



Report to Legislative Analyst's Office re Fiscal Impacts of "Safety for All Act"

This is a report prepared by the law firm of Michel & Associates, PC for the purpose of providing the Legislative Analyst's Office information regarding expected fiscal impacts of the proposed initiative measure, the "Safety for All Act," that the LAO should take into account in preparing the ballot analysis and fiscal summary for that measure.

In addition to identifying costs or significance of costs that LAO may not have considered initially, this report makes two main conclusions about the LAO's findings in its fiscal impact letter published on December 16, 2015, that we believe should cause the fiscal summary for the ballot to contain at least two significant changes from that letter:

- 1) It is not proper for the final fiscal analysis to say that the measure's contemplated regulatory fees on ammunition purchasers and vendors are "likely" to offset all of the costs created by the measure, because there are simply too many variables that could affect costs and revenue intake to make such a determination; and
- 2) Neither the measure nor existing law allows courts to recover the significant new costs the measure would impose on courts and probation officers. The new fiscal summary should clarify this.

I. REGULATION OF AMMUNITION SALES

A. Ammunition Background Checks

The measure requires that, with few exceptions, only persons who apply for and obtain an "ammunition purchase authorization" would be able to legally purchase ammunition.¹ To determine a potential purchaser's eligibility for such an authorization, the measure would require that DOJ review certain records and databases, to the extent it is allowed to. If, in conducting its review, DOJ finds a disqualifier, i.e., that the applicant is prohibited under state or federal law from acquiring or possessing ammunition, the applicant would be denied the "ammunition purchase authorization." DOJ would be required to explain its reasons for the denial and provide the applicant an appeal process to challenge it. If DOJ cannot confirm whether the applicant has a disqualifier, the DOJ must issue the applicant an authorization after 30 days.

¹ See *The Safety For All Act of 2016*, Section 8 (available at https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20%28Firearms%29_0.pdf?) (adding Cal. Penal Code § 30352(c))

B. Ammunition Databases

The measure will also require that DOJ create and maintain two databases:

- (1) **The Ammunition Purchase Records File** – which records every ammunition purchase that goes through an ammunition vendor, including the name, driver’s license or other ID card number, residential address, phone number, and date of birth of the purchaser; the brand, type, and amount of ammunition transferred; and the name of the salesperson;² and,
- (2) **An internal centralized list of all persons who are authorized to purchase ammunition**, i.e., those with a valid “ammunition purchase authorization.”³

C. Ammunition Vendors

The measure will also require that any person or entity that wishes to sell more than 500 rounds of ammunition within any 30 day period must first obtain an “ammunition vendor license.”⁴ DOJ will be required to process applications of such vendors and conduct background checks on them.⁵ Those applicants who are granted a license are included in a registry maintained by the DOJ.⁶ DOJ will be tasked with making sure all “ammunition vendors” are not subject to forfeiture of their licenses.⁷

D. Regulations

DOJ is required to create and implement various regulations to govern this new regulatory regime. It must also develop regulations and policies it will have to govern its internal management for doing so. DOJ’s regulatory obligations would include making rules for:

- Ammunition Vendor Licenses (including the drafting and implementation of an application form, the requirements for obtaining such a license, and the processing requirements for the Department), as well as:
 - Procedures ensuring due process should the Department wish to revoke a license;
 - Procedures and requirements for the renewal of any license; and,
 - Establishing the fee required for such a license, not exceeding the reasonable, estimated cost of administering the license program.⁸

² *Id.* (amending Cal. Penal Code § 30352(a-b)).

³ *Id.* (adding Cal. Penal Code § 30370(c)).

⁴ *Id.* (adding Cal. Penal Code § 30342(a)).

⁵ *Id.* (adding Cal. Penal Code § 30395(a)).

⁶ *See The Safety For All Act of 2016* (adding Cal. Penal Code § 30395(b)).

⁷ *Id.* (adding Cal. Penal Code § 30395(c)).

