

SUBCOMMITTEE NO. 5

Agenda

Senator Aisha Wahab, Chair
Senator María Elena Durazo
Senator Josh Newman
Senator Kelly Seyarto



Thursday, March 21, 2024
9:30 a.m. or Upon Adjournment of Session
State Capitol – Room 112

Consultant: Nora Brackbill, Ph.D.

ITEMS FOR DISCUSSION

8120 Commission on Peace Officer Standards and Training (POST)	2
Issue 1: Department Overview and SB 2 Implementation	2
0820 Department of Justice (DOJ)	5
1111 Department of Consumer Affairs (DCA)	5
Issue 2: Controlled Substance Utilization Review and Evaluation System Fee Increase	5
0820 Department of Justice (DOJ)	7
Issue 3: Department Overview	7
Issue 4: Armed and Prohibited Persons Update	9
Issue 5: Litigation Deposit Fund Loan	14
0690 Office of Emergency Services (Cal OES)	18
Issue 6: Department Overview	18
Issue 7: Flexible Assistance for Survivors of Crime Delay	20
Issue 8: Public Safety Radio Modernization to Support Equal Access to 9-1-1 Services	22

Public Comment

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ITEMS FOR DISCUSSION

8120 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING (POST)

Issue 1: Department Overview and SB 2 Implementation

Governor’s Budget. The Governor has proposed \$112.2 million (\$63.4 million General Fund, \$46.8 million State Penalty Fund, and \$1.96 million reimbursements) and 263 total positions to support POST in 2024-25. The Governor’s budget also reflects a reversion of \$8 million one-time in 2023-24 related to the implementation of SB 2 (Bradford and Atkins), Chapter 409, Statutes of 2021, and \$2.9 million ongoing in unused local assistance authority.

Panelists

- Manny Alvarez, Executive Director, POST
- Joshua Wittmershaus, Junior Staff Analyst, DOF
- Allison Hewitt, Principal Program Budget Analyst, DOF
- Jared Sippel, Principal Fiscal and Policy Analyst, LAO
- Drew Soderborg, Deputy Legislative Analyst, LAO

Background. POST is an 18-member commission responsible for overseeing standards and training for certain California peace officers, including city police and county sheriff’s deputies. Fifteen of the POST commissioners are appointed by the Governor and confirmed by the Senate, one commissioner by the Speaker of the Assembly, and one commissioner by the Senate President pro Tempore. The Attorney General is an ex officio member and also serves as a commissioner.

POST is responsible for setting minimum selection and training standards, developing and running law enforcement training programs, improving law enforcement management practices, and reimbursing local law enforcement for training. About 600 law enforcement agencies employing roughly 90,000 peace officers participate in POST’s programs and abide by the commission’s minimum standards.

Peace Officers Require Certification From POST. Existing state law requires peace officers (excluding certain classifications like correctional officers) to receive a basic certificate from POST. This certificate is issued by POST when officers have met all minimum standards and requirements, such as completing required training, passing background checks, and completing a probationary term of employment with their law enforcement agency (typically lasting 18 to 24 months after the date of hire).

Peace Officer Decertification. SB 2 (Bradford and Atkins), Chapter 409, Statutes of 2021 established a process for POST to suspend or revoke a peace officer’s basic certificate for serious misconduct, such as dishonesty related to an investigation or abuse of power by intimidating witnesses. (Prior to the enactment of SB 2, POST lacked the authority to suspend or revoke an officer’s basic certificate.) This decertification temporarily (in cases of suspension) or permanently (in cases of revocation) makes a person ineligible to be a peace officer in California. In addition, SB 2 requires officers who do not have a basic certificate (typically officers completing their

probationary terms and certain reserve officers) to obtain a proof of eligibility (pre-certification) from POST. Similar to a basic certificate, SB 2 allows POST to suspend or revoke a peace officer's proof of eligibility for serious misconduct.

Decertification Process. SB 2 requires POST to review allegations of serious misconduct to determine whether decertification is warranted. The steps are as follows:

1. *Report.* POST receives allegations of serious misconduct in the following ways:
 - a. Since January 1, 2023, all agencies employing peace officers must report to POST allegations of serious misconduct when they occur.
 - b. By July 1, 2023, agencies also had to report any allegations of serious misconduct that occurred from January 1, 2020 to January 1, 2023 (the lookback period).
 - c. Since January 1, 2023, the public can directly report allegations of serious misconduct to POST, including misconduct that occurred prior to January 1, 2023.
 - d. POST can choose to review an allegation of serious misconduct it becomes aware of in other ways, such as through media coverage.
2. *Review.* These reports are reviewed by a new division within POST, the Peace Officer Standards and Accountability Division. This division was created by SB 2 to review all allegations and determine whether decertification is warranted.
3. *Decertification Recommendation.* If the division recommends decertification, the next step depends on whether the officer contests the recommendation. If the officer does not contest, the case ends and the officer's certificate or proof of eligibility is suspended or revoked.
4. *Peace Officer Standards Accountability Advisory Board (POSAAB).* If the officer contests the recommendation, the case is referred to the POSAAB, a new nine-member board within POST. Seven members of this board are appointed by the Governor, one member by the Speaker of the Assembly, and one member by the Senate Rules Committee. The Board votes on whether to recommend decertification to the full Commission.
5. *POST Commission.* If the board determines decertification is warranted, the case is referred to the full 18-member POST commission, who then votes whether to decertify the officer.
6. *Office of Administration Hearings.* If the POST commission votes for decertification, the case is referred to an administrative law judge at the Office of Administrative Hearings (OAH) who prepares a proposed decision to be voted on by the POST Commission. The Commission renders the final decision.

Previous Resources for SB 2 Implementation. The 2022 budget included \$23 million General Fund in 2022-23 and \$20.6 million and 127 positions ongoing to implement SB 2. The 2023 budget included an additional \$4.5 million in 2023-24 and \$3.9 million ongoing to fund OAH costs, and

\$6.1 million one-time in fiscal year 2023-24 and \$5.3 million in 2024-25 and 2025-26 to fund Department of Justice (DOJ) legal costs related to SB 2. As of December 2023, POST had staffed 89 positions and had 45 vacancies.

Workload. POST's initial workload estimates anticipated receiving 16,000 reports of serious misconduct annually, with 3,500 of those including sustained allegations. As of January 2024, POST has received over 22,000 reports of serious misconduct, with roughly 2,000 cases that have been screened and tentatively appear to rise to the level of serious misconduct.

