California State Auditor

October 2013

Armed Persons With Mental Illness

Insufficient Outreach From the Department of Justice and Poor Reporting From Superior Courts Limit the Identification of Armed Persons With Mental Illness

Report 2013-103

The first five copies of each California State Auditor report are free. Additional copies are $3 each, payable by check or money order. You can obtain reports by contacting the California State Auditor's Office at the following address:

California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814
916.445.0255 or TTY 916.445.0033

OR

This report is also available on our Web site at www.auditor.ca.gov.

The California State Auditor is pleased to announce the availability of an online subscription service. For information on how to subscribe, visit our Web site at www.auditor.ca.gov.

Alternate format reports available upon request.

Permission is granted to reproduce reports.

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

For complaints of state employee misconduct, contact the California State Auditor's Whistleblower Hotline: 1.800.952.5665.

California State Auditor

Elaine M. Howle State Auditor
Doug Cordiner Chief Deputy

October 29, 2013 2013-103

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor (state auditor) presents this audit report concerning the reporting and identification of persons with mental illness who are prohibited from owning or possessing a firearm.

This report concludes that the Department of Justice (Justice) has not sufficiently reached out to superior courts (courts) or mental health facilities to remind them of firearm prohibition reporting requirements in state law. We surveyed 34 courts that did not appear to be submitting firearm prohibition reports to Justice's mental health unit from 2010 through 2012 and learned that most of them were unaware of the reporting requirements. Those courts who were able to do so indicated that they had not reported about 2,300 mental health determinations to Justice over the three-year period. We also visited three courts that did report information—Los Angeles, San Bernardino, and Santa Clara—and found these courts did not report all required mental health determinations to Justice. Further, Justice was not aware of and has not reached out to all mental health facilities in the State that were approved to treat reportable individuals.

Justice needs to improve its controls over processing the information about persons with mental illness that it receives from reporting entities. For example, we found that some key staff decisions, such as determining that a specific individual is not an armed prohibited person, are not subject to supervisory review once staff complete training. In fact, three of eight such decisions we reviewed were incorrect, and the lack of supervisory review may have contributed to these incorrect decisions. Similarly, decisions to delete prohibition information in the Mental Health Firearms Prohibition System do not require supervisory review.

In May 2013 the governor signed into law a $24 million appropriation to provide additional support to Justice's effort to confiscate firearms from individuals it has identified as armed prohibited persons. As of July 2013 Justice reported that more than 20,800 persons were still deemed to be armed prohibited persons for a variety of reasons not limited to mental health, and these persons had not had their firearms confiscated. Justice has begun the process of hiring additional enforcement agents. However, because Justice uses the information it receives from courts and mental health facilities to identify persons who are prohibited from possessing a firearm, Justice must improve its outreach to these entities and strengthen its management of the information it does receive to ensure it does all it can to protect the public.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Blank page inserted for reproduction purposes only.

Contents

Blank page inserted for reproduction purposes only.

Summary

Results in Brief

The Department of Justice (Justice) manages California's effort to identify firearm owners in the State who are prohibited from owning or possessing a firearm because of a mental health-related event in their life. Justice refers to these individuals as *armed prohibited persons*. Justice attempts to identify armed prohibited persons by matching its records of firearm owners against reports about individuals with mental illness that it receives from superior courts (courts) and mental health facilities. Although it relies on information from courts and mental health facilities to identify these persons, Justice had not sufficiently reached out to the courts or mental health facilities to remind them to promptly report this required information. In addition, Justice needs to improve its controls over processing the information it does receive from reporting entities, because key decisions, such as whether a person is prohibited, are left to staff whose work does not receive a supervisory review. Because of these issues, Justice cannot identify all armed prohibited persons in California as effectively as it should, and the information it uses to ensure public safety by confiscating firearms is incomplete.

Although state law requires courts to report individuals to Justice whenever the courts make certain mental health determinations, many courts in the State were not aware of these requirements. We surveyed 34 courts that did not appear to be reporting these determinations, and their collective responses indicated that they had not reported about 2,300 mental health determinations to Justice over the three-year period from 2010 through 2012, the focus period of this audit. Additionally, several courts indicated that, generally due to system limitations, they could not provide us with the number of reportable determinations they had failed to report. Before our audit, Justice had not reached out to the courts to remind them about the reporting requirements, and it still has not followed up with nonreporting courts to confirm that they had no reportable determinations.

Further, we visited three courts that did report information to Justice during the audit period, but they did not fully comply with state law because they failed to report all of their required court determinations. For example, we found that the Mental Health Courthouse at the Los Angeles Superior Court (Los Angeles Court) was unaware of several court determinations it was required to report. Among these were those that determined that individuals were mentally incompetent to stand trial or that an individual is a danger to others. Additionally, we found that the San Bernardino Superior Court (San Bernardino Court) had not reported any of

Audit Highlights . . .

Our audit of the reporting and identification of persons with mental illness who are prohibited from owning or possessing a firearm (armed prohibited persons) highlighted the following:

- *The Department of Justice (Justice) has not sufficiently reached out to the superior courts (courts) or mental health facilities to remind them to promptly report required information and cannot identify all armed prohibited persons in California effectively.*
- *Many courts were not aware of state law requiring them to report individuals to Justice when the courts make certain mental health determinations—the 34 courts we surveyed indicated they had not reported about 2,300 of these determinations collectively over a three-year period.*
- *None of the three courts we visited fully complied with state law because they failed to report all of their required determinations, such as those that determined that individuals were mentally incompetent to stand trial or those deemed a danger to others.*
- *Each of the courts we visited varied in their interpretation of state law's current requirement to report determinations to Justice immediately.*
- *We identified 22 mental health facilities that Justice had not contacted about reporting requirements.*
- *Justice has struggled to keep up with its existing workload—it has at times had a daily backlog of cases waiting for initial review that exceeded the informal cap of 1,200 cases.*

continued on next page . . .

- *There is a lack of supervisory review, and three of the eight decisions regarding armed prohibited person status we reviewed were incorrect.*
- *Justice reported that more than 20,800 persons were still deemed to be armed prohibited persons as of July 2013, and these persons had not had their firearms confiscated.*

the determinations we reviewed of individuals deemed mentally incompetent to stand trial. Further, the Santa Clara Superior Court (Santa Clara Court) did not notify Justice about any of its determinations that an individual was to be committed to a mental health facility for an extended period or that an individual's conservatorship was to be terminated early. We also found that these courts varied in their interpretations of state law's current requirement to report determinations to Justice *immediately*. Legislation signed by the governor in October 2013 will change this requirement effective January 1, 2014. This change will give courts more time to report to Justice than the 24 hours given to mental health facilities, which are also required to report certain individuals to Justice. Because the information courts report is important for public safety, we question this change.

Additionally, Justice was not aware of and has not reached out to all mental health facilities in the State that were approved to treat reportable individuals. By comparing Justice's facilities outreach list to a list of approved mental health facilities, we identified 22 mental health facilities that Justice had not contacted about reporting requirements. When it does not reach out to all mental health facilities in the State, Justice risks being unable to identify all armed prohibited persons because the mental health facilities may not know about the reporting requirements or how or when to report such individuals.

However, if additional mental health facilities and courts were to report prohibiting events, Justice's workload would increase, and it has struggled to keep up with its existing workload. Justice's Armed and Prohibited Persons unit (APPS unit) in its Bureau of Firearms has at times had a daily backlog waiting for initial review that exceeded the informal cap Justice set of 1,200 pending matches. For example, Justice reported that a significant rise in the Armed Prohibited Persons System backlog during late 2012 and early 2013 coincided with a rise in the number of required background checks for firearm purchases. At the time the background check workload increased, Justice reports that it shifted APPS unit staff to complete these checks, and we found Justice did not meet its own internal deadline for completing initial reviews of potential armed prohibited persons. Justice could again face similar challenges.

Further, current weaknesses in Justice's workload management and controls over information it receives demonstrate that it may be unprepared for an increase in workload. Justice needs to improve its controls over processing the information about persons with mental illness that it receives from reporting entities. For some of the report records we reviewed, Justice had not entered information it received into the databases that would make the information available for the APPS unit to review.

Additionally, we found that some key staff decisions, such as determining that a specific individual is not an armed prohibited person, are not subject to supervisory review once staff complete training. In fact, three of eight such decisions we reviewed were incorrect, and the lack of supervisory review may have contributed to these incorrect decisions. Similarly, decisions to delete prohibition information in the Mental Health Firearms Prohibition System (mental health database) do not require supervisory review. If Justice improved its controls over this information, it would reduce the risk of failing to identify all armed prohibited persons and it would have all the information necessary to ensure public safety through firearms confiscation.

The need for improvements to Justice's identification of armed prohibited persons has recently taken on greater importance due to an increase in funding to aid in the confiscation of firearms from those prohibited persons. In May 2013 the governor signed into law an appropriation of $24 million to provide additional support to Justice's effort to confiscate firearms from armed prohibited persons. Over the two-year period ending in May 2013, Justice had completed a total of three confiscation sweeps, which, in addition to its ongoing confiscation efforts, collected a total of nearly 4,000 firearms from armed prohibited persons. However, Justice reported that more than 20,800 persons were still deemed to be armed prohibited persons—for a variety of reasons not limited to mental health—as of July 2013, and these persons had not had their firearms confiscated. In response to the new appropriation, Justice has begun the process of hiring additional enforcement agents. However, these agents will rely on the information that Justice receives from reporting entities and that its staff review and make determinations about. Therefore, it is critical that Justice improve its outreach and internal processes so its agents can better protect the public from armed prohibited persons.

Recommendations

To ensure that it has the necessary information to identify armed prohibited persons with mental illness, Justice should at least once a year consider information about court reporting levels and request that courts it determines may be underreporting forward all required case information.

To ensure that all required prohibited individuals are reported to Justice, the three courts we visited—Los Angeles, San Bernardino, and Santa Clara—should ensure that they implement procedures to report all types of determinations that state law requires.

The Legislature should amend state law to specify that all mental health-related prohibiting events must be reported to Justice within 24 hours regardless of the entity required to report.

To ensure that it keeps an accurate and up-to-date list of all mental health facilities required to report individuals with mental illness, at least twice a year Justice should update its outreach list of mental health facilities, and as soon as it identifies mental health facilities that have not yet received information about reporting requirements, Justice should send these facilities this information.

To ensure that timely information is available for its efforts to identify armed prohibited persons and confiscate their firearms, Justice should manage staff priorities to meet its internal deadline for initially reviewing potential prohibited persons.

To ensure that it makes correct determinations about whether an individual is an armed prohibited person, Justice should implement quality control procedures, including supervisory review, over APPS unit staff determinations.

To ensure that it processes all reports it receives about persons with mental illness, Justice's mental health unit should develop and implement quality control procedures, including periodic supervisory review of report entry to ensure that all reports are entered correctly into the mental health database. Additionally, it should conduct a supervisory review of all staff decisions to delete records from the database before their deletion.

Agency Comments

Justice agreed with all of our recommendations and outlined steps it will take to implement them. In general, the other entities to which we directed recommendations acknowledged that they need to improve their practices and agreed to implement changes to address the issues we found. However, the Administrative Office of the Courts cited resource issues as precluding courts from implementing a change we recommend to state law. In addition, San Francisco Superior Court objected to specific language in our report and did not indicate whether it agreed with our recommendation to the court.

Introduction

Background

State law, enacted in 2001 and subject to appropriation of funds, mandated the Department of Justice (Justice) to create a database to match information related to persons in the State who are prohibited from owning or possessing a firearm (prohibited persons) to its records of firearm owners to determine whether these individuals are prohibited from owning their firearms.[1] This database, commonly known as the Armed Prohibited Persons System (APPS database), was implemented in November 2006. The purpose of this system is to cross-reference all persons in California who are firearm owners and who are unlawfully in possession of a firearm because of a qualifying event in their life that prohibits them from owning a firearm. Justice refers to these individuals as *armed prohibited persons*. Justice has described California as the only state in the United States that has established an automated system for tracking handgun and assault weapon owners who might fall into a prohibited status. This system and its purpose are separate from Justice's other duty to complete background checks for individuals who are attempting to purchase a firearm.

Although different qualifying events can cause someone to become a prohibited person, the scope of this audit is limited to prohibitions related to mental health. Because of the variety of prohibiting events, different entities throughout the State are required to report to Justice when a prohibiting event occurs. Mental health facilities are generally responsible for reporting prohibiting events related to mental health status. Superior courts (courts) are generally responsible for reporting events related to criminal proceedings, but they are also required to report information to Justice related to determinations concerning an individual's mental health. Local law enforcement is required to report whenever a licensed psychotherapist reports that a patient has made a threat against an individual. Such reports are known as Tarasoff reports.

[1] Current state law directs Justice to identify persons who have ownership or possession of a firearm, as indicated by a record in Justice's Consolidated Firearms Information System (CFIS). CFIS contains records of firearm owners from information that Justice receives from sales and subsequent transfers of firearms as well as registered owners of assault weapons. Thus, we use the term *firearm owners* throughout the report to describe these individuals.

Determinations That Superior Courts Must Report to the Department of Justice

An individual has been found by the court to be:

- A danger to others as a result of a mental disorder or illness, which results in a court-ordered commitment to a treatment facility.
- Not guilty by reason of insanity or has regained his or her sanity.
- Mentally incompetent to stand trial or has regained his or her competency.
- Gravely disabled due to a mental disorder or impairment by chronic alcoholism and requiring a conservator, and the possession of a firearm would present a danger to himself or herself or others.
- No longer gravely disabled and requiring a conservator or the court has found that the possession of a firearm would no longer present a danger to himself or herself or others.

Source: California Welfare and Institutions Code, sections 8103, 5300, and 6500.

Reporting by the Courts

State law requires courts to report certain mental health determinations to Justice immediately after the court makes the determination.[2] The text box shows the types of judicial determinations that courts are required to report to Justice. These determinations are related to both civil and criminal matters. Courts can report their determinations to Justice by either electronic or paper means. As Figure 1 shows, the courts send their determinations either to Justice's Bureau of Criminal Information and Analysis (criminal information unit) or to Justice's Bureau of Firearms' mental health unit. Each unit at Justice processes reports from the courts into a different Justice database. The criminal information unit inputs reports from the courts into Justice's Automated Criminal History System (criminal history system), while mental health unit staff enter reports they receive into the Mental Health Firearms Prohibition System (mental health database).

