approve on a limited-term basis seems like a suitable alternative to rejecting. Let's see what pieces of information DOJ provides us.

Issue 17: DNA Identification Fund Revenue Backfill BCP

Governor's Budget. The budget includes \$25 million (\$15 million General Fund and \$10 million redirecting existing General Fund and backfilling expenditures with Fingerprint Fees) to the Bureau of Forensic Services (BFS).

Background. The BFS's regional laboratory system was established in 1972 to provide assistance to local law enforcement agencies that do not have access to local crime laboratory services. Today, the bureau is a comprehensive, state-of-the-art system accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB-International). The BFS operates 10 regional crime laboratories which serve all of the state's 58 counties. The BFS's forensic scientists collect, analyze, interpret, and compare physical evidence from suspected crimes, provide reports on their forensic findings, and provide expert testimony in court.

In addition, BFS's Jan Bashinski Laboratory in Richmond conducts research to advance DNA typing and coordinates the development of statewide standards for forensic DNA analysis. The laboratory has established CAL-DNA, a computerized DNA identification data bank, to which evidence analysis results can be compared to identify unknown offenders. This database works in conjunction with the National DNA Index System (NDIS) as part of the Combined DNA Index System (CODIS), as well as housing the Missing Persons DNA program, method validation, and a DNA casework section.

Historical Funding sources for BFS. Historically, the BFS was funded by the General Fund. However, with the passage of Proposition 69 on November 3, 2004, a new revenue stream was created from dedicated penalty assessment revenues that are deposited into the DNA Identification Fund. The revenue in this fund is part of the California Fine and Fees System, which has seen significant revenue declines in recent years. The revenue generated by this fund is used to expand DNA collection and processing. As written in Government Code (GC) section 76104.6, the DNA Identification Fund's revenue is collected based on fines for all criminal offenses, including all offenses involving a violation of the Vehicle Code. An additional fine was added under GC 76104.7 in 2012, which was expected to provide complete funding support for the bureau's operations. The revenue generated by the DNA Identification Fund adequately funded the BFS for the first three fiscal years.

The DOJ reports that the DNA Identification Fund has experienced "a significant decline" in revenue that started in FY 2015-16 and continued on through FY 2017-18. The DOJ partially attributes this decline to Proposition 47 (2014), which reduced the classification of certain crimes from felonies to misdemeanors. With decreased criminal penalties, the DOJ states, the number of fines levied and collected subsequently decreased. Total revenue collections for 2015-16 were \$59.2 million and in 2016-17 were \$52.5 million, including accruals, which is a total decrease of \$13.6 million from the average collections of the two years prior to the passage of Proposition 47.

Recent Solutions. The most recent solution to the funding shortage was a General Fund redirection of \$15 million into the Bureau of Forensic Services for 2017-18 and 2018-19, followed by a one-year authority increase of \$6 million in 2018-19 to support continued revenue declines. This one-time funding was intended to temporarily supplement the declining DNA Identification Fund revenue. Additional revenue loss was addressed in the aforementioned 2018-19 May Revise proposal, which allocated an additional one-time \$6 million from the General Fund to support the DNA Identification Fund.

Staff Recommendation. Hold open.

Staff Comments

- From Marvin: “Zero-base DOJ budget?”
- They will attribute the revenue loss to the implementation of Prop 47. They should consider other options to address revenue loss. Why not spend less? What are the other options considered aside from a backfill with General Fund money?
- What’s the current fund balance?

Issue 18: Criminal Law: DNA Collection of minors (AB 1584) BCP

Governor's Budget. The budget includes \$149,000 General Fund in 2019-20, \$136,000 General Fund in 2020-21 and ongoing and one position to the DOJ to implement AB 1584 (Gonzalez-Fletcher), Chapter 745, Statutes of 2018 which prohibits law enforcement from collecting a buccal DNA swab or any biological sample from a minor without first obtaining written consent of the minor and approval of the minor's consent from a parent, legal guardian, or attorney.

Background. AB 1584 added Section 625.4 to the Welfare and Institutions Code and prohibits a law enforcement entity from collecting a buccal DNA swab sample or any biological sample from a minor without first obtaining written consent of the minor and approval of the minor's consent by a parent, legal guardian, or attorney. The bill also prohibits, except as otherwise expressly authorized by law, a minor's voluntarily given DNA from being searched, analyzed, or compared to DNA or profiles related to crimes other than the one for which it was taken. The bill also provides a procedure for a minor to have a voluntary sample expunged.