As of March 14, 2024, the division has issued 13 notices of intent to revoke certification. Of these, six have not been contested to date, with one still pending the 30-day appeal time frame, five resulting in default decertifications, and one surrendering their certification. Of the six cases that have been appealed, two were heard by the POSAAB on December 14, 2023, and four cases are scheduled to be heard on March 21, 2024. The POSAAB recommended revocation in both cases heard in December 2023. These two cases were heard before the full Commission on March 7, 2024, where the Commission determined that revocation in one case was appropriate, and deferred the other case back to the division for consideration of settlement terms. Tentatively, there are four scheduled for the Commission meeting on June 13, 2024, pending the outcome of the POSAAB hearing. No cases have reached the OAH stage as of January 2024.

There are a number of unknowns in evaluating POST's ongoing workload. POST is still sorting through the influx of initial allegations, so the final number of cases with serious misconduct is unknown. Few cases have made it very far in the process, making it difficult to evaluate the workload at each step. In addition, POST is currently handling both current allegations and allegations submitted for the "lookback period," from January 1, 2020 to January 1, 2023. However, the Administration notes that the volume of reporting has not slowed even after the deadline for the lookback period, and POST is still receiving over 200 reports of serious misconduct weekly from law enforcement agencies. Finally, POST is currently only receiving reports from 379 out of 614 total covered agencies. Just over half of the non-reporting agencies employ a dozen or less peace officers (53 percent).

General Fund Solutions. The Governor's budget includes the following proposed General Fund solutions related to POST:

- *Estimated SB 2 Current Year Savings.* The funding provided in the 2023-24 was largely for the hearings that take place as the last stage of the decertification process. Since no cases have made it to that stage, POST will likely not spend the funding provided in the 2023-24 budget for OAH hearings and DOJ legal costs. The Administration is proposing to revert \$8 million out of the \$10.6 million budgeted for these two costs.
- *Local Assistance Funding Reversion.* POST has identified a non-specific local assistance appropriation totaling \$2.9 million that has not been utilized in recent years. Peace officer training is funded through other local assistance appropriations within POST's budget.

Staff Recommendation. Hold Open.

0820 DEPARTMENT OF JUSTICE (DOJ)**1111 DEPARTMENT OF CONSUMER AFFAIRS (DCA)****Issue 2: Controlled Substance Utilization Review and Evaluation System Fee Increase**

Governor’s Budget. The Governor’s budget includes proposed trailer bill language to increase the Controlled Substance Utilization Review and Evaluation System (CURES) fee from \$9 to \$15 beginning April 1, 2025 to cover the costs of administering the program.

Panelists

- Ashley Harp, Budget Office, Department of Justice
- Chris Ryan, Chief of Operations, Department of Justice
- Taylor Schick, Chief Fiscal Officer, Department of Consumer Affairs
- Anthony Franzoia, Finance Budget Analyst, Department of Finance
- Amy Ascencio, Department of Finance
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst’s Office

Background. CURES (Controlled Substance Utilization Review and Evaluation System) is a database of Schedule II, Schedule III, Schedule IV and Schedule V controlled substance prescriptions dispensed in California. The database is designed to track prescription drug use in order to reduce abuse and diversion of prescription drugs. Certain health care practitioners and pharmacists are required to register with CURES, in order to consult the prescription history and record new prescriptions of patients under their care. In addition, specified regulatory agency officials and law enforcement officials may access information in CURES only to assist the efforts of their agencies to control the diversion and resultant abuse of controlled substances.

CURES is funded by an annual fee paid by the doctors and pharmacists registered with the system. The fee was set at \$6 in 2014, and temporarily increased to \$11 in April 2021, before reverting to \$9 in April 2023. The fee collection and fund administration is handled by DCA, and the database is maintained and operated by DOJ. The yearly revenues from the fee are listed in the table below.

Fiscal Year	Total
2013-14	\$ 311,000
2014-15	\$ 1,559,000
2015-16	\$ 1,632,000
2016-17	\$ 1,640,000
2017-18	\$ 1,632,000
2018-19 ¹	\$ 1,937,000
2019-20	\$ 1,712,000
2020-21 ²	\$ 1,868,000
2021-22	\$ 3,224,000
2022-23 ³	\$ 3,258,000
Total	\$ 18,773,000

¹ One-time revenue spike due to a change in the way CURES fee payments were recorded into FI\$Cal.

² Revenue split between \$6 and \$11 fee (effective April 1, 2021)

³ Revenue split between \$11 fee and \$9 fee (effective April 1, 2023)

According to the DOJ, the CURES program is expected to run a deficit of around \$1 million (see table below). Previous deficits have been covered by excess General Fund authority within DOJ. Increased program costs are due to employee compensation, equipment costs, and additional requirements generated by legislation. DCA and DOJ are projecting employee compensation costs to continue to increase by 3 percent a year, and are expecting additional legislative expenditures.

	FY 2022-23	FY 2023-24	FY 2024-25 (Projected)
DCA CURES Fund Appropriation	\$2,673,000	\$2,765,000	\$2,789,000
DOJ Projected Costs	\$3,019,000	\$3,401,000	\$3,933,000
Personal Services	\$1,796,000	\$2,047,000	\$2,062,000
Operating Expense & Equipment	\$927,000	\$936,000	\$1,453,000
Departmental Services	\$296,000	\$418,000	\$418,000
DCA CURES Fund Shortfall	\$346,000	\$636,000	\$1,144,000

Proposed Fee Increase. The Governor’s budget proposes to increase the annual fee to \$15, effective April 1, 2025. The current and estimated revenue amounts by program are included in the table below.

Program Name	Percentage of CURES Revenue	2023-24 Estimated Revenue	Estimated Revenue due to Fee Increase	2025-26 Estimated Revenue
Dental Board	11.40%	\$301,878	\$215,340	\$517,218
Medical Board	40.60%	\$1,073,394	\$765,688	\$1,839,082
Naturopathic Medicine	0.30%	\$7,596	\$5,418	\$13,014
Optometry	2.30%	\$62,118	\$44,311	\$106,429
Osteopathic Medicine	3.20%	\$85,392	\$60,913	\$146,305
Pharmacy	21.80%	\$575,730	\$410,687	\$986,417
Physician Assistant	5.00%	\$132,102	\$94,233	\$226,335
Podiatric Medicine	0.60%	\$15,210	\$10,850	\$26,060
Registered Nursing	10.60%	\$280,962	\$200,420	\$481,382
Veterinary Medicine	4.20%	\$111,546	\$79,569	\$191,115
Total	100.00%	\$2,645,928	\$1,887,429	\$4,533,357

DOJ noted that a \$14 fee would require General Fund backfill in the amounts of \$45,000 in fiscal year 2024-25 and \$311,000 in 2025-26 and ongoing in order to continue services at existing levels. A \$13 fee would require General Fund backfill in the amounts of \$91,000 in 2024-25 and \$623,000 in 2025-26 and ongoing in order to continue services at existing levels. These General Fund amounts combined with the adjusted fees equate to the same level of funding through 2028-29 that the \$15 fee would provide. Should a lower fee amount be approved without the necessary backfill, DOJ would be unable to absorb the shortfall without negative impacts to other programs.