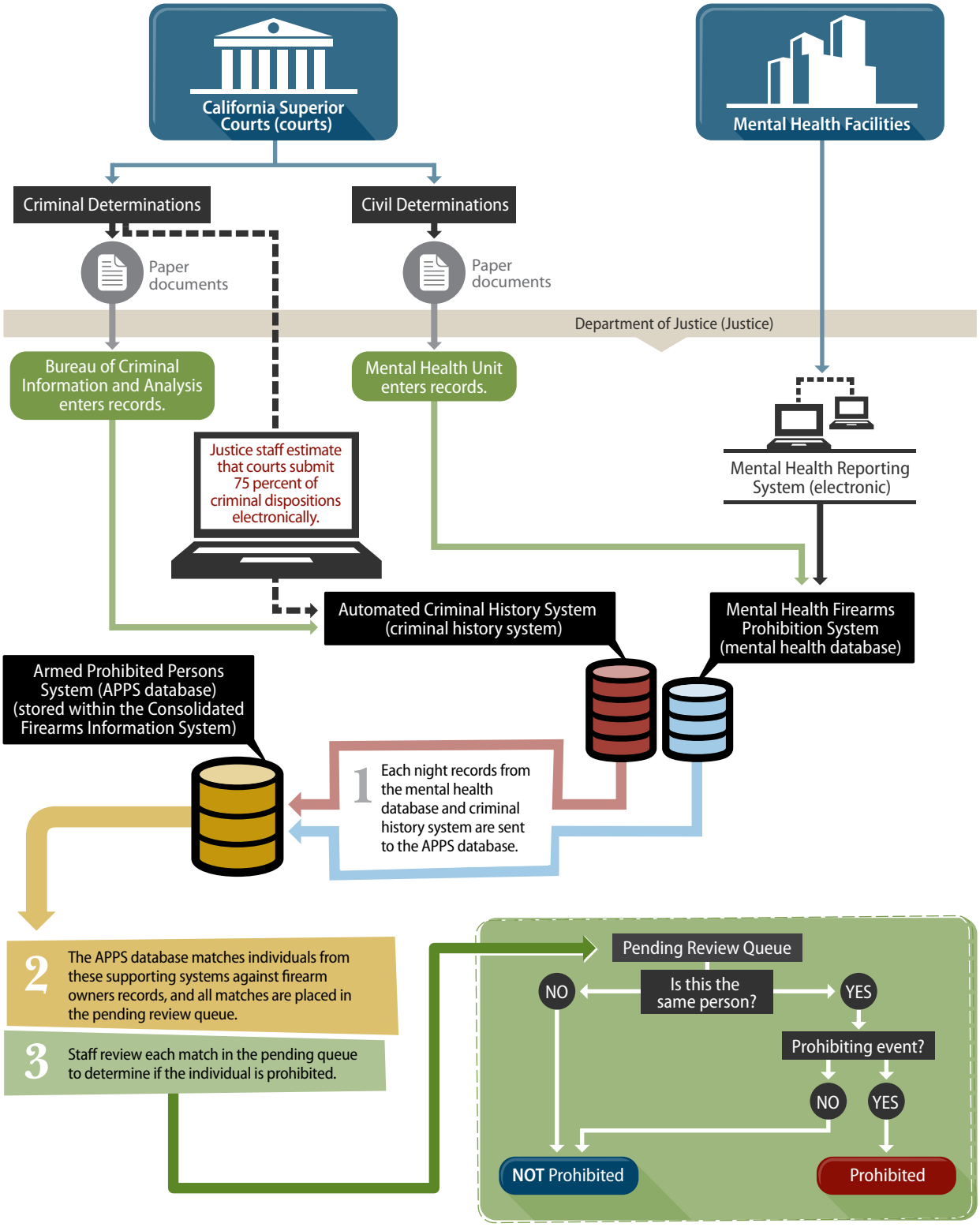
Not all determinations that courts report to Justice result in an individual being prohibited from possessing a firearm. Some determinations will reverse or lift a previous prohibition. For example, a court determination that an individual requires a conservatorship because of a mental illness can result in prohibition from possessing a firearm if the court orders such a prohibition. However, if the court later orders an early termination of the original conservatorship or determines that the individual's possession of a firearm would no longer present a danger, the individual is no longer prohibited under state law from possessing a firearm. State law requires courts to report both types of determinations to Justice.

Reporting by Mental Health Facilities and the California Department of State Hospitals

California has both public and private mental health facilities that provide treatment to individuals for mental health issues. These include psychiatric health facilities and acute psychiatric hospitals

[2] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which courts must report their mental health determinations. Specifically, courts will no longer be required to report immediately but will be required to report as soon as possible but not later than two court days after the determination. Also, courts will be required to report these determinations electronically.

Figure 1
The Process of Reporting Mental Health Firearm Prohibiting Events to the Department of Justice and Identifying Armed Prohibited Persons



Sources: Information provided by Justice's Bureau of Firearms and the Bureau of Criminal Information and Analysis.

that provide inpatient treatment to individuals with mental health needs. State law requires mental health facilities to report to Justice certain individuals who are placed for treatment. Specifically, these facilities are required to report individuals placed under involuntary holds at a mental health facility and individuals who, after their involuntary hold, are found to be in need of further treatment.[3] In all cases, state law requires that mental health facilities report these prohibiting events to Justice immediately and update Justice regarding the person's discharge from the facility if the individual remained at the facility for more than one month.[4] Figure 1 on the previous page shows the flow of reported information. As the figure shows, Justice stores the information from mental health facilities in its mental health database.

Effective July 2012 state law requires all mental health facilities to report prohibited persons to Justice electronically. According to a committee analysis of this change to the law, this requirement was intended to decrease the time it takes to report prohibiting events to Justice and thereby increase the speed at which Justice can identify prohibited persons. In fact, Justice had implemented an electronic reporting system as early as July 2009, and mental health facilities had the option of reporting electronically before use of this system was required in July 2012.

Additionally, the California Department of State Hospitals (State Hospitals) operates eight hospital facilities statewide, some of which provide treatment to patients who are prohibited from possessing firearms because of their mental health condition. State law requires State Hospitals to maintain and make available to Justice those records as are necessary to identify prohibited persons. This information must be kept in a central location, and State Hospitals must make it available to Justice upon request. Due to the legislation discussed in footnote 4, effective January 1, 2014, State Hospitals will be required to provide this information to Justice electronically and within 24 hours of a request.

Justice's Process for Identifying Prohibited Persons

The Armed and Prohibited Persons unit (APPS unit) within Justice's Bureau of Firearms is responsible for identifying armed persons with mental illness from a daily list of individuals who may meet

[3] State law requires mental health facilities to report individuals who have been taken to a facility involuntarily and admitted to the facility for evaluation and treatment because they present a danger to themselves or others. Throughout this report, we refer to this process as an *involuntary hold*.

[4] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which mental health facilities must report individuals with prohibiting events. Specifically, facilities will no longer be required to report immediately but will be required to report within 24 hours.

the criteria. As of April 2013 the APPS unit consisted of 10 staff, a manager, and a supervisor. As shown in Figure 1, every evening an automatic check matches the records in the mental health database and criminal history system with information in Justice's CFIS, which contains a record of firearm owners in California since 1996 and of assault weapon owners since 1989.[5] Specifically, Justice compares personal identifying information such as Social Security numbers to identify individuals who own a firearm and who may have had a mental health prohibiting event logged into one of the two databases within the last 24 hours. All persons identified through this automated check are placed in a pending queue for APPS unit staff to review.

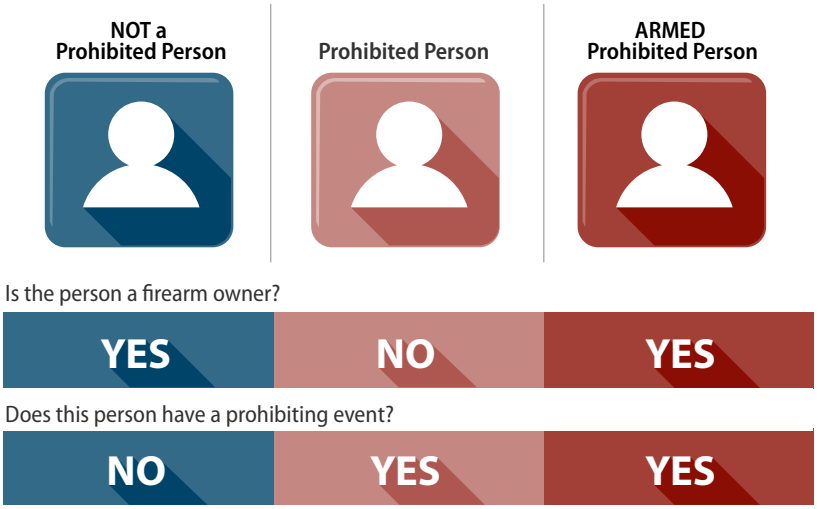
Staff in the APPS unit manually review each person in the pending review queue to determine whether the automated check has matched the correct individual. For example, the automated check will match an individual with a recent prohibiting event with someone in CFIS who has the same personal identification number, such as a California driver's license number, but a different name and date of birth. Justice has implemented a manual review of these potentially prohibited persons so that firearm owners are not incorrectly labeled as prohibited persons by an automated process. In addition to verifying identity, staff also verify that the event that pulled the individual from the criminal history system or the mental health database is actually a prohibiting event. When staff determine that someone is a prohibited person, they change that individual's status in the APPS database to *prohibited* and update his or her information, including address and firearm ownership information.

The APPS database identifies individuals who own firearms and whether they have a prohibition. The state law that required Justice to create the APPS database specifically requires Justice to search its firearm records to determine whether the individual has had a prohibiting event. State law does not direct Justice to, nor is Justice attempting to, identify for purposes of the APPS database individuals who have prohibiting events, are unarmed, and are living at the same residence as firearm owners. Legislation signed by the governor in October 2013 will amend state law, effective January 1, 2014, to specify that when firearm owners know or have reason to know that they reside with a prohibited person, they may not keep a firearm at the residence unless the firearm is maintained under specific conditions that state law prescribes, such as within a locked container. A violation of these provisions will constitute a misdemeanor. Further, the APPS unit is not responsible for background checks for firearm purchases. Another Bureau of Firearms unit, the Dealers' Record of Sale processing unit,

[5] Additional databases, such as Justice's Domestic Violence Restraining Order System, are also matched against the records of firearm owners. However, only the mental health database and the criminal history system are pertinent to our review.

is responsible for completing these background checks. Figure 2 shows the possible types of prohibited person status as they relate to firearm ownership.

Figure 2
Types of Prohibited Person Status



Sources: California State Auditor's analysis of state law and the Department of Justice's Bureau of Firearms' *Armed Prohibited Persons System Training Manual*.

Note: The term *prohibited person* means that the individual is prohibited from owning or possessing a firearm.

As of July 2013 Justice had identified more than 20,800 persons as armed prohibited persons. Of this total, Justice estimated that about one-third are prohibited due to an event related to their mental health; these types of prohibitions are the subject of this audit. Testifying about the known armed prohibited persons at an Assembly budget subcommittee hearing in March 2013, the chief of Justice's Bureau of Firearms indicated that a lack of resources has prevented Justice from being able to make any major progress in removing firearms from individuals identified as armed prohibited persons. Although some confiscation efforts have occurred, efforts have been limited. In May 2013 Justice received additional funding to advance its efforts to confiscate firearms by addressing a backlog of armed prohibited persons in the APPS database, which we discuss further in Chapter 2.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor (state auditor) to review Justice's management of information it receives regarding

individuals with mental illness who are prohibited from owning or possessing a firearm and what Justice does to identify whether these individuals are armed. The audit committee also directed the state auditor to review a selection of courts to determine whether the courts had sufficient policies, procedures, and practices to report all relevant court determinations to Justice in a timely manner. Table 1 lists the objectives that the audit committee approved and the methods we used to address them.

Table 1
Audit Objectives and the Methods Used to Address Them

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant laws and other background materials. We identified no relevant regulations that were significant to the audit objectives.
2	Review and evaluate the Department of Justice's (Justice) policies and procedures for identifying, tracking, and monitoring of information related to prohibited persons with mental illness and determine whether the policies and procedures comply with laws and regulations.	• Reviewed Justice's relevant policies and procedures and compared them to the requirements in state law. • Interviewed Justice's staff to determine and document the key steps in Justice's processes for receiving and entering information into the Automated Criminal History System (criminal history system) and the Mental Health Firearms Prohibition System (mental health database) and what supervisory controls exist over this process. • Interviewed staff regarding the process that Armed and Prohibited Persons unit (APPS unit) staff use to determine that an individual is a prohibited person and what supervisory controls exist over these decisions. • Interviewed Justice staff to determine whether Justice makes any effort to reach out to superior courts (courts) that do not report mental health determinations.
3	Review and assess Justice's process for communicating with public and private mental health facilities and the California Department of State Hospitals (State Hospitals), and for requesting and obtaining information from these entities concerning prohibited persons with mental illness. Determine the extent to which Justice is successful in obtaining this information and if not, what recourse, if any, it can take.	At Justice we performed the following steps: • Interviewed staff at Justice to understand how they obtain information from public and private mental health facilities and whether they believe Justice has any recourse when facilities do not report. • Reviewed mental health facility outreach documents that communicate facility reporting requirements to determine if the outreach documents inform facilities about their reporting duties. • Determined whether Justice's outreach list of mental health facilities was complete by obtaining an independent listing of mental health facilities, which was maintained by the California Department of Social Services, and comparing it to the list Justice uses for outreach activities. • For 2012 determined how many mental health facilities reported information to Justice and the trend in facility reporting levels. Determined what actions Justice has taken to receive reports from facilities that stopped reporting or had a significant drop in their reporting levels. • Reviewed email communications and interviewed Justice's staff to understand Justice's attempts to request that State Hospitals share information about prohibited persons. At State Hospitals we performed the following steps: • Interviewed staff to determine how often State Hospitals reported prohibited persons to Justice. • Interviewed staff to determine whether State Hospitals reported information to Justice electronically. • Determined which hospital facilities reported electronically in 2012 and whether those facilities are the only ones that treat patients that should be reported.

continued on next page . . .

	AUDIT OBJECTIVE	METHOD
4	Examine Justice's practices to determine the following:	
	a. Whether Justice complies with its policies and procedures in processing reports from the various entities to ensure that information regarding prohibited persons with mental illness is updated in its Armed Prohibited Persons System (APPS database).	• Interviewed staff to understand processes and controls regarding receiving and processing reports from courts, mental health facilities, and local law enforcement. • Reviewed a selection of 24 paper prohibition reports to determine if Justice was accurately processing reports of mental health prohibiting events it received in a timely manner. • Justice's mental health unit received 15 of these paper records from courts, mental health facilities, or local law enforcement. Although we intended to review five reports from each of the three years in our audit period (2010 through 2012), our selection of reports was more heavily weighted towards reports from August 2012 through December 2012 because Justice's record retention practices left fewer paper reports before that time available for our review. • Obtained the remaining nine paper reports from the Los Angeles Superior Court (Los Angeles Court). This court was the only court we visited under Objective 5 that reported some criminal case information using paper forms. • Reviewed a selection of individuals related to mental health determinations from the APPS unit and determined whether Justice correctly identified each individual's prohibited status and entered the required information into the APPS database. In 12 of these selected determinations, the individual was an armed prohibited person, and in eight, the individual was not an armed prohibited person. • Obtained and reviewed the Bureau of Firearms' and Bureau of Criminal Information and Analysis' record retention schedules and interviewed applicable staff.
	b. The length of time it takes Justice to process reports identifying prohibited persons with mental illness and to update applicable databases.	• Calculated the average amount of time that passes between the time an individual is available for review in the APPS database and the time an APPS unit staff person makes a determination about whether that individual is prohibited. • Identified the cases in which Justice took the longest amount of time to make an APPS determination and interviewed Justice's staff about why these determinations took longer to process. • As part of testing under Objective 4(a), reviewed the time it took Justice to enter reports of prohibiting events that it received into the criminal history system and the mental health database. • As part of work completed under Objective 4(d), determined the average time it took Justice to process reports it received from mental health facilities.
	c. Whether Justice has a backlog in processing and updating the APPS database and the extent, source, and reasons for any backlogs.	• Interviewed Justice's staff to determine whether backlogs exist in the APPS database and what may cause backlogs. • Determined how Justice prioritizes the APPS database review queue. • Documented the circumstances that led to the historical backlog of firearm owners and Justice's efforts to reduce this backlog. • Reviewed the APPS unit manager's records of the number of potentially prohibited persons that the APPS unit reviewed during the time the manager oversaw the unit.
	d. Whether the requirement to electronically submit information imposed by Assembly Bill 302—Chapter 344, Statutes of 2010—has improved the efficiency of processing applicable reports.	• By quarter for 2010 through 2012, calculated the average amount of time it took mental health facilities to report individuals with mental illness to Justice and the time it took Justice to enter these reports into its mental health database. Compared the period of time before and after the electronic reporting requirement to determine if the amount of time it took both the facilities and Justice to process reports decreased after the reporting requirement. • Determined when Justice first made electronic reporting available to facilities.
5	For a sample of courts, conduct the following:	We visited selected locations at three courts: Los Angeles, San Bernardino, and Santa Clara. At each court, we performed the following procedures:
	a. Review the courts' policies and protocols related to tracking relevant information about prohibited persons with mental illness and reporting required information to Justice. Assess the courts' compliance with related laws and regulations.	• Reviewed the court's policies, procedures, and practices related to reporting the required court determinations to Justice in a timely manner. When written policies and procedures did not exist, we interviewed court staff to understand the courts' reporting practices. • Compared the court's policies, procedures, or practices to the requirements in state law to determine if the courts reported all of the types of court determinations that state law requires courts to report to Justice. • Interviewed staff at the courts to determine how they understand the law's requirement to report to Justice immediately.

