CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 12. GUN VIOLENCE RESTRAINING ORDERS (GVRO)

ADDENDUM TO INITIAL STATEMENT OF REASONS (OAL File No. Z2021-0112-05)

On January 22, 2021, the Department of Justice (Department) published proposed regulations regarding Gun Violence Restraining Orders (GVRO), pursuant to the authority provided in Penal Code section 14231.5. These and other rulemaking documents are available for review on the Attorney General's website at https://oag.ca.gov/research-center/regs#gvro.

The Department received written public comments on the proposed regulations until March 26, 2021. The Department also held a virtual public hearing on March 11, 2021. Oral comments on the proposed regulations were accepted with detailed minutes of the meeting recording the comments.

The Department reviewed all comments received during the public comment period. In response to these public comments, and to clarify the regulations as originally proposed, the Department has modified its proposed regulations, and has prepared this Addendum to the Initial Statement of Reasons (Addendum).

This Addendum explains the modifications and the reasons for these modifications in the"Purpose and Necessity of Modifications to Proposed Regulations" section below.

PURPOSE AND NECESSITY OF MODIFICATIONS TO PROPOSED REGULATIONS

§ 961. Title and Scope.

This provision was only amended to add an authority and reference citation to the Information Practices Act of 1977 (IPA), Civil Code section 1798.21.

§ 962. Definitions.

Subdivision (b) was amended to add the acronym "PII." This amendment was necessary because Personal Identifiable Information is often referred to as PII.

Subdivision (h) was amended to replace "Personal Identifiable Information" with the acronym "PII." This amendment was necessary because Personal Identifiable Information is often referred to as PII.

Subdivision (k) was amended to replace "Personal Identifiable Information" with the acronym "PII." This amendment was necessary because Personal Identifiable Information is often referred to as PII.

Subdivision (m) was amended to include "or PII." This amendment was necessary because Personal Identifiable Information is often referred to as PII.

New subdivision (r) was added to add a definition of "Statistical Purposes", which means statistical analysis of data to summarize and describe a population or subpopulation, which is designed to develop or contribute to general knowledge or education. This definition is necessary to clearly explain what would constitute one of the purposes for which a Bona Fide Researcher qualifies to receive GVRO De-Identified Individual-Level Data and Identified Individual-Level Data. The addition of this definition requires the subsequent renumbering of subdivisions (s) and (t) in this section. Additionally, subdivision (s) was revised nonsubstantively in its numbering by including a parenthesis.

In response to a comment discussing student assistants, the Department amended subdivision (t) to delete the language and requirement that a "Team Member" be "Affiliated" with a Nonprofit Educational Institution or Public Agency, since "Affiliated" is defined in subdivision (a) as being an employee. This revision is necessary to allow the Nonprofit Educational Institution, Public Agency, or the Bona Fide Researcher flexibility in forming their research teams and identifying individuals in their Data Request Standard Applications who may access or analyze data obtained.

There were also additions to the reference citations, which were necessary to include as the Department has obligations to protect that information, which may be included in the GVRO De-Identified Individual Level or Identified Individual Level Data.

§ 963. Eligibility for Access to Data.

In response to comments, subdivisions (a)(2) and (a)(3) were amended to delete overly restrictive language and to authorize access to GVRO De-Identified Individual-Level Data and GVRO Identified Individual-Level Data to those eligible to receive it and after following specified procedures. These amendments make clear that pursuant to Penal Code section 14231.5, a Bona Fide Researcher from a Nonprofit Educational Institution or Public Agency is eligible to obtain GVRO Aggregated Data, De-Identified Individual-Level Data, and Identified Individual-Level Data, as long as the requirements in section 966 are met. These amendments were necessary to address public comments and to ensure the implementation of Penal Code section 14231.5 as the Legislature intended.

There were also additions to the reference citations, which were necessary to include as the Department has obligations to protect that information, which may be included in the GVRO De-Identified Individual Level or Identified Individual Level Data.