Staff Recommendation. Hold Open.

0820 DEPARTMENT OF JUSTICE (DOJ)**Issue 3: Department Overview****Panelists**

- Chris Ryan, Chief of Operations, Department of Justice
- Ashley Harp, Budget Officer, Department of Justice
- Anthony Franzonia, Finance Budget Analyst, Department of Finance
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office

Background. Under the direction of the Attorney General, the DOJ provides legal services to state and local entities; brings lawsuits to enforce public rights; and carries out various law enforcement activities, such as seizing firearms and ammunition from those prohibited from owning or possessing them. DOJ also provides various services to local law enforcement agencies, including providing forensic services to local law enforcement agencies in jurisdictions without their own crime laboratory. In addition, the department manages various databases including the statewide criminal history database and CURES, as discussed in the previous issue.

The Governor's budget proposes \$1.3 billion to support DOJ operations in 2024-25, a decrease of \$47 million (or 4 percent) over the revised amount for 2023-24. About 38 percent (\$487 million) of DOJ's budget is General Fund; the remainder is from approximately 35 special funds. About half of the proposed funding (\$686 million) supports DOJ's Division of Legal Services, while the remainder supports the Division of Law Enforcement (\$345 million) and the California Justice Information Services Division (CJIS; \$253 million). The proposed budget would provide DOJ with a total of about 5,900 positions in 2024-25, roughly the same as the revised 2023-24 level. The activities of each division are outlined below.

- The Division of Legal Services is made up of the following subdivisions:
 - Division of Civil Law: This division is made up of nine sections, including Business Litigation, Cannabis Control, and Licensing. This division provides legal services to state agencies and officials in trial and appellate litigation.
 - Division of Criminal Law: This division is made up of six sections including Appeals, Writs and Trials and the eCrime Unit. This division upholds the Attorney General's constitutional responsibility to represent the people of California in criminal cases.
 - Division of Public Rights: This division is made up of ten sections including Antitrust, Corporate Fraud, Environment, and Land Use and Conservation. This division safeguards the states' environment, lands, and natural resources; prevents fraudulent business practices; protects consumers; monitors Indian and Gaming Practices; preserves charitable assets, and protects the civil rights of Californians.

- The Division of Law Enforcement includes sworn peace officers and other law enforcement staff involved criminal investigations that range from white collar crime, narcotics enforcement, gambling control, etc. This section includes the Division of Law Enforcement, the Bureau of Firearms, the Bureau of Gambling Control, the California Justice Information Services Division, and the Division of Medi-Cal Fraud and Elder Abuse.
- Administration is made up of the Division of Operations and Directorate Programs which includes units such as the Public Inquiry Unit, the Office of Legislative Affairs, and the Local Assistance Unit.
- CJIS provides criminal history and analysis, supports the DOJ's information technology infrastructure, and includes eight sections, including the Department of Justice Research Center and the Criminal Information and Analysis Bureau.

Client Agencies. When the DOJ represents a state agency, the funding for that work can be scheduled either directly under the DOJ budget, or under the agency's budget, which they then use to reimburse DOJ. Typically, agencies with consistently large legal workloads (more than 1,000 hours per year for multiple years) reimburse DOJ for legal costs out of their own budgets. For agencies with small legal workloads, DOJ typically covers the cost, as the workload for any given small client can fluctuate year to year, and they may not need ongoing appropriations. In 2021, the DOJ received \$4 million General Fund for three years to support small client legal workload. The Governor's budget proposes to extend this funding for three more years, from 2024-25 through 2026-27.

Budget Proposals. The Governor's budget includes various proposals for the Department of Justice. Two of these, a fee increase to support DOJ workload and a special fund loan, will be discussed in other issues. In addition, the Governor's budget includes:

- *Charitable Trusts Enforcement Workload.* The Department of Justice requests 3 positions and Registry of Charities and Fundraisers Fund spending authority of \$860,000 in 2024-25, \$832,000 in 2025-26, and \$832,000 annually thereafter to support increased workload in the Registry resulting largely from statutory changes, which require organizations to be in good standing in order to receive donations from platform fundraisers.
- *Tribal Key Employee Licensing Workload.* The Department of Justice, Division of Law Enforcement, Bureau of Gambling Control requests 6 permanent positions and \$874,000 from the Indian Gaming Special Distribution Fund in 2024-25 and ongoing to maintain the Tribal Key Employee Licensing workload.
- *Small Client Legal Workload.* The proposed budget includes \$4 million General Fund in 2024-25 through 2026-27 to support workload on behalf of small client departments. This retains baseline funding that was authorized for three years in the 2021 budget.

Staff Recommendation. Hold Open.

Issue 4: Armed and Prohibited Persons Update

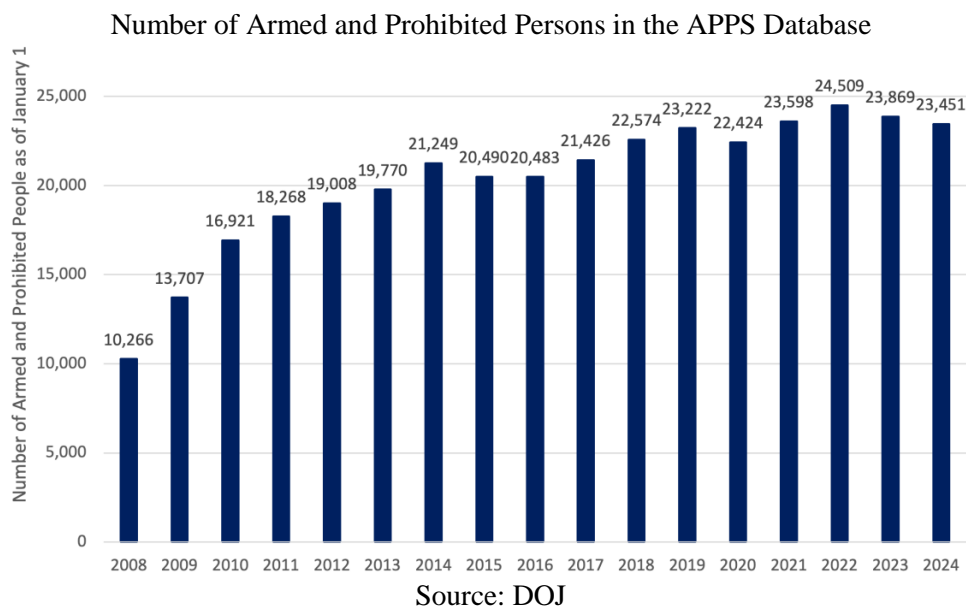
Panelists

- Michael Redding, Special Assistant Attorney General, Department of Justice
- Peter Wold, Assistant Director, Bureau of Firearms, Department of Justice
- Anthony Franzoia, Finance Budget Analyst, Department of Finance
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office

Background. When a firearm owner becomes prohibited from keeping firearms they own or possess, for example by being convicted of certain crimes or having active restraining orders with firearm prohibitions, California law generally requires that individual promptly surrender their firearms and provide documentation to a court and/or law enforcement agency to verify that they did so. The best time to remove a firearm from a prohibited person is at or near the time they become prohibited, such as when a local law enforcement official serving a restraining order takes possession of any firearms simultaneously.