Provided justification. The DOJ houses, maintains, and is responsible for California's contributions to the FBI's Combined DNA Index System (CODIS). Local law enforcement agencies rely on the DOJ to provide training and guidance regarding the new restrictions on collecting DNA and biological samples from juveniles. The DOJ states that one position is needed to develop a training curriculum for the proper sample collection from juvenile offenders and to make the training curriculum available to agencies statewide. In addition to this training component, they raise the issues that there will be an influx of calls inquiring on samples that were previously collected from juveniles. The third component of the legislation calls for an expungement process for voluntarily submitted samples. Samples received by the DOJ's Data Bank Program require a thorough vetting process prior to expungement and the new position will assist with the increase in workload that AB 1584 will produce. The estimated costs for AB 1584 cannot be funded from the DNA Identification Fund as current DNA ID revenues are insufficient to cover these costs.

Staff Recommendation. Hold open.

Staff Comments

I noted in our Tuesday briefing that you wanted to know why they needed \$ and one position to implement this bill. Why couldn't they absorb the costs internally?

Issue 19: CA Consumer Privacy Act of 2018 (AB 375, SB 1121) BCP

Governor’s Budget. The budget proposes a permanent augmentation of 23.0 positions and \$1,827,000 General Fund and \$2,912,000 Unfair Competition Law Fund in 2019-20 and \$1,746,000 General Fund and \$2,808,000 Unfair Competition Law Fund in 2020-21 and ongoing, to implement and enforce the mandates of AB 375 (Chau), Chapter 55, Statutes of 2018, and SB 1121 (Dodd), Chapter 735, Statutes of 2018.

Background. Beginning January 1, 2020, AB 375 (Chau), Chapter 55, Statutes of 2018, and SB 1121 (Dodd), Chapter 735, Statutes of 2018—also known as the California Consumer Privacy Act of 2018—impose various requirements related to the collection, use, and protection of consumer data collected by certain businesses (such as those with annual gross revenues of more than \$25 million). These requirements include providing consumers with the right to request that a business disclose the categories and specific pieces of personal information collected about them and delete such information, as well as direct a business not to sell such information. Additionally, the act tasks DOJ with (1) developing regulations related to these requirements, (2) providing guidance to businesses on how to comply with these requirements, and (3) pursuing civil actions against businesses who fail to correct any alleged violations within 30 days.

Consumer Privacy Fund creation. The California Consumer Privacy Act of 2018 created the Consumer Privacy Fund to receive civil penalties assessed for violations of the act. The act further specifies the intent that these penalty revenues fully offset costs incurred by the state courts and DOJ related to implementing and enforcing the act. Moreover, the act prohibits the use of the revenue for any other purpose until after these costs are fully offset.

LAO Assessment

Fund Source Not Appropriate. The LAO finds that the level of resources being requested by DOJ to implement the California Consumer Privacy Act of 2018 appear reasonable given the increased workload. However, the LAO finds that the proposal to use the General Fund and UCL Fund to support the workload on an ongoing basis is not aligned with the act. This is because the act specifically created the Consumer Privacy Fund to fully offset DOJ’s costs to implement and enforce its provisions. The LAO recognizes, however, that DOJ will incur some start-up costs—such as those related to developing regulations or beginning to pursue civil actions for violations of the act—prior to the deposit of penalty revenues into the Consumer Privacy Fund. As such, funding from other fund sources will be needed on a *temporary* basis to support the department’s workload.

LAO Recommendation. In view of the above, the LAO recommends that the Legislature authorize a \$4.7 million loan to the Consumer Fund in 2019-20—\$1.8 million from the General Fund and \$2.9 million from the UCL Fund—rather than as a direct appropriation as proposed by the Governor. This loan would ensure that DOJ has enough resources to begin implementation of the California Consumer Privacy Act of 2018, as well as comply with legislative intent that costs be supported by the penalty revenues deposited into the Consumer Privacy Fund. The LAO notes that additional loans could be needed until sufficient penalty revenues begin to be deposited into the Consumer Privacy Fund. Additionally, this approach would help the Legislature conduct oversight of the act’s implementation. This is because, to the extent that insufficient penalty revenues are deposited to support ongoing DOJ costs and/or to repay the loan, the Legislature could consider making changes to the California Consumer Privacy Act of 2018 (such as increasing the amount of civil penalty that can be pursued for violations).