	AUDIT OBJECTIVE	METHOD
b.	Review the courts' practices and determine whether the courts are properly, and in a timely manner, transmitting required information on prohibited persons with mental illness to Justice.	• Reviewed a selection of court determinations that state law requires the court to report to Justice to determine if the court complied with state law and its own policies and procedures for reporting. We reviewed 27 to 30 determinations at each of the three courts. • For cases where the court failed to report determinations to Justice, we reviewed the related individual's firearm ownership history. We also reviewed Justice's criminal history system and mental health database to assess whether the individual had been reported previously or by another entity for a mental health event.
c.	Identify the courts' monitoring policies and control processes to determine whether they adequately ensure that courts comply with reporting requirements.	• Identified monitoring policies and controls over reporting during our review of court policies, procedures, and practices described in step 5(a). • Tested the court determinations we selected in step 5(b) to see whether the court's controls ensured that Justice receives reports of prohibiting qualifying events in a timely fashion.
6	Review and assess any other issues that are significant to the reporting of information to Justice related to prohibited persons with mental illness, and the use of these data to protect the public.	• Based on data obtained from Justice's mental health database, surveyed courts that appeared to report only a few or no determinations to Justice in order to determine if the courts were aware of the reporting requirements, whether they had ever been contacted by Justice about the reporting requirements, and if they had not been reporting, the total number of determinations that should have been reported to Justice. • Interviewed staff at Justice regarding its efforts and process to remove firearms from known prohibited persons. • Reviewed summary information pertaining to the number of armed prohibited persons in the State as of July 2013 and the extent of the backlog in confiscating firearms. • Reviewed legislation, signed into law in May 2013, that appropriated additional funding to Justice for the purpose of confiscating firearms from armed prohibited persons.

Sources: California State Auditor's analysis of Joint Legislative Audit Committee audit request number 2013-103, planning documents, and analysis of information and documentation identified in the column titled *Method*.

Assessment of Data Reliability

In performing this audit, we obtained electronic data files extracted from Justice's APPS database and mental health database. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues. We did not perform accuracy and completeness testing of these data because the source documents required for this testing are stored by various entities, such as mental health facilities, courts, or firearm retailers located throughout the State, making such testing cost-prohibitive. Consequently, we found the data from the APPS and mental health databases were of undetermined reliability for the purposes of calculating mental health facilities reporting statistics, the number of mental health reports submitted to Justice, number of firearm owners with personal identifying numbers not used in the matching

process, and the average number of days it took Justice to make a determination. Further, we also used these data for the purpose of selecting determinations for review. Nevertheless, we used data from the APPS database and the mental health database, as they represent the best available sources of data related to armed prohibited persons.

Chapter 1

SUPERIOR COURTS DID NOT REPORT ALL REQUIRED INDIVIDUALS, AND THE DEPARTMENT OF JUSTICE SHOULD DO MORE TO OBTAIN INFORMATION RELATED TO PERSONS WITH MENTAL ILLNESS

Chapter Summary

Although state law requires superior courts (courts) to report individuals to the Department of Justice (Justice) whenever the court makes certain mental health determinations, many courts in California were not aware of these requirements, and the corresponding lack of information inhibits Justice's ability to identify armed persons with mental illness. However, before our audit, Justice had not reached out to courts to remind them about the reporting requirement. Additionally, it has not followed up with nonreporting or apparent underreporting courts to determine whether these courts had any reportable determinations or why there had been a significant change in reporting. Further, we found that even three courts we visited that were reporting information to Justice were not always reporting all of their determinations as state law requires. For example, we found that the Mental Health Courthouse at the Los Angeles Superior Court (Los Angeles Court) was unaware of several types of court determinations it was required to report.

In addition to courts, state law requires mental health facilities to report persons who are prohibited from owning or possessing a firearm (prohibited persons) to Justice. However, Justice was not aware of and has not made contact with all mental health facilities in the State that may treat reportable individuals. When it does not reach out to all mental health facilities in the State, Justice risks being unable to identify armed prohibited persons because those facilities may not know how to report such individuals. When Justice and the courts do not make every effort to identify and report all persons with mental illness who are prohibited from possessing firearms, the risk increases that individuals who should no longer possess their firearms will go unnoticed, thus hindering Justice's effort to protect the public by confiscating those firearms.

Many Courts Were Unaware of the Mental Health Reporting Requirements, and Justice Had Not Completed Outreach to Remind These Courts of the Requirements

Data from Justice's Mental Health Firearms Prohibition System (mental health database) show that many courts appear not to be reporting any mental health determinations to Justice. Further, in

response to a survey we sent, a majority of these courts indicated that they were not aware of the requirement in state law to report certain mental health determinations. Although Justice was aware that courts were not reporting specific mental health events as state law requires, it had not reached out to the nonreporting courts before the start of our audit. When courts do not inform Justice of the required mental health determinations, Justice is less able to identify armed individuals with mental illness who continue to possess firearms.

Many Courts Failed to Report Mental Health Determinations to Justice Because They Were Unaware of the Reporting Requirements

As we discuss in the Introduction, state law requires the courts to notify Justice of certain mental health determinations that prohibit an individual from possessing a firearm. Courts must report some of these determinations to Justice's mental health unit, and staff in that unit then enter these reports into Justice's mental health database. However, records from that database show that from 2010 through 2012, many courts did not submit any reports regarding mental health determinations to the mental health unit. Based on this information, we surveyed 34 courts throughout the State that either had not reported any determinations or had reported very few. Court responses to key survey questions appear in Table 2.

Table 2
Responses From Superior Courts Surveyed by the California State Auditor Regarding Reporting Firearm Prohibitions to the Department of Justice

COURT NAME	DURING 2010 THROUGH 2012, WAS THE SUPERIOR COURT (COURT) AWARE OF THE REQUIREMENT TO REPORT MENTAL HEALTH DETERMINATIONS UNDER THE CALIFORNIA WELFARE AND INSTITUTIONS CODE, SECTION 8103?	HOW MANY CIVIL DETERMINATIONS DID COURTS INDICATE THEY FAILED TO REPORT FROM 2010 THROUGH 2012?
Alameda	No	963*,†
Alpine	No	0
Amador	No	0
Calaveras	No	23
Colusa	No	7
Contra Costa	Yes‡	Unable to determine§
Del Norte	Yes	0
El Dorado	No	130
Fresno	No	661
Glenn	No	47
Imperial	No	42
Inyo	Yes	0
Kings	No	Unable to determine§

COURT NAME	DURING 2010 THROUGH 2012, WAS THE SUPERIOR COURT (COURT) AWARE OF THE REQUIREMENT TO REPORT MENTAL HEALTH DETERMINATIONS UNDER THE CALIFORNIA WELFARE AND INSTITUTIONS CODE, SECTION 8103?	HOW MANY CIVIL DETERMINATIONS DID COURTS INDICATE THEY FAILED TO REPORT FROM 2010 THROUGH 2012?
Lassen	No	2
Madera	No	Unable to determine§
Mariposa	No	2
Mendocino	Yes	30
Modoc	No	17
Mono	No	1
Napa	No	Unable to determine§
Nevada	No	Unable to determine§
Plumas	No	14
Riverside	Yes‖	10†,‖
San Benito	No	0
San Francisco	No	15#
San Joaquin	No	74
Shasta	No	Unable to determine§
Sierra	No	0
Solano	No	200*
Stanislaus	No	7
Trinity	No	11
Tulare	No	Unable to determine§
Yolo	No	24†
Yuba	No	24
	Total number of reportable determinations:	**2,304****

Source: California State Auditor's analysis of responses to a survey of courts in 34 counties.

* These courts stated that they could not separately identify conservatorship orders that contained a firearm prohibition.

† These courts stated that they were only able to provide a partial number of determinations—either only for specific types of determinations or only for certain years.

‡ This court stated that its procedures show that court staff were aware of portions of the California Welfare and Institutions Code, Section 8103, but was not aware of all types of cases it was required to report.

§ These courts were unable to determine the number of reportable court determinations, with several courts citing limitations of their court case management systems.

‖ This court stated that it became aware of the requirement in March 2011, at which time it began reporting. Therefore, we did not include 173 determinations the court reported it made after it became aware. However, this court stated that before 2013 it submitted incomplete reports to Justice. These reports were not included in the data we analyzed.

In addition to the 15 determinations shown in the table that do not relate to conservatorships, San Francisco Superior Court reported 2,137 conservatorship orders in response to our survey. According to a managing attorney, the orders do not include firearm prohibitions. We discuss this issue further in the report text.

** Fifteen of the 2,304 determinations would have removed an individual's firearm restriction rather than imposed it.

According to the survey responses, many courts in the State were not aware of mental health reporting requirements that relate directly to firearm prohibitions. Specifically, 29 of the 34 courts we

surveyed indicated that between 2010 and 2012 they were not aware of the state law that requires them to notify Justice immediately about certain mental health determinations that prohibit an individual from possessing a firearm.[6] We noted that several courts stated they were not aware of the mental health reporting requirements but they did report criminal determinations to Justice, indicating that they were aware of a separate requirement in state law to report certain criminal case information. Because some mental health determinations, such as court findings that a person is mentally incompetent to stand trial, are criminal determinations, it is possible that courts reported some criminal mental health determinations in response to this requirement. Nevertheless, 29 of the 34 courts we surveyed were not aware of the requirements related specifically to firearm prohibitions that require them to report information immediately, which means the courts would not have reported all mental health prohibiting events.

At the same time that 29 of the 34 courts we surveyed were unaware of the firearm reporting requirements, many of those courts stated that they made determinations between 2010 and 2012 that should have been reported to Justice.

At the same time that they were unaware of the firearm reporting requirements, many of the courts we surveyed stated that they made determinations between 2010 and 2012 that should have been reported to Justice. In the survey responses we received, courts indicated that they collectively made about 2,300 civil mental health determinations, such as conservatorships and court-ordered commitments to mental health facilities, that should have been reported to Justice and were not. One court, the Alameda Superior Court (Alameda Court), accounted for the largest number of the unreported determinations shown in Table 2 beginning on page 16. Those 963 determinations relate to appointments and reappointments of conservators. Alameda Court's case management system could not distinguish between conservatorships with firearm restrictions and those that did not have restrictions. However, based on a random sample of cases reviewed and its discussion with county counsel that firearm prohibition language is included in such orders as a general rule, the court indicated that 100 percent of its conservatorship orders contained firearm prohibitions. Thus, these determinations should have been reported to Justice. Alameda Court's court services manager stated that because the court was not aware of the reporting requirement, it had no policies or procedures to report these determinations to Justice. However, the court services manager also stated that the court is taking steps to report such determinations to Justice now that it is aware of the requirement.

[6] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which courts must report their mental health determinations. Specifically, courts will no longer be required to report immediately but will be required to report as soon as possible but not later than two court days after the determination.

Further, seven courts we surveyed could not state how many court determinations they failed to report. Some of these courts acknowledged that they had reportable court determinations during the three-year period, and all but one indicated that they were entirely unaware of the reporting requirement in state law. Several courts cited the limitations of their court's case management system as the reason why they did not know how many court determinations went unreported. Therefore, while Table 2 indicates that a large number of court determinations have not been reported to Justice, the true number of unreported determinations is likely greater.

While courts indicated that a large number of court determinations have not been reported to Justice, the true number of unreported determinations is likely greater.

Finally, one of the courts we surveyed, the San Francisco Superior Court (San Francisco Court), reported that it made more than 2,100 conservatorship determinations during the three-year period. The court managing attorney stated that none of these conservatorship orders contained language that specifically prohibited the conserved individual from possessing a firearm. State law requires the court to make this specific finding in order to prohibit a conserved individual from owning, possessing, controlling, or having custody of a firearm. Therefore, according to the information the court provided, none of the individuals it placed under these conservatorships from 2010 through 2012 were prohibited from possessing a firearm by the court's conservatorship order, and we did not include them in Table 2.

San Francisco Court's managing attorney stated that none of the conservatorship orders contain a specific finding because the finding was not requested in the petitions the district attorney and the Office of Conservatorship Services filed with the court. She indicated that this was because all conservatorships for San Francisco Court arise from prior events that would already prohibit an individual from possessing a firearm (such as an involuntary hold at a mental health facility). However, the fact that a firearm prohibition was imposed for a prior event does not mean that it may not be appropriate to impose it when the conservatorship order is established. Further, the absence of a firearm prohibition in San Francisco Court's conservatorship orders is inconsistent with other courts in the State. We found, as indicated in survey responses, that even some courts in counties with smaller populations than San Francisco had at least some prohibition orders over the three years we reviewed. Therefore, the fact that San Francisco Court did not order a single firearm prohibition during the three-year period we reviewed stands in stark contrast to other courts in the State. After we discussed this contrast with the managing attorney, she noted that the court had already initiated efforts to have the district attorney and the Office of Conservatorship Services revise the petition form that

they submit to the court to specifically include the request for a prohibition if warranted. Such an effort appears necessary given the differences between the practices at the San Francisco Court and other courts we surveyed.

Despite Being Aware of Potential Underreporting, Justice Has Not Reminded Courts of the Reporting Requirement

When courts do not report mental health determinations as state law requires, Justice cannot identify armed persons with mental illness effectively.[7] Despite this, and despite being aware that some courts do not report the required mental health information, until our audit Justice performed no outreach to courts to remind them of the reporting requirement, and it still has not followed up with courts that do not report. The courts we surveyed indicated that they did not receive communication from Justice about the requirement to report at any time from 2010 through 2012. The assistant chief of Justice's Bureau of Firearms (assistant bureau chief) and the manager of Justice's Training Information and Compliance Section (training unit manager) reported that Justice distributed an information bulletin to the courts regarding the reporting requirements in 1991. However, the training unit manager was unable to locate the bulletin and stated that Justice has not provided firearm reporting training to individual courts. According to the assistant bureau chief, Justice did not conduct outreach to the courts because it believes it does not have the authority to require or enforce courts to comply with the reporting requirements contained in state law. Instead, Justice believes the Administrative Office of the Courts (AOC) is responsible for ensuring that courts are in compliance with state law.

The courts we surveyed indicated that they did not receive communication from Justice about the requirement to report at any time from 2010 through 2012.