However, if the prohibited individual fails to comply with the law, and local law enforcement cannot promptly separate the firearms from the individual, that individual is flagged in the Armed and Prohibited Persons System (APPS) database. Since 2006, California has used this database to monitor individuals who legally purchased or acquired firearms and later failed to relinquish those firearms after they became legally prohibited from owning or possessing them. APPS cross-references databases of recorded firearm purchasers against other records identifying individuals who have become prohibited from owning or possessing firearms. DOJ locates and seizes firearms from illegally armed prohibited persons identified through the APPS database.

APPS Activities in 2023. The DOJ released their annual APPS report on March 11, 2024¹. As of January 1, 2024, the APPS database contained 23,451 armed and prohibited persons.

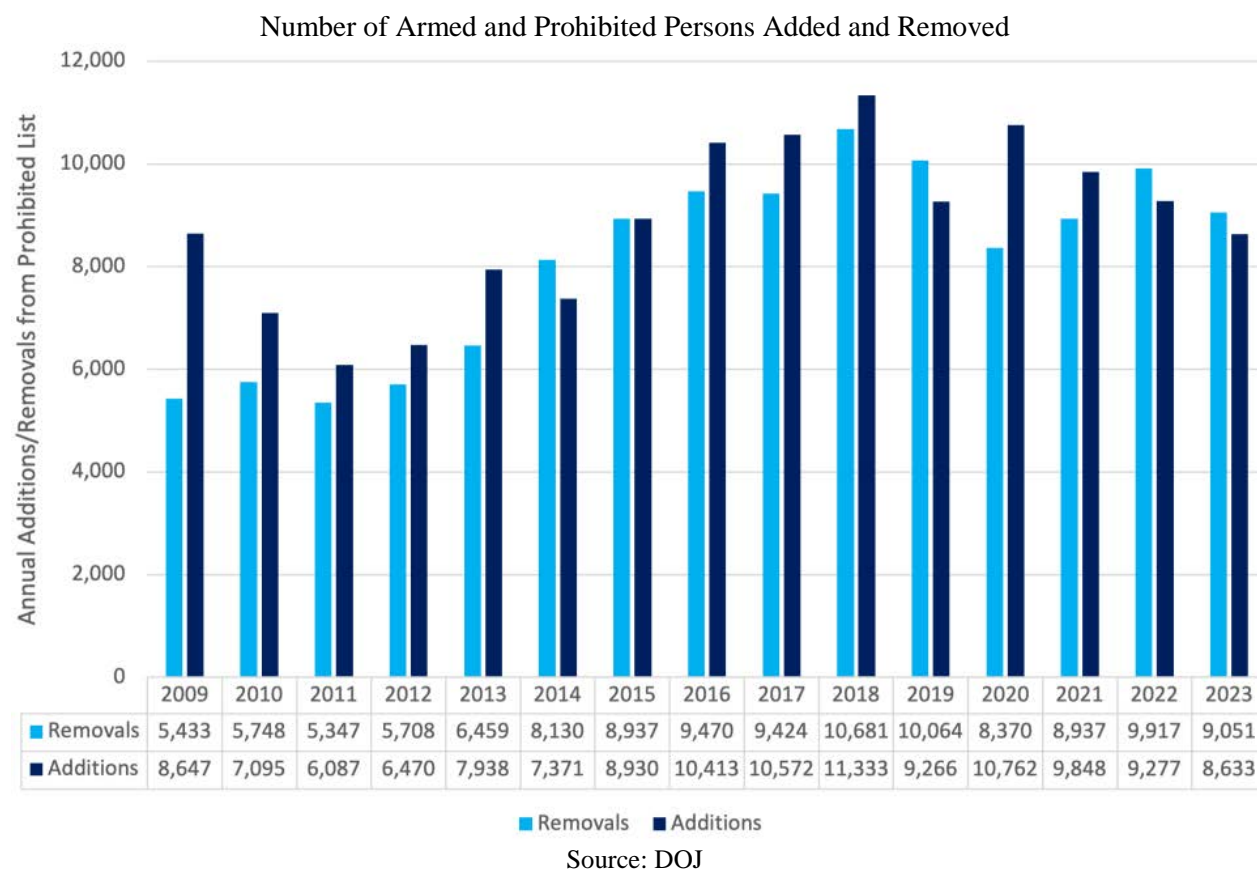


¹ <https://oag.ca.gov/system/files/media/2023-apps-report.pdf>

Reasons for Prohibitions. The statistics below outline the number of armed and prohibited individuals in each prohibiting category of the APPS database, as of January 1, 2024. Persons can be prohibited under more than one category, which is why the total number exceeds 100 percent.

- 11,815 (50 percent) were prohibited due to a felony conviction.
- 4,879 (21 percent) were prohibited due to the federal Brady Handgun Violence Prevention Act (18 U.S.C. §§ 921, 922).
- 4,795 (20 percent) were prohibited due to mental health-triggering events.
- 3,173 (14 percent) were prohibited due to a restraining order.
- 2,282 (10 percent) were prohibited due to a qualifying misdemeanor conviction.
- 409 (2 percent) were prohibited per the conditions of their probation.

Additions and Removals. In 2023, DOJ removed 9,051 people from APPS, and 8,633 people were added, a decrease of 1.75 percent. 2023 saw the fewest additions to the prohibited persons list since 2014, following a steady decline across the past several years.



As shown in the table on the next page, the majority (59 percent) of individuals were removed from the database because their prohibitions expired. 38 percent were removed because they were disassociated from all known firearms, and 3 percent were deceased.

Reason for Removal	2019	2020	2021	2022	2023
No Longer Prohibited	7640	5291	5365	5940	5353
Firearms Removed	1927	2822	3221	3598	3449
Deceased	188	257	351	379	249

Source: DOJ

In 2023, 1,845 individuals who were prohibited due to restraining orders were removed because they were dissociated from all known firearms. However, 3,702 individuals who were prohibited due to restraining orders were removed because their restraining order expired; these individuals were recorded as being in unlawful possession of firearms throughout the duration of the restraining order. In many cases, these individuals were subject to emergency or temporary restraining orders that generally expire within 5 to 21 days; however, ideally they would have been separated from their firearms at the time the restraining order was served.