⁸ *See The Safety For All Act of 2016* (adding Cal. Penal Code § 30385)

- The sale or transfer of ammunition at a “gun show” or other “event.”⁹
- Revising the current Certificate of Eligibility form to include provisions regarding an ammunition vendor license.¹⁰
- The “Ammunition Purchase Records File” to be administered by the Department (including regulations regarding its creation, use, maintenance, and any other relevant regulations).¹¹
- Ammunition Purchase Authorizations (including the drafting and implementation of an application form, the requirements for obtaining such an authorization, and the processing requirements which are limited to 30 days), as well as:
 - Procedures ensuring due process should the Department wish to revoke such authorization;
 - Procedures and requirements for the renewal of such authorization; and,
 - Establishing the fee required for such authorization, not to exceed \$50, and not to exceed the amount necessary to recover the reasonable estimated costs to fund the program.¹²
- How the Department will administer an “internal centralized list” of all persons authorized to purchase ammunition (including regulations regarding its creation, use, maintenance, and any other relevant regulations).¹³
- How ammunition vendors should handle transactions involving exempt individuals, including law enforcement officers.¹⁴
- The drafting and implementation of the form required for ammunition sales, including its contents, how it is to be processed by ammo vendors, and any other relevant regulations.¹⁵
- How ammunition vendors are to ensure a purchaser of ammunition is authorized to purchase ammunition by demonstrating “bona fide evidence of identity.”¹⁶
- How the Department shall deposit and appropriate funds from the Ammunition Vendor’s Special Account created by the Act.¹⁷

⁹ *Id.* (adding Cal. Penal Code § 30348(b)).

¹⁰ *See The Safety For All Act of 2016* (adding Cal. Penal Code § 30395(a)).

¹¹ *Id.* (adding Cal. Penal Code § 30352(b)).

¹² *Id.* (adding Cal. Penal Code § 30370).

¹³ *Id.* (adding Cal. Penal Code §§ 30352(d), 30370(c)).

¹⁴ *Id.* (adding Cal. Penal Code § 30352).

¹⁵ *Id.* (adding Cal. Penal Code § 30352(a)).

¹⁶ *Id.* (adding Cal. Penal Code § 30352(c)).

¹⁷ *Id.* (adding Cal. Penal Code § 30390(b)).

E. Costs

The current LAO report says that the background checks and databases will result in “increased state costs in the tens of millions of dollars annually” but that those costs will be “*likely* offset by *various* regulatory fees authorized by the measure.” We do not see how it can be determined that it is “likely” the permitted fees will cover those costs based on the available information.

1. Fees

First, the measure does not authorize “various” fees to fund the ammunition regulations. It only allows for two fees: one on purchasers and one on vendors.

Purchasers. The DOJ will be allowed to charge “ammunition purchase authorization” applicants up to \$50 to recover its costs for issuing the authorization; maintaining any data systems associated with the program, and enforcing the program.¹⁸ The measure creates the “Ammunition Safety and Enforcement Special Fund” for revenues from this fee to be deposited.¹⁹

Vendors. The DOJ will be allowed to charge “ammunition vendor” applicants “a reasonable fee sufficient to reimburse the Department for the reasonable, estimated costs of administering the license program, including the enforcement of this program and maintenance of the registry of ammunition vendors.”²⁰ The measure creates the “Ammunition Vendor’s Special Account” for revenues from this fee to be deposited.²¹

And, while the measure purports to allow DOJ to use revenue from the Firearms Safety and Enforcement Special Fund to finance the “ammunition vendor license” program,²² doing so is likely illegal. That Fund consists of monies paid by firearm purchasers, not vendors. Using it to fund activities that are not associated with the fee payer could make it an illegal tax under California law.²³ Likewise, DOJ cannot take money out of the DROS Special Account for supplemental funding for the same reason and because it is not statutorily authorized to do so.

So the state is limited to recouping its costs for regulating ammunition sales from a \$50 fee and a “reasonable” annual fee that can only be charged to some (possibly *a minority*) of vendors (see below).

¹⁸ *Id.* (adding Cal. Penal Code § 30370(g)).

¹⁹ *Id.* (adding Cal. Penal Code § 30370(h)).

²⁰ *Id.* (adding Cal. Penal Code § 30390(a)).

²¹ *Id.* (adding Cal. Penal Code § 30390(b)).

²² *Id.* (adding Cal. Penal Code § 30390(c)).

²³ Cal. Const. art. 13A, § 3(b).

Costs: DOJ will have to create and maintain both the “Ammunition Safety and Enforcement Special Fund” and the “Ammunition Vendor’s Special Account.” This will require state employees to manage them on an ongoing basis.