Staff Recommendation. Hold Open

Staff Comments

- The level of required resources is unclear at this time.
- From Pro Tem Policy staff: The AG seems to sponsor a Sen. Jackson bill that enables private rights of action under CCPA. The bill (SB 561) would expand a consumer's rights to bring a civil action for damages to apply to other violations under the act. Something to keep an eye on as the next month plays out.

Issue 20: CA Internet Consumer Protection and Net Neutrality Act of 2018 (BCP)

Governor’s Budget. The budget requests a permanent augmentation of three Deputy Attorneys General (DAG), two Associate Governmental Program Analyst (AGPA), two Staff Services Analyst (SSA), the legal complement of two Legal Secretaries, and an increase in spending authority of \$1,846,000 Unfair Competition Law Fund for 2019-20, and \$1,775,000 in 2020-21 and ongoing, to support the implementation of, and thereafter, to address the mandates associated with SB 822 (Wiener), Chapter 976, Statutes of 2018.

Background. The Federal Communications Commission (FCC) is an independent federal agency tasked with the regulation of interstate and international communications by radio, television, wire, satellite, and cable in the United States. In 2015, the FCC approved rules related to net neutrality—the principle that Internet service providers treat all Internet data the same regardless of its source. These rules prohibited providers from (1) blocking lawful content or applications, (2) slowing down specific applications or services (known as “throttling”), and (3) accepting fees to directly or indirectly favor some data traffic over others (known as “paid prioritization”). In 2017, the FCC reversed these net neutrality rules.

SB 822 (Wiener), Chapter 976, Statutes of 2018. SB 822—known as the California Internet Consumer Protection and Net Neutrality Act of 2018—establishes net neutrality requirements in California. In particular, it prohibits Internet service providers that provide broadband Internet access service from (1) blocking lawful content or applications, (2) throttling applications or services, and (3) engaging in paid prioritization. It also requires providers to publicly disclose certain information to ensure that consumers are able to make informed choices regarding the use of their services.

Net Neutrality Litigation. Litigation is currently pending challenging the FCC’s 2017 decision to reverse net neutrality rules as well as Chapter 976. These cases include:

- **Multistate and Stakeholder Suit against FCC and U.S.** California, other states, and various stakeholders (such as Mozilla Corporation) filed suit against the FCC and the U.S. challenging the agency’s 2017 decision to reverse net neutrality rules. This case is currently pending in a federal court of appeals.
- **U.S. Suit against California.** The U.S. filed suit against California challenging the constitutionality of Chapter 976. Specifically, the U.S. argues that federal law—specifically the FCC decision—preempts state law (Chapter 976). This case is currently pending in a federal district court.
- **Industry Stakeholder Suit Against California.** The American Cable Association and other industry stakeholders filed suit against California challenging the constitutionality of Chapter 976. Specifically, they argue that (1) federal law preempts Chapter 976 and (2) Chapter 976 regulates commerce outside of California. This case is currently pending in a federal district court.

In October 2018, California entered into an agreement with the plaintiffs in the two suits filed against the state. Under the agreement, both lawsuits would be stayed (or placed on hold) until the federal court of appeals issues its opinion on the multistate case against the FCC and U.S. or the U.S. Supreme Court issues a final decision on the case—whichever is later. In exchange, California agreed to not enforce SB 822 until either (1) 30 days after the October 2018 stay expires if plaintiffs in the two cases against California do not request a new stay within that time period, or (2) 30 days after a judge makes a decision

if they request a new stay within that time period. The LAO notes that further stays on the enforcement of SB 822 could potentially be sought.

The workload associated with the bill would include receiving complaints, investigating potential violations, and prosecuting cases.

LAO Assessment

Pending Litigation Could Prevent SB 822 Enforcement. The LAO finds that requested resources for DOJ to implement and enforce SB 822 appear justified on workload basis. However, it is unclear whether the October 2018 stay on SB 822 will expire in 2019-20. Oral argument in the multistate case against the FCC and U.S. is currently scheduled for February 2019. As such, it is possible that the stay could expire during the budget year. However, it is also possible that the stay is in place beyond the budget year. This could happen if, for example, the Supreme Court takes time to issue a decision or if subsequent stays are issued in the two cases against California. Under such circumstances, DOJ would not need the proposed resources to implement SB 822 in 2019-20 and thus would not need the resources proposed by the Governor.