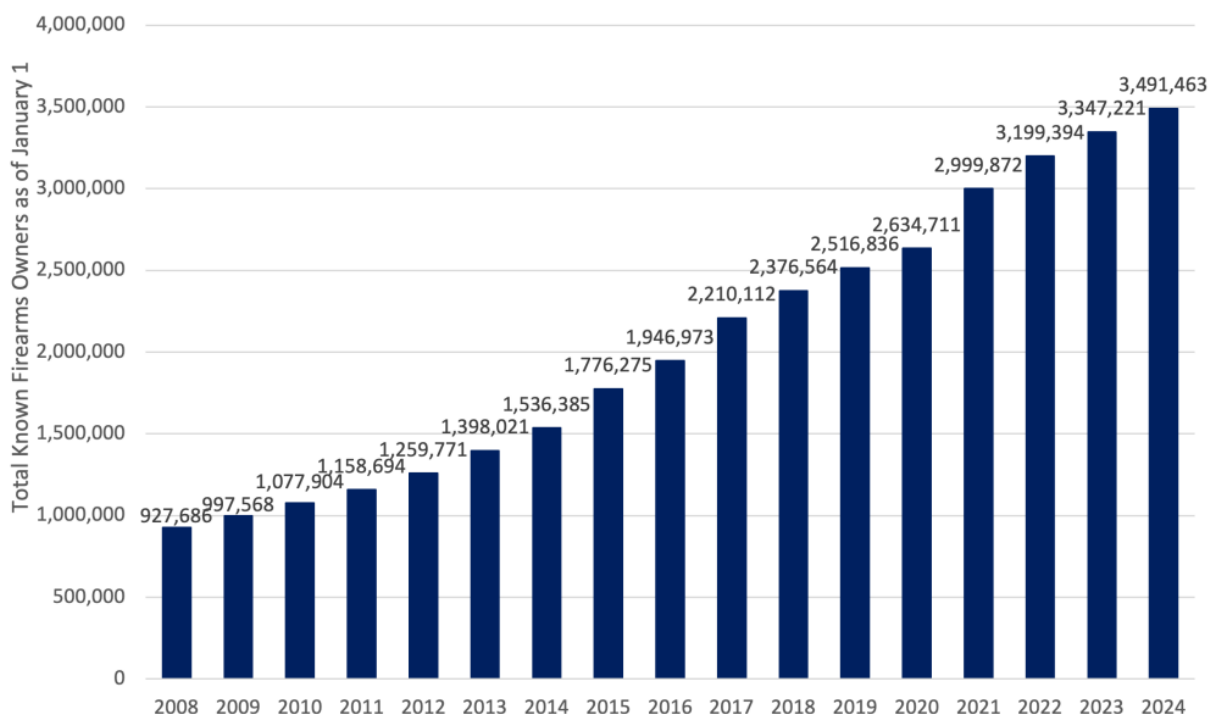
Case Status. Of the 23,451 cases, 8,903 are active, and 14,548 are pending. Active cases have either not yet been investigated or they are in the process of being investigated but all investigative leads have not yet been exhausted. Pending cases have been thoroughly analyzed and all investigative leads were exhausted. Of the pending cases, 6,592 (45 percent) were unable to be cleared, 2,365 (16 percent) were unable to be located, 3,982 (27 percent) moved out of state, and 1,609 (11 percent) were prohibited under federal prohibitions only. Additionally, there are 1,189 incarcerated individuals in the APPS database.

Enforcement Activities. In 2023, DOJ's Bureau of Firearms (BOF) had between 34 and 37 Special Agents and between 11 and 14 Special Agent Supervisors working to address the number of armed and prohibited individuals. In total, agents made approximately 25,500 contacts in 2023, 1,500 more than in 2022. This is the highest number of contacts since the APPS program came into existence. In 2023, DOJ investigated 8,500 individuals who were identified as armed and prohibited persons in the APPS database.

Through the APPS program in 2023, DOJ recovered 1,443 firearms from illegally armed individuals, including 683 handguns, 364 rifles, 216 shotguns, 39 assault weapons, 88 ghost guns, 51 receivers or frames, and 2 short-barreled shotguns. Of these, 901 (62 percent) were firearms identified in the APPS database and 542 (38 percent) were non-APPS firearms. Non-APPS firearms are those not known to be associated with the prohibited person but are found in that person's possession.

Registered Firearm Owners. As of January 1, 2024, the APPS database of recorded firearm owners included 3,491,463 individuals. This number grew by 144,242 in 2023 (meaning those individuals did not own a registered firearm at the start of 2023 and purchased a firearm during the year).

Number of Known Firearm Owners in the APPS Database



Source: DOJ

Recommendations. The most recent APPS report included the following recommendations:

- Promote more consistent firearm relinquishment at the time of prohibition (i.e. at the time of conviction or immediately when a restraining order is issued).
- Move towards competitive salaries for DOJ agents who perform APPS enforcement.
- Modernize the APPS database.

Recent Budget Actions for APPS and Firearm Relinquishment. Recent budgets included the following resources related to APPS and firearm relinquishment from prohibited persons:

- The 2019-20 budget package included \$17.5 million ongoing General Fund to support APPS enforcement teams. This amount included (1) \$11.9 million to shift existing support for the teams from three special funds to the General Fund and (2) \$5.6 million in increased support for the teams.
- The 2019-20 budget package included \$3 million General Fund (available through June 2022) for the Gun Violence Reduction Pilot Program. This program awarded grants to four

counties: Alameda (\$1 million), San Diego (\$1 million), Ventura (\$750,000), and Santa Cruz (\$250,000). The 2021-22 budget package included \$10 million General Fund (available for two years after award) for the Gun Violence Reduction Program. To date, this program has awarded grant to ten counties totaling \$5 million in December 2021 and to five counties totaling \$2.8 million in November 2022.

- The 2022-23 budget package included \$40 million General Fund (available through June 2025) for trial courts to enforce court orders removing firearms and ammunition from prohibited persons. Courts are to prioritize removals stemming from domestic violence restraining orders, gun violence restraining orders, and other civil orders. Each court receiving funding is required to partner with at least one law enforcement agency within the county and to use at least 30 percent of its funding for law enforcement costs.

Staff Recommendation. This item is informational, and no action is needed.