§ 964. Restrictions on Use or Disclosure of GVRO De-Identified Individual-Level Data or Identified Individual-Level Data.

In response to comments, this section was amended to clarify the term "GVRO data," by making it more specific to GVRO De-Identified Individual-Level Data and/or Identified Individual-Level Data where applicable. This amendment is necessary because GVRO Aggregated Data is not

subject to the same restrictions as De-Identified Individual-Level Data and Identified Individual-Level Data.

In response to comments, subdivision (c) was amended and former subdivision (d) was deleted to avoid repetition and to add clarity. Subdivision (c) was amended to clarify that if the transfer, disclosure, or dissemination is authorized by statute, which would include Penal Code section 14231.5, or court order, and the Data Request Standard Application authorized disclosure, additional written approval from the Research Center is not necessary. Alternatively, if written approval is necessary because another situation or use arises not described in the Data Request Standard Application, subdivision (c) was amended to provide a timeframe for the Research Center to respond to any such request. The amendment is necessary to respond and refute concerns that the Department might inappropriately use the publication review process, which is designed to protect confidential information, as an illegitimate way to suppress research based on content other than confidential information. The removal of subdivision (d) requires the subsequent renumbering in subdivisions (e)-(g).

Subdivision (d) includes a minor revision to "Individuals" as it was not a specially defined term.

Subdivision (e) was revised to replace "Department" with "Research Center." This change is necessary to provide more specificity as to what division would be responsible for providing the documents.

Subdivision (f) was amended to replace "GVRO data" with "data" as no special defined term was required. It was also revised to provide the acronym of the Federal Bureau of Investigations as "FBI" and correctly refer to the CII number, which means the California Identification and Index Number. It also was amended to replace "Personal Identifying Information" with its acronym, PII, which was necessary to conform to changes elsewhere.

In response to comments, the first part of subdivision (g) was revised to add a timeframe for reviewing any report, evaluation, or document for review. This change is necessary to address concerns made by commenters regarding undue delays in the review process. Subdivision (g) was also revised to reference the Data Request Standard Application, which includes the purpose and objective of the research project. This change is necessary to more accurately describe to scope of the Department's review, which is to ensure that the report, evaluation, or document matches the purpose that was declared in the Data Request Standard Application, and approved by the Research Center.

Subdivision (g)(1) restates subdivision (i) and adds a timeframe for Department notification that a publication may compromise the identify of an individual. This change is necessary to address concerns made by commenters regarding undue delays in the review process.

In response to comments, the Department added subdivision (g)(2) to clarify that if the Research Center determines that data was not used for the purposes for which it was requested, it may require the submission of a new or revised Data Request Standard Application. This will allow the Bona Fide Researcher to inform the Department of the purpose of a project or report that was not previously disclosed and the Department can ensure that the purpose meets the research

criteria for GVRO De-Identified Individual-Level Data and Identified Individual-Level Data. The amendment is necessary to efficiently resolve discrepancies between the research purpose as described in the publication and the purpose as described in the Data Request Standard Application.

Subdivision (g)(3) was renumbered and included language in previous subdivision (g)(1), to allow for more coherency in its ordering.

In response to comments, former subdivision (i) was deleted and moved to subdivision (g)(1).

In response to comments, a new subdivision was added, subdivision (h) which would provide the Bona Fide Researchers, Nonprofit Educational Institutions, or Public Agencies, a method of appeal for decisions by the Department that (1) the Nonprofit Educational Institution, Public Agency, or Bona Fide Researcher is not permitted to transfer, disclose, or disseminate GVRO De-Identified Individual-Level Data or Identified Individual-Level Data, (2) any publication, dissemination, disclosure, or release of GVRO De-Identified Individual-Level Data or Identified Individual-Level Data or analyses could compromise the identity of any individual, or (3) that the GVRO De-Identified Individual-Level Data or Identified Individual-Level Data obtained in accordance with this section was not used for the purposes for which it was requested. The addition of this subdivision requires the subsequent renumbering in subdivisions (i)-(m).