LAO Recommendation. *Adopt Budget Bill Language Limiting When Funds Could Be Used.* In view of the above, the LAO recommends that the Legislature modify the Governor's proposal by adopting budget bill language specifying that DOJ could only spend the proposed \$1.8 million to enforce SB 822 if all court prohibitions preventing its implementation or enforcement have expired.

Staff Recommendation. Hold Open

Staff Comments

- Staff had no issues with this proposal but it is important to note that the litigation could impact SB 822 enforcement.
- Chris Ryan conveyed to me yesterday that the AG does not want to comment much on this topic because the active litigation is unresolved. In their view, by not commenting on the issue one way or another they are able to not give the "opposing side" a sense of what resources they have/do not have to implement this bill.

Issue 21: New and Expanded Crimes (BCP)

Governor's Budget. The budget includes \$145,000 General Fund and one position in 2019-20, \$136,000 General Fund in 2020-21 and ongoing to process the additional workload of 25 bills signed into law.

Background. The DOJ maintains, according to statute, various repositories for criminal record information. Penal Code Section 11105 mandates DOJ to function as the criminal record repository for California and serve as the Federal Bureau of Investigation's (FBI) single point of contact when accepting applicant fingerprint images and related data for federal-level criminal offender record information (CORI). Existing law permits DOJ to provide state or federal arrest or disposition notification to any entity authorized by state or federal law to receive such information under specified circumstances including employment and licensing purposes.

Penal Code Section 13150 requires law enforcement agencies (LEAs) to report to DOJ each arrest made, including the applicable identification, specified arrest data, and fingerprints. Existing law also delineates how DOJ shall accept fingerprint images and related information to process CORI requests.

The Cal-ID Program within DOJ maintains a central repository of fingerprints and palm prints, and administers the Automated Fingerprint Identification System (AFIS) through which positive identification of individuals is established. Fingerprints and palm prints that are submitted by LEAs are searched, verified, and indexed in automated databases such as the AFIS and the Automated Latent Print System.

The Criminal Record Update Program (CRUP) within DOJ receives arrests and dispositions submitted by LEAs. CRUP is tasked with analyzing and updating records when there are errors, when consolidation is necessary, or when subsequent notifications are canceled. CRUP also performs updates to and publishes offense tables for LEA reporting purposes.

Justification for request. According to the DOJ, as Law Enforcement Agencies (LEAs) are required to submit information to DOJ regarding arrests and convictions, DOJ is tasked with ensuring that offense tables used by LEAs are current and inclusive of all crimes for which individuals can be arrested or cited. Creation of new and expansion of existing crimes requires DOJ to update and maintain a standardized set of tables to be used by criminal justice agencies in submitting information and coordinate with agencies for use of the tables and submission requirements.

The one authorized position will update and publish the statewide master code tables, coordinate with the statewide master code table governance board and subject matter experts, coordinate with the Criminal Justice Statistics Center for National Incident-Based Reporting System and Bureau of Criminal Statistics (BCS) codes, update departmental documentation and procedures, and provide outreach and coordination with criminal justice agency stakeholders.

LAO Assessment

Lack of Justification for Requested Resources. At the time of the LAO's analysis, DOJ was unable to provide sufficient justification for the requested resources, as well as explain why the statewide lists could not be updated within existing resources. The LAO recognizes that the Legislature regularly enacts legislation that create new crimes or expand the parameters of existing crimes and, thus, require DOJ to

update the statewide lists. However, the LAO finds that the lists should generally need to be updated only once a year and existing staff who are currently doing this work should be able to do it for the recently-enacted bills. It is also unclear how much additional work conducting outreach and coordinating with law enforcement agencies would require.

LAO Recommendation. In view of the above concerns, the LAO recommends that the Legislature reject the Governor's proposal to provide \$145,000 (General Fund) for DOJ to update and publish its statewide master code tables, as well as to coordinate with criminal justice agencies on the use of these tables.

Staff Recommendation. Hold Open

Staff Comments

The level of required resources is unclear at this time and there's virtually no implementation going on here. LAO recommendation to reject has a lot of merit. Let's see what pieces of information DOJ provides us.

- There are new crimes passed every year so why not absorb this workload internally? Don't you have existing staff that does this already?