The AOC is the staff agency for the Judicial Council, which is the policy-making body for California's court system. After the start of our audit, in April 2013, AOC contacted Justice to obtain a better understanding of how courts were reporting required mental health information and how Justice used the reported information.[8] According to Justice's assistant bureau chief, a supervising research analyst with AOC wanted to discuss courts that appeared not to be reporting. Around the time of this discussion, the assistant bureau chief sent AOC information about which courts Justice received reports from and how many reports these courts submitted.

---

[7] This lack of information could also affect Justice's decision to allow an individual to purchase a firearm if he or she is not currently a firearm owner. As discussed in the Introduction, this background check process, which another unit performs, was not the focus of this report.

[8] AOC provided internal emails indicating that another staff person had attempted to reach out to Justice in February 2013 during research on firearm prohibition requirements. However, we saw no email documentation of any communication between AOC and Justice until the April 2013 contact we discuss.

After this contact with Justice, AOC contacted all superior courts' presiding judges and court executive officers by email in May 2013 to remind them of the reporting requirements and to inform them about this audit. AOC's email also explained that Justice would be sending additional information to the courts about reporting individuals with mental illness. Justice's assistant bureau chief stated that since April or May 2013, he has experienced a rise in the number of calls from AOC and courts regarding reporting firearm prohibitions. In August 2013 Justice issued an information bulletin that reminds courts about the requirements and provides instructions about how to report individuals with mental illness. Additionally, Justice provided the forms courts should use for reporting. AOC has indicated that it will work to ensure that this information is incorporated into appropriate trainings for the courts.

In the absence of comprehensive outreach to address nonreporting, Justice did appear to practice some limited outreach to courts that submit incomplete reports to its mental health unit. A program technician in the mental health unit confirmed that it was the practice of unit staff to call courts that submit incomplete reports. In fact, one of the courts we surveyed stated that in March 2013 Justice contacted it to explain that its reports were incomplete.

Justice is in a unique position to conduct outreach to the courts. As the recipient of the reported information, Justice is the only entity that is aware of the extent to which courts statewide are reporting. Therefore, Justice needs to participate in any effort to track noncompliance with state law or to remind courts that appear to underreport mental health determinations. Justice and the AOC can benefit from working together to ensure that courts know what state law requires them to report and how to submit a report to Justice. Such a collaboration will ensure that Justice has done all it can to identify individuals that state law prohibits from possessing firearms because of a mental health-related court determination.

Justice and the AOC can benefit from working together to ensure that courts know what state law requires them to report and how to submit a report to Justice.

Reporting Courts We Visited Failed to Submit Some Types of Mental Health Determinations to Justice

Although not all courts were submitting required reports to Justice, other courts were reporting prohibited individuals to Justice's mental health unit. However, we found that although these courts reported some determinations, they did not report all of the required mental health events to Justice. In addition to surveying nonreporting courts, we visited courts in three counties—Los Angeles, San Bernardino, and Santa Clara—that were reporting information to Justice, and we reviewed their procedures and practices to determine whether these courts complied with the reporting

requirements in state law. As we discuss in the Introduction, state law requires courts to report certain mental health determinations to Justice immediately after making those determinations. In some cases, court staff were unaware of the requirement to report certain determinations, or the court's procedures did not specifically direct it to report some types of required determinations. Further, some court practices were insufficient to ensure that the court reported all required court determinations to Justice. When courts do not submit the information state law requires, Justice must rely on incomplete information to identify persons with mental illness who are prohibited from possessing firearms. Consequently, Justice is less likely to identify and disarm all armed prohibited persons.

Los Angeles Court Failed to Report Certain Mental Health Determinations

Despite reporting the largest volume of mental health determinations, Los Angeles Court failed to report 15 of the 27 determinations we reviewed.

Data obtained from Justice shows that Los Angeles Court reports the largest number of mental health prohibiting events to Justice's mental health unit. Despite reporting the largest volume of mental health determinations, Los Angeles Court failed to report 15 of the 27 determinations we reviewed. Most of these unreported determinations were from Los Angeles Court's Mental Health Courthouse, which is a centralized court location for cases involving mental health disorders and mental health legal issues. We also reviewed mental health determinations made at Los Angeles Court's Clara Shortridge Foltz Criminal Justice Center (Criminal Justice Center), which processes the greatest volume of cases related to criminal offenses. Although this court location does not deal exclusively with mental health issues, we found it did not always report those determinations that were related to an individual's mental competency.

Despite serving as the centralized courthouse for mental health-related cases, staff at the Mental Health Courthouse were not aware of several types of court determinations that state law requires the court to report to Justice. Specifically, staff were unaware that the court was required to report determinations regarding mental competency to stand trial, findings that a person is a danger to others, and court reappointments of conservatorships. According to a court administrator, for the three-year period we reviewed, the Mental Health Courthouse reported only original appointments or early terminations of conservatorships to Justice. The administrator stated that his courthouse had not received guidance from Justice regarding reporting requirements and did not have a contact at Justice from which the court could request assistance. Regardless, it is the court's responsibility to report prohibiting events to Justice as directed by state law.

We also found that, before our audit began, the Mental Health Courthouse lacked written procedures to ensure that staff were reporting mental health determinations to Justice. Instead, the court administrator stated that staff were trained verbally on what duties were expected of them in their position. The court administrator explained that at the Mental Health Courthouse, a firearm report form is printed only if a judicial assistant makes an entry on the court order to reflect that a judge has applied a firearm prohibition to a conserved individual. Therefore, a notation on the court order is the evidence that the court had printed a report to submit to Justice.

We reviewed 17 mental health determinations at the Mental Health Courthouse and found the courthouse also was not consistently following its own stated practices for reporting.[9] For 12 of the 17 determinations, we found no evidence that the courthouse reported its determination to Justice. Although some of these were determinations the Mental Health Courthouse admitted it was not reporting, among the determinations that the court knew it should report, we still found unreported cases. Specifically, we found that for two of the five conservatorship appointments we reviewed, the court order did not reflect the judicial assistant's entry to print a report for Justice. In contrast, although the courthouse claims to have been unaware that it was required to report reappointed conservatorships, we found court orders for two reappointments that indicated that the judicial assistant had printed a report to send to Justice.

The administrator at the Mental Health Courthouse stated that, after we informed Los Angeles Court that we would be visiting the court as part of this audit, he researched the courthouse's reporting practices and began work on new procedures to address determinations the courthouse was not reporting to Justice. In July 2013 the courthouse established new written procedures and a new firearm report form that identifies all court findings that should be reported to Justice. However, we noted that the new procedures do not discuss quality control steps, such as supervisory review and other monitoring processes, that could help the courthouse ensure that it submits all of its relevant court determinations. Revising these new procedures to include these elements would benefit the courthouse as it alters its practices to comply with state law.

Revising its new procedures to include quality control steps would benefit the courthouse as it alters its practices to comply with state law.

Although the Criminal Justice Center was aware of the requirements to report individuals with mental illness to Justice as state law requires, it did not report all court findings

[9] Because the courthouse hears civil cases as well as certain felony and misdemeanor cases, we chose 15 cases relating to civil determinations and two relating to criminal determinations. We reviewed additional criminal determinations at the Criminal Justice Center.

that an individual was mentally incompetent or that an individual had regained his or her competence to stand trial.[10] For 10 determinations judges made at the Criminal Justice Center, we found three determinations that were not reported to Justice. One of the three cases was a court finding that determined an individual was incompetent to stand trial, and two cases were court findings that restored an individual's competency. It is likely that the Criminal Justice Center's failure to report the latter two cases relates to a problem with its practices for reporting court determinations. According to a court administrator at the Criminal Justice Center, current courtroom procedures do not require the judicial assistant to send the case for processing when the court has made a determination that restoration of competence has occurred. She agreed that the current courtroom procedure needs to be reviewed and amended to require immediate reporting of competency determinations as state law requires.

The San Bernardino Superior Court Did Not Report Findings That Individuals Were Mentally Incompetent to Stand Trial

San Bernardino Court's criminal division at the central courthouse did not report any of the 15 determinations of mental incompetence to stand trial that we reviewed.

The San Bernardino Superior Court (San Bernardino Court) serves one of the most populated counties in California, and Justice's records show that the county has a relatively large percentage of the total number of prohibited persons in the State. However, its criminal division at the central courthouse that handles the largest volume of cases did not report any of the 15 determinations of mental incompetence to stand trial that we reviewed. Further, although a court supervisor noted that the determinations are infrequent, the probate division at the same central courthouse did not report any early terminations of conservatorships.

Although San Bernardino Court's criminal division initially believed it was electronically reporting all required information to Justice, we found that the court was not reporting any of its determinations related to mental incompetence. Specifically, in all 15 court determinations we reviewed, we did not find evidence that the criminal division reported its mental incompetency determinations to Justice. Further, as we discuss later in the chapter, we found that one of the 15 determinations was related to a firearm owner. When we discussed the lack of reporting with the court's district manager, she acknowledged that it was the court's oversight that information regarding mental incompetence was not being transmitted with the electronic dispositions.

[10] Unlike findings that an individual is incompetent to stand trial, restorations of competency to stand trial restore an individual's right to possess a firearm under state law. State law requires courts to report both the determination that an individual is incompetent to stand trial and the determination that an individual has regained competency.

Additionally, San Bernardino Court's probate division does not report a particular type of court determination to Justice. The probate division has not notified Justice of any court determinations to terminate an individual's conservatorship before the originally scheduled expiration date.[11] A court order terminating a conservatorship early would remove an individual's firearm prohibition under state law. According to the court's district manager, the probate division was aware that it was not reporting early terminations of conservatorships, but it believed that the former conservator had the responsibility to provide the court with a firearm report form. Further, the court supervisor stated that the court rarely orders early terminations. Regardless of the reason why the probate division chose not to report early terminations, state law requires the court to notify Justice of any early terminations. Therefore, if the probate division continues its practice of not reporting these early terminations, it will not be in compliance with state law.

We also reviewed 15 determinations that the probate division stated was its practice to report to Justice. For all 15 cases, we found a firearm report form in the case file, which indicated that the court had made a report to Justice. Although our testing indicated that the probate division did report to Justice for these cases, the division's procedures regarding mental health cases do not inform staff about when or how they should complete and submit a firearm report form to Justice. Instead, the court supervisor explained that when they assume a position, staff are trained by shadowing other staff until they are considered knowledgeable.

In August 2013, after we discussed San Bernardino Court's lack of reporting in both its criminal and its probate divisions with the court's district manager, the court developed new procedures to ensure that staff report the required determinations to Justice. Specifically, the court developed procedures for its criminal division to ensure that staff print a firearm report form to mail to Justice when there is a determination relating to mental incompetence. Additionally, the court revised its probate procedures for staff to report early terminations of conservatorships to Justice. Implementing and following the procedures for each division will reduce the risk of San Bernardino Court failing to report a prohibited person with mental illness to Justice.

In August 2013, after we discussed San Bernardino Court's lack of reporting in both its criminal and its probate divisions with the court's district manager, the court developed new procedures.

[11] An early termination of a conservatorship can occur if the individual petitions the court for a status hearing before the scheduled termination date and the court determines that the individual no longer needs to be conserved.

The Santa Clara Superior Court Should Improve Its Reporting of Mental Health Determinations

According to information Justice provided us, the Santa Clara Superior Court (Santa Clara Court) reported a relatively consistent number of mental health determinations to Justice's mental health unit during the three-year period we reviewed. Although it has procedures for reporting mental health determinations, Santa Clara's largest criminal courthouse, the Hall of Justice (criminal division), did not consistently report all of its determinations to Justice. In the criminal division, we reviewed 15 determinations that state law requires the court to report to Justice, and we found that only eight of the cases had a firearm report form in the file indicating that the court had reported the individual to Justice. For the seven determinations where we did not a find a firearm report form in the file, we found that one determination was recorded in Justice's mental health database, indicating that the court reported to Justice despite not keeping a report form in the case file. The director of Criminal and Traffic (criminal division director) and a court manager explained that the staff tasked with processing reports to Justice may not always receive the necessary information to notify them that a firearm report form should be sent to Justice. However, after we shared the results of our testing, Santa Clara Court's criminal division director provided us with new reporting procedures for staff and stated that supervisors or managers will monitor a weekly report that will allow them to ensure that all court determinations are reported to Justice.

After we shared the results of our testing, Santa Clara Court's criminal division director provided us with new reporting procedures for staff.

Santa Clara Court's probate division also did not report all required types of court determinations to Justice. More specifically, the probate division did not notify Justice about any of its determinations where the court terminated an individual's conservatorship early. According to the director of the civil division, the court was not reporting early terminations of conservatorships because the court orders did not contain language specifically terminating all the terms of the original conservatorship. However, she explained that the court would now begin working with the public defender and the judicial officers to ensure that the orders to terminate a conservatorship will include language to remove firearm prohibitions. Additionally, the probate division did not report court determinations that committed an individual to a mental health facility for an extended period after an initial involuntary hold. The director stated that the court would now begin reporting these court-ordered commitments to a mental health facility even though they believe that the mental health facilities are already reporting these individuals to Justice.

Our testing indicated that the probate division reported individuals to Justice if it was its practice to report that type of determination. We reviewed 15 determinations at the probate

division. For 14 conservatorship cases we reviewed, we found a firearm report form in the case file, indicating that the court reported the determination to Justice. We reviewed one additional determination, which was a court-ordered commitment to a mental health facility. As previously discussed, the court had not reported this determination because it believed that reporting responsibility belonged to the mental health facility.

Finally, we noted that the probate division could improve the accuracy of the report forms it submits to Justice. The written procedures and practices for the probate division do not include verification of all information on the firearm report form, which we found led to inaccurate reports. For example, for three of 14 conservatorship cases we reviewed, the scheduled termination date for an individual's conservatorship was incorrect by two weeks to eight months. According to a court clerk, when the probate division receives a petition for an appointment or reappointment of a conservatorship, the county counsel provides the probate division with a firearm report form, and the counsel has already completed the subject information and the scheduled termination fields of the form. However, a judge may continue a case for several weeks, and the termination date for the conservatorship may change from the original planned date. Even though this may happen in some cases, the court clerk who sends the firearm report form to Justice verifies only the subject name and the case number before sending the form. Incorrect termination dates may result in Justice prolonging or prematurely ending a person's state prohibition on possessing a firearm.[12] After we discussed this issue with Santa Clara Court, the director of the civil division stated that court staff will implement a review process and obtain the correct termination date before submitting a report to Justice.

Courts' Incomplete Reporting Results in a Lack of Critical Information at Justice

The gap in court practices results in unreported individuals with mental illness, and Justice will be less likely to identify that these individuals are prohibited from possessing firearms and confiscate the firearms they do possess. For the 28 prohibiting court determinations we tested with no evidence of reporting at the three courts we visited, we performed procedures at Justice to determine the effect of the courts' failure to report. Unreported court determinations that were associated with firearm owners hinder Justice's ability to identify individuals with mental illness

The gap in court practices results in unreported individuals with mental illness, and Justice will be less likely to identify that these individuals are prohibited from possessing firearms and confiscate the firearms they do possess.

[12] When Justice determines an individual is prohibited from owning a firearm, it applies federal prohibitions to that individual if the duration of the federal prohibition is longer than California's prohibition. We discuss this subject in Chapter 2.

who should have their firearms confiscated. Further, unreported determinations may also affect whether an individual can pass a background check as a firearm purchaser.

For some individuals, another entity besides the court had already reported a mental health prohibiting event to Justice, or the court itself had reported a previous event. Nevertheless, state law requires courts to report mental health determinations to Justice, and the courts cannot rely on other entities to do this. Relying on other entities risks that an individual will go unreported and that an individual with court findings related to mental health will go unidentified. In fact, in four of the 28 unreported cases, we found that at the time courts failed to report a mental health determination to Justice, the individual subject to the court determination did not have another mental health prohibiting event recorded in Justice's Automated Criminal History System or its mental health database. Therefore, there was no information related to mental health prohibitions that would have prevented these individuals from passing a background check if they attempted to purchase a firearm following their court determination. As we mention in the Introduction, the focus of this audit is on mental health prohibiting events; therefore, we reviewed these individuals' histories only for mental health events. However, it is possible that some other event not related to mental health prohibited these individuals from possessing firearms.

In two additional cases, Los Angeles Court's Criminal Justice Center and San Bernardino Court's criminal division failed to report determinations that were related to firearm owners.

In two additional cases, Los Angeles Court's Criminal Justice Center and San Bernardino Court's criminal division failed to report determinations that were related to firearm owners. However, in each of these cases, another entity had already reported a mental health prohibiting event for the individual to Justice. Therefore, although the courts failed to notify Justice of their mental health determination, these individuals should have already been identified as armed prohibited persons. If these individuals had not had a prior prohibiting event, the courts' failure to report could have led Justice to fail to determine that these individuals were prohibited from possessing a firearm. When we examined these two individuals in Justice's Armed Prohibited Persons System (APPS database), we were not able to find them identified as armed prohibited persons because Justice's review is limited to firearm records from 1996 to present, which is after these individuals obtained their firearms. We discuss this matter further in Chapter 2.

Courts Are Not Always Timely in Submitting Reports to Justice

In addition to the visited courts not always reporting all their required mental health determinations to Justice, we found that the reports the courts did make were not always submitted to Justice in a timely manner. As discussed in the Introduction,

state law requires courts to immediately report certain mental health determinations to Justice. However, the law does not define *immediately*. Consequently, courts we visited had differing interpretations of what the law meant by that.

On average, for the items we tested, none of the court divisions we visited that kept a record of the date they sent reports met their own definitions of *immediately*. For instance, Santa Clara Court's criminal division interpreted *immediately* as called for in state law to mean two to three business days or as soon as possible. However, we found that for the items we tested, the average time Santa Clara Court took to process and submit firearm report forms was more than four business days. In one instance, court staff did not report a determination to Justice until 13 business days after the court determination date. Similarly, Santa Clara Court's probate division exceeded its interpretation of *immediately* by two business days on average. Further, Los Angeles Court's Criminal Justice Center defined *immediately* as within two court days, which is generally equivalent to business days, but exceeded that definition by six days on average for the items we tested. For one particular determination, the Criminal Justice Center staff did not complete the firearm report form until 28 business days after the court determination date. A senior administrator at the Criminal Justice Center noted that our calculation does not distinguish between the dates the findings were made in the courtroom and the dates the findings were received in the clerk's office. Although that is true, when discussing how soon courts must report to Justice, state law does not distinguish between the time of the determination and when the clerk's office receives information from the courtroom.

For one particular determination, the Los Angeles Court's Criminal Justice Center staff did not complete the firearm report form until 28 business days after the court determination date.

Other court divisions did not keep records that allowed us to assess the timeliness of their reports to Justice. Although San Bernardino Court's probate division defined *immediately* as within seven days, we could not calculate the number of business days it took for San Bernardino Court's probate division to submit firearm report forms. This was because instead of recording the date of completion on the firearm report form, San Bernardino Court's staff recorded only the date of the court determination. The probate division did not keep any additional record of when a firearm report form was mailed to Justice. Los Angeles Court's Mental Health Courthouse used the same two-court-day definition its Criminal Justice Center used to define *immediately*. However, we were unable to determine when Los Angeles Court's Mental Health Courthouse submitted firearm report forms to Justice because the Mental Health Courthouse does not keep a copy of the firearm report form it submits to Justice. The courthouse also does not separately track the date it mails a report form to Justice.

In October 2013 the governor signed legislation that will change the reporting requirements for mental health firearm prohibitions effective January 1, 2014. Beginning on that date, state law will

require that courts report their determinations electronically and will include revised timelines for both courts and mental health facilities to report prohibiting events to Justice. Specifically, state law will no longer require courts and mental health facilities to report immediately. Instead, it will require the courts to report to Justice as soon as possible but not later than two court days after the prohibiting determination. However, the new requirement for mental health facilities to report to Justice will be a shorter period of time: within 24 hours of a prohibiting event. In effect, this change to the law will place less urgency on prohibition reports from courts than on those from mental health facilities.

The director of AOC's Office of Governmental Affairs commented that the AOC believes that courts require at least two court days because orders from court proceedings are typically not available for processing immediately after the proceedings. He stated that unlike mental health facilities, courts operate on limited business hours and are not staffed around the clock and on weekends. Coupled with broad understaffing due to unprecedented budget cuts, he believed any shorter deadline would be impractical in light of typical demands on court staff. Further, he noted that many courts currently lack electronic reporting capabilities. Although this may be true at some courts, it does not reflect capabilities and processes that courts may develop in response to a change in state law. We question a change to state law that provides courts more time to report than mental health facilities. Existing law requires reports to be submitted immediately regardless of where the report originates. Having the deadline for reporting be the same for courts and mental health facilities seems appropriate, especially considering that both types of entities will be able to electronically report and that it is important for public safety that prohibiting events be reported promptly, no matter where they originate.

Any delay in the reports courts make can unnecessarily delay the amount of time it takes Justice to identify armed persons with mental illness and prolong the amount of time to confiscate the firearms that these prohibited individuals possess.

Further, we found that none of the court divisions where we were able to assess the timeliness of reporting were reporting to Justice within two court days. Therefore, these courts will need to adjust their current practices once this legislation takes effect. Any delay in the reports courts make can unnecessarily delay the amount of time it takes Justice to identify armed persons with mental illness. This delay can also prolong the amount of time before Justice can confiscate the firearms that these prohibited individuals possess.

Justice Does Not Conduct Outreach to All Mental Health Facilities Regarding Requirements to Report

In addition to courts, mental health facilities are an essential provider of the information Justice uses to identify individuals who are prohibited for mental health reasons from owning firearms.

Although Justice must rely on mental health facilities to report individuals with mental illness so that it can determine whether they are prohibited from being armed, Justice has not contacted all of the facilities in the State that treat prohibited persons. In fact, Justice does not verify that the list of mental health facilities it uses for outreach includes all facilities that should be reporting firearm prohibitions. Additionally, Justice does not contact mental health facilities that stop submitting reports regarding persons with mental illness to determine whether those facilities require training or whether another problem is preventing them from reporting. Without ongoing monitoring of reporting levels, Justice cannot effectively identify which mental health facilities are not reporting persons who have mental illness. Finally, Justice has only offered training to the facilities that appear on its incomplete outreach list.

Justice Is Not Aware of All Relevant Mental Health Facilities and Does Not Regularly Update Its List of Facilities to Ensure That It Is Complete

Justice uses an outreach list containing the names and contact information for mental health facilities to communicate with these facilities regarding the requirement to report mental health information relevant to firearm prohibitions. As we discuss in the Introduction, state law requires that mental health facilities that provide treatment to patients who have been placed under an involuntary hold immediately report these individuals to Justice.[13] According to information Justice's assistant bureau chief provided, 96 percent of the reports Justice receives about individuals with mental illness come from mental health facilities. In the past, Justice has periodically sent information bulletins to the mental health facilities on its outreach list to remind them of the reporting requirement and to inform them about trainings that Justice offers on the method for submitting information. However, this list of mental health facilities was missing 22 facilities that were approved to provide treatment to the types of individuals that mental health facilities must report to Justice. As a result, Justice did not communicate with these facilities about its expectations for reporting or which individuals the facilities should report.

Justice's outreach list of mental health facilities was missing 22 facilities that were approved to provide treatment to the types of individuals that mental health facilities must report to Justice.

Justice's outreach list is likely missing these mental health facilities because Justice does not check with the relevant approval authority for such facilities and thereby ensure that it knows about facilities in the State that may need to report. State law requires that individuals who are placed under an involuntary hold because they

[13] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which mental health facilities must report individuals. Specifically, facilities will no longer be required to report immediately but will be required to report within 24 hours.

are gravely disabled or because, as a result of a mental disorder, they are a danger to themselves or others must be held and treated in an approved mental health facility. The California Department of Health Care Services (Health Care Services) currently approves these facilities. Before June 2013 the most recent entity that had this approval responsibility was the California Department of Social Services (Social Services). Social Services maintained a list of the facilities that it approved for this purpose and, according to its chief of mental health treatment licensing, it updated the list when counties provided Social Services with new information. However, Justice did not contact Social Services to inquire about any new mental health facilities that should be reporting prohibited persons. We compared the list of facilities from Social Services to the list Justice uses to conduct outreach and matched facilities by name and address.[14] For 22 facilities on the Social Services list, we could not find a corresponding facility name and address on Justice's outreach list.

The assistant bureau chief reported that Justice created the initial list of mental health facilities in the early 1990s by working with the Department of Mental Health (which had approval responsibility for these facilities before Social Services), but in recent years, Justice's efforts to update the list have been limited to contacting known facilities or contacting facilities brought to its attention through law enforcement or legislative meetings and contacts. Further, Justice's mental health unit manager reported that he generally adds facilities to the list when the facilities contact his unit for an identification number they can use to report individuals with mental illness. Despite this assertion, we found that three of the 22 facilities that were missing from Justice's outreach list had reported individuals with mental illness to Justice in 2012, indicating that Justice has not always used this approach to update its list.

Justice does not believe that it is responsible for identifying new mental health facilities with these patient types.

Although communication with the facilities missing from its outreach list could benefit Justice's efforts to identify and confiscate firearms from armed prohibited persons, Justice does not believe that it is responsible for identifying new mental health facilities with these patient types. Reports about these individuals would assist Justice in identifying armed persons with mental illness because without this information, Justice may not know whether a firearm owner is now prohibited. Despite this, Justice's assistant bureau chief stated that it is not Justice's responsibility to notify newly licensed mental health facilities about the requirement to report

[14] The list of facilities we obtained from Social Services and used for this analysis was last updated in 2011. When we began our review, Justice's list was last updated in July 2012. Justice does not remove closed facilities from its list because the facilities could have records. Therefore, we would expect Justice's list to include all facilities from Social Services' list.

prohibited persons information. He noted that Justice is only a repository for reported information, and its responsibility is limited to administering the reporting forms and system. Although we located no state law specifically requiring Justice to maintain a list of all mental health facilities, the law expressly requires that Justice determine the information it needs to identify persons who have been admitted for inpatient treatment and are a danger to themselves or others because of a mental disorder and to request that information from mental health facilities. Based on the type of individuals that state law requires mental health facilities to report to Justice and statements by the chief of mental health treatment licensing at Health Care Services, we believe that the list Health Care Services now maintains represents the facilities from which Justice should receive reports.

Justice's incomplete outreach list may well have a negative impact on its efforts to identify armed persons with mental illness.

Justice's incomplete outreach list may well have a negative impact on its efforts to identify armed persons with mental illness. The mental health facilities missing from Justice's outreach list did not receive the latest information bulletin that Justice sent to facilities in 2012 regarding the requirement to report patient information to Justice through a specific electronic system. Therefore, there is a risk that the mental health facilities missing from the outreach list that have not initiated contact with Justice on their own may be unaware of how to report individuals or even the need to report. Further, if the missing mental health facilities do not report required information to Justice, then individuals who should be prohibited from possessing a firearm will not be identified, and Justice will not be able to confiscate any firearms that these individuals possess.

Justice Does Not Track Facility Reporting or Follow Up When Reporting Levels Change

In addition to not identifying all mental health facilities that may need to report individuals with mental illness, Justice is not doing all it can to ensure that it receives complete information from those facilities that do report to its mental health database. According to its mental health unit manager, Justice conducts no ongoing tracking of reporting levels from facilities. Such reports would allow Justice to identify potential problems, such as a large drop in reports from a specific facility. Because the reports that Justice receives from mental health facilities are an essential component for identifying armed prohibited persons, we would expect Justice to track reporting levels to identify any trends indicating inadequate reporting. The mental health unit does track when a facility has repeatedly submitted incorrect reports so that Justice can offer

the facility additional training. However, the mental health unit manager indicated that no similar tracking exists for the level of reporting Justice receives from facilities.

Because it does not track facility reporting over time, Justice is unaware when mental health facilities stop reporting individuals with mental illness, and its own efforts to identify prohibited persons suffer as a result. Our analysis of the mental health database indicated that 146 facilities submitted more than 100 prohibition reports each to Justice during 2012, but four of these facilities stopped submitting reports by the end of the year. In addition to those four facilities, 10 more facilities had decreases in their reporting levels of more than 50 percent from the first quarter of 2012 to the last quarter of the year. Some of these facilities were submitting hundreds of reports during the first half of the year before their report total fell. There may be valid reasons for the decrease in reports, but if Justice does not follow up directly with these mental health facilities, it cannot know whether persons with mental illness are going unreported or if some other factor caused the facility to stop reporting these individuals.

When it does not track the level of reporting from mental health facilities, Justice may also be missing an opportunity to offer training to facilities that need it.

When it does not track the level of reporting from mental health facilities, Justice may also be missing an opportunity to offer training to facilities that need it. The assistant bureau chief confirmed that Justice does not know why some facilities stop reporting or have a significant drop in their reporting level. He acknowledged that there could be several reasons why a facility would stop reporting, including staff turnover at the facility, a lack of knowledge transfer from one facility staff to another, or possibly the recent change in reporting requirements wherein state law now requires electronic reporting. In each of these cases, additional training might assist a facility that stopped reporting or had a significant drop in its reporting level. However, without tracking facility reporting levels, Justice cannot identify these facilities and offer such training or assistance. Such assistance would be a reasonable response to the requirement, discussed previously, that Justice determine the information it needs to identify individuals with mental illness and request that information from mental health facilities.

According to its manager, Justice's mental health unit is not required to follow up with mental health facilities that stop submitting reports. Also, Justice's assistant bureau chief said he did not believe that tracking facility reporting levels over time and contacting facilities that have a drop in reporting levels were Justice's responsibility because Justice lacks statutory authority and funding. Further, he noted that Justice has no authority to penalize a mental health facility for not providing a required report. Despite this, Justice is in a unique position to know whether a facility has stopped reporting

or has had a significant drop in its reporting level and to request that the facility provide reports about prohibited persons. A decrease in facility reporting could mean that Justice is left unable to identify armed prohibited persons.

Justice's Training to Mental Health Facilities Informs Facilities as to Which Patients to Report and How to Submit a Report

Although Justice has not offered these trainings or distributed its information bulletins to all relevant mental health facilities, its training materials and information bulletins contain content to inform the facilities about the requirement to report individuals with mental illness and the method for this reporting. Justice offers both statewide and individual facility training opportunities to mental health facilities. Since the APPS database was implemented in November 2006, Justice has conducted two statewide trainings for mental health facilities on the requirement to report individuals with mental illness and the reporting method. The interim manager of the training unit (interim manager) indicated that the first of the two statewide trainings took place in 2007, and it focused on the requirement to report using a paper-based system. Justice offered the second statewide training in 2012, ahead of the requirement that facilities report using the online electronic reporting system (online reporting system). During this training, Justice emphasized the process for using the online reporting system. In addition to statewide trainings, Justice's training unit also conducts on-site training for mental health facilities that request it for their specific facility. According to the interim manager, Justice receives an average of seven or eight requests for additional on-site trainings from mental health facilities each year.

In addition to offering training, Justice also occasionally sends information bulletins to mental health facilities to remind them of the reporting requirements and to inform them of any changes to the requirements. As of June 2013 three information bulletins had been sent to facilities in the more than six years since the APPS database was implemented. Each bulletin explains the types of patients that mental health facilities must report to Justice and informs the facilities that they can request on-site trainings at any time. Justice sent bulletins in response to a national firearm-related incident, namely the Virginia Tech shootings in April 2007, and in response to changes to its own processes or state law's reporting requirements. Although this may be a reasonable approach, as we indicated earlier Justice has not taken steps to identify all facilities approved to provide treatment to the type of individuals who must be reported to Justice to ensure that its outreach list is complete. As a result, Justice has not notified all applicable mental health facilities of the reporting requirements or changes to those requirements.

In addition to offering training, Justice also occasionally sends information bulletins to mental health facilities to remind them of the reporting requirements and to inform them of any changes to the requirements.

Justice Has Decided That State Hospitals Should Report Using the Online Reporting System

Although Justice has made attempts to establish ongoing electronic information sharing with the California Department of State Hospitals (State Hospitals), these attempts appear to have been unsuccessful and Justice has now requested that State Hospitals use the online reporting system other mental health facilities use. State law requires State Hospitals to maintain records necessary to identify prohibited persons in a central location and to make those records available to Justice when Justice requests this information.[15] Justice and State Hospitals both indicate that information sharing between the two departments has occurred on a more ongoing basis rather than periodically upon request during the three-year period we reviewed.

State Hospitals reports that it uses an information system to identify individuals treated at its hospital facilities who should be reported to Justice. According to State Hospitals' chief of Client Technology Services (client technology chief), until January 2013 State Hospitals sent hard-copy reports to Justice whenever its system identified relevant patients and printed a report on the individual. Subsequently, State Hospitals began reporting to Justice via secure email.

Justice has attempted to establish an electronic exchange of information between State Hospitals and itself, but communication regarding this electronic exchange appears to have ended in October 2012.

However, Justice has attempted to establish an electronic exchange of information between State Hospitals and itself. Justice's email records show that in April 2011 it was working on an information technology system upgrade and offered to work with the staff (then from the Department of Mental Health) to facilitate an electronic exchange of patient information. In these emails, Justice's assistant bureau chief stated that Justice was hoping to establish an electronic exchange that might be more efficient than the online reporting system that anticipated legislation would soon require other mental health facilities to use. Although representatives from the two departments continued to exchange emails, communication regarding this electronic exchange appears to have ended in October 2012. The assistant bureau chief indicated that after that time the opportunity to establish an electronic exchange as part of the system upgrade had passed.

[15] Previously, state law required the Department of Mental Health to maintain these records. Effective June 27, 2012, certain functions of the Department of Mental Health, including oversight of the hospital facilities, were reorganized into the newly created State Hospitals. Further, due to the legislation signed by the governor in October 2013, effective January 1, 2014, State Hospitals will be required to provide this information to Justice electronically and within 24 hours of a request.

Subsequently, State Hospitals attempted to share information electronically. In March 2013 State Hospitals sent a secure email containing information about prohibited persons with mental illness directly to the assistant bureau chief. After receiving the email, the assistant bureau chief informed State Hospitals that he was no longer in a capacity nor had the authority to receive State Hospitals' reports via email. In the same response, he provided instructions on how State Hospitals could access the online reporting system that other mental health facilities use to report individuals with mental illness.

According to the assistant bureau chief, some of the information he received in the March 2013 email from State Hospitals' headquarters was related to persons that individual hospital facilities had already reported to Justice. The assistant bureau chief stated that he informed State Hospitals staff about the duplicate reports during a conference call that occurred shortly after receiving the email. We examined the mental health database for 2012 to determine whether it reflected reports of persons with mental illness associated with state hospital facilities. Justice's mental health database shows that 38 reports of persons with mental illness were associated with Napa State Hospital during 2012. However, summary information State Hospitals provided to us shows that another facility, Metropolitan LA State Hospital, can also treat patients who should be reported to Justice as prohibited persons with mental illness.[16] Justice's mental health database did not show that any reports for Metropolitan LA State Hospital were received during 2012. State Hospitals' client technology chief did not know whether the hard-copy reports sent to Justice by what is now State Hospitals included patient information from this facility, or whether the facility had no patients to report.

In September 2013 State Hospitals' client technology chief reported that State Hospitals has begun using the online reporting system to report individuals to Justice. She stated that State Hospitals will coordinate with the individual state hospital facilities to ensure that all reporting is centralized at the administrative level and that duplicate reports are not sent to Justice. She also said this would not impact the efficiency of State Hospitals' reports to Justice because information in the system that State Hospitals headquarters uses to identify reportable patients is available to individual hospitals and headquarters simultaneously. Such a continual sharing of information about prohibited persons from State Hospitals to

[16] The two state hospital facilities we discuss do not include state hospitals that can treat individuals who have been found by a court to be mentally incompetent or not guilty by reason of insanity. We focus our discussion on the types of individuals that state law requires other mental health facilities to report to Justice, such as individuals determined to be a danger to themselves or others after an involuntary hold.

Both departments could benefit from a formal agreement about the method and frequency of the information sharing, as law does not currently prescribe this level of detail.

Justice does not appear inconsistent with state law. However, both departments could benefit from a formal agreement about the method and frequency of the information sharing, as law does not currently prescribe this level of detail. A formal agreement would help ensure that State Hospitals shares information about prohibited persons on an ongoing basis as Justice has indicated it prefers.

Recommendations

To ensure that it has the necessary information to identify armed prohibited persons with mental illness, Justice should coordinate with the AOC at least once a year to share information about court reporting levels and to determine the need to distribute additional information to courts about reporting requirements and the manner in which to report. In coordinating with the AOC about potential underreporting, at a minimum Justice should consider trends in the number of reports each court sends and the number of reports that it might expect to receive from a court given the court's size, location, and reporting history. Whenever Justice identifies a court that it determines may not be reporting all required information, it should request that the court forward all required case information.

AOC should coordinate with Justice at least once a year to obtain information about court reporting levels. Using that information, AOC should provide technical assistance to the courts that do not appear to be complying with state law's requirement to report prohibited individuals and assist the courts in taking appropriate steps to ensure compliance.

To ensure that it is properly reporting to Justice individuals posing a danger to themselves or others, San Francisco Court should work with the district attorney and the Office of Conservatorship Services to ensure that the court is sufficiently considering whether individuals should be prohibited from possessing a firearm. Where appropriate, the court should include prohibitive language in orders relating to those cases and promptly report these individuals to Justice.

To ensure that it is reporting all required individuals to Justice, Los Angeles Court should, by December 31, 2013, revise its new procedures at the Mental Health Courthouse to discuss quality control steps, such as a supervisory review and other monitoring processes, that would ensure that it is reporting all required determinations. Los Angeles Court should implement the revised procedures so that it reports all types of court determinations state law requires.

To ensure that it is reporting all court determinations that prohibit an individual from possessing a firearm, by December 31, 2013, Los Angeles Court's Criminal Justice Center should revise its court procedures regarding these determinations so that court administrative staff are notified when a finding related to mental competency occurs.

Los Angeles Court should review its compliance with state law's firearm prohibition reporting requirements at each of the other courthouse locations within its court and make the necessary adjustments to courthouse policies and practices so that it fully complies with state law by March 31, 2014.

To ensure that it reports all required prohibited persons to Justice, San Bernardino Court should implement its new procedures for both its criminal and its probate divisions at the central courthouse by December 31, 2013, so that it reports all types of court determinations state law requires.

San Bernardino Court should review its compliance with state law's firearm prohibition reporting requirements at each of the other courthouse locations within its court and make the necessary adjustments to courthouse policies and practices so that it fully complies with state law by March 31, 2014.

To ensure that it reports all required prohibited persons to Justice, Santa Clara Court's probate division should revise its court policies and practices by December 31, 2013, so that it reports all types of court determinations state law requires. Further, Santa Clara Court's criminal division at its Hall of Justice should follow its new reporting and monitoring procedures to ensure that it reports all required determinations to Justice.

Santa Clara Court should review its compliance with state law's firearm prohibition reporting requirements at each of the other courthouse locations within its court and make the necessary adjustments to courthouse policies and practices so that it fully complies with state law by March 31, 2014.

The Legislature should amend state law to specify that all mental health-related prohibiting events must be reported to Justice within 24 hours regardless of the entity required to report.

Los Angeles, San Bernardino, and Santa Clara courts should follow the requirements in state law related to how quickly to report individuals to Justice.

To ensure that it keeps an accurate and up-to-date list of all mental health facilities that are required to report individuals with mental illness, at least twice a year Justice should update its outreach list of mental health facilities by obtaining a list of facilities from Health Care Services.

As soon as it identifies mental health facilities that have not yet received information about reporting requirements and the online reporting system, Justice should send these facilities the related information.

To ensure that it continues to receive information from facilities that currently report individuals with mental illness and that should continue to report such individuals, by January 31, 2014, and at least twice a year thereafter Justice should implement a review of the number of reports it receives from individual mental health facilities. These reviews should focus on identifying any significant drops in a facility's reporting levels and include follow up with facilities that may require additional assistance in reporting.

To ensure that all applicable information from State Hospitals is communicated to Justice, by March 31, 2014, Justice and State Hospitals should establish a written understanding of the method and frequency with which State Hospitals will report prohibited individuals to Justice.

Chapter 2

THE DEPARTMENT OF JUSTICE DID NOT ALWAYS IDENTIFY ALL ARMED PROHIBITED PERSONS AND HAS STRUGGLED TO KEEP UP WITH ITS ARMED PROHIBITED PERSONS WORKLOAD

Chapter Summary

The Department of Justice (Justice) did not always identify armed persons with mental illness about which it had received reports. In some cases, although an individual with mental illness was reported to Justice and was a firearm owner, Justice's staff did not indicate that the individual was an armed prohibited person. In addition, Justice has at times had difficulty processing the information it receives from reporting entities. Its Armed and Prohibited Persons unit (APPS unit) has sometimes had a daily backlog of cases pending review that has exceeded the informal cap that Justice set of 1,200 matches of prohibiting events with firearm owners. With regard to one significant increase in the Armed Prohibited Persons System (APPS database) backlog, Justice reported that the rise in the backlog coincided with a rise in the number of background checks it was required to complete for firearm purchases. Justice's average time to make prohibition determinations for its daily APPS database workload is five days, although some cases have waited much longer for a final determination. In addition to its daily workload, Justice has not finished reviewing a historical backlog of firearm owners—nearly 380,000 as of July 2013—to determine whether any of those individuals are armed prohibited persons. Although Justice plans to complete this review by the end of 2016, it does not appear to be on track to meet this planned deadline, and until this process is complete, Justice will not know the true number of firearm owners who are prohibited from possessing a firearm.

Additionally, Justice needs to make improvements to its controls over the information that it receives from reporting entities. We found instances where Justice had not input reported information that it received into its Mental Health Firearms Prohibition System (mental health database). Further, we found that some key staff decisions, such as the decision to delete prohibition information in databases and the decision that an individual is not prohibited, do not require supervisory approval. If Justice improved its controls over this information, it could better ensure that it is appropriately identifying all armed prohibited persons and is thereby equipped with all the information it needs to ensure public safety through firearm confiscation.

Justice Did Not Always Identify Individuals as Armed Prohibited Persons Even Though They Had Been Reported as Prohibited

We reviewed eight APPS unit staff determinations that an individual was not an armed prohibited person and, considering the individual's mental health history, we found that three of these decisions were incorrect.

Although Justice receives reports about individuals with mental illness that it uses to identify armed prohibited persons, Justice did not always make appropriate decisions with this information. We reviewed eight APPS unit staff determinations that an individual was not an armed prohibited person and, considering the individual's mental health history, we found that three of these decisions were incorrect.[17] In these three instances, the individual was a firearm owner and had a record in Justice's mental health database for a prohibiting event at the time APPS unit staff made their determination. Two of these individuals came back to the attention of the APPS unit at a later date, and at the time of our review in August 2013 were identified as armed prohibited persons. However, one of them remained unidentified for more than one year. In addition, in the third instance, the prohibition was temporary, and Justice's incorrect decision led to an incorrect status for a few days.

In the first two cases, the assistant chief of Justice's Bureau of Firearms (assistant bureau chief) acknowledged that APPS unit staff made incorrect decisions at the time of the determination. He did not know the exact reason why staff made an incorrect decision for one of these cases. However, in the other case, the assistant bureau chief stated that the individual was not identified as prohibited because she used an alias that was not known to Justice when she was admitted to the reporting mental health facility. The assistant bureau chief explained that during their reviews, APPS unit staff did not review the aliases that were available to them through a California Department of Motor Vehicles (DMV) database. Therefore, because staff did not review this woman's aliases in the DMV database, the assistant bureau chief stated that the staff did not know the firearm owner they were reviewing was the same person who had been involuntarily committed to a mental health facility. He stated that Justice is not required to review information in the DMV database because it does not contain prohibiting information or firearm ownership information. He further stated that checking the DMV database would require additional steps for APPS unit staff to review and would slow down the determination process in addition to possibly reducing

[17] To review a high-risk population of determinations by the APPS unit, we identified decisions that the individual was not an armed prohibited person and where the individual's personal identification number was located in the mental health database. This initial step yielded 117 results, which we considered further. However, most of these items were related to expired mental health records that could not have triggered a review during the period we reviewed or cases where the personal identification number matched to the mental health database but the individual's name did not match. After eliminating these items, we focused on eight determinations for review.

staff efficiency. However, because identifying armed prohibited persons is critical, it is important that Justice pursue a cost-effective method of reviewing alias information in the DMV database.

For the third incorrect decision, the individual voluntarily admitted himself to a mental health facility. State law prohibits such individuals from possessing a firearm but only while they are admitted to the facility. In this case, staff determined that the individual was not prohibited but did not document that he was no longer at the mental health facility. After we discussed this case with the assistant bureau chief, Justice contacted the associated mental health facility and obtained confirmation that the man had been released from the facility, but not until four days after the staff made the decision. The assistant bureau chief stated that normal processing for these types of individuals would involve the mental health facility submitting a patient discharge report, which would cause Justice to lift the prohibition for the associated individual. Similarly, staff also did not document a discharge for another of the eight decisions we reviewed and had to contact the facility upon our inquiry. However, in this case, the documentation staff subsequently obtained showed the individual had been released before the staff decision, demonstrating that the staff decision was correct. Still, until we asked about these items, Justice lacked the documentation necessary to show whether its decision was appropriate.

We found that Justice had appropriate prohibition statuses for 12 additional individuals we reviewed, although the information in the APPS database about the individuals was not always accurate.

Further, we found that Justice had appropriate prohibition statuses for 12 additional individuals we reviewed, although the information in the APPS database about the individuals was not always accurate. According to the APPS unit manager, staff are supposed to enter all prohibiting information into the APPS database. However, during our review, we found that one of the 12 individuals we reviewed was missing a mental health prohibition in the APPS database. This missing prohibition would extend the individual's prohibition period by five months. Also, for one individual we reviewed, the APPS database did not identify all of the individual's firearms. In contrast, for another individual, the APPS database showed that the individual was the owner of a specific firearm, when other Justice records showed the individual was no longer in possession of that firearm. It is important that Justice maintain correct prohibition and firearm information in the APPS database, because law enforcement agencies and Justice's staff use the APPS database to identify and disarm armed prohibited persons.

The incorrect prohibition decisions and inaccurate APPS database entries may, in part, be a consequence of the APPS unit managers or supervisors not reviewing prohibition decisions. The APPS unit manager stated that there is no active review of prohibition determinations after staff complete extensive training, including on average three to four months of one-on-one supervision, because there

is not enough staff to double-check the work. Nevertheless, we believe periodic reviews of staff determinations are essential to ensure that the APPS database records Justice relies on to protect the public are complete and accurate.

In addition to our concerns over how Justice's staff were making and documenting certain APPS determinations, we noted a limitation in what the APPS database is identifying—one that does not appear to be fully consistent with state law. As we discuss in Chapter 1, during our testing at two of the three courts we visited, Justice had not identified as armed prohibited persons two individuals who are firearm owners and who had mental health prohibiting events recorded in the mental health database. The assistant bureau chief explained that these individuals were not identified as armed prohibited persons because Justice's review of firearm owners is limited to firearm records from 1996 through the present. He noted that because both of these individuals acquired their firearms in the 1980s, Justice would not have reviewed their prohibition history when their prohibiting event was reported.[18] Still, he said that when individuals who obtained their firearm before 1996 and have prohibiting events come to Justice's attention through other investigations, APPS unit staff will identify the individual as an armed prohibited person. We confirmed that Justice subsequently completed this process for the two individuals we identified and brought to its attention.

Although Justice is generally only reviewing firearm records from 1996 through the present, the state law that establishes the APPS database requires Justice to identify armed prohibited persons in its Consolidated Firearms Information System (CFIS) going back to January 1991. According to the assistant bureau chief, because CFIS was not implemented until 1996, CFIS does not contain firearm records going back to 1991. However, Justice does have firearm records that pre-date 1996, but it considers these records less reliable for the purpose of identifying prohibited persons and thus for conducting prohibition reviews. The assistant bureau chief stated that records before 1996 are extremely unreliable. He explained that before 1996, Justice did not verify the firearm purchaser's information against DMV database information. Further, the assistant bureau chief stated that he believed all parties that were involved in developing the state law understood that CFIS records only went back to 1996. However, such an understanding is not currently displayed in the plain language of state law. Therefore, Justice's effort to implement the APPS database using only firearm information from 1996 to the present appears inconsistent with the requirement in state law to review firearm records going back to 1991.

Justice's effort to implement the APPS database using only firearm information from 1996 to the present appears inconsistent with the requirement in state law to review firearm records going back to 1991.

[18] Justice does review registered owners of assault weapons going back as far as 1989.

Justice Does Not Use All Available Information to Identify Armed Prohibited Persons

Justice does not use all personal identifying numbers existing in its databases to determine whether firearm owners have mental health-related prohibiting events. Further, we discovered Justice does not transfer all mental health reports from its mental health database to the APPS database to aid in the identification of armed persons with mental illness.

As discussed in the Introduction, Justice compares personal identifying information of firearm owners to identify individuals who may have had a mental health-related prohibiting event recorded in the mental health database or in the criminal history system. For example, Justice compares personal identifying information, such as Social Security numbers or the combination of an individual's name and date of birth. However, Justice does not compare certain other identifying numbers recorded in its mental health database and criminal history system. According to the assistant bureau chief, Justice intended to use all available personal identifying numbers to identify armed prohibited persons; however, there was an oversight during the development of the electronic matching process, and not all personal identifying information was included in the matching process. As of June 17, 2013, nearly 32,000 persons in the APPS database had only personal identifying numbers that Justice does not use in its matching process. Consequently, Justice could identify these individuals based only on their names and dates of birth. By not using all personal identifying numbers available, Justice risks not identifying armed persons prohibited from firearm ownership.

As of June 17, 2013, nearly 32,000 persons in the APPS database had only personal identifying numbers that Justice does not use in its matching process.

In addition, Justice is excluding certain mental health reports from the process that matches current firearm owners with the mental health database. Specifically, Justice does not transfer reports stored in the mental health database to the APPS database for persons whose reported dates of birth contain only the birth year. According to the assistant bureau chief, Justice does not transfer these reports because matching firearm owners based on names and birth years would create too many false matches. Further, we found that Justice does not send to the APPS database other information included in these reports that could be used for matching—such as an individual's Social Security number. For example, Justice received a report for an individual in the mental health database on December 30, 2012, which contained the person's birth year and Social Security number. Because Justice does not transfer reports containing only a birth year, this individual's Social Security number was not sent to the APPS database for evaluation. Nearly a month and a half passed before Justice received another report containing the full birth date for this individual and made the determination

that he should be prohibited. As of May 29, 2013, the mental health database contained more than 14,500 reports containing the birth year and a personal identifying number, such as a Social Security number. As a result, these mental health reports have been excluded from the process Justice uses to identify firearm owners in the State who are prohibited from owning or possessing a firearm due to a mental health-related event.

Justice Has Experienced Significant Delays in Processing Its Armed Prohibited Persons System Workload

Justice has faced obstacles throughout the three-year period we reviewed—2010 through 2012—in meeting its workload demands for both the daily and the historical review queues of prohibited persons in the APPS database. During this time, Justice focused staff efforts on addressing a rise in background checks that state law requires when someone attempts to purchase a firearm, which resulted in the APPS unit experiencing a daily backlog that at times exceeded its internal goal of having no more than 1,200 matches pending for initial review at any one time. Although, on average, the APPS unit reviewed its daily APPS database workload within a time frame of five days, a few potential armed prohibited person cases waited more than three years before the APPS unit made a final determination about the person's prohibited status. Further, the APPS unit has also experienced delays in processing a historical backlog of firearms owners—nearly 380,000 as of July 2013—who remain to be reviewed from more than six years ago when it implemented the APPS database.

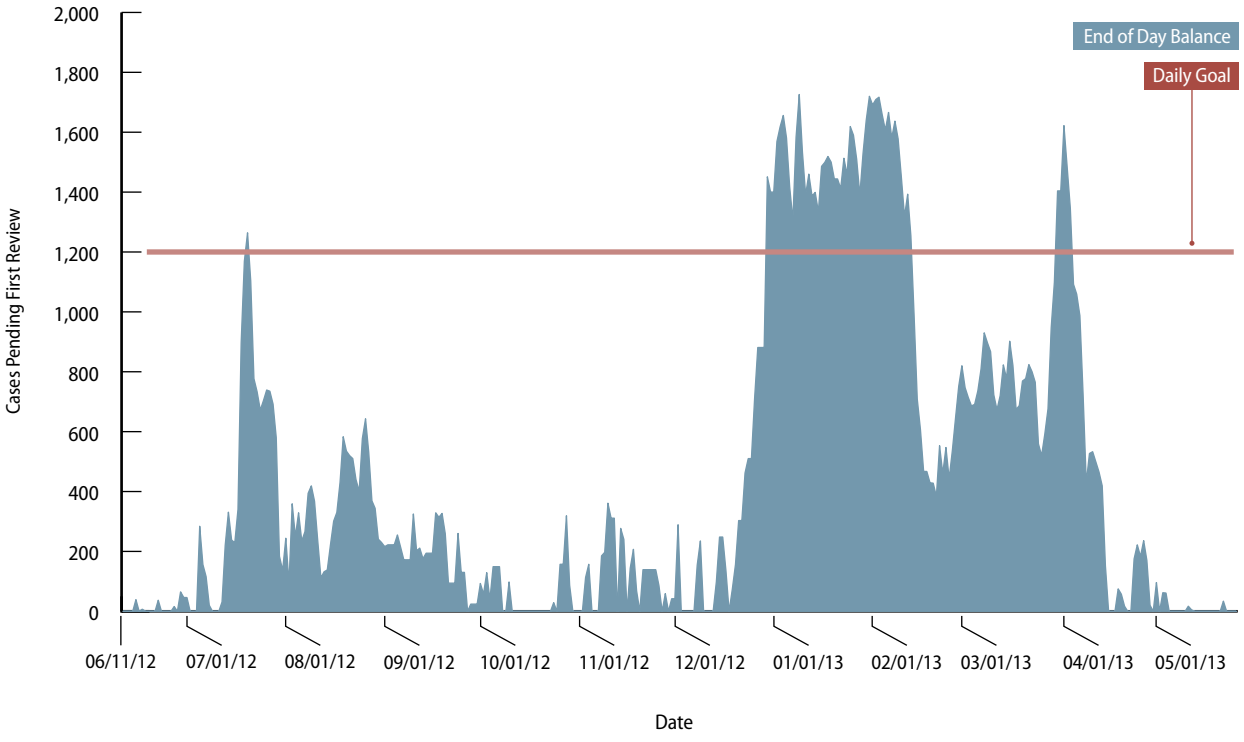
Justice Has at Times Had a High Daily Backlog of Unreviewed Prohibiting Events That Have Been Matched With Firearm Owners

Justice has two main processing queues it reviews to determine whether a firearm owner should be prohibited from owning a weapon: a daily queue and an historical queue. As we discuss in the Introduction, data from the APPS database that identifies whether an armed person is prohibited are the result of a matching process between CFIS and several supporting databases, including the mental health database and the Automated Criminal History System (criminal history system). This match links prohibiting events with firearm owners, and then Justice's APPS unit staff (of which there were 10 during our audit) review these matches and determine whether the individual is prohibited from possessing a firearm. Matches remain in the daily queue until an APPS unit staff member completes an initial review of the individual. APPS unit staff may not make a final determination about each match's

prohibiting event the first time they review the person's prohibition history. Therefore, the daily queue indicates the number of matches Justice has not yet reviewed at all.

Justice decided to informally cap at 1,200 the number of matches in the APPS database daily queue that were waiting for initial review. Despite its goal, Justice has at times exceeded this number of matches in the daily queue. During late 2012 and early 2013, for example, there was a backlog of more than 1,200 matches pending initial review. The APPS unit manager, who has been in her position since May 2012, tracks statistics from a daily report showing the number of matches that are still pending review at the end of each day. Based on her data, we found that in the 350 days from mid-June 2012 through May 2013, Justice had not reviewed all matches in the daily queue on 265 of those days. Of the 265 days with cases awaiting staff review, Justice exceeded its 1,200 goal for the maximum number of matches awaiting review 52 times. As shown in Figure 3, the amount of the daily backlog varied each day, and there was a sustained and significant increase in the backlog that began at the end of December 2012.

Figure 3
Backlog of Prohibiting Event Matches to Firearm Owners Waiting for Initial Review
Mid-June 2012 Through May 2013



Source: California State Auditor's analysis of records kept by the manager of the Department of Justice's Armed and Prohibited Persons unit.

A Justice official stated that in the latter part of 2012 California and the nation experienced a voluminous increase in gun sales and the associated background check workload, concurrent with public perception of impending changes in firearm laws after the Newtown shootings.

This sustained and significant increase in the APPS database daily backlog occurred directly following a rise in Justice's Dealers' Record of Sale (DROS) background check workload after the shootings at an elementary school in Newtown, Connecticut, on December 14, 2012. The assistant bureau chief stated that in the latter part of 2012, California and the nation experienced a voluminous increase in gun sales and the associated background check workload. He stated that this rise in gun sales was concurrent with the public perception of impending changes in firearm laws after the Newtown shootings.

Justice has 10 days after receipt of a completed application or fee to complete a background check to determine whether an individual seeking to purchase a firearm is prohibited from possessing, owning, purchasing, or receiving a firearm.[19] The DROS processing unit conducts these background checks. The assistant bureau chief reported that in response to that rise in background checks, Justice temporarily redirected APPS unit staff to assist with DROS background checks until Justice could hire additional DROS staff. According to the assistant bureau chief, DROS background checks will always take priority over the daily queue reviews because subjects in the APPS database are already in possession of firearms, whereas Justice assumes that DROS purchasers are attempting to obtain a firearm for the first time or are attempting to re-arm themselves after their firearms have been confiscated. However, we believe that although it is essential for Justice to meet its 10-day DROS deadline, the identification of armed prohibited persons is also important and that identification will assist Justice as it scales up confiscation efforts that we describe later in the chapter.

Although in April and May 2013 Justice had more success in reviewing the entire APPS database daily queue by the end of every workday, it could again face similar challenges to processing the daily queue. The assistant bureau chief stated that in 2013, Justice used a budget change proposal (proposal) to hire and train new DROS unit staff, and the APPS unit manager stated that her staff have returned to reviewing the daily queue. As of late August 2013 Justice had hired 11 of the 20 DROS staff the proposal funded. Further, the positions are for only a two-year limited term period. Therefore, Justice could develop backlogs in the daily queue in the future if the volume of DROS background checks exceeds the DROS unit's resources.

In May 2013 Justice was appropriated new funding for the purpose of increasing its efforts to remove firearms from armed prohibited persons. As Justice broadens its focus to include a greater emphasis

[19] In October 2013 the governor signed legislation, effective January 1, 2014, that will require Justice to notify firearm dealers to delay the transfer of a firearm under certain circumstances, thereby extending the period of time Justice can take to complete a background check for firearm purchases in those circumstances.

on confiscation of firearms from armed prohibited persons, it will become even more important that it have timely information about who is an armed prohibited person. The APPS unit manager stated that prohibiting event matches should not remain in the APPS database daily queue for longer than two days. However, her records show that even though the unit uses a first-in, first-out approach to its work on the queue, the APPS unit was not meeting this two-day deadline during the time Justice shifted these staff to the DROS workload during late 2012.

Further, by setting its goal for the APPS database daily queue at no more than 1,200 matches, Justice may allow matches to wait too long before their first review by an APPS unit staff member. Although there were periods where Justice exceeded its goal, Justice kept the number of matches waiting in the queue under 400 for 61 percent and under 600 for 71 percent of the period shown in Figure 3 on page 47. A goal that is closer to these levels could assist Justice in meeting the APPS unit manager's stated expectation that matches wait no more than two days for an initial review. Performing a first review of matches' prohibiting events in a timely fashion is a critical step to knowing whether Justice should confiscate a firearm from an individual. In the future, it will be important for Justice to manage its staff to meet both its DROS and its APPS unit priorities and to inform policy makers if it cannot effectively meet both of its mandates.

Performing a first review of matches' prohibiting events in a timely fashion is a critical step to knowing whether Justice should confiscate a firearm from an individual.

On Average, the APPS Unit Reaches Its Decisions Within a Reasonable Time Frame, Although in Some Cases It Does Not Reach a Decision for Long Periods of Time

We found that, on average, Justice reviews potential armed prohibited persons and reaches a decision about whether to prohibit the individual from possessing a firearm within a reasonable amount of time. During the three-year period we reviewed, APPS unit staff made prohibition determinations for their daily workload an average of five days after the potential armed prohibited person came into the daily queue. As described previously, the unit follows a first-in, first-out policy. Thus, some of this five-day average includes time the case waits for an APPS unit staff member to begin a review.

However, we did observe that some cases take years to resolve. The APPS unit manager reported that in some cases, staff need to hold their decisions because they do not have complete information about the individual they are reviewing. These delayed decisions are tracked in individual queues assigned to the staff member in the APPS unit who originally reviewed the case. Although the average amount of time that cases wait for a final determination was relatively small, it

took the APPS unit much longer to reach a final conclusion for some cases. Our review of the APPS database showed that in the case of four individuals, it took the APPS unit more than three years to reach a determination that the individual was an armed prohibited person. In the most extreme case, the APPS unit did not reach a decision until five years after the individual was first matched. The APPS unit manager was not able to explain the specific reason why staff could not reach a decision more quickly for these individuals. However, the assistant bureau chief noted that it is not uncommon for Justice to be waiting for a superior court (court) to submit final case information. He stated that without this information, staff cannot reach a final conclusion about whether a person should be prohibited. Further, speaking about another case for which staff could not promptly reach a conclusion, the APPS unit manager noted that it is possible for staff to experience a delay because they must contact mental health facilities for information.

In addition to these individuals, we found that as of June 17, 2013 (the date we obtained data from the APPS database), Justice had not yet made a prohibition determination for more than 1,600 potential armed prohibited person cases, and these cases had been waiting for a decision for an average of a little more than 1,000 days. This does not necessarily represent 1,600 separate events, because one individual can have multiple events waiting for a determination. Also, because these are cases where APPS unit staff have not yet made a determination, it is possible that some of these cases will ultimately be determined "not prohibited."

It took Justice more than three years to reach decisions to prohibit four individuals, and the APPS unit manager could not explain the cause of the delay.

It appears reasonable that in some cases, Justice may not be able to reach a determination about an individual's prohibited status because an outside entity has not sent additional needed information. However, Justice's documentation of its efforts to resolve these cases could be improved. As described earlier, it took Justice more than three years to reach decisions to prohibit four individuals, and the APPS unit manager could not explain the cause of the delay. When it does not keep adequate documentation of why it could not more quickly reach determinations about some individuals, Justice leaves itself vulnerable to questions about the efficiency of its decision-making process. If staff documented key events in their efforts to resolve long-outstanding cases, Justice would be able to demonstrate that it had made sufficient effort to bring such cases to a final determination. Following its current practices, Justice cannot demonstrate such effort.

Additionally, the APPS unit manager confirmed that no formal policy exists to direct APPS staff to periodically review the cases that have been waiting the longest for a determination. The manager explained that she does informally direct her staff to address those individuals as their highest priority. Although informally reminding staff to address the longest pending cases is a good practice, Justice would

benefit from formalizing this expectation into a written policy. Such a policy could clearly define how often, at a minimum, Justice's staff should revisit the individuals who have remained pending more than a certain number of days and how often the staff should perform follow-up work to attempt to reach a final determination about those individuals.

Justice Has Experienced Delays in Reviewing a Historical Backlog of Firearm Owners for Prohibiting Events

In addition to the backlog and delays that Justice's APPS unit has experienced in the daily queue, Justice has also faced difficulty in remaining on pace to complete, by the end of 2016, its review of a historical backlog of individuals. According to the assistant bureau chief, the historical backlog was initially about one million firearm owners and consists of persons who registered an assault weapon since 1989 or acquired a firearm since 1996 and who have not yet been reviewed for prohibiting events since Justice implemented the APPS database in November 2006. As part of the fiscal year 2006–07 budget process, Justice received funding for staff to perform the daily and historical APPS database reviews. According to the assistant bureau chief, based on the number of positions received, Justice and the California Department of Finance (Finance) agreed that Justice would eliminate the backlog by the end of 2016. Justice's records show that, as of July 2013, nearly 380,000 persons still remained in the historical backlog.

Justice's records show that, as of July 2013, nearly 380,000 persons still remained in the historical backlog, and it does not appear that Justice will clear its entire backlog until 2019.

Although Justice reduced the historical backlog to almost 380,000 in July 2013, we observed that the pace of Justice's historical reviews during our audit period may not be sufficient to meet the 2016 goal it agreed upon with Finance. We reviewed the past three complete years of its processing of these individuals and found that the highest annual number of historical reviews Justice processed between 2010 and 2012 was nearly 43,000 individuals in 2010. However, we observed that in the first half of 2013, Justice has been processing the historical backlog at an accelerated pace. If Justice continues its pace through the remainder of 2013, we estimate that it will review nearly 68,000 individuals for the entire year. Still, even assuming that Justice would be able to maintain the increased pace, it does not appear that Justice will clear its entire backlog until 2019.[20] Calculated another way, to meet its goal, Justice would need to process almost 104,000 individuals per year from 2013 through the end of 2016.

[20] We made this calculation using the number of persons remaining in the backlog in January 2013, which was nearly 415,000, and the estimated processing pace for 2013.

Although Justice asserts that it will eliminate the historical backlog on schedule, its staff admit they may face challenges. When we inquired about whether Justice has benchmarks to measure its progress in reducing the historical backlog, the assistant bureau chief could not provide any, but he stated that Justice plans to make every effort to complete the historical backlog by 2016 while maintaining the highest standard of public safety by addressing future DROS backlogs as the priority. This may require occasionally using APPS unit staff. He noted that all APPS unit staff are funded through the DROS Special Account—the state fund supported by firearm purchase fees. Further, because Justice's stated expectation is that staff clear the daily APPS database queue before working on the historical backlog, an increase in the number of potentially prohibited persons in the daily queue could also delay work on the historical backlog.

Although it has not updated its estimate in recent years, Justice expects that about 6 percent of the remaining historical backlog, which would have been about 23,000 persons as of July 2013, will be determined to be armed prohibited persons. The assistant bureau chief stated that this estimate was developed before the APPS unit was staffed in 2006. He speculated that the estimate was based on a review of firearm owners and prohibition information and stated that a professor of statistics had confirmed this estimate. Nevertheless, because the historical backlog remains a lesser priority, Justice may be unable to meet its goal and identify all prohibited persons in the historical backlog by the end of 2016. Further, as more time passes, it may become more difficult for Justice to locate these persons and confiscate their firearms.

As more time passes, it may become more difficult for Justice to locate these persons and confiscate their firearms.

The Time It Takes to Fully Process Reports From Mental Health Facilities Has Decreased Although Facilities Still Do Not Report Immediately

Effective July 1, 2012, in an effort to streamline the reporting process, state law altered the way in which mental health facilities are required to report prohibiting events to Justice. As we discuss in the Introduction, state law requires mental health facilities to report certain persons with mental illness to Justice immediately after they are admitted to the facility.[21] In July 2009, in an effort to facilitate immediate reporting, Justice made an online electronic reporting system (online reporting system) available to mental health facilities. Until July 1, 2012, use of this online reporting system was voluntary, and facilities had the option to mail paper report forms

[21] In October 2013 the governor signed legislation, which will take effect January 1, 2014, and will change the time frames within which mental health facilities must report individuals. Specifically, facilities will no longer be required to report immediately but will be required to report within 24 hours.

to Justice instead. However, state law now mandates that mental health facilities submit to Justice electronically all required reports regarding persons with mental illness.

The time it takes for a report from a mental health facility about a person with mental illness to enter Justice's mental health database and be available for review has decreased since the requirement to report electronically took effect. Since July 1, 2012, the quarterly average number of days that it takes Justice to input a mental health report has dropped to zero. According to a data processing manager within Justice, the online reporting system usually processes submitted information into Justice's mental health database within a few minutes. As Table 3 shows, Justice's recent processing times are an improvement from the first quarter of 2010, when it took Justice an average of four days to enter a report into the mental health database. In fact, Justice's processing time had already reached a quarterly average of one or zero days in the first half of 2012, even before the electronic reporting requirement was effective.

Table 3
Mental Health Facility Reporting Time and Department of Justice Processing Time 2010 Through 2012

	QUARTER IN WHICH THE DEPARTMENT OF JUSTICE (JUSTICE) RECEIVED THE REPORT	AVERAGE NUMBER OF DAYS	
		BETWEEN PROHIBITING EVENT AND JUSTICE'S RECEIPT OF THE REPORT	BETWEEN JUSTICE'S RECEIPT OF THE REPORT AND ITS ENTRY IN THE MENTAL HEALTH FIREARMS PROHIBITION SYSTEM
2010	First Quarter	17	4
	Second Quarter	14	2
	Third Quarter	15	2
	Fourth Quarter	19	3
2011	First Quarter	17	2
	Second Quarter	17	1
	Third Quarter	20	1
	Fourth Quarter	15	3
2012	First Quarter	15	0
	Second Quarter	17	1
	Third Quarter	11	0
	Fourth Quarter	8	0

Source: California State Auditor's analysis of data obtained from Justice's Mental Health Firearms Prohibition System, as of May 29, 2013. See the "Assessment of Data Reliability" on page 13 in the Introduction to the report regarding the electronic data used in this table.

— = Required electronic reporting began July 1, 2012.

Although the time it takes for mental health facilities to report to Justice has decreased since the electronic reporting requirement took effect, mental health facilities are still not reporting immediately as state law requires. Before the electronic reporting requirement, when facilities could choose to report either electronically or by paper, it took facilities on average 14 to 20 days to submit reports to Justice for each quarter during 2010 and 2011. Although there has been only a limited time since the requirement took effect and other factors could have affected reporting times, we noted that facilities' reporting times have improved. Nevertheless, even though the amount of time it takes facilities to report has fallen since July 1, 2012, facilities still took an average of eight days in the fourth quarter of 2012 to report persons with mental illness to Justice.

Justice Has Not Always Adequately Processed the Mental Health Prohibiting Information It Receives

Justice's mental health unit has not entered all the firearm prohibition reports that entities submitted from 2010 through 2012 into its mental health database. We found that, as of July 2013, Justice had not entered three of the 15 paper reports that we reviewed from reporting entities. We expected that Justice would enter all the reports it received into the database, because this information enables it to identify and maintain accurate prohibiting event information needed to identify prohibited persons. The unentered reports included two reports from mental health facilities—one requesting a previous report be deleted because of inaccurate information and the other a paper report that Justice received after July 1, 2012, the date that the statutory electronic reporting requirement took effect. The third unentered report was from a court identifying an individual who the court determined was mentally incompetent.

The current mental health unit manager has only been in his position since January 2013 and could not explain why unit staff had not processed the facility deletion request and the court report. He speculated that staff may have thought the court report was a duplicate report because the court had already reported the same individual several times on other dates. Further, regarding the facility deletion request, he noted that after we brought the unprocessed report to his attention, he contacted the facility to obtain more information and then processed the deletion. If Justice does not process all court reports it receives, it risks failing to identify a prohibited person. In addition, the unprocessed deletion request could result in improperly preventing an individual from owning a firearm.

If Justice does not process all court reports it receives, it risks failing to identify a prohibited person.

However, Justice intentionally did not enter the paper mental health facility report it received after the required date for facilities to begin submitting these reports electronically. The mental health unit manager stated that Justice did not enter the report because the law requires facilities to submit the information electronically. We selected six additional mental health facility reports from Justice's paper files to review whether Justice was consistent in its practice of not entering these paper facility reports. We found that neither Justice nor the reporting facility entered information related to these reports into the mental health database for five of the six additional mental health facility paper reports. Because neither Justice nor the facility entered information related to these individuals, Justice had no record of these specific mental health prohibiting events and therefore could not consider them for applying a prohibition. After we discussed what we found, the assistant bureau chief reported that Justice plans to go back through the mental health unit's files and ensure that all reports it received from mental health facilities after July 1, 2012, are entered into the mental health database.

Justice's assistant bureau chief acknowledged that one of the individuals reported on a form that Justice did not enter had no other mental health prohibiting events in Justice's records and that the failure to enter this report would have allowed this individual, who was not a firearm owner, to purchase a firearm. He further reported that the individuals on the remaining unentered reports had already been reported to Justice for other prohibiting events logged in the mental health database. We also confirmed that these individuals had been reported previously to Justice. Nevertheless, Justice's failure to enter these reports means that it did not keep a complete record of the reasons why these individuals were prohibited and could not ensure that it applied all applicable prohibitions, and related prohibition time periods, to each armed prohibited person. Therefore, there is the potential for the prohibition period to be shorter than it should be when, in fact, the period should have been extended.

We could not verify that Justice has followed up with mental health facilities that submitted paper reports after the electronic reporting requirement became effective in July 2012. According to the mental health unit manager, Justice's process for handling these specific reports is to notify the mental health facility of the law's requirements and then notify Justice's Training Information and Compliance Section that the facility staff needs training. However, Justice's staff were unable to provide documentation that showed they performed these actions. Thus, Justice cannot demonstrate that it did all it could to identify prohibited persons and to assist mental health facilities in reporting appropriately.

We could not verify that Justice has followed up with mental health facilities that submitted paper reports after the electronic reporting requirement became effective in July 2012.

We observed that reports that Justice's mental health unit received between late May 2013 and mid-July 2013 were not entered into the mental health database until early August.

Further, for a recent period of almost two months, Justice's mental health unit had no staff assigned to enter reports about prohibiting events, and as a result, many reports were not entered. According to the mental health unit manager, the retired annuitant responsible for entering reports left his position in late May 2013, and the only other staff member in the mental health unit transferred out of the unit earlier that month. As a result, we observed that reports that Justice's mental health unit received between late May 2013 and mid-July 2013 were not entered into the mental health database until early August. Subsequently, the assistant bureau chief informed us that according to his research, the unentered reports totaled 1,700. The assistant bureau chief stated that when he discovered the unentered reports, he took immediate action to resolve the backlog within 24 hours. He further asserted that Justice has entered all the reports into the mental health database, and it checked the individuals identified in the mental health reports against its databases to confirm that none of them had purchased firearms. We reviewed two reports that we observed were not initially entered and confirmed that they were subsequently entered.

The assistant bureau chief also reported that a previous manager of the mental health unit had a quality control process whereby she would periodically check whether staff had appropriately entered received reports. He stated that the process for doing these reviews likely broke down over time as the mental health unit switched office locations and there was turnover among staff and mental health unit management. The assistant bureau chief acknowledged that a quality control review adds significant value and stated that it would be implemented if Justice received the resources necessary to carry out such a process. Nevertheless, it is Justice's responsibility to ensure that it carries out its duties appropriately.

As we discuss in the Introduction, Justice can also receive information about mental health prohibiting events from court reports that Justice inputs into its criminal history system. The unit responsible for processing these reports is the Bureau of Criminal Information and Analysis (criminal information unit). We reviewed nine reports that we obtained from case files at the Los Angeles Superior Court's (Los Angeles Court) Clara Shortridge Foltz Criminal Justice Center (Criminal Justice Center) and found that Justice appropriately entered seven of the reports that we reviewed for the period of 2010 through 2012.[22]

For the remaining two reports, we could not determine whether Justice failed to enter the report or the Los Angeles Court's Criminal Justice Center did not send Justice the report even though there

[22] We tested criminal history items only from Los Angeles Court because it was the only one of the three courts we visited that submitted paper reports.

was a copy of the report in the court's case file. It is the criminal information unit's practice to enter a court's reported information into Justice's criminal history system to update the individual's arrest and prosecution record (RAP sheet) and then to create an archived scanned image of the paper report the court sent. According to the criminal information unit's program manager (criminal information unit manager), these two steps would show that Justice received and entered the record. However, for these two reports, Justice did not have a corresponding RAP sheet entry or scanned report image. The criminal information unit manager stated that if Justice had received the reports, it would have updated and archived those documents.

When we asked the Los Angeles Court whether it had sent the two reports to Justice, an administrator at the Criminal Justice Center stated that the court did submit the reports. Once we brought to her attention that Justice did not have a record of the reports, she stated that the court would resend them. Because both entities claimed to have followed their processes for submitting and processing the criminal history reports, we cannot determine which entity is responsible for the information that was missing from Justice's criminal records. Regardless, when criminal history information is incomplete, Justice's records will not reflect the current firearm prohibition status of all individuals.

As part of our testing of mental health and criminal history records, we also reviewed the length of time it takes Justice to enter paper reports into its databases. State law does not identify a time period within which Justice is to enter the firearm prohibition reports into its