The Department revised the subdivisions related to the above situations to respond to commenters' concerns regarding undue publication delays. The addition of the appeals process is necessary to demonstrate that while the Department's reviews are to meet its obligations under the IPA, researchers will have an opportunity to dispute any findings that might disrupt the publication process.

Subdivision (i) was amended to clarify that selling Aggregated Data, De-Identified Individual-Level Data, or Identified Individual-Level Data is prohibited. This change is necessary to more accurately describe what types of data may not be sold. Additionally, language was added to clarify that the prohibition does not apply to a report, evaluation, or other document that uses or relies on Aggregated Data, De-Identified Individual-Level Data, or Identified Individual-Level Data. This addition is necessary to more accurately describe the scope of the prohibition.

Subdivision (k)(2) was also amended to replace "Personal Identifying Information" with the acronym "PII." This amendment was necessary because "Personal Identifying Information" is commonly referred to as PII.

Subdivision (k)(3) was amended in response to comments that liability apply only to a Nonprofit Educational Institution, Public Agency, or Bona Fide Researcher, and not to a Team Member (such as students or temporary employees or consultants). This amendment is necessary to ensure that in the case of a breach, liability is properly placed with the party that has the adequate financial ability to comply with this requirement.

Amendments to the authority and reference sections were made to include other applicable citations.

§ 965. Procedures for Requesting GVRO Aggregated Data.

This section was amended to replace the underinclusive term "Entity" in subdivisions (b) and (c), since a Bona Fide Researcher could also request Aggregated Data.

§ 966. Procedures for Requesting GVRO De-Identified Individual-Level Data or Identified Individual-Level Data.

Subdivision (b)(12)(A)(ii) was amended because of changes elsewhere in the regulations allowing the release of GVRO De-Identified Individual-Level Data or Identified Individual-Level Data, and the definition of Statistical Purposes being added. The added phrase "especially Identified Individual-Level Data and PII, is required and" was necessary to ensure Bona Fide Researcher have a legitimate need for PII. Additionally, since Statistical Purposes was defined, and is also a basis for eligibility to receive the relevant data, the Department included Statistical Purposes in this subdivision. This change was necessary for Bona Fide Researchers to know what information is required in the Data Request Standard Application. Also, this subdivision's changes were necessary to allow the Department to continue to meet its obligations under the IPA, while balancing its obligation to release information under Penal Code section 14231.5 by ensuring information is only released consistent with Penal Code section 14231.5 and these regulations.

Subdivision (b)(12)(A)(v) was amended to delete language that was inconsistent with amendments made in section 963 in response to comments. This is necessary to conform to section 963 and make clear that a cohort was no longer required to be submitted.

In response to comments, subdivisions (b)(12)(C) and (b)(12)(D) were amended clarify that the phrase GVRO data refers to GVRO De-Identified Individual-Level Data or Identified Individual-Level Data, and not GVRO Aggregated Data. This change is necessary because GVRO Aggregated Data is not subject to the same restrictions as De-Identified Individual-Level Data and Identified Individual-Level Data.

Subdivision (b)(12)(D) was also amended to update the name of the document that must be signed and certified by the security officer or IT manager, the information that the security officer or IT manager must provide, and the certification and requirements that the security officer or IT manager must verify. Because information the Department maintains in its various databases is becoming increasingly subject to various disclosures under the law, like Penal Code section 14231.5, the Department made these changes based on ongoing efforts to update, and communicate, the security requirements for research organizations, contractors, external entities, and vendors. The Department revised the requirements, which are described in a new document, based on federal requirements governing criminal justice information. The updated changes are also reflected in the Department's new document entitled "California Department of Justice (CADOJ) California Justice Information Services (CJIS) Division Security Requirements for Research Organizations, Contractors, External Entities, & Vendors." The changes in the regulation are necessary to incorporate all of the requirements in that document, to delete requirements that are not in that document, and to provide guidance to the Nonprofit Educational

Institutions, Public Agencies, and Bona Fide Researchers as to what requirements they must meet for security controls. The security requirements described in the new document and in the regulation are based on consultations with the Department's security and IT personnel.

