

## AGENDA

**ASSEMBLY BUDGET SUBCOMMITTEE NO. 5  
PUBLIC SAFETY  
ASSEMBLYMEMBER NORA CAMPOS, CHAIR**

**MONDAY, APRIL 11, 2016  
2:30 P.M. – CALIFORNIA STATE CAPITOL, ROOM 437**

<b>VOTE ONLY ITEMS</b>		
<b>ITEM</b>	<b>DESCRIPTION</b>	
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**VOTE ONLY ITEMS****(ALL VOTE ONLY ITEMS ARE SUBJECT TO FURTHER DISCUSSION WITHOUT NOTICE)****8120 Commission on Peace Officer Standards and Training**

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<b>VOTE ONLY ISSUE 1: MENTAL HEALTH TRAINING FOR LAW ENFORCEMENT [SENATE BILL 11 (CHAPTER 468, STATUTES OF 2015) AND SENATE BILL 29 (CHAPTER 469, STATUTES OF 2015).]</b>
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**Request:** The Commission on Peace Officer Standards and Training requests \$777,000 (Peace Officers' Training Fund) in 2016-17 and \$156,000 (Peace Officers' Training Fund) beginning in 2017-18 to provide reimbursements to local law enforcement agencies for peace officers attending new mental health training courses mandated by Senate Bill 11 (Chapter 468, Statutes of 2015) and Senate Bill 29 (Chapter 469, Statutes of 2015).

**Background:** POST is required to improve officer training for mental illness, intellectual disability, and substance use disorder issues, pursuant to Penal Code Sections Penal Code 13515.26, 13515.27, 13515.28, 13515.29, and 13515.295. POST provides aid in the form of reimbursements to law enforcement agencies for peace officers to complete mandated training requirements. Communities expect their peace officers to be highly trained in current, contemporary methods to address the myriad of situations officers encounter on a daily basis.

**Chapter 468, Statutes of 2015 (Senate Bill 11)** requires POST to increase the training module in the RBC, relating to persons with mental illness, to 15 hours. The legislation also requires the hours be increased within the existing requirement of total regular basic course hours. The intent is to better prepare the estimated 3,500 law enforcement officers who attend this course annually to interact with persons suffering from mental illness, intellectual disability, or substance use disorders.

**Chapter 469, Statutes of 2015 (Senate Bill 29)** requires four hours of mental illness related training to be incorporated into the 40-hour Field Training Officer Course. The qualifications and training requirements for California's 8,628 field training officers are outlined in the California Code of Regulations (CCR Title 11, Division 2, Article 1, §1004(a)(4) and §1004(d)). Senate Bill 29 will add completion of eight hours of crisis intervention behavioral health training to the training requirements. This training is intended to help field training officers better train new peace officers in the field training program on how to effectively interact with persons suffering from mental illness or an intellectual disability. The course must include classroom instruction and instructor-led learning activities.

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**Staff Recommendation: Approve as budgeted**

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**VOTE ONLY ISSUE 2: HOMELAND SECURITY TRAINING**

**Request:** The Commission on Peace Officer Standards and Training (POST) requests \$455,000 (Antiterrorism Fund) one-time in 2016-17 to design, deliver and implement timely, relevant and credible anti-terrorism and threat assessment training for peace officers and first responders to prevent, disrupt, mitigate, detect and respond to acts of terrorism and violent extremism.

POST is a key partner in a coordinated network of training providers at the local, state and federal levels and has played a central role in the collaborative delivery of high quality anti-terrorism training.

**Background:** AS 587 (Chapter 392, Statutes of 2007) appropriated \$5 million from the 9/11 Memorial License Plate Fund into the Antiterrorism Training Fund created to bolster terrorism/threat preparedness and response by law enforcement.

From 2008 to 2010, \$2.5 million of the available funds were appropriated to POST over three fiscal years to support the development and delivery of training for law enforcement. The funds were used for antiterrorism projects approved by POST to support course development and delivery of training to first responders.

Projects included 12 Homeland Security Tele-courses, a Terrorism for Patrol Officers Course, a course on Public Health Emergencies, the Terrorism Liaison Officer Intermediate Course, and the NIMS/SEMS/ICS Instructor Course for Learning Domain 43 (Emergency Management continues to be mandated training for entry-level peace officers ).

In 2011, Cal-OES awarded POST \$500,000 from the Anti-terrorism Fund, through March 31, 2013, for the creation and presentation of terrorism-related training programs. POST used the funds to support streaming of the Law Enforcement Response Training (LERT) online, revise the Terrorism Liaison Officer (TLO) Intermediate Course, and finance a program manager for the POST Homeland Security Training Program. To date, over 18,000 peace officers have viewed the LERT course, which received the Brandon Hall Research Excellence in learning award.