2. Background Checks

Currently, DOJ suggests that it costs it around \$20 to perform a background check to determine whether someone is eligible for firearm ownership. That is the amount it charges for a Personal Firearms Eligibility Check²⁴ and a Law Enforcement Gun Release,²⁵ which are both background checks to determine firearm eligibility, the fees for which are statutorily limited to recouping DOJ’s costs.²⁶ DOJ also charges \$25 in fees to firearm purchasers, \$19 of which is more or less dedicated to performing the background check and related infrastructure.²⁷

It is unclear, however, what the scope of the background check that would be performed under the proposed measure will be. The measure itself calls into question the legality of DOJ utilizing the federal NICS database, which is used for firearm background checks. Without knowing the scope of the background check, it cannot be determined what its cost would be at this point. Would and could DOJ have to consult different databases as a substitute for NICS? Would that be more costly? Would they receive as reliable information as NICS? Is it possible to confirm whether someone is eligible for firearm possession without accessing NICS? It should be noted that DOJ officials have testified that DOJ’s current background check system for firearms only clears 20% of applicants immediately, meaning 80% require further review by a DOJ employee.²⁸

It is also unclear whether DOJ already has the capability of conducting any type of background check on ammunition purchasers or would need to create the infrastructure and processes for performing one. If it is not already in place, this could be a significantly costly undertaking.

DOJ will certainly need to spend time and resources to figure these issues out and to adopt the requisite regulations and policies noted above.

²⁴ *BOF 116 (Rev. 08, 2015): Personal Firearms Eligibility Check Application*, California Department of Justice, Bureau of Firearms, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/pfecapp.pdf>? (Aug. 2015).

²⁵ *BOF 119 (Rev. 08, 2015): Law Enforcement Gun Release Application*, California Department of Justice, Bureau of Firearms, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/legr.pdf>? (Aug. 2015).

²⁶ Cal. Penal Code §§ 30105(b), 33880(a-b).

²⁷ Cal. Code Regs., tit. 11, § 4001; *See also Frequently Asked Questions #13*, California Department of Justice, Bureau of Firearms, <https://oag.ca.gov/firearms/pubfaqs#13> (last visited April 28, 2016).

²⁸ *See Silvester v. Harris*, 41 F.Supp.3d 927, 853 (E.D. Cal. 2014) (finding that approximately 20% of all DROS applications are auto approved and do not require review by a DOJ employee, while 80% are not auto-approved and require the review of a CIS Analyst based on testimony of DOJ Firearms Bureau Chief, Steven Lindley).

In any event, whether the contemplated background check system will be more or less costly than the current system for firearms has not been established and likely cannot be determined at this point. As such, there appears to be no way of knowing how much establishing or operating this system will cost.

Costs: Unknown, establishing the background check system could range from minimal to astronomical. The costs of implementing and maintaining the background check system is also unknown, but likely significant, if not high. And, DOJ's costs in formulating and distributing denial letters and in developing and processing appeals of denials are also unknown, but will be, in part, incurred on an ongoing basis.

3. Ammunition Databases

i. The Ammunition Purchase Records File

DOJ will incur costs in **creating the database** that can house the details of *every* ammunition purchase in the state, including recording the name, driver's license or other ID card number, residential address, phone number, and date of birth of the purchaser; the brand, type, and amount of ammunition transferred; and the name of the salesperson. This is not a one-time cost. DOJ will have to **maintain the database** and continually update it with every new ammunition purchase in perpetuity.

DOJ currently maintains a database for recording firearm transfers, the Automated Firearms System ("AFS"). During 2013, the most recent year for which we have information, DOJ processed approximately 960,179 DROS applications (which are generally required for firearm purchases). The number of annual ammunition transactions, while there are no records to confirm, is reasonable to assume may reach many times that number annually in California. Each of those will need to be recorded, whether they are covered by a fee or not. Also the number of transactions by the average fee payer is not known, it could be scores per fee payer over four years.

Note that individuals purchasing ammunition during a firearm purchase are not required to have an "ammunition purchase authorization" and thus do not have to pay the associated fee.²⁹ Yet, their transactions would still need to be recorded. There is no telling how large of a percentage of ammunition purchases this practice currently constitutes or how prevalent it may become as a result of this measure's passage. If significant, it would mean DOJ will have to do much unfunded work.

Finally, DOJ will also incur costs to create regulations and policies implementing this database, and to train its staff regarding such.

Costs: Unknown. Likely substantial.

²⁹ See *The Safety For All Act of 2016*, Section 8 (available at https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20%28Firearms%29_0.pdf?) (amending Cal. Penal Code § 30352(c)(2)).

ii. The Centralized List of All Persons Authorized to Purchase Ammunition

DOJ will incur unknown costs in **creating a database** designed to show every person who is authorized to purchase ammunition. But, **maintaining that database** is where it will incur more significant and perpetual costs. DOJ is tasked with removing people from the database who no longer are authorized to purchase ammunition.³⁰ This could be people who failed to pay their renewal fee or who have become prohibited persons.