Additionally, in response to comments, the Department is also permitting data storage on cloud providers. This addition is necessary to accommodate a common method of storing data. Because of this addition, subdivision (b)(12)(D) was amended to include the requirements for data storage on cloud providers, including the FBI CJIS Appendix A Clouds Control Catalog, and a certification that if data storage will be in a data server maintained by a cloud provider, the data storage must have undergone either (a) a Systems and Organization (SOC) 2 audit or (b) a Federal Risk and Authorization Management Program (FedRAMP) certification. This change was necessary to incorporate the requirements of the "California Department of Justice (CADOJ) California Justice Information Services (CJIS) Division Security Requirements for Research Organizations, Contractors, External Entities, & Vendors," and to provide notice and guidance to the Nonprofit Educational Institutions, Public Agency, or Bona Fide Researcher regarding the security requirements. The cloud storage requirements are based on consultations with the Department's security and IT personnel.

This subdivision also incorporates by reference two additional documents that set forth the requirements that Nonprofit Educational Institutions, Public Agencies, and Bona Fide Researchers must meet for security control: United States Department of Justice, Criminal Justice Information Services (CJIS) Requirements Companion Document to the FBI CJIS Security Policy Version 5.9, dated June 1, 2020, and the FBI CJIS Appendix A Clouds Control Catalog located at https://www.fbi.gov/file-repository/cloud-control-catalog-appendix-a.pdf/view. The Department chose these guidelines because CJIS provides a minimum set of security requirements for access to Federal Bureau of Investigation (FBI) CJIS Division systems and information and to protect and safeguard criminal justice information. CJIS has integrated presidential directives, federal laws, FBI directives, the criminal justice community's Advisory Policy Board decisions along with nationally recognized guidance from the National Institute of Standards and Technology (NIST) and the National Crime Prevention and Privacy Compact Council into its guidelines. Because the GVRO De-Identified Level Data and Identified Individual-Level Data is in one of the Department's criminal databases, and may include criminal and federal information, the CJIS security requirements were necessary to include, in order to allow the Bona Fide Researchers access to the information.

In response to comments, and to conform to changes in the definition of "Team Member" in section 962 subdivision (t), subdivision (d) was revised to delete the requirement that the "Team Member" be "Affiliated" with the Nonprofit Educational Institution or Public Agency. This amendment is also necessary to maintain consistency in the regulations, and allow flexibility for the Nonprofit Educational Institution, Public Agency, or Bona Fide Researcher in selecting research teams.

New subdivision (e) was added to conform to changes in section 963 allowing the release of GVRO Identified Individual-Level Data by requiring background checks. This change is necessary to allow the Department to balance its obligations under Penal Code Section 14231.5, the IPA, and other statutory and regulatory requirements governing access to PII, and criminal

and federal information, by ensuring proper safeguards are in place. Also, in response to comments, the subdivision provides an appeals process if a Bona Fide Researcher or Team Member fails the background check. This change is necessary to remedy any mistakes made during the background check process. The addition of this subdivision requires the subsequent renumbering in subdivision (f).

The Department also amended the Authority and Reference sections to add citations to the other statutory requirements and the IPA.

§ 967. Procedures for Destruction of GVRO De-Identified Individual-Level Data or Identified Individual-Level Data.

In response to comments, this section was amended to clarify the phrase "GVRO data" describes the requirements for destruction of "GVRO data" as meaning GVRO De-Identified Individual-Level Data or GVRO Identified Individual-Level Data as applicable. This change is necessary because GVRO Aggregated Data is not subject to the same restrictions as De-Identified Individual-Level Data and Identified Individual-Level Data.