Issue 5: Litigation Deposit Fund Loan

Governor’s Budget. The Governor’s 2024-25 budget proposes provisional language allowing DOF to authorize an additional, up to \$100 million no-interest loan from the Litigation Deposit Fund (LDF) to the General Fund, subject to 30-day legislative notification. Similar to the requirements for the 2023-24 loan, DOJ would be required to provide a list of all cases whose litigation proceeds would be loaned to the General Fund within 60 days after transfer of the funds and to report certain information until the loan is repaid. Additionally, these litigation proceeds would be exempt from transfer out of the LDF until the entire loan is repaid.

Panelists

- Anthony Franzoia, Finance Budget Analyst, DOF
- Ashley Harp, Budget Officer, Department of Justice
- Chris Ryan, Chief of Operations, Department of Justice
- Anita Lee, Principal Fiscal and Policy Analyst, LAO

Background.

LDF Receives Certain State Litigation Proceeds. The LDF is a state special fund that receives litigation proceeds—or monies required by settlement agreements or court judgements to resolve legal cases—in cases where the state is a party to the case and no other state law specifically provides for (1) the handling and investing of the money, and (2) how any earned interest is distributed. The fund primarily supports payments to people and entities harmed by those breaking the law, as well as transfers to various state special funds—most notably, DOJ special funds to support current and future litigation-related costs. State law requires that any monies remaining in the LDF that are not needed to satisfy court-ordered payments or to support DOJ litigation costs be transferred to the state General Fund no later than July 1 of each fiscal year.

LDF Revenues Primarily Transferred to DOJ Special Funds. Tens of millions of LDF revenues are regularly transferred to four DOJ special funds—the Unfair Competition Law (UCL) Fund, the False Claims Act (FCA) Fund, the Antitrust Account, and the Public Rights Law Enforcement Special Fund (PRLESF)—that support litigation-related costs. For example, \$87 million was transferred to these four funds in 2022-23. State law specifies what types of litigation proceeds can be transferred into these funds and provides guidelines on how these proceeds are to be used. These DOJ special funds are part of the annual state budget process. This means the Legislature receives key revenue and expenditure information to monitor the health of these funds and makes decisions about how much funding should be available from them to support DOJ litigation activities.

Concerns With Legislative Oversight of LDF Prior to 2023-24. Prior to changes made in the 2023-24 budget package described below, the Legislature had concerns with the level of oversight it had of the LDF. This is because the LDF was created to hold monies as a trust fund. Accordingly, it is not reflected in or considered part of the state budget, similar to other state funds with this status. Instead, DOJ is responsible for administering the fund and had significant discretion over when funds would be transferred from the LDF—including to its own special funds. This allowed for the LDF fund balance to steadily grow—reaching nearly \$900 million by the end of 2022-23.

Additionally, DOJ was only required by state law to report limited information on the fund to the Legislature on a quarterly basis.

Key Changes Made in 2023-24 to Increase Legislative Oversight of LDF. To increase legislative oversight of the LDF, the 2023-24 budget package made various changes. One key change was that it revised Government Code 16427 to require that most litigation proceeds deposited into the LDF be transferred to a state special fund subject to legislative oversight (1) within three months after case resolution for deposits made after July 2023 or (2) by January 2024 for deposits made before July 2023. This requirement ensures that monies transferred to these funds are considered in the annual state budget process and subject to greater legislative oversight. Additionally, this transfer requirement will generally only leave monies in the LDF that were pending allocation to specific entities or narrowly defined purposes, as well as funds tied to cases awaiting final resolution. Another key change made by the 2023-24 budget package required DOJ provide the Legislature with increased information for litigation proceeds deposited into or transferred from the LDF.

\$400 Million Loan From LDF to General Fund. The 2023-24 budget included budget provisional language allowing the Department of Finance (DOF) to authorize an up to \$400 million no-interest loan from the LDF to the General Fund to help address the state's budget problem. DOF is required to notify the Legislature at least 30 days before transferring funds associated with the loan. The budget required DOJ provide a list of all cases whose litigation proceeds would be loaned to the General Fund within 60 days after the transfer of funds and report certain information (such as any restrictions on the use of such funds) until the entire loan is repaid. The budget also exempted these litigation proceeds from being transferred out of the LDF until the entire loan is repaid. This is to ensure that the repaid monies will be used to comply with the underlying settlement agreements and court judgements of these cases. DOF notified the Legislature of its intent to authorize the full \$400 million loan in January 2024.

LAO Comments.

LDF Fund Balance Has Decreased Significantly. While the LDF fund balance reached \$958 million at the end of September 2023, it decreased to nearly \$657 million as of the end of December 2023, largely due to the transfers required by Government Code 16427. Specifically, as of the end of December 2023, \$484 million had either been transferred (\$389 million) or was pending transfer (\$95 million) from the LDF to state funds subject to legislative oversight. These monies will be transferred to four DOJ special funds—the UCL Fund (\$263 million), the FCA Fund (\$100 million), the PRLESF (\$64 million), and the Antitrust Account (\$57 million)—and will be available to support DOJ litigation-related costs.

Proposed Loan Would Help Address Budget Condition, but LDF Not an Ideal Source. Given the state's fiscal condition, the LAO finds it reasonable for the administration to propose a loan to the General Fund, as this will help reduce the level of reductions necessary for other programs supported by the General Fund. Despite this, the LAO is concerned about making such a loan from the LDF. This because much of the \$657 million LDF fund balance is not an ideal source for a loan. Specifically, about \$500 million (or 76 percent) of this fund balance consists of the litigation proceeds that will already be loaned to the General Fund (which are exempt from transfer) or were

in the process of being transferred to state special funds, as required by Government Code 16427. This leaves about \$157 million in the LDF. However, these funds are generally to be used for narrowly defined purposes or are attached to cases that have not been fully resolved. This makes these funds a less than ideal source for a loan for various reasons. For example, monies held in the LDF for a case that has not been resolved (such as due to the case being on appeal) may need to be returned. As such, it would be difficult for the LDF to support the proposed additional \$100 million loan.

Funds Transferred to DOJ Special Funds Likely Able to Support Loan. DOJ's UCL Fund, FCA Fund, PRLESF, and Antitrust Account will receive nearly \$485 million in transfers from the LDF to support DOJ litigation activities. Assuming expenditures levels from these funds remain relatively constant at approximately \$105 million, it appears likely that \$100 million could be borrowed from these special funds without impacting DOJ's operations supported by the special funds in the near term.