For 2014-15, POST was appropriated \$500,000 from the Antiterrorism Fund. The funds were used to augment tactical casualty care equipment for the continued training of peace officers, fire personnel and emergency medical services personnel who may respond to active shooter, mass casualty incidents or other terrorist-related events; to deliver Public Safety Dispatch Terrorism Awareness courses; replace POST'S Peace Officer database server that contains critical information relevant to homeland security training; and revise homeland security components for POST mandated training course for supervisors, middle managers and executives. Funds were also used to update mandated emergency management and terrorism awareness curriculum in the Peace Officer Basic Courses; design and produce a training video on Law Enforcement

Response to extremist activities to be used as part of the instructional methodology for POST mandated supervisory, middle management and executive courses. Content of the video included domestic extremism, agricultural terrorism, and recognition of suspicious activities that have a potential nexus to terrorist or extremist acts; support for the Simon Wiesenthal Museum of Tolerance curriculum development; and research and development of training to enhance peace officers' prime decision-making at critical incidents including response to suspected terrorist events.

To date, POST has spent more than \$3.5 million to design, develop, support and deliver antiterrorism training statewide to the over 600 agencies that are participants of the POST program. This includes the release of over 24 training videos in DVD format and online in the Homeland Security Suite. The videos are streamed on the POST Learning Portal to allow peace officers 24/7 access. The delivery methodology has proven to be a cost effective way to provide training material to first responders. Many of the award winning videos were designed and produced in a joint effort with State Threat Assessment System experts. The videos include valuable curriculum related to reacting to and preventing potential terror incidents.

POST has also used the antiterrorism funds to develop classroom-training courses to support the California law enforcement community and the State fusion centers. Topics include: Mass Casualty and Preparedness; the Intermediate Terrorism Liaison Officer; Multi-Assault Counterterrorism Action Capabilities; Weapons of Mass Destruction Awareness for Public Safety Dispatchers and Tactical Medicine as a Collaborative Effort with Emergency Medical Services Authority (EMSA).

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**Staff Recommendation: Approve as budgeted**

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**0890 Department of Justice**

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**VOTE ONLY ISSUE 3: CRIMINAL JUSTICE REPORTING – CHAPTER 462, STATUTES OF 2015 (AB 71)****Request:**

The Department of Justice requests a General Fund authority increase of \$374,000 and 4.0 permanent positions in Fiscal Year 2016-17 and ongoing. The requested authority and positions will allow the DOJ to meet the mandates associated with Chapter 462, Statutes of 2015 (AB 71).

**Background:** AB 71 requires the Attorney General to collect, analyze, and report statistical data, which provides valid measures of crime and criminal justice process to government and to the citizens of California. The mandate of the DOJ Criminal Justice Statistics Center (CJSC) is to collect and report statistical data that allows for valid assessments of crime and the criminal justice process in California. To achieve this mandate, the CJSC maintains several statewide data systems containing specific criminal justice data. Published annually, these data reports are accompanied by interpretive analyses.

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**Staff Recommendation: Approve as budgeted**

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**VOTE ONLY ISSUE 4: MAJOR LEAGUE SPORTING EVENT RAFFLES PROGRAM – CHAPTER 509, STATUTES OF 2015 (SB 549)**

**Request:** Pursuant to the passage of Senate Bill 549 (SB 549), the Department of Justice requests a three-year limited-term General Fund increase of \$335,000 beginning in FY 2016-2017 and 2.0 positions to address workload related to the initial implementation of and statutory enforcement activities for the Major League Sporting Event Raffles Program, pursuant to newly enacted California Penal Code section 320.6.

**Background:** SB 549 authorizes a professional sports organization to conduct a 50/50 raffle for the purpose of directly supporting a specified beneficial or charitable purpose in California, or financially supporting another private, nonprofit, eligible organization. These types of charitable raffles are raffles in which 50 percent of the proceeds go to the winner, and 50 percent of the proceeds go to the local charities designated by the professional sports team for that particular event.

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**Staff Recommendation: Approve as budgeted**

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**VOTE ONLY ISSUE 5: PROFESSIONS AND VOCATIONS WORKLOAD – CHAPTER 656, STATUTES OF 2015 (SB 467)**

**Request:** Pursuant to Chapter 656, Statutes of 2015, the Department of Justice requests a permanent increase of 10.0 positions and \$1.3 million in Legal Services Revolving Fund authority in order to implement the provisions of SB 467.

**Background:** SB 467 added new reporting obligations with the first report due on January 1, 2018 for the prior fiscal year, FY 2016-17. SB 467 requires accountings of not only the cases The Health Quality Enforcement (HQE) received for all clients, but also accountings for HQE's efficiency in specific markers for accusation, stipulation, default and hearing processing. While there is no direct intent to heighten public protection in SB 467, the consequences of not providing additional staff to HQE to meet the reporting demands of SB 467 will have an unintended adverse impact to the timeliness and quality of work performed on the existing workload in HQE. Additional staff will allow for the proper and reliable accounting and processing of DCA cases, as well as allow existing legal staff to continue to focus on protecting patients from unprofessional licensees. In order for HQE to meet the enhanced legal service requests and data reports that SB 467 requires, HQE will need authorization for six (6.0) additional SLA positions.

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**Staff Recommendation: Approve as budgeted**

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**VOTE ONLY ISSUE 6: RACIAL AND IDENTITY PROFILING ACT OF 2015 – CHAPTER 466, STATUTES OF 2015 (AB 953)**

**Request:** The Department of Justice requests 41.0 permanent positions and increased General Fund spending authority of \$9.9 million in 2016-17 and \$7.9 million ongoing to address the mandates associated with Chapter 466, Statutes of 2015 (AB 953).

