

AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 5
ON PUBLIC SAFETY

ASSEMBLYMEMBER SHIRLEY N. WEBER, PH.D., CHAIR

MONDAY, APRIL 8, 2019
 2:30 P.M. – STATE CAPITOL, ROOM 444
 (PLEASE NOTE ROOM CHANGE)

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ITEMS TO BE HEARD

0820 DEPARTMENT OF JUSTICE

ISSUE 1: DEPARTMENTAL PRIORITIES

The Attorney General will provide an overview of the Department of Justice’s (DOJ) priorities.

PANELISTS

- Xavier Becerra, Attorney General

BACKGROUND

Under the direction of the Attorney General, DOJ provides legal services to state and local entities, brings lawsuits to enforce public rights, carries out various law enforcement activities, collects criminal justice statistics from local authorities, manages the statewide criminal history database, conducts background checks required for firearm purchase, licensing, and other purposes, and provides various services to local law enforcement agencies including the provision of forensic services. The Governor’s budget proposes approximately \$1 billion to support DOJ operations in 2019-20, an increase of \$39 million over the revised amount for 2018-19. Of the total amount proposed for DOJ operations in 2019-20, nearly one third is from the General Fund. This increase reflects various proposals to provide additional General Fund support, most notably for: (1) the state’s forensic laboratories; (2) the continued implementation of the state’s new tiered sex offender registry; (3) the recovery of firearms from persons who are prohibited from owning them; and, (4) the establishment of new human trafficking investigative teams.

Total Operational Expenditures for the Department of Justice

(Dollars in Millions)

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

ISSUE 2: BUREAU OF FIREARMS, ARMED AND PROHIBITED PERSONS SYSTEM, AND VARIOUS ASSOCIATED BUDGET PROPOSALS

The Department of Justice (DOJ) will provide an overview of the Armed and Prohibited Persons System (APPS) and the two budget proposals to add 26 permanent positions to conduct APPS investigations and 63 permanent positions to the Bureau of Firearms.

PANELISTS

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

BACKGROUND

Bureau of Firearms (BOF). BOF is primarily responsible for the regulation and enforcement of the state's firearm and ammunition laws, including conducting background checks for individuals seeking to purchase firearms, licensing firearm and ammunition vendors, conducting vendor compliance investigations, ensuring lawful possession of firearms and ammunition, and administering various other firearms and ammunition programs. BOF engages in various activities related to these responsibilities, including APPS investigation teams who are primarily responsible for investigating the illegal purchase or possession of firearms and ammunition, as well as seizing them from individuals who are prohibited from owning or possessing them. In 2018-19, BOF received \$36.2 million from several special funds to support its various activities.

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

DROS Special Account and FS&E Special Fund. Currently, both the DROS Special Account and the FS&E Special Fund are experiencing operational shortfalls as the expenditures from these funds exceed their revenues. For example, about \$20.6 million in revenues is estimated to be deposited into the DROS Special Account in 2018-19 to support about \$24 million in

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

Armed Prohibited Persons System. APPS, established in 2006, is the only automated system of its kind in the country that allows the monitoring of known prohibited firearm owners. The Bureau of Firearms (BOF) uses Criminal Intelligence Specialists (CIS) and sworn Special Agents to locate and disarm individuals identified through APPS. As of January 2019, BOF had 68 permanent Special Agent and Special Agent Supervisors positions and of those, 50 were filled and 18 were vacant. The DOJ notes that recruitment efforts are hindered by pay disparities. According to a DOJ study on salary and pay differential of comparable state and local law enforcement agencies, DOJ was between 38%-44% below the statewide average in pay.

A significant backlog of 20,721 individuals was identified in 2013. As a result, SB 140 provided the DOJ with \$24 million dollars to address the backlog and mandated reporting as well. According to the DOJ, 53,101 individuals were removed from the APPS database since 2013 and at the same time, 56,557 individuals were added. In 2018, 10,681 individuals were removed and 11,333 individuals were added. Agent enforcement activities removed 4,142 of those cases. The remaining 6,268 individuals were removed due to the expiration or removal of the prohibition and 271 were removed because the individual had passed away. In these latter cases, DOJ agents had to engage in various activities in order to remove the individuals from the system as removal did not happen automatically. Currently, there are 23,222 individuals in the APPS database, with 9,404 of them categorized as “active” and “ongoing,” and the remaining 13,818 as “pending cases” with subcategories like, “unable to clear,” which currently consists of approximately 7,500 cases. Of the “active and ongoing” cases, approximately 1,600 of them are categorized as Federal Brady prohibitions which DOJ does not currently have jurisdiction. An example of an “unable to clear” case is an APPS individual who has five firearms associated with him, but only four of the guns could be recovered or accounted for during an investigation. This person will remain in APPS in the “unable to clear category” until that remaining firearm is accounted for.

An average of three separate contacts are required to close one APPS case for the following reasons:

- (1) The APPS individual is not home at the time of the initial contact.
- (2) The APPS individual moved and failed to update their address with the Department of Motor Vehicles.

- (3) The APPS individual moved out of state.
- (4) The APPS individual claims the firearm was already seized by local law enforcement or reported as lost or stolen to law enforcement.
- (5) The APPS individual is uncooperative and not forthcoming with information about the firearms, requiring additional interviews or contacts.
- (6) The APPS individual claims to have given their firearm to another person outside of the legal firearms transfer process, thereby requiring agents to track down the firearm and/or verify the information provided.

Collaboration with Local Law Enforcement Agencies. BOF currently manages the Contra Costa Anti-Violence Support Effort (CASE) task force, whose primary mission is to conduct complex firearms investigations and disarming prohibited individuals in Contra Costa County. In addition, BPF conducts APPS sweeps throughout the state with the following law enforcement agencies:

- Los Angeles County Sheriff's Department;
- Long Beach Police Department;
- Los Angeles Police Department;
- Oxnard Police Department;
- Santa Cruz County Sheriff's Department;
- Santa Cruz Police Department;
- Santa Paula Police Department;
- Simi Valley Police Department;
- Ventura County Probation Department;
- Ventura County Sheriff's Department;
- Ventura Police Department.

BOF related budget proposals. Four bills were signed into law in the previous legislative session as described below:

Chapter 780, Statutes of 2018 (SB 746) allows a person who is temporarily prohibited from possessing ammunition to transfer ammunition to an ammunition vendor, in addition to a licensed firearms dealer and requires a new California resident to apply for a unique serial number within 60 days of arrival for any firearm the resident wishes to possess in the state.

Chapter 894, Statutes of 2018 (SB 1100) increases the age at which a person can purchase a long-gun from a licensed dealer from 18 to 21 years old with certain exceptions.

Chapter 56, Statutes of 2018 (AB 1872) adds harbor and port police departments to the list of entities exempt from the sale or purchase of unsafe handguns.

Chapter 861, Statutes of 2018 (AB 1968) prohibits a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder and who was previously taken into custody, assessed, and admitted one or more times within a period of one year preceding the most recent admittance from owning a firearm for the remainder of his or her life.

Proposed Funding

Bureau of Firearms Proposal. The Governor's Budget includes \$6.875 million DROS authority in 2019-20 and 63 positions (a combination of new positions, converting temporary positions to permanent positions, and positions with authority but no funding) in the DOJ's Bureau of Firearms, and \$6.41 million DROS authority in 2020-21 and ongoing to maintain time-sensitive firearms workloads. The positions would be placed in the Background Clearance Unit, Phone Resolution Unit, DROS Quality Assurance Team, Reporting and Quality Assurance Section, and Armed Prohibited Persons Section.

APPS Proposal. The Governor's Budget includes \$5.6 million (\$16.9 million General Fund minus \$11.3 million DROS) and 26 positions in 2019-20, and \$4.7 million (\$16 million General Fund minus 11.3 million DROS) in 2020-21 and ongoing.

Spring Finance Letter. The Administration requests that Item 0820-001-0001 be increased by \$575,000 and Item 0820-001-0032 be decreased by \$575,000 to reflect an adjustment to the funding proposed in the Governor's Budget for APPS. This adjustment makes APPS entirely funded by the General Fund.

SB 746, SB 1100, AB 1872, AB 1968. The Governor's Budget includes \$5.22 million DROS spending authority and 10 positions in 2019-20, \$2.69 million in 2020-21, and \$1.74 million in 2021-22 and ongoing to the Department of Justice to meet the mandates of SB 746, SB 1100, AB 1872, and AB 1968.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO provides the following assessment and recommendations:

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

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

Uncertain Impact of Additional Funding for APPS Investigations in Long Run. Since the early 2000s, DOJ has requested additional resources to decrease a backlog of APPS cases awaiting investigation. For example, Chapter 2, Statutes of 2013 (SB 140, Leno) appropriated \$24 million from the DROS Special Account to DOJ in order to address the APPS backlog. While significant progress has been made, the backlog still remains. Specifically, as of January 2019, the Department reports that the backlog was at about 9,400 cases.

DOJ is currently projecting that the backlog may increase due to other new legislation or mandates resulting in an increase in new APPS cases added annually. For example, beginning July 1, 2019, DOJ will need to confirm whether an individual seeking to purchase ammunition is authorized to do so. In the process of doing so, it is likely that DOJ will identify additional cases requiring APPS investigations. DOJ anticipates that this could then generate additional APPS workload such that the APPS backlog increases despite the additional resources. However, the actual magnitude of such a potential increase is uncertain.

If APPS workload does not increase as anticipated, it is possible that the proposed 26 new positions would help DOJ nearly eliminate the existing APPS backlog in several years. According to DOJ, it would then use these resources to take on investigations it currently leaves unaddressed (such as complex cases) or increase its other enforcement duties (such as increasing attendance at gun shows). While additional resources in either of these seem appropriate, the *actual* impact of these additional resources in the long run is uncertain.

Impact of Reduction in DROS Special Fund Support for Other BOF Workload Unclear. At the time of this analysis, the Administration and DOJ had not provided information on which BOF programs would be reduced. As such, the impacts of the proposed reduction is unclear.

DROS Special Fund Augmentations Generally Seem Reasonable. The LAO finds that the request of \$12.1 million from the DROS Special Account to support increases in existing BOF licensing and administration workload, and to support the implementation of new legislation, generally seems reasonable based on the workload data and other information provided by the Department.

LAO Recommendations:

Adopt Alternative to Administration's Budget Proposals. While the Governor's proposal helps prevent the DROS Special Account from becoming insolvent and accommodates increased workload related to a backlog of APPS cases, BOF licensing and administrative workload, and recent legislation, components of it appear unjustified, do not fully address identified problems, and result in unintended consequences. In recognition of this, the LAO recommends an alternative package of adjustments to Governor's proposal which does not change the total amount of funding provided or fund sources it is provided from. However, it allocates the funding in a different manner that, along with the other recommendations below, addresses the concerns identified with the Governor's plan. Additionally, this alternative plan—similar to the Governor's proposal—helps the DROS Special Account avoid insolvency. The key components of this alternative include:

- ***Funding Adjustments for APPS Investigation Teams.*** The LAO recommends the Legislature provide \$16.9 million from the General Fund (declining to \$16 million in 2020-21 and ongoing) to support existing and increased APPS workload. The LAO also recommends approval of the 26 new positions requested to continue addressing the backlog. This provides DOJ with the level of resources that there is workload justification for. The LAO also recommends eliminating existing DROS Special Account support of \$5.8 million and FS&E Special Fund support of \$5.8 million and FS&E Special Fund support of \$5.5 million for APPS investigation teams, which would both be backfilled with the above General Fund support. Under this alternative, APPS investigation teams would be fully funded from the General Fund.
- ***Funding Adjustments for Other BOF Workload.*** The LAO recommends the Legislature provide \$12.1 million to support BOF's increased licensing and administrative workload (\$6.9 million) and the implementation of recent legislation (\$5.2 million). In order to support most of these increased costs, the LAO recommends the Legislature appropriate the freed up \$11.3 million resulting from our above recommendation—\$5.8 million from the DROS Special Account and \$5.5 million from the F&SE Special Fund—to support this other BOF workload. The remaining \$798,000 would be supported by an augmentation in funding from the DROS Special Account. Similar to the Governor's proposal, this alternative would result in an increase of \$16.9 million in General Fund support and a net

\$798,000 increase from the DROS Special Account. Unlike the Governor's proposal, however, this alternative plan does not include an unallocated reduction to BOF.

- **Direct DOJ and Administration Report on Solutions to Address Operational Shortfalls.** The LAO recommends the Legislature direct DOJ and the Administration to submit a report no later than December 15, 2019, on potential solutions to address the ongoing operational shortfalls facing the DROS Special Account and the FS&E Special Fund. These potential solutions can include changing business processes, one-time investments to improve efficiency, increasing firearm-related fees—such as directing DOJ to administratively increase the DROS fee to account for inflation—and/or statutory or regulatory changes. The Legislature can use this report to determine what steps should be taken to ensure that BOF receives sufficient funding from the appropriate fund sources to address legislatively desired service levels. For example, BOF workload has been completely supported by fee revenue deposited into its special funds since 2012-13. The Legislature could decide to increase fee levels to maintain existing practices of fully covering BOF costs through fee revenue rather than providing General Fund support.
- **Require APPS Reporting.** The LAO recommends the Legislature approve budget trailer legislation directing DOJ to report on key metrics it already reports on (such as the number of APPS cases addressed annually), given that the backlog of APPS cases pending investigation is expected to remain for at least the next few years and could potentially increase. Although existing state law requires DOJ to submit annual reports to the Joint Legislative Budget Committee on key metrics related to the APPS backlog, the requirement is scheduled to end on March 1, 2019. This could help the Legislature continue to conduct oversight over the reduction of the APPS backlog and of any additional funding provided to reduce the backlog. Additionally, the LAO recommends that the reporting language specify that once the backlog is eliminated, DOJ should begin reporting on the new or expanded activities the APPS investigation teams engage in. This could help the Legislature determine the extent to which ongoing resource levels should be adjusted in the future

STAFF COMMENTS

APPS Funding. Staff notes a discrepancy in the manner in which APPS has been funded in prior years and the Administration's current proposal. APPS has been previously funded at a level of \$11.3 million, with \$5.8 million from DROS and \$5.5 million from the (FS&E) Special Fund. DROS does not fully fund APPS currently. The Administration's proposal actually provides a total of \$22.4 million for APPS because it does not reduce the FS&E authority by \$5.5 million. The Administration submitted a spring finance letter that made an unrelated adjustment

that does not address this discrepancy. In addition, this proposal would shift the current special funding for APPS from special funds to being completely funded by the General Fund.

Positions Requested. According to the Department of Finance, the staff positions requested below are broken down in the following manner:

Of the 63.0 positions requested in the BOF budget proposal, 19.0 are new positions to address the increase in workload; 24.0 are existing positions without position authority or funding; and 20.0 are existing positions with position authority and no funding. In total, 44 out of the 63 positions are existing (a mix of permanent and temporary positions) and the other 19 are new. The APPS positions requested in the BOF budget proposal are located within the Regulatory Program, not in Enforcement. Regulatory positions, along with the Enforcement teams, are responsible for administering the legislatively mandated programs involving firearm law administration, education, enforcement, dangerous weapons, and firearms related employment. Currently 9.0 of the 44.0 positions are vacant.

The 26.0 positions requested in the APPS budget proposal are existing positions without position authority or funding. Currently, 11.0 of the 26.0 existing positions are vacant.

Definitions used by DOJ to describe the individuals in the APPS database. In the APPS budget proposal, the DOJ included a table to reflect projected outcomes which includes the status of backlogs, incoming workload, and other metrics. According to the proposal, a backlog of 6,980 exists for Fiscal Year 2019-20.

Projected Outcomes

Armed & Prohibited Persons Investigations				
Fiscal Year	Active Armed & Prohibited Persons (Backlog)	Apps Investigations Processed with Approved BCP	Average Annual Investigation Purges	Incoming Workload - Annual APPS Added*
17/18	9,455	7,562	3,200	10,267
18/19*	8,960	9,000	3,200	10,220
19/20**	6,980	9,540	3,200	10,220
20/21**	4,460	9,540	3,200	10,220
21/22**	1,940	9,540	3,200	10,220

*Annual APPS Added projections based on historical data/trends. On average, 28 people are added daily.

*FY 2018-19 projection based on total authorized positions as of July 1, 2018 - 47 SA, 3 CIS I

**FY 2019-20 & FY 2020-21 projection based on 55 agents closing 12 cases/mo & 9 CIS positions closing 15/mo. (assuming this BCP is approved)

The LAO had pointed out that the workload in the table above does not justify the staffing requested. In response, the DOJ provides the updated table on the following page:

Armed Prohibited Persons System				
Fiscal Year	Active Armed and Prohibited Persons (Backlog)	APPS Investigations - Processed with approved BCP	Average Annual Investigation Purges	Incoming Workload - Annual APPS Added*
17/18	9,455	7,562	3,200	12,732
18/19*	11,425	8,172	3,232	12,859
19/20**	12,880	9,540	3,264	12,988
20/21**	13,064	9,540	3,297	13,118
21/22**	13,345	9,540	3,330	13,249

*Annual APPS Added projections based on historical data/trends. On average, 28 people are added daily.

*FY 2018-19 projection based on total authorized positions as of July 1, 2018

**FY 2019-20 & FY 2020-21 projection based on 55 agents closing 12 cases/mo & 9 CIS positions closing 15/mo.

In recent meetings with the DOJ, officials have stated that the APPS backlog *has been eliminated* as of March 31, 2019. When staff asked for further clarification, DOJ provided the following response:

“During the preparation of the BCP, the general terminology of “backlog” was used to describe our Active cases. The Active cases make up our ongoing workload, which could also be called our backlog. In order to establish better clarity in the workload dynamics for the 2018 APPS Report, we defined the “backlog” as being relative to the original 20,721 Active cases from July 2013. On December 31, 2018, of the original 20,721 Active backlog cases there were only 538 cases left in the Active workload. The remainder of the cases make up our Active workload totaling 9,404 cases, which are new cases that have been added since July 2013.”

It appears that the definitions used by DOJ have shifted since the previous year, and even as early as the submission of this proposal, causing confusion. The Legislature may wish to require the Department to provide a final list of definitions and a table that accurately categorizes all of the subjects in the APPS database to clearly understand the current status of APPS and whether the budget proposal accurately reflects the workload. In addition, the Legislature may wish to consider legislation to provide DOJ with the jurisdiction to address federal Brady Prohibitions.

Staff Recommendation: Hold Open.

ISSUE 3: CALIFORNIA INTERNET CONSUMER PROTECTION AND NET NEUTRALITY ACT OF 2018

The Department of Justice will open this issue with an overview of the proposal and an update on ongoing litigation that may impact the implementation of this policy.

PANELISTS

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

BACKGROUND

Chapter 976, Statutes of 2018 (SB 822) was signed into law in 2018 which enacts the California Internet Consumer Protection and Net Neutrality Act of 2018. Net neutrality allows consumers the right to access online content of their choice without interference or manipulation by their internet service providers. In particular, it prohibits Internet service providers that provide broadband Internet access service from: (1) blocking lawful content or applications; (2) throttling applications or services; and, (3) engaging in paid prioritization. It also requires providers to publicly disclose certain information to ensure that consumers are able to make informed choices regarding the use of their services.

Litigation is currently pending challenging the Federal Communications Commission's 2017 decision to reverse net neutrality rules, as well as Chapter 976. These cases include:

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

In October 2018, California entered into an agreement with the plaintiffs in the two suits filed against the state. Under the agreement, both lawsuits would be stayed (or placed on hold) until the federal court of appeals issues its opinion on the multistate case against the FCC and U.S., or the U.S. Supreme Court issues a final decision on the case—whichever is later. In exchange, California agreed to not enforce Chapter 976 until either: (1) 30 days after the October 2018 stay expires if plaintiffs in the two cases against California do not request a new stay within that time period; or, (2) 30 days after a judge makes a decision if they request a new stay within that time period. Further stays on the enforcement of Chapter 976 could potentially be sought. DOJ estimates that they expect a ruling in the FCC case sometime this summer.

Proposed Funding

The Governor's Budget includes \$1.846 million Unfair Competition Law Fund and 9 positions for 2019-20 and \$1.775 million Unfair Competition Law Fund and ongoing to support the implementation and perform the mandates under SB 822.

LEGISLATIVE ANALYST'S OFFICE (LAO)

According to the LAO, the pending Litigation could prevent Chapter 976 enforcement because it is unclear whether the October 2018 stay on Chapter 976 will expire in 2019-20. Oral argument in the multistate case against the FCC and U.S. concluded in February 2019. As such, it is possible that the stay could expire during the budget year. However, it is also possible that the stay is in place beyond the budget year. This could happen if, for example, the Supreme Court takes time to issue a decision or if subsequent stays are issued in the two cases against California. Under such circumstances, DOJ would not need the proposed resources to implement Chapter 976 in 2019-20 and thus would not need the resources proposed by the Governor. As such, the LAO makes the following recommendation to the Legislature:

- Modify the Governor's proposal by adopting budget bill language specifying that DOJ could only spend the proposed \$1.8 million to enforce Chapter 976 if all court prohibitions preventing its implementation or enforcement have expired.

Staff Recommendation: Hold Open.

ISSUE 4: DISPOSITIONS WORKLOAD INCREASE

The Department of Justice will open this issue with an overview of the proposal regarding the increase in dispositions workload.

PANELISTS

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

BACKGROUND

Chapter 523, Statutes of 2018 (AB 865) requires the court, upon receiving a petition for recall of a sentence from a member of the military suffering from a specified condition, to determine, at a public hearing, whether the person qualifies for relief.

Chapter 652, Statutes of 2018 (AB 2599) requires a facility at which an arrestee is detained to, at the request of the arrestee upon release, provide forms to the arrestee to apply for a record seal.

Chapter 1001, Statutes of 2018 (AB 2942) authorizes a prosecutor to provide a recall and resentencing recommendation to the court.

Chapter 1015, Statutes of 2018 (SB 1437) provides a means of vacating the conviction and resentencing a defendant when a complaint, information, or indictment was filed against the defendant that allowed the prosecution to proceed under a theory of first degree murder, or murder, under the natural and probable consequences doctrine.

Proposed Funding

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

LEGISLATIVE ANALYST'S OFFICE (LAO)

State law requires DOJ to maintain the state's databases of criminal history records. For each individual arrested, state law requires law enforcement agencies, the state courts, and detention

facilities to submit certain specified information to DOJ's databases. Such information includes the individual's name, date of birth, and fingerprints, as well as the charges filed, disposition of cases, sentence received, and date of release. DOJ also serves as the state's single point of contact for the exchange of criminal history records with the federal government. Finally, state law authorizes DOJ to provide certain federal and state criminal history information to designated entities (such as peace officers, courts, and county child welfare agency personnel) and/or under specified circumstances (such as if the information is being used for licensing or employment purposes).

According to the LAO, the workload associated with the four pieces of legislation enacted in 2018 appear to be, either limited-term in nature or uncertain, given that it would depend on how certain individuals respond to the legislation. For example, the additional workload resulting from resentences occurring in the implementation of Chapter 1015 would likely not be ongoing in nature. This is because the resentencing under the legislation only applies to those offenders who were convicted prior to its implementation. The LAO also notes that such offenders have a strong incentive to seek resentencing in order to potentially serve shorter sentences—thereby filing resentencing requests that generate increased workload in the near-term. Additionally, the actual number of district attorneys that would recommend the recall and resentence of defendants under Chapter 1001 is uncertain. This makes it difficult to estimate the number of cases that would be filed and adjudicated by the courts, and thus requiring DOJ to update its criminal history records. As such, the LAO makes the following recommendation to the Legislature:

- Approve the requested \$203,000 for DOJ to process additional criminal history record updates on a two-year, limited-term basis—rather than on an ongoing basis as proposed by the Governor. This would allow DOJ to track the total amount of workload generated by the four pieces of legislation enacted in 2018 and request additional resources as needed in two years based on actual workload.

Staff Recommendation: Hold Open.

0690 OFFICE OF EMERGENCY SERVICES

ISSUE 5: CALIFORNIA INTEROPERABLE PUBLIC SAFETY RADIO SYSTEM

The Office of Emergency Services will open this issue with an overview of the proposal regarding the public safety radio system.

PANELISTS

- Office of Emergency Services
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Public safety radio systems allow public safety personnel in the field to communicate with each other, dispatch centers, and allied agencies during everyday business and life and death situations. Land Mobile Radio (LMR) are the primary means of reliable voice communications among public safety personnel.

The state's current radio system operates on different radio frequencies and dissimilar infrastructure, and does not interoperate with other radio systems. The multiple systems also cause congestion, and there are a limited number of radio systems available. California's radio agencies own, fund and control 38 separate radio systems across the state, each with its own infrastructure, used only by that agency. Fourteen states have invested in statewide public safety radio interoperable systems with success.

The California Interoperable Radio System (CRIS) will:

- Provide seamless, interoperable communications among system users.
- Improve radio coverage to clients whose radio systems are geographically limited.
- Allow radio clients to replace part of all of their legacy system, allowing the State to maintain fewer legacy systems and focus on building one stronger statewide interoperable system.
- Leverage and link to existing state and regional digital trunked radio systems.
- Provide priority for public safety users while allowing non-public safety agencies to use the system.
- Reduce radio programming workload and increase interoperability during emergencies.

CRIS will help to expand geographical radio coverage to all users without the expense of adding new radio sites to the system. As a subscriber based service, OES expects to recover costs from participating agencies which will be used to support the ongoing maintenance of the system. In addition, the Governor has decided to opt into the First Responder Networker (FirstNet) State Plan, which is meant to complement land mobile radio systems, since FirstNet is not expected to reach all areas of the state.

The funding will be used for activities such as purchasing and installing new radio equipment, as well as hiring personnel to maintain and manage the radio system.

Proposed Funding

The Governor's Budget includes \$59.46 million General Fund over five years and eight positions in 2019-20, increasing to 13 positions in 2020-21, with ongoing funding of \$2.718 million General Fund beginning in 2024-25 to build a statewide public safety radio system. Below are the five-year costs to build out the radio system:

<i>(in millions)</i>	2019-20	2020-21	2021-22	2022-23	2023-24	TOTAL
Personnel	\$ 1.743	\$ 2.718	\$ 2.718	\$ 2.718	\$ 2.718	\$ 12.615
Positions	8.00	13.00	13.00	13.00	13.00	
System Build	\$ 9.047	\$ 8.924	9.487	\$ 9.676	\$ 9.715	\$ 46.849
Total by Year	\$ 10.790	\$ 11.642	\$ 12.205	\$ 12.394	\$ 12.433	\$ 59.464

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO has no concerns with the proposal to provide five years of funding to implement the system and, thus, recommend the Legislature approve this part of the request. However, the LAO recommends rejecting the ongoing funding component of \$2.7 million because of the uncertainty regarding the future level of workload associated with operating and maintaining the public radio system after the radio system is implemented. This is because: (1) the level of workload associated with developing the system could be different from the level of workload associated with maintaining the system on an ongoing basis; and, (2) there is expected to be an unspecified level of efficiencies achieved as a result of the new system. Additionally, to the extent ongoing workload is funded in the future, the LAO recommends that it be paid for using a fee-for-service model rather than exclusively from the General Fund. The LAO states that this

approach is consistent with the current funding structure for the public safety radio system and would fairly apportion costs to the various client agencies that benefit from it.

Staff Recommendation: Hold Open.

ISSUE 6: MUTUAL AID SYSTEM

The Office of Emergency Services (OES) will open this issue with an overview of their mutual aid system proposal.

PANELISTS

- Office of Emergency Services
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

The mutual aid system is based on four organizational levels: cities, counties, regions and the state, and provides that, within the operational area (typically the same boundaries as the county), adjacent or neighboring agencies will assist each other. Should the event require assistance from outside the county, the region will provide requested assistance to the impacted county. If the combined resources of the region are insufficient, the regional coordinator contacts the state mutual aid coordinator at OES. The state reimburses costs directed by OES that are related to pre-positioning requests activated through the mutual aid system and that were not requested by the local agencies. Specifically, the 2016 Budget Act provided various augmentations in support of the mutual aid system, including a one-time \$10 million General Fund augmentation for purchasing fire engines for the mutual aid system. The 2018 budget package also provided one-time \$25 million and \$1.1 million ongoing from the Greenhouse Gas Reduction Fund (GGRF) to OES for the procurement and maintenance of fire engines and to support the mutual aid system. Additionally, the 2017 budget package provided \$25 million from GGRF for prepositioning, and the 2018 Budget Act provided \$25 million from the General Fund for prepositioning. Prepositioning occurs in areas of identified potential fire threat, which is determined through various means such as weather modeling, high wind zones, low humidity, and dense fire load.

According to OES, of the \$25 million provided in 2017-18, only \$4 million has been expended, and out of the \$25 million provided in 2018-19, only \$1.5 million had been expended.

Proposed Funding

The Governor's Budget includes \$25 million General Fund on an ongoing basis for prepositioning of existing OES and local government resources that are a part of the statewide mutual aid system.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO states that the requested ongoing funding for repositioning mutual aid engines represents a continuation of funding provided on a one-time basis by the Legislature in the last two budget years. While much of the current fiscal year remains to expend these funds, this leaves questions about what the annual funding need for this program should be. Additionally, this request was submitted without a formal budget proposal. Therefore, the LAO recommends that the Legislature direct OES to submit Budget Change Proposals for future requests that include: (1) new positions; (2) funding for new activities; (3) changes in proposed funding-levels for existing activities if not purely technical in nature; and, (4) extensions of funding, activities, and/or positions that were previously approved on a limited-term basis.

Staff Recommendation: Hold Open.

This agenda and other publications are available on the Assembly Budget Committee's website at: <https://abgt.assembly.ca.gov/sub5hearingagendas>. You may contact the Committee at (916) 319-2099. This agenda was prepared by Jennifer Kim.