Various Ways Available to Ensure Loans From DOJ Special Funds Do Not Impact DOJ Activities. There are various ways to ensure any loans authorized from the UCL Fund, FCA Fund, PRLESF, and Antitrust Account do not negatively affect the ability of DOJ to pursue the litigation supported by the special funds. For example, most—if not all—of the money could be borrowed from the UCL Fund and the FCA Fund. This is because these two funds received three-quarters of the money recently transferred from the LDF. Additionally, these two funds have traditionally received deposits of litigation proceeds on a more regular basis. Accordingly, if there was an unexpected increase in litigation expenses before the loan is repaid, it is more likely that additional revenues would be forthcoming to these special funds to maintain ongoing support for DOJ litigation activities. Additionally, DOJ could be required to report on specific cases whose litigation proceeds were being used to make this loan, similar to the reporting requirements related to the \$400 million loan from the LDF. This transparency would help ensure that the state complies with the underlying settlement agreements and court judgements of these cases when monies are repaid.

LAO Recommendation.

Reject Loan From LDF. The LAO recommends the Legislature reject the Governor's proposed loan from the LDF as it will be difficult for the LDF to support the loan. The monies currently left in the fund balance are to support the 2023-24 authorized loan or narrowly defined purposes or are tied to cases that have not yet been resolved. Accordingly, these funds are not ideal candidates to support the loan.

Direct DOJ to Identify Specific Litigation Proceeds in Its Special Funds That Could Be Loaned. The LAO recommends the Legislature direct DOJ to provide by May Revision a list of cases whose litigation proceeds could be used to support up to \$100 million in loans, along with the DOJ special fund or funds from which the monies would be borrowed. Such loans should come from one or more of the DOJ special funds that received LDF transfers. This allows DOJ to consider what litigation activities may currently be in progress, what activities may be necessary in the near future, and what litigation proceeds might be forthcoming when providing the Legislature with the department's recommendations for how much to borrow from its special funds. Additionally, such

a list will help the Legislature ensure that the state complies with any underlying settlement agreements and court judgements when monies are ultimately repaid.

Authorize Loans From DOJ Special Funds to General Fund. The LAO recommends that the Legislature review DOJ's proposed list of cases whose litigation proceeds could be used to support General Fund loans to determine whether any changes are needed, such as changing the amount proposed to be borrowed from a particular special fund. The LAO recommends that the Legislature then modify the budget to reflect loans to the General Fund from the special funds holding the litigation proceeds identified on the final list. Additionally, for each of these loans, the LAO recommends requiring DOJ to report certain information (such as any restrictions on the use of the litigation proceeds) until the entire loan is repaid, similar to the reporting requirements related to the \$400 million loan from the LDF. This will help the Legislature monitor and track loan repayments and ensure that monies are used appropriately when they are repaid.

Staff Recommendation. Hold Open.

0690 OFFICE OF EMERGENCY SERVICES (CAL OES)**Issue 6: Department Overview****Panelists**

- Nancy Ward, Director, Cal OES
- Eric Swanson, Deputy Director of Finance and Administration, Cal OES
- Jared Sippel, Principal Fiscal and Policy Analyst, LAO
- Drew Soderborg, Deputy Legislative Analyst, LAO
- Vy Nguyen, Department of Finance
- Tess Scherkenback, Department of Finance

Background.

Cal OES serves as the state's leadership hub during all major emergencies and disasters. This includes responding, directing, and coordinating local, state, and federal resources and mutual aid assets across all regions to support the diverse communities across the state. Cal OES also builds disaster resilience by supporting local jurisdictions and communities through planning and preparedness activities, training, and facilitating the immediate response to an emergency through the longer-term recovery phase. During this process, Cal OES serves as the state's overall coordinator and agent to secure federal government resources through the Federal Emergency Management Agency.

The Governor's budget includes \$3.2 billion (\$530 million General Fund) and 1,909 positions for Cal OES. Of this total, \$2.4 billion is proposed for Special Programs and Grant Management which includes the administration of various federal homeland security, emergency management, and victim service grants.

The Governor's budget also includes the following General Fund solutions for Cal OES:

General Fund Solution	Summary	Category
Community Hardening Grants Reversion	The budget proposes to revert \$45 million unspent funds from the Community Hardening to Build Disaster Resilient Communities Program, which was originally approved in the 2021 budget at \$100 million.	Reduction
Gun Buyback Program Elimination	The budget proposes to eliminate \$21 million General Fund intended for a gun buyback program.	Reduction
Multifamily Seismic Retrofitting Reversion	The proposed budget removes \$15 million one-time General Fund provided in 2023-24 to establish the Seismic Retrofitting Program for Soft Story Multifamily Housing.	Reduction
Flexible Assistance for Survivors of Crime Delay	The budget proposes to delay \$47.5 million out of \$50 million General Fund provided in the 2022 budget for assistance to survivors of violent crimes to 2025-26.	Delay

Recent budgets included a requirement for Cal OES to submit a report to the Legislature by March 1, 2024 that outlines the department's emergency preparedness and response planning for the state, including the department's operational framework for determining the appropriate resource capabilities and necessary capacity to carry out its duties. The report is not yet available.

Staff Recommendation. Hold Open.

Issue 7: Flexible Assistance for Survivors of Crime Delay

Governor’s Budget. The budget proposes to delay \$47.5 million out of \$50 million General Fund for assistance to survivors of violent crimes, provided in the 2022 budget, to 2025-26.

Panelists

- Gina Buccieri-Harrington, Assistant Director of Grants Management, Cal OES
- Eric Swanson, Deputy Director of Finance and Administration, Cal OES
- Jared Sippel, Principal Fiscal and Policy Analyst, LAO
- Drew Soderborg, Deputy Legislative Analyst, LAO
- Vy Nguyen, Department of Finance
- Tess Scherkenback, Department of Finance

Background.

The 2022 budget included \$50 million General Fund available over four years and trailer bill language to establish a grant program for community-based organizations to provide flexible assistance to survivors of crime. The Flexible Assistance for Survivors (FAS) Pilot Grant Program is established in Chapter 7.9 (commencing with Section 8699) of Division 1 of Title 2 of the Government Code, which was added by AB 200 (Committee on Budget), Chapter 58, Statutes of 2022. Up to 5 percent was available to Cal OES for administration of the program.

Cal OES had created the Advisory Council required in statute, and had hired limited-term staff to work on the program. The Advisory Council was close to releasing a Request for Proposals (RFP) in January when the proposed delay was announced. The Administration indicated that they will be ready to release the RFP as soon as the funding is available. The Administration is proposing to retain the \$2.5 million for administration, which will be used throughout the grant, and delay the remainder of the funding until 2025-26.