**Background:** AB 953 (the Racial and Identity Profiling Act of 2015) was signed by the Governor on October 3, 2015. This legislation imposes a number of significant mandatory responsibilities on DOJ related to the collection of data from state and local Law Enforcement Agencies (LEAs), promulgation of regulations regarding that data collection, and the creation of an advisory board, whose duties will include the publication of an annual report regarding racial profiling during any and all stops conducted by LEAs.

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**Staff Recommendation: Approve as budgeted**

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**VOTE ONLY ISSUE 7: NEW BUREAU OF GAMBLING CONTROL TRAINING PROGRAM**

**Request:** The Department of Justice's Bureau of Gambling Control requests a \$200,000 expenditure authority increase from the Gambling Control Fines and Penalties Account.

**Background:** The Bureau seeks to increase its authority and use the funds to develop an ongoing, in-depth academy style training program which would include courses in financial audits, investigative writing, fraud investigations, investigative trends, gaming related trends, and other courses related to the gaming industry. Courses would be geared towards all programs and levels of employees (sworn and non-sworn), including licensing, enforcement, as well as audit and compact compliance.

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**Staff Recommendation: Approve as budgeted**

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## DISCUSSION ITEMS

### 0820 DEPARTMENT OF JUSTICE

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#### DISCUSSION ISSUE 1: LAW ENFORCEMENT TRAINING - IMPLICIT BIAS & PROCEDURAL JUSTICE

The Attorney General's Office will open this issue with a brief overview of the Department of Justice's Procedural Justice and Implicit Bias Training program.

#### PANELISTS

- Department of Justice
- Sarah Lyons-Padilla and Camilla Griffiths, Stanford University's Center for Social Psychological Answers to Real-World Questions (SPARQ),
- Commission on Peace Officer Standards and Training
- Department of Finance
- Legislative Analyst's Office
- Public Comment

#### BACKGROUND

The relationship between law enforcement and the communities they serve must be grounded in trust in order to ensure safety and protection for all. Recent events in California and across the nation have strained this relationship. As part of Attorney General Kamala D. Harris' ongoing commitment to identify strategies to strengthen trust between law enforcement and communities, the Department of Justice offered California law enforcement executives a course entitled Principled Policing in November 2015.

Principled Policing was the first Commission on Peace Officer Standards and Training (POST) certified course on procedural justice and implicit bias in the nation. Over 50 law enforcement executives from 28 departments across California participated in one-day trainings held in Sacramento and Los Angeles. The Department developed the training in partnership with Stanford University's Center for Social Psychological Answers to Real-World Questions (SPARQ), the Oakland and Stockton Police Departments, and the community organization California Partnership for Safer Communities.

Stanford SPARQ evaluated the course. Key points from that evaluation are summarized on the next page:



- Police executives found the training effective in advancing their knowledge of procedural justice and implicit bias.
- Police executives believed the training could help increase trust and decrease tension between police and community.
- The training increased confidence among police executives that better police-community relations are possible.
- The training helped police executives recognize multiple routes to positive change, including the role of diverse stakeholders.
- The training was well-received by agencies of varying size and geographic location.

The following is an excerpt from the Attorney General's Tuesday, November 17, 2015 press release:

*“In January, I began a dialogue with leaders of the California law enforcement community about strengthening the relationship of trust between law enforcement and the communities we are sworn to serve,” said Attorney General Harris. “Throughout this dialogue, a theme has emerged regarding the need to continue to bring best-in-class training to law enforcement across our state. Today, we are proud to announce that the California Department of Justice is offering the first POST certified course in the nation to combine the concepts of procedural justice and implicit bias. This course is the result of a true collaboration with law enforcement, community partners and academics to bring evidence-based concepts into practice.”*

*The training course, titled “Principled Policing: Procedural Justice and Implicit Bias” is the result of a collaborative partnership between the California Department of Justice, the Commission on Peace Officers Standards and Training, the Stockton and Oakland Police Departments, Stanford University and the California Partnership for Safe Communities.*

*“On behalf of POST, we are proud to join Attorney General Harris in offering this innovative course on Principled Policing,” said Bob Stresak, Executive Director of POST. “The high enrollment in this course is a testament to California's law enforcement leaders recognizing that California's communities deserve the highest levels of professional service and that they are committed to making every effort to accomplish this goal.”*

*Specifically, the procedural justice and implicit bias training will consist of six areas that focus on policing approaches that emphasize respect, listening, neutrality and trust, while recognizing and addressing implicit biases that can be barriers to these approaches. As a result, the training will work to create a broader awareness of both procedural justice and implicit bias in order to build trust and improve public and officer safety. “We are pleased to have contributed to this new, research-based training,” said Stanford Professor Jennifer Eberhardt. “Our aim is to improve the ability of law*

*enforcement executives across the state to recognize and address common implicit biases – biases that can be barriers to neutral policing.”*

*“The experience of police departments across the country, backed up by extensive research, is that procedural justice interventions are among the most effective tools available to police for strengthening trust and communication with communities,” said Stewart Wakeling, Executive Director of the California Partnership for Safer Communities. “We have worked with the Stockton and Oakland Police Departments, with community leaders and officers as key partners, to bring procedural justice training to their officers, and are excited to add Implicit Bias to the curriculum and make it available to agencies statewide.”*

*The course will total eight hours of training and participants will receive a certificate and be required to complete a pre- and post- survey of the course. Stanford University will be compiling the survey results to conduct an evaluation of the course. More than 90 applicants from 30 agencies applied for the course.*

*“I commend Attorney General Harris and these partners for playing a leadership role in advancing 21st Century Policing at the state level. The President’s Task Force specifically identifies procedural justice and addressing implicit bias as cornerstones of 21st Century Policing. General Harris is leading the nation in her support for law enforcement agencies across California to understand and apply these concepts,” said Tracey Meares, Walton Hale Hamilton Professor at Yale Law School and Member of President Obama’s Task Force on 21st Century Policing.*

*The following law enforcement agencies have enrolled in the first courses:*

- *Berkeley Police Department*
- *California Department of Justice*
- *California Highway Patrol*
- *El Cerrito Police Department*
- *Elk Grove Police Department*
- *Fremont Police Department*
- *Fresno Police Department*
- *Indio Police Department*
- *Lassen County Sheriff’s Department*
- *Long Beach Police Department*
- *Los Angeles Airport Police Department*
- *Los Angeles County Sheriff’s Department*
- *Los Angeles Police Department*
- *Modesto Police Department*
- *Newport Beach Police Department*
- *Orange County Sheriff’s Department*
- *Oxnard Police Department*
- *Rancho Cordova Police Department*
- *Richmond Police Department*
- *Sacramento County Sheriff’s Department*
- *Sacramento Police Department*
- *San Bernardino County Sheriff’s Department*
- *San Diego County District Attorney’s Office*
- *San Diego Police Department*
- *San Francisco Police Department*
- *San Jose Police Department*
- *Simi Valley Police Department*
- *Ventura Police Department*

*POST was formed by the California State Legislature to enforce minimum training and selection standards in order to increase the professionalism of California law enforcement.*

*This training was developed as part of the California Department of Justice's 90-Day Review of its own special agent training programs on implicit bias and use of force which were announced in April 2015.*

*Since January 2015, Attorney General Harris has taken several steps to strengthen the trust between law enforcement and California communities. These actions include:*

- Directing the Department of Justice's Division of Law Enforcement to conduct a 90-Day Review of its special agent trainings on implicit bias and use of force.*
- Instituting a body camera policy for all DOJ special agent personnel conducting field operations.*
- Convening law enforcement, youth and community organizations.*
- Creating the 21st Century Policing Working Group to foster discussion regarding implicit bias and building community trust.*
- Launching OpenJustice, a first-of-its-kind criminal justice open data initiative that will release unprecedented data while being interactive and easy to use. The tool spotlights key criminal justice indicators and embraces transparency in the criminal justice system to strengthen trust, enhance government accountability, and inform public policy.*
- Creating a POST Certified Training on Implicit Bias and Procedural Justice."*

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**Staff Recommendation: Discussion Item**

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**DISCUSSION ISSUE 2: CURES 2.0 UPDATE**

The Attorney General's Office will open this issue with a brief overview of the Department of Justice's progress in implementing the new CURES 2.0 system.

**PANELISTS**

- Department of Justice
- Department of Finance
- Legislative Analyst's Office
- Public Comment

**BACKGROUND**

Created in 1939, California's Triplicate Prescription Program (TPP) was the nation's first multiple-copy prescription program to regulate the distribution of controlled prescription drugs. For 60 years, the TPP captured information regarding prescriptions of Schedule II controlled substances. In 1996, the Legislature initiated the development of the Controlled Substance Utilization Review & Evaluation System (CURES) in an attempt to identify solutions to the programmatic challenges facing the TPP. Specifically, inadequate staffing and an outdated automated system had reduced the effectiveness of the TPP hampering efforts to prevent, investigate, and prosecute serious cases of abuse and misuse of controlled prescription drugs.

Initiated in 1997, CURES operated in parallel with the TPP and the Automated Triplicate Prescription System (ATPS) to examine the comparative efficiencies between the two systems over a three-year period. After only ten months of evaluation, it was evident that the CURES far outperformed the ATPS. The comparison of the two systems was suspended permanently in March 1999. The ATPS was decommissioned in January 2005 when SB 151 (Burton), Chapter 406, Statutes of 2003 eliminated the triplicate prescription requirement for Schedule II controlled substances and made the CURES permanent.

While the CURES represented a significant improvement over ATPS, the system did not provide licensed healthcare practitioners and pharmacies with access to uniform and timely information to proactively diminish and deter the diversion of controlled substances. To address the issues with the CURES system, in 2009, the DOJ initiated the Prescription Drug Monitoring Program (PDMP). The PDMP allows licensed prescribers and dispensers to access PDMP data at the point of care through the PDMP system. Consistent with California Health and Safety Code section 11165 et seq, the DOJ uses the PDMP system to collect and store data on the prescription and dispensation of controlled substances.

State law requires the DOJ to assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of controlled substances. The Health and Safety Code specifically allows licensed prescribers and dispensers to access the system in order to prevent and intervene with patients under their care who may be abusing controlled substances.

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

The CURES 2.0 system proposed to:

- Integrate with health information systems.
- Provide a scalable environment capable of accommodating large increases in usage.
- Provide a method to collaborate and share sensitive communications among DOJ users, medical community users, and law enforcement users.
- Maintain and make available a directory of all system users to enable collaboration.
- Provide law enforcement investigators and prosecutors with a directory of criminal justice system users, DOJ program staff, prescribers, and dispensers.
- Provide a highly secure, responsive, scalable, and reliable system. CURES 2.0 Enhance access to PDMP data.
- Provide geospatial and data analytics.
- Electronically distribute unsolicited PARS.
- Streamline PDMP registration process.
- Integrate with health information systems.
- Align data model with national standards.
- Share PDMP data across state boundaries.
- Enable collaboration among PDMP users.
- Employ advanced privacy and security standards.
- Provide prescribers and dispensers with a directory of prescribers and dispensers and DOJ staff.
- Facilitate the secure sharing of PARs among practitioners and dispensers, and among practitioners/dispensers and DOJ program staff.
- Allow a prescriber or dispenser to instigate a secure communication with all the prescribers and dispensers on any given PAR, and with the PAR easily accessible for their convenience.
- Facilitate the secure sharing of reports and other files among law enforcement and prosecutorial officials, and among law enforcement/prosecutorial officials and DOJ staff.
- Allow for interstate information sharing through the Prescription Monitoring Information Exchange (PMIX).

- Respond to 400,000 PAR requests on weekdays and 150,000 on weekend days. Respond to parameter-based searches by DOJ and law enforcement users within 1minute.
- Provide DOJ staff, law enforcement investigators and prosecutors, and regulatory boards with the ability to create dynamic, on-demand variable parameter based reports.
- Generate unsolicited PARs to pertinent prescribers and dispensers based on algorithmic thresholds.
- Provide drug and usage trending data and reports.
- Provide a secure user registration system.
- Provide automated validation of state licenses during registration review process.
- Provide for electronic submission of supporting documents as attachments to the electronic registration submission.
- Provide registered users the ability to renew their registration on an annual basis.
- Provide a licensing mechanism for security printers..

#### CURES Registration Requirements

California law (Health and Safety Code Section 11165.1) requires all California licensed prescribers authorized to prescribe scheduled drugs to register for access to CURES 2.0 by July 1, 2016 or upon issuance of a Drug Enforcement Administration Controlled Substance Registration Certificate, whichever occurs later. California licensed pharmacists must register for access to CURES 2.0 by July 1, 2016, or upon issuance of a Board of Pharmacy Pharmacist License, whichever occurs later. Prescriber and dispenser registration to access CURES 2.0 is simple and fully automated. Prescribers and dispensers can register to access CURES online.

California Health & Safety Code Section 11165(d) requires dispensing pharmacies, clinics, or other dispensers of Schedule II through IV controlled substances to provide specified dispensing information to the Department of Justice on a weekly basis in a format approved and accepted by the DOJ. Currently, the ASAP 2009 Version 4.1 format is accepted.

#### Direct Dispense Reporting Application

The DOJ, in coordination with Atlantic Associates, Inc. (AAI), allows direct dispense prescribers and entities, including pharmacies filling less than 25 prescriptions per month, to electronically report dispensing data to the DOJ. The direct dispense application can be accessed on online. Also available online are instructions on how to apply for an account and submit dispense data. The DOJ no longer accepts paper direct dispense reports.

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#### **Staff Recommendation: Discussion Item**

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**DISCUSSION ISSUE 3: ARMED PROHIBITED PERSONS SYSTEM INVESTIGATIONS**

The Department of Justice's Bureau of Firearms will open this issue with a brief overview of the requests for a permanent increase of \$4.7 million from the Firearms Safety & Enforcement Special Fund in support of armed Prohibited Persons System (APPS) investigations.

**PANELISTS**

- Department of Justice
- Department of Finance
- Legislative Analyst's Office
- Public Comment

**BACKGROUND**

California is the only state in the nation to establish an automated system for tracking handgun and assault weapon owners who might fall into a prohibited status. The online database, Armed Prohibited Persons System (APPS), cross-references firearm owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon.

The DOJ has experienced a backlog in the APPS database since its inception in 2006. Initially, the backlog resulted from the merging of multiple DOJ databases and the extraction of relevant information necessary to positively identify armed and prohibited persons. Since then, the number of APPS offenders that populate the database yearly is far greater than the number of APPS investigations that the DOJ can accomplish. This was predominantly due to inadequate staffing levels and the lack of timely and accurate Automated Firearms System (AFS) entries.

In May of 2013, the DOJ was appropriated temporary funding in the amount of \$24 million per Senate Bill 140 (SB 140) to address the APPS backlog. The funding was appropriated for three years and supported 48.0 positions from the Dealers Record of Sale Special Account (DROS).

The DOJ asserts that temporary nature of the funding has created limitations in recruitment. This has caused the current Special Agents to work an immense amount of overtime in order to meet the mandated workload set by SB 140.

The 2015 Budget Act authorized the conversion of 22.0 limited-term Special Agent positions to permanent status. By appropriating permanent funding as proposed in this request, the DOJ will be able to retain staff and continue to decrease the backlog. Consequently, unauthorized gun possessions in California will be reduced and result in increased public safety.

Each day, the list of armed and prohibited persons in California grows by about 20 individuals (6,886 annually). As of June 30, 2015, there were 15,662 armed and prohibited persons in California, the lowest level since fiscal year (FY) 2009-2010. Since the implementation of SB 140, the DOJ has closed an average of 6,924 cases annually. Prior to SB 140 funding, from FY 2009-10 to FY 2012-13, the DOJ closed an average of 2,105 cases annually. In order to continue its effort to remove firearms from prohibited individuals, the DOJ-BOF must maintain the appropriate staffing level to meet workload demands and address the backlog.

The DOJ argues that upon approval of the request of permanent funding, the DOJ will be able to continue its success by eliminating recruitment and retention obstacles. With a dedicated sworn staff of 45.0, the DOJ is projected to continue to reduce the amount of armed and prohibited persons annually by 6,480 cases (12 cases per agent per month).

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**Staff Recommendation: Approve as Budgeted**

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**DISCUSSION ISSUE 4: FRAUD AND ELDER ABUSE ENFORCEMENT ENHANCEMENT**

The Department of Justice's Bureau of Medi-Cal Fraud and Elder Abuse will open this issue with a brief overview of the requests for \$7.8 million (\$5.9 million Federal Trust and \$2 million False Claims Fund) to support 35.0 positions and the establishment of three satellite offices.

The Department will then provide a responses to the concerns raised by the LAO.

**PANELISTS**

- Department of Justice
- Department of Finance
- Legislative Analyst's Office
- Public Comment

**BACKGROUND (PROVIDED BY LAO)**

**Medi-Cal Program.** In California, the Department of Health Care Services (DHCS) administers the state's Medicaid program (known as Medi-Cal). As a joint federal-state program, federal funds are available to the state for the provision of health care services for most low-income persons. Until recently, Medi-Cal eligibility was mainly restricted to low-income families with children, seniors and persons with disabilities, and pregnant women. As part of the federal Patient Protection and Affordable Care Act, beginning January 1, 2014, the state expanded Medi-Cal eligibility to include additional low-income populations - primarily childless adults who did not previously qualify for the program.

**DOJ Bureau of Medi-Cal Fraud and Elder Abuse.** Federal law generally requires states operating Medicaid programs to establish fraud control units tasked with the investigation and prosecution of fraud in the state's Medicaid program. Such units must also review complaints of abuse or neglect of patients (such as the elderly) in health care facilities and room and board facilities. The federal government pays 75 percent of the total cost to support the operations of such fraud units up to a certain limit. The state pays the remaining portion.

The Bureau of Medi-Cal Fraud and Elder Abuse within DOJ serves as California's Medicaid fraud control unit. Under state law, the bureau is generally responsible for fraud investigations and prosecutions related to providers (such as billing fraud and prescription drug diversion schemes), as well as abuse or neglect complaints. The bureau currently receives \$36.7 million in funding - \$27.5 million in federal funds and \$9.2 million in state funds - to handle this workload. This funding supports 205 positions

across five satellite offices - located in Sacramento, Burbank, San Diego, Laguna Woods, and West Covina. In 2014–15, the bureau received a total of 3,382 cases—2,938 related to abuse or neglect and 444 related to fraud. According to DOJ, the bureau currently has a backlog of approximately 230 cases that have been opened, but have not been assigned to an investigator. Of this amount, 93 percent are related to abuse or neglect cases with the balance being related to provider fraud. DHCS handles investigations of fraud committed by beneficiaries of the Medi-Cal program.

<b>LAO ASSESSMENT AND RECOMMENDATION</b>
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### Assessment

***Resources to Address Backlog Appear Justified, but Ongoing Need Unclear.*** As indicated above, the proposed 35 positions are based on the level of resources DOJ believes is necessary to address the 230 case backlog in 2016–17. Since most of the backlog consists of abuse or neglect cases involving the health and safety of individuals, we find that the request for positions in the budget year is reasonable. However, the department has not provided sufficient information to justify these positions on an ongoing basis after the backlog is eliminated. For example, it is unclear exactly how much additional abuse and neglect workload will be generated from an increasing elderly population. In addition, a major reason for expanding the bureau's capacity to pursue Medi-Cal fraud cases is to generate a financial return for the state (such as from the recovery of money paid to fraudulent providers). However, the department has not provided information on the return the state can expect from the activities that would be supported by the ongoing funding. This information is critical because the Legislature will want to ensure that the returns justify the ongoing resources dedicated to them.

### Recommendations

***Provide One-Time Funding.*** We recommend that the Legislature provide DOJ with the 35 requested positions and funding for the bureau on a one-time basis to address the existing backlog of cases that are largely related to abuse or neglect. However, at this time, there is a lack of sufficient information to justify the ongoing need for these positions. To the extent that DOJ is able to provide the Legislature with information on (1) the extent to which abuse and neglect cases will increase and (2) the return the state can expect from expanding its capacity to pursue Medi-Cal fraud, the Legislature can consider a request for ongoing funding in the future.

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**Staff Recommendation: Approve as Budgeted**

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**DISCUSSION ISSUE 5: PUBLIC PROTECTION AND CONSUMER PROTECTION ENFORCEMENT INITIATIVE**

The Department of Justice's Licensing Section requests a permanent increase of 7.0 positions and \$1.4 million in Legal Services Revolving Fund authority to enable the Licensing Section to reduce average case processing time for formal discipline matters.

The Department will then provide a responses to the concerns raised by the LAO.

**PANELISTS**

- Department of Justice
- Department of Finance
- Legislative Analyst's Office
- Public Comment

**BACKGROUND (PROVIDED BY LAO)**

***Enforcement of Consumer Protection Laws.*** The DCA is responsible for promoting consumer protection while supporting a fair and competitive marketplace. Currently, DCA consists of roughly 40 boards and bureaus - such as the Medical Board of California and the California Bureau of Real Estate - that are responsible for regulating various professions. One of DCA's primary responsibilities is the enforcement of consumer protection laws by disciplining licensees. The enforcement process can vary for each of DCA's boards and bureaus, but generally includes three steps: intake, investigation, and formal discipline. First, at the intake step, the board or bureau receives a complaint against a licensee and assigns the case to an investigator. Second, at the investigation step, the board or bureau collects facts and determines whether sufficient evidence exists to pursue an action and, if so, what type of action (formal discipline or a lesser action such as a citation and fine). Finally, if it is determined that there is sufficient evidence to pursue formal discipline, the board or bureau will refer such cases to DOJ for prosecution. DOJ can resolve these cases in various ways—such as declining to prosecute the case or settling the case on behalf of the board or bureau. DOJ can also schedule the case for a hearing before an administrative law judge at the Office of Administrative Hearings (OAH) within the Department of General Services. Cases are resolved when the board or bureau adopts a decision on the case.

***DCA Initiates Improvements to Enforcement Process.*** In 2010, DCA proposed a plan, known as the Consumer Protection Enforcement Initiative (CPEI), to address problems it believed limited the ability of its boards to resolve complaints in a timely manner. For example, some boards took an average of three years to complete the

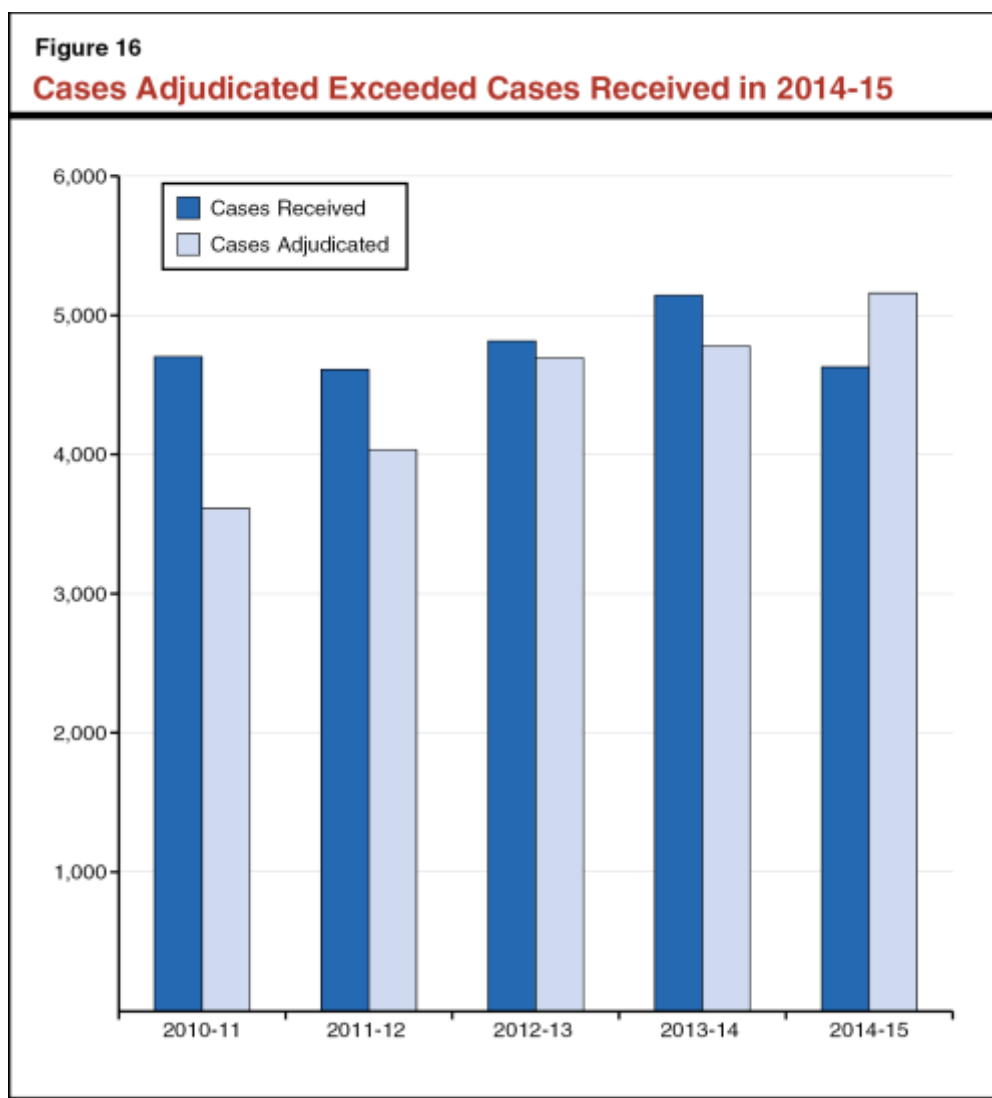
enforcement process. The CPEI proposed restructuring the enforcement process by making administrative improvements (such as delegating subpoena authority to board and bureau staff). In addition, the plan called for increased staff and fiscal resources, and potential statutory changes. As part of CPEI, DCA and its boards and bureaus set performance targets for the average number of days to complete each of the three main steps of the enforcement process. While targets for individual steps may vary by board and bureau, the formal target for the entire process is set uniformly at 540 days (or 18 months). In recent years, many boards and bureaus have not been meeting the 18-month target. For example, roughly two-thirds of boards and bureaus exceeded the target in 2013–14. Of this amount, roughly 58 percent exceeded the target by more than 200 days. Enforcement delays sometimes last for years and allow licensees to continue working despite outstanding complaints, which can compromise consumer protection.

***DOJ Provided Additional Positions in 2015–16 for Increased Enforcement Workload.*** The 2015–16 budget includes a \$2.8 million augmentation from the Legal Services Revolving Fund, as well as nine deputy attorney general and six legal secretary positions, for DOJ to address increased workload related to formal discipline. This brought the total DOJ budget related to the formal discipline step to roughly \$30 million and 117 positions—including 90 deputy attorney general positions. (We note that DCA boards and bureaus reimburse DOJ for its costs through deposits into the Legal Services Revolving Fund.) At the time of this analysis, three of the nine deputy attorney general positions provided in the 2015–16 budget remained unfilled.

## LAO ASSESSMENT AND RECOMMENDATION

### Assessment

***Average Days to Adjudication Would Likely Decline Without Additional Positions.*** Even without receiving additional positions in 2016–17, we estimate that the average number of days to adjudication would likely decline for two reasons. First, as shown in Figure 16, DOJ receives cases (also known as “opening the case”) each year that add to its existing workload. At the same time, DOJ brings a certain number of cases to adjudication each year (also known as “closing the case”). In years where the number of cases received exceeds the number of cases adjudicated, these cases take longer to resolve, increasing DOJ’s average days to adjudication. However, in 2014–15, DOJ received fewer cases than it adjudicated—thereby allowing DOJ to begin to reduce the total number of unresolved cases. This likely reduced average days to adjudication. Second, the number of cases received annually has remained relatively constant. Assuming that DOJ attorneys each handle the same number of cases, the additional positions provided in 2015–16 should allow DOJ to adjudicate even more cases—particularly after the three vacant positions are filled. This would further reduce the total number of unresolved cases and average days to adjudication.



**Issues Unrelated to Staffing Could Be Delaying Overall Enforcement Process.** The Governor’s proposal seeks to meet the 18-month goal for the overall enforcement process by speeding up the formal discipline step—that is, by providing DOJ with greater resources to bring cases to adjudication more quickly. We note, however, that DCA and some of its boards, OAH, and DOJ have identified a number of other possible reasons unrelated to DOJ staffing for the failure to meet the 18-month goal. For example, some DCA boards indicated that difficulties in obtaining information necessary to complete investigations often caused delays in completing the second step of the enforcement process in a timely manner. Departments involved in the process also noted that DOJ sometimes receives incomplete cases from DCA and that there are often delays regarding the scheduling of hearings by OAH, both of which impact the average time it takes to complete the formal discipline step. In addition, DOJ reported certain challenges in settling some cases because it lacks clear guidance on the specific settlement terms that will be acceptable to DCA’s boards and bureaus, which can delay the enforcement process. Accordingly, the additional positions for DOJ in the

Governor's budget may not address key factors contributing to delays in the overall enforcement process.

### **Recommendations**

***Reject Governor's Proposal.*** In view of the above, we recommend that the Legislature not approve the proposed \$1.4 million augmentation from the Legal Services Revolving Fund and seven additional positions at this time. Providing such resources is premature given that (1) DOJ's average number of days to adjudication would likely decline even without additional positions and (2) there appears to be other factors unrelated to DOJ staffing that could be preventing departments from meeting the 18-month goal for completing the overall enforcement process.

***Require DOJ to Report on Workload Strategy.*** In order to increase legislative oversight of DOJ's handling of the formal discipline step, we recommend that the Legislature adopt supplemental reporting language requiring DOJ to evaluate its workload and provide a plan by January 10, 2017 for preparing cases for adjudication in a more timely manner. Specifically, this report should identify (1) the causes of delays in DOJ workload (such as the number of cases returned annually to specific boards/bureaus due to incompleteness), (2) strategies for addressing these delays (which could include improved processes with DCA boards/bureaus or within DOJ), and (3) trade-offs associated with each strategy (such as the need for additional resources). The Legislature will want to consider this report, along with similar information it currently requires from DCA and OAH, to begin identifying the specific causes of delay in the enforcement process and potential solutions to address these delays.

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**Staff Recommendation: Reject proposal for the reasons specified in the LAO's Assessment and Recommendation.**

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