But, removing people from the list requires much work, as DOJ knows from running the Armed Prohibited Persons System (“APPS”). Here is DOJ’s description of APPS:

[E]very evening an automatic check matches the records in the mental health database and criminal history system with information in CFIS, which contains a record of [registered] firearm owners in California since 1996 and of [registered] assault weapon owners since 1989. Specifically, [the Department] compares personal identifying information such as Social Security numbers to identify individuals who own a firearm and who have had a prohibiting event logged into one of the [] databases. All persons identified . . . are placed in a pending queue for APPS [U]nit staff to review.

Staff in the APPS [U]nit manually review each person in the pending review queue to determine whether the automated check has matched the correct individual . . . [the Department] has implemented a manual review of the potentially prohibited persons so that firearm owners are not incorrectly labeled as prohibited persons by an automated process. In addition to verifying identity, staff also verify that the event that pulled is actually a prohibiting event. When staff determine that someone is a prohibited person, they change that individual’s status in the APPS database to prohibited and update his or her information, including address and firearm ownership information.³¹

A similar system would almost certainly need to be put in place for removing people from the database of persons authorized to purchase ammunition. But, DOJ could not simply rely on APPS to do this, because people do not have to have a registered firearm to be authorized to purchase ammunition like they do to be included in APPS. In other words, APPS would not catch all people who need to be removed. So DOJ would need to independently confirm that the person appearing on the APPS List is the same person they intend to remove from the database of persons authorized to purchase ammunition. According to DOJ, between July 1, 2013 and

³⁰ See *The Safety For All Act of 2016*, Section 8 (available at https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20%28Firearms%29_0.pdf?) (adding Cal. Penal Code § 30370, subd. (c), requiring the Department to “promptly remove from the list any persons whose authorization was revoked”)

³¹ *Follow-Up---California Department of Justice: Delays in Fully Implementing Recommendations Prevent It From Accurately and Promptly Identifying All Armed Persons With Mental Illness, Resulting in Continued Risk to Public Safety*, California State Auditor at 6, <https://www.bsa.ca.gov/pdfs/reports/2015-504.pdf> (July 2015).

December 31, 2015, 20,351 people were added to the APPS database.³² In other words, if that is a standard year, around 14,000 people who have registered firearms will be added to APPS.

But, as explained, many ammunition purchasers are not subject to APPS because they have never registered a firearm, so the number of people that will become disqualified from firearm possession in a year and have to be investigated for firearm removal will be many more. How many more is not able to be determined. But, according to the Judicial Council's 2015 Court Statistics Report (CSR), in the fiscal year 2013-2014 alone, 272,610 people were charged with felonies and 915,568 with misdemeanors.³ Assuming that is a normal year, with a conviction rate of around 90%, it is likely that tens of thousands of people receive prohibiting convictions annually. How many of those will be on the authorized purchaser database is unknown.

Finally, DOJ will also incur costs to create regulations and policies implementing this database, and to train its staff regarding such.

Costs: Unknown. Likely substantial with creating and maintaining the database. The initiative called for a \$25 million loan that will be paid back with interest.³³ But this cannot be accepted as the high side of the costs to create and implement this database. Despite recently receiving a \$25 million allocation of DROS Fee monies for APPS costs (in addition to what it was already receiving), in legislative hearings in 2015, the DOJ requested millions in additional funds for APPS.³⁴ Thus history shows that the extra work that would be required under the measure would undoubtedly require millions more than what is projected.

4. "Ammunition Vendors"

DOJ will incur costs in:

1. Evaluating vendor applications;
2. Creating a registry of qualified vendors;
3. Creating and maintaining the Ammunition Vendor's Special Account;
4. Overseeing compliance of vendors to make sure they should not have their license revoked;
5. Maintaining the registry with only qualified vendors;

³² *SB 140 Supplemental Report of the 2015-2016 Budget Package: Armed Prohibited Persons System*, Office of the Attorney General, California Department of Justice at 4, <http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/sb-140-supp-budget-report.pdf> (Jan. 1, 2016).

³ JUDICIAL COUNCIL OF CALIFORNIA, *Statewide Caseload Trends, 2004-2005 Through 2013-2014*, <http://www.courts.ca.gov/documents/2015-Court-Statistics-Report.pdf>.