In response to comments, the phrase "except as provided in subdivisions (b) and (c)" was added to subdivision (a) because subdivisions (b) and (c) allow Bona Fide Researchers to submit a request to extend the time for destruction. The necessity for subdivision (b) is described below.

Subdivision was amended (a)(4) to provide replace "confidential information" with GVRO De-Identified Individual-Level Data or GVRO Identified Individual-Level Data. This was necessary to more accurately describe the data subject to destruction requirements.

Subdivision (a)(8) was amended to delete repetitive and unnecessary language.

In response to comments, subdivision (b) was added to allow Bona Fide Researchers to submit a request to extend the time for destruction of the GVRO De-Identified Individual-Level Data or Identified Individual-Level Data, for purposes of verification and validation. The Research Center will authorize up to seven years for verification and validation purposes, as requested by an applicant. This change is necessary because researchers need time after completion of a project and publication for other researchers to verify their findings and, according to public comments, seven years is industry standard. In order to ensure that the Research Center is able to track which Bona Fide Researchers have what data, and which projects are still open, the Research Center will require the yearly submission for a request. This yearly submission also aligns with the requirement of when project renewal requests must be submitted. If the Research Center did not have a yearly requirement, there are concerns that a Bona Fide Researcher may move from a Nonprofit Educational Institution or Public Agency, and the Research Center would not be able to verify the ongoing protection, and destruction, of the data.

Subdivision (c) was added to allow the GVRO De-Identified Individual-Level Data or Identified Individual-Level Data to be incorporated into a new Data Request Standard Application and then retained for an additional project. This change is necessary because it would be inefficient and costlier for Department staff to respond to new data requests by recreating data sets that were

previously compiled and requested by the applicant, and would be costlier and less efficient for the Bona Fide Researchers to destroy data sets already in their possession and needed for another project.

Subdivision (d) was added to make clear that if a Bona Fide Researcher is submitting renewals for the Data Request Standard Application, then the destruction requirements do not apply. This subdivision is necessary to avoid premature destruction of data before project completion.

The Department also amended the Authority and Reference sections to add citations to the other statutory requirements and the IPA.

§ 968. Enforcement of Regulations by the Department.

In response to comments, subdivision (a) was amended to limit the scope of any possible inspection to determine compliance with the regulations and ensure the security and protection of the GVRO De-Identified Individual-Level Data or Identified Individual-Level Data. Subdivision (a) also requires that prior written notice be given, and that any inspection occur at a mutually convenient time. The amended language also limits is application to GVRO De-Identified Individual-Level Data or Identified Individual-Level Data, and not Aggregated Data. The changes are necessary to balance the Department's need to ensure data security with an applicant's desire to avoid overly burdensome and intrusive inspections.

In response to comments, subdivision (b) adds a requirement that the Research Center notify the Bona Fide Researcher of its findings within a certain amount of time following the inspection, and adds a remedy period. The changes are necessary to balance the Department's need to ensure data security with an applicant's desire to avoid overly burdensome inspections that could impact the research.

Subdivision (c) was reorganized and was amended to replace "Department" with "Research Center," and to change the tense of restricted. This subdivision was also amended to include the destruction of data as a consequence to discourage violations, and in response to changes in section 967 because destruction of data may not occur automatically after the closure of a project.

New subdivision (d) was added to emphasize that despite the Department's right to inspect, the Nonprofit Educational Institution, Public Agency, and Bona Fide Researcher are still responsible for securing data and otherwise complying with the regulations. This language is necessary to ensure that the Nonprofit Educational Institution, Public Agency, and Bona Fide Researcher continue to abide by the regulations and protect the PII in their possession.

In response to comments, the Department also added an appeals process in subdivision (e) for any findings pursuant to the inspection, or any enforcement actions taken in subdivision (c). The change is necessary to balance the Department's need to ensure data security with an applicant's desire to avoid overly burdensome inspections that could impact the research, and concerns about potential suppression of research.

The authority and reference section were amended to include citations to the Department's

obligations under the IPA.