Cal OES is one of four state departments that house victim services programs. Most grants and programs reside at either Cal OES or the Victim Compensation Board (VCB). The other two entities are the California Department of Corrections and Rehabilitation (which handles restitution collection and notification) and DOJ (victim assistance and information services). Cal OES combines federal and state funding to support more than 1,200 projects providing victim services throughout the state, and in 2018-19, Cal OES administered \$486.5 million in grant funds. Likewise, VCB also combines federal and state funding—from fines and restitution orders paid by offenders convicted of traffic infractions, misdemeanors, or felonies—to offer compensation directly to, or on behalf of, victims and survivors who are injured or threatened with injury. The 2018-19 and 2019-20 budget packages directed VCB and Cal OES to work together to develop a plan to consolidate the state’s victims programs under one organization, with the goal of providing one central place for victims and their families to obtain information and access services. This was intended to be included in the 2020-21 budget, but the consolidation proposal has not yet been put forward.

Staff Comment. Concerns have been raised about how to support survivors during the time it takes for a claim to be approved and processed by Cal VCB. Victims may have immediate needs that community-based organizations can help with, if flexible resources are available.

Staff Recommendation. Hold Open.

Issue 8: Public Safety Radio Modernization to Support Equal Access to 9-1-1 Services

Governor’s Budget. Cal OES is requesting \$6,366,000 in State Emergency Telephone Number Account (SETNA) Fund authority for four years, to be funded by an estimated increase of 5 cents to the 9-1-1 surcharge. This funding will provide 13 limited-term positions and add 12 new positions to complete the California Radio Interoperable System (CRIS) build out, increase the coverage footprint, and expand the network capacity.

Panelists

- Budge Carrier, Assistant Director of Public Safety Communication, Cal OES
- Eric Swanson, Deputy Director of Finance and Administration, Cal OES
- Jared Sippel, Principal Fiscal and Policy Analyst, LAO
- Drew Soderborg, Deputy Legislative Analyst, LAO
- Vy Nguyen, Department of Finance
- Tess Scherkenback, Department of Finance

Background.

Cal OES manages a number of public safety communication networks that link emergency requests for assistance to first responders. These systems, which include the Next Generation 9-1-1 system (NG 9-1-1), the California Public Safety Microwave Network (CAPSNET), and the California Radio Interoperable System (CRIS), are largely funded by through a telephone access line surcharge, which is deposited in the State Emergency Telephone Number Account. The fee is defined in Revenue and Tax Code Section 41136. The fee is charged per line, and is set by dividing the annual expenditure by the number of eligible lines. This fee is currently 30 cents, and is capped at 80 cents. The projects proposed in the Governor’s budget would result in a 5 cent fee increase, to 35 cents total, for the four years of increased authority. Carriers also pay 8 cents a line to support the 9-8-8 system, which is also operated by Cal OES. Cal OES noted that this is one of the lowest charges in the nation.

Next Generation 9-1-1 (NG 9-1-1). The existing 9-1-1 system is based on technology that was developed and deployed in the 1980s and has various limitations. For example, during disaster events, the system can get overwhelmed, making it difficult for callers to reach dispatchers. Additionally, the system has limited ability to handle data—such as photos and text messages—or provide accurate location information to first responders. Government Code Section 53121 requires Cal OES to implement and operate NG 9-1-1, which transitions California’s 9-1-1 network from analog to an Internet Protocol based NG 9-1-1 technology. The transition to NG 9-1-1 is anticipated to be completed in 2023-24, and legacy 9-1-1 services will be terminated when the new system is in place and validated.

California Public Safety Microwave Network (CAPSNET). CAPSNET has been in service for more than 50 years spanning the entire State of California with over 300 locations. Managed and maintained by Cal OES’ Public Safety Communications (PSC), the statewide microwave network enables greater communication coverage for first responders given the vast topology of California. During the 2018-19 budget cycle, PSC sought to address these issues by proposing to use SETNA funds to advance CAPSNET with newer digital technologies allowing for greater capabilities,

much needed redundancy, resiliency, as well as provide the capacity needed to provide backup connectivity for the California Radio Interoperable System (CRIS), the California Earthquake Early Warning System, and NG 9-1-1 transport. The CAPSNET upgrade is anticipated to be completed in 2023-24.

California Radio Interoperable System (CRIS). The 2019 budget provided 13 positions and \$59,464,000 General Fund for a four-year period to develop and implement CRIS, a statewide public safety radio system. CRIS allows interoperable communications during emergencies between first responders from different agencies, and with the NG 9-1-1 system. Eventually, CRIS could replace daily, non-emergency communications, referred to as “operable” communications. Some local entities can also leverage the network for communications, but they need to do an analysis with and set up an agreement with OES to ensure proper coverage of the local area. Cal OES indicated that a handful of counties have done this.

System Integration. When someone calls 9-1-1, their call is processed and routed by the NG 9-1-1 system, and directed to a PSAP to answer the call and dispatch on the ground resources. CAPSNET provides rapid statewide connections, and CRIS brings information locally to the first responder on the ground.

Previous Resources. The 2019-20 budget included \$59.5 million one-time General Fund and eight positions in 2019-20, increasing to 13 positions in 2020-21, to build out the California Interoperable Public Safety Radio System. These funds are available through 2023-24.

In addition, the 2018-19 and 2019-20 budgets included limited-term funding and statutory changes to support the CAPSNET upgrade and the NG 9-1-1 projects. The 2023 budget included \$137.6 million (\$19.5 million state operations and \$118.1 million local assistance) in 2023-24, \$132.8 million (\$12.1 million state operations and \$120.7 million local assistance) in 2024-25, and \$91.4 million (\$6.2 million state operations and \$85.2 million local assistance) ongoing State Emergency Telephone Number Account to support the completion of the California Public Safety Microwave Network buildout, completion of the Next Generation 9-1-1 system, and the ongoing maintenance and support of these systems.

Proposed Upgrades. Cal OES is requesting \$6,366,000 in SETNA fund authority which will provide four-year funding for 13 existing positions and to add an additional 12 to complete the build-out of CRIS and prepare it for daily use communications. The Administration noted that upon the completion of the CRIS buildout, Cal OES shall reassess the potential drop-off in workload and need for resources and update the number and classification of positions at that time.

Specifically, these positions will focus on:

- *Infrastructure Expansion.* Installing radio access sites to increase CRIS coverage and to continue deployment of the site infrastructure at 12 to 15 sites per year to meet coverage objectives for operable network (13 positions).
- *System and User Integration.* Supporting operational workload around expansion of the system from an interoperable system to an operable system (4 positions).

- *Backhaul Engineering and Security.* Managing significant network traffic management and configuring equipment for the network which will eventually include at least 150 sites (6 positions).
- *Site Management.* Managing installed sites (2 positions).

The Administration is also considering a proposal in the spring to include approximately \$26,134,000 in additional SETNA Fund authority for CRIS equipment costs as an update to this proposal. This additional authority would be covered by the estimated increase to the 9-1-1 surcharge of 5 cents.

Staff Recommendation. Hold Open.