³³ See *The Safety For All Act of 2016*, Section 8 (available at https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20%28Firearms%29_0.pdf?) (adding Cal. Penal Code § 30371)

³⁴ Senate Budget and Fiscal Review, Subcommittee No. 5 – Agenda (May 20, 2015), available at <http://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/SUB5/05202015Sub5MR.pdf>.

6. Investigating and taking action against violating vendors; and
7. Creating the infrastructure, regulations, and policies to process vendor applications, create and maintain the registries, and oversee compliance and take action against violators.

Costs: Unknown but *unlikely* covered by authorized fees. Such fees are only allowed to be charged to non-FFLs to fund this system regulating all vendors.³⁵ There is no available data on how many persons or entities that sell ammunition are non-FFLs, but it is likely a relatively small percentage. In other words, DOJ will only be able to obtain fees to fund this system from a small group of vendors. But, non-FFLs likely cannot legally be made to finance the costs of regulating FFLs.³⁶ But even if it was legal, there is no telling how many non-FFLs would stop selling ammunition rather than comply with the regulations.

Conclusion Regarding Ammunition Regulation Costs

In sum, there does not appear to be any basis for concluding that the contemplated regulatory fees on ammunition purchasers and vendors are “likely” to offset all of the costs of creating and maintaining three databases; creating and maintaining a new background check system, creating and maintaining three funds; and implementing and enforcing the various provisions of the measure. There are simply too many variables that could affect costs and revenue intake to make a determination one way or the other. As such, LAO’s original fiscal letter should be amended to remove the word “likely” and to clarify the analysis about what all is involved with the measure.

It is worth noting that, while unclear exactly what the reason was, New York Governor Cuomo—a renowned supporter of gun control who signed the NY SAFE Act into law—agreed with lawmakers to suspend that Act’s ammunition scheme, which is effectively identical to the one called for by the proposed measure.³⁷ Some New York lawmakers who participated in the agreement indicated that it was because the proposed ammunition databases “relied on unproven technology, and establishing it would have cost New York State taxpayers upwards of \$100 million - a colossal waste of tax dollars.”³⁸ Whether that is a reliable figure, what is clear is the New York State Police rejected proposals to implement the scheme as unfeasible.

New York’s experience demonstrates the uncertainty with implementing this type of scheme and provides a further basis for removing the word “likely” from the fiscal analysis.

³⁵ See *The Safety For All Act of 2016*, Section 8 (available at https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20%28Firearms%29_0.pdf?) (adding Cal. Penal Code § 30385(d)).

³⁶ Cal. Const. art. 13A, § 3(b).

³⁷ See *New York Secure Ammunition and Firearms Enforcement (“SAFE”) Act of 2013*, http://www.governor.ny.gov/sites/governor.ny.gov/files/archive/assets/documents/GPB_1_GUNS_BILL_LBD_12007_03_3.pdf (last visited April 28, 2016).

³⁸ Sen. Michael F. Nozzolio, *Giant Step Forward Toward Repeal of the SAFE Act*, <https://www.nysenate.gov/newsroom/press-releases/michael-f-nozzolio/giant-step-forward-toward-repeal-safe-act> (July 10, 2015).

II. REMOVAL OF FIREARMS FROM PROHIBITED PERSONS

The measure would greatly increase the duties placed on the court, probation department, defense counsel, prosecutors, and local law enforcement officers.

A. Impact on the Judicial System

Upon conviction of an offense listed in Penal Code sections 29800 and 29805, the measure would require the trial court to inform the Defendant that he is prohibited from owning, purchasing, receiving, possessing, or having under his custody or control, any firearms, ammunition, ammunition feeding devices, and must order him to give up all firearms.

At that time, the Court must also give Defendant a new form called the “*Prohibited Persons Relinquishment Form*.” The “*Relinquishment Form*” will give Defendant the opportunity to choose between surrendering his firearms to a local law enforcement agency, selling his firearms to a licensed firearm dealer, or transferring the firearm for storage to a firearm dealer.

Through the “*Relinquishment Form*,” Defendant will also be required to choose a designee and provide information about the location of any of his firearms to enable a designee to locate them. The measure would allow Defendant to choose local law enforcement as his designee. Once Defendant relinquishes his firearms to the designee and the firearms are given to the law enforcement agency or licensed firearms dealer, they must give Defendant a receipt.

