

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 12. GUN VIOLENCE RESTRAINING ORDERS

NOTICE OF PROPOSED RULEMAKING

Notice originally published January 22, 2021
Notice revised February 19, 2021
Notice secondly revised March 11, 2021

****The Department has extended the comment period until March 26, 2021 at 5:00 p.m.****

The Department of Justice (Department) proposes to adopt sections 961 through 967 of Title 11, Division 1, Chapter 12 of the California Code of Regulations (CCR) concerning Gun Violence Restraining Orders (GVRO), pursuant to the authority provided in Penal Code section 14231.5.

PUBLIC HEARING

The Department held a virtual public hearing on March 11, 2021.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on March 26, 2021 at 5:00 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Department of Justice
Government Law Section
Attn: Kevin Sabo
1300 I Street, 17th Floor
Sacramento, CA 95814
regulations@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Penal Code section 14231.5.

Reference: Penal Code sections 530.55, 11105, 13202, and 14321.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

Assembly Bill (AB) 1602 (Stats. 2016, Ch. 24) established Penal Code section 14230 and codified legislative findings and declarations related to firearm violence, noting that too little was known about firearm violence and prevention. (Pen. Code, § 14230, subd. (e).) As a result, the Legislature established a center for research into firearm-related violence to be administered by the University of California. (Pen. Code, § 14231, subd. (a).)

California also had enacted a gun violence restraining order (GVRO) process. (Pen. Code, § 18100 et seq.) The GVROs are orders, in writing, signed by the court, that prohibit and enjoin the named person from having in their custody or control, owning, purchasing, possessing, or receiving firearms or ammunition. (Pen. Code, § 18100.) Subsequent to the statutory scheme establishing and governing GVROs, the Legislature adopted Senate Bill (SB) 536 (Stats. 2017, Ch. 810), which enacted Penal Code section 14231.5 to make available GVRO information to the University of California Firearm Violence Research Center, and at the Department's discretion, to any other nonprofit educational institution or public agency immediately concerned with the study and prevention of violence, for academic and policy research purposes.

Effect of the Proposed Rulemaking:

These proposed regulations codify and update existing policies and procedures governing the dissemination of GVRO data. Specifically, the regulations would describe the processes and procedures to request, receive, secure, store, disseminate, and destroy GVRO information provided by the Department. Proposed CCR, Title 11, Division 1, Chapter 12, interprets and details the specifics of Penal Code section 14231.5 as follows:

Article 1 specifies the title and scope of the new chapter, which is to set forth the policies and procedures governing the dissemination of GVRO data.

Article 2 specifies the definitions used in the new chapter.

Article 3 specifies the access to, and use of, the data, including nonprofit educational institution and public agency eligibility for access to the GVRO data, access to aggregated data, restrictions on use or disclosure of GVRO data, and the procedures for requesting GVRO data, including aggregated data.

Article 4 specifies the procedures to destroy GVRO data, including the National Institute of Standards and Technology (NIST) guidelines to follow, and the requirements to submit a certificate of data destruction.

Article 5 specifies the consequences of failure to comply with the regulations.

Anticipated Benefits of the Proposed Regulations:

The objective of this proposed rulemaking is to allow the Department to utilize its discretion under Penal Code section 14231.5 to make available the GVRO information for academic and policy research purposes. The regulations outline that information would be available to researchers of nonprofit educational institutions and public agencies immediately concerned with the study and prevention of violence. Furthermore, these regulations clarify the requirements for eligibility and access to, and subsequent destruction of, GVRO data, thus ensuring that GVRO data is controlled and safeguarded.

The Department anticipates these regulations would benefit the privacy, security, and welfare of California residents because by detailing the requirements for access and use, including clarity for aggregated data requests, these regulations would ensure that the information is only available to those entitled to it under Penal Code section 14231.5. These regulations would also help to further the Legislature's intent to make GVRO data available to nonprofit educational institutions and public agencies immediately concerned with the study and prevention of violence, for academic and policy research purposes.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern GVRO data as these regulations are based on recently enacted legislation that instituted Penal Code section 14231.5 and are not connected to any previous regulations.

Forms Incorporated by Reference:

NIST Special Publication 800-88, Revision 1, Guidelines for Media Sanitization, December 2014. (See § 967, subd. (a)(4).)

Materials Relied Upon:

SLDS Technical Brief 3: Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting (NCES 2011-603): <https://nces.ed.gov/pubs2011/2011603.pdf>

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The Department received an appropriation of \$138,000 in fiscal year (FY) 2018-19 and an ongoing appropriation for a Research Data Analyst (RDA) II, related to SB 536 (Stats. 2017, Ch. 810), which provides the authority for these regulations. This appropriation, based on input from the Department, was designed to enable the Department to address the following areas of responsibility: (1) draft regulations to establish parameters for usage, data governance, etc.; (2) analyze data; (3) conduct empirical research; (4) perform audits; and (5) process data requests. The Department anticipates incurring the same costs in future FYs to implement SB 536 and these regulations.

As these regulations establish clear guidelines to request and receive GVRO data from the Department, the Department believes it is possible that the enactment of these regulations could result in an increased number of requests for GVRO data. If the regulations lead to an increase in workload, the Department may need to pursue a Budget Change Proposal (BCP) to acquire an additional position. However, the Department is not able to estimate this potential impact at this time and is therefore not currently pursuing a BCP.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that this proposed action would not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, and (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

Benefits of the proposed action: This proposed action would standardize the processes to obtain GVRO data and eliminate confusion and ambiguity about eligibility for access to GVRO data. In addition, this proposed action would protect Californians' privacy in the GVRO data by ensuring proper protocols and procedures are in place to secure and destroy the information.

Business report requirement: None.

Small business determination: The Department has determined that this proposed action does not affect small businesses because it only applies to nonpublic educational institutions and public agencies requesting GVRO data, and other entities entitled to aggregated GVRO data.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than this proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has determined that these proposed regulations are the most effective way to implement Penal Code section 14231.5 and its discretion to allow access to GVRO data for nonpublic educational institutions and public agencies immediately concerned with the study and prevention of violence, for academic and policy research purposes.

CONTACT PERSONS

Inquiries concerning this proposed administrative action may be directed to:

Department of Justice
Government Law Section
Attn: Kevin Sabo
1300 I Street, 17th Floor
Sacramento, CA 95814
(916) 210-7639
regulations@doj.ca.gov

Questions regarding procedure, comments, or the substance of this proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding this proposed action may be directed to the below backup contact person:

Department of Justice
Government Law Section
Attn: Zach Hoffman

1300 I Street, 17th Floor
Sacramento, CA 95814
(916) 210-6366
regulations@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which this proposed rulemaking is based. The text of the Notice, the express terms, the Initial Statement of Reasons, and any information upon which this proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/regulations>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this Notice or make modifications based on the comments. If the Department makes modifications which are sufficiently related to the originally-proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department’s website at <https://oag.ca.gov/regulations>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/regulations>.