At the time of conviction, the court will be required to “immediately” assign Defendant’s matter to the Probation Department. Depending on whether Defendant is in or out of custody, Defendant has a narrow period of time in order to provide proof of the firearm surrender to probation.

The assigned Probation Officer will have to investigate whether the Automated Firearms System (AFS), or other credible information, such as a police report, has information concerning whether Defendant owns, possesses, or has under his or her custody or control any firearms. Once the Probation Officer receives the completed “*Relinquishment Form*” from Defendant the Officer has to also ensure that the AFS has been updated to indicate that Defendant has relinquished all firearms. The Probation Officer will also have to fill out **another new form** to report whether the AFS has been updated to indicate which firearms have been relinquished by Defendant.

The Probation Officer is then required to **compile a report** for the court stating or determining whether Defendant surrendered all the firearms in his possession. While the court is allowed, for the purpose of avoiding delays in sentencing, to make findings in a case based on the Probation Officer’s report at a later date, the court may only do this up to fourteen days after sentencing.

Once the Probation Officer completes and files the required reports and forms, and prior to the final disposition or sentencing in the case, the court is required to review all of the reports issued by the Probation Officer. These include the Probation Officer's report indicating that Defendant has relinquished all firearms, the "*Relinquishment Form*," and the receipts. The court must ensure that the findings in these forms are included in the abstract of judgment.

Additionally, the court may enter the findings based on the Probation Officers report 14 days after sentencing. However, the initiative allows the court to shorten or enlarge that time or provide for another method of relinquishing the firearms based on a showing of good cause. Any of these requests would require a separate hearing.

If the court determines there is probable cause to believe that Defendant failed to relinquish any firearms as required, the court is required to issue an order for and removal of any firearms where there is probable cause to believe they may be found.

Additional Costs for Courts and Probation Departments

Advisement and Forms

The courts' advisement informing Defendant of the firearm prohibition will add time during the plea/conviction hearing. Expenses relating to printing, copying, and distributing the "*Relinquishment Form*" will also be attributable to the court.

The "*Prohibited Persons Relinquishment Form*" is a new form. Since filling out this form will be mandatory, judges, court staff, prosecutors, defenders, and probation officers, will likely have to conduct training on how to properly fill out and process it.

Probation Officer Report and/or Hearings Concerning Firearm Relinquishment

The costs for the report and related forms Probation Officer will have to fill out for each prohibiting conviction, which, as explained, will be in the tens of thousands, will likely be substantial. The Probation Officer in charge of the matter will have to investigate, including through AFS, whether the Defendant possesses any firearms. Depending on the size of defendant's collection this report can take a significant amount of time to complete, as individuals are not required to keep records concerning their firearm acquisition and disposition and the AFS is not reliable.

The Probation Officer will also have to ensure that the AFS has been updated pursuant to Defendant's "*Relinquishment Form*," and fill out a new DOJ form to report whether the AFS has been updated to indicate which firearms have been relinquished by Defendant.

The AFS does not update by itself. It requires the dealers and law enforcement agencies to whom the firearms are transferred to be accurate and thorough. Often, the DOJ is in charge of

ensuring that the AFS updates appropriately. There is risk that AFS will not be updated to show the current status of Defendant's compliance with the measure.

This places Probation Officers in a very delicate and complicated position. Because the Probation Officer's accuracy of reports will depend in part on DOJ's efficient and timely updating of the AFS, the Probation Officers might not be able to complete the required reports for court review in a timely fashion, or the reports might be inaccurate. Giving inaccurate information in turn will lead the courts to either delay the progress of the proceedings, which could mean additional hearings, or to issue unnecessary warrants against the Defendant that wastes law enforcement resources.

Additional Hearings Concerning Status of Firearm Relinquishment

The measure will take up a lot of our courts' already limited resources by requiring at least one additional hearing for every case where the Defendant receives a prohibiting conviction. As explained above, there are likely tens of thousands of such cases annually that will result in at least one additional Section 29810 firearm hearing.

This is a significant increase the court's workload for judges, staff, prosecutors, and public defenders. Currently, the vast majority of cases resulting in a conviction are resolved via plea agreement. Often, and as a standard practice in California, the plea and sentencing are entered at the same time on the same day. This extra hearing will result in a delay in sentencing in order for the court can make a determination on whether the firearms were properly surrendered, which may, as explained below, result in even more hearings and court work.

The measure would require the court to issue a warrant for a search if the judge finds that there is probable cause to believe that the Defendant failed to relinquish his firearms. The problem is that inaccuracies in the AFS abound, and often firearms presumed to be in possession of individuals were long since transferred. As a result, there is a risk that the probation officer's report might be inaccurate or incomplete by the time they arrive to the judge's hands and the Defendant may be subjected to unnecessary searches. This in turn would lead to additional hearings on the constitutionality of the search.

Public Defenders

Public Defenders will not only have to attend any firearm relinquishment hearings, but will also have to be vigilant of any potential Fourth Amendment violation when the court is considering issuing or does issue a warrant. This would require Defense Counsel to take the time to oversee the other parties, including Probation Officers and DOJ. Any such potential violation would only result in additional briefing and hearings, and potentially unnecessary delays.

Prosecutors

In addition to having to attend all firearm relinquishment related hearings, prosecutors will likely have to spend time ensuring that law enforcement agencies and Probation Officers execute their reporting duties appropriately and efficiently. Failure to do so would result in a delay in the processing of reports, which would in turn result in a delay in the processing of the matter past the 14 day period to make a finding. Further, prosecutors will have to monitor each of the tens of thousands of cases involving convictions under Sections 29800 or 29805 and file charges against those found to be in violation of Section 29810. This will require time and resources. They will also have to brief and attend hearings to defend any Fourth Amendment disputes.

Court and Probation Costs Cannot Be Offset by Fees

Under proposed Penal Code section 29810(j) of the measure, “a city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of a firearm **pursuant to Section 33880.**” Section 33880 provides that “any charges imposed for administrative costs pursuant to [it]” are subject to certain restrictions, including, that:

No [such] charge may be imposed for *any hearing* or appeal *relating to the removal*, impound, storage, or release *of a firearm*, unless that hearing or appeal was requested in writing by the legal owner of the firearm. In addition, the charge may be imposed only upon the person requesting that hearing or appeal.³⁹

The measure requires such a hearing so there is no need for a defendant to request one. A fee to recover the costs for such a hearing is therefore expressly prohibited. Courts will have to absorb all the costs of the likely tens of thousands of additional hearings that will be required to satisfy the mandates of the measure requiring courts to make findings that the defendant relinquished his or her firearms.

Likewise, a fee to recover the costs for the probation officers duties to perform a mandatory investigation and report is prohibited under section 33880 because the fee it provides for “shall not exceed the actual costs incurred for the expenses *directly* related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm *to a licensed firearms dealer or to the owner.*”⁴⁰ Probation officers are not tasked with directly taking possession or storing firearms, nor are they a dealer or owner of the subject firearms. And, their costs attending a hearing on the matter cannot be recovered per subsection (d) of section 33880 noted above.

Nor is there any other mechanism in the Code allowing for costs incurred by probation officers under the measure to be recouped by a fee. The Code expressly lays out what very

³⁹ Cal. Penal Code § 33880(d)(4).

⁴⁰ Cal. Penal Code § 33880(b).

specific costs probation officers can recoup via fees; the costs for the investigation and report they would be required to perform under the measure are not contemplated.⁴¹

As such, all the significant additional costs on courts and probation officers created by the measure cannot be recouped via a fee and will have to be absorbed by existing resources.

B. Impacts on Department of Justice & Costs

The “Prohibited Persons Relinquishment Form” is a new form that the DOJ will have to create, which will take time, lawyers, staff, etc. DOJ will also likely have to create the form and procedures for issuing the receipt that law enforcement and licensed firearm dealers must give Defendant upon releasing firearms to them. And, DOJ will have to create a new form for Probation Officers to report whether the AFS has been updated to indicate which firearms have been relinquished by Defendant.

C. Impacts on Law Enforcement

If Defendant elects to surrender firearms to a law enforcement agency, it is required to update the Automated Firearms System to reflect Defendant’s relinquishment of his firearms to them. The agency must also store the firearm(s) a minimum of 30 days. Law enforcement agencies could also be required to store the firearms beyond the 30-day period upon certificate of the court or district attorney that the retention of the firearm is necessary or proper to the ends of justice, or if the defendant provides written notice of intent to appeal the conviction.

If any of the firearms were reported lost or stolen, the law enforcement agency is required to restore the firearm to the lawful owner. This requires additional investigation and contact with the supposed owner, and when that owner is found the initiative requires the agency to confirm ownership of the firearm with proof. Lastly, the initiative requires the agency to comply with the existing requirements of Penal Code sections 33850 et seq.

Law Enforcement Costs

As Designees

If law enforcement is chosen as a designee, officers could potentially spend significant time and resources locating firearms. While the actual amount of time that an officer would spend finding and collecting the firearms in one single case is hard to predict, the total time for all cases, in the aggregate, will be significant. This will result in law enforcement agencies spending their limited time locating and carrying firearms from one location to another. This will require law enforcement official to potentially spend a significant amount of time and resources retrieving these firearms. If Defendant lives in San Diego, but the firearms are located in his

⁴¹ See Cal. Penal Code §§ 1203.1b, 1203.7, and 1203.

hometown of Salinas, California, locating and getting the firearms will result in an additional burden for law enforcement.

If acting as a designee, law enforcement must act within a limited time window. If Defendant is out of custody, he would have five days to dispose of the firearm. This, by implication, means that law enforcement, as a designee, would also have limited time to carry out its responsibilities.

Moreover, once Defendant relinquishes his firearm(s) to law enforcement, law enforcement must update the AFS to reflect Defendant's compliance. As stated previously, failure to update AFS in an efficient and timely manner will only result in a delay in the Probation Officers' reports, and thus a delay in the processing of the matter altogether.

Once again, for law enforcement, intra-office policies and training will likely be required to avoid confusion and delays.

Storage

Law enforcement will also be required to store any relinquished guns for 30-days or more in some cases. Because the expected number of guns to be relinquished is high, law enforcement agencies are bound to face storage challenges. A law enforcement agency must ensure that there is space for all and any evidence seized as part of criminal prosecutions, not just firearms. If a law enforcement agency's storage unit reaches full capacity, the agency may have to transfer the evidence to a neighboring facility or extend the existing one. This will in turn require time and resources.

Going Out to Search Based on Probable Cause that Defendant Failed to Turn In All Firearms

If the court issues an order for removal of any firearms, it will require the participation of law enforcement agencies. Law enforcement will be required to go to the locations where the judge has reason to believe the firearms are located, and search for the firearms. As explained above, some of these searches may be based on unreliable information and unnecessary.

Conclusion Regarding Costs of Removing Firearms From Prohibited Persons

In sum, the initiative will *require* courts and probation officers to dedicate significant more time and resources to administrative matters concerning firearms. It will also potentially do the same for local law enforcement officers. Court and probation costs, however, need to be analyzed separately from law enforcement costs because the measure allows for adoption of a fee permitting law enforcement to recoup its costs for *some* activities, but, as explained above, there is no such provision for recovering courts' and probation officers' new costs.

As such, the LAO's conclusion that "these costs could be offset to some extent by fees authorized by the measure" is accurate with respect to law enforcement costs for handling of

firearms but is not accurate with respect to the added court and probation costs. The LAO's original report should therefore be amended to clarify that the court and probation costs cannot be recovered by fees and should be discussed separately from law enforcement costs, which are not necessary mandatory and can be at least partially recovered via fees.

It is also unclear what the basis is for the LAO concluding that the additional costs that could result for courts, probation, and law enforcement would "unlikely" exceed the tens of millions of dollars annually. The courts and probation officers should be consulted to determine how much it would cost for tens of thousands of additional hearings and reports, which is the minimum cost created by the measure.

Finally, the fees contemplated by the measure to recover law enforcement costs are limited. While the measure provides for law enforcement to recoup some of its costs in seizing and storing firearms via fees, it would require each local government or state agency in charge to adopt an ordinance or regulation allowing for such fees. This would result in costs to create such ordinances and regulations, the policies implementing them, and training of staff. Since such fees can only be charged for costs "directly" related to seizing and storing firearms, these costs are not recoverable under the measure. There is also an issue of whether such fees will be able to be recovered from indigents who may not be able to pay them.

III. BAN ON "LARGE-CAPACITY" MAGAZINES

State and local law enforcement agencies will need to dedicate resources to analyzing the measure's effect on their personnel, making decisions about what policies to put in place, and create those policies. For example, the measure only exempts peace officers who are authorized to carry a firearm in the course and scope of their duties. So agencies will have to make determinations and policies on when an officer is so authorized and train its staff accordingly.

IV. OTHER PROVISIONS

- A. Mandatory NICS participation:** We cannot know what the potential fiscal impacts are of requiring DOJ to participate in NICS. Once locked in, Congress could require any sort of change to NICS that could cause costs for California to increase, e.g., a periodic audit.
- B. Mandatory Lost or Stolen Firearm Reporting:** Law enforcement agencies will have to incur costs in developing policies for enforcement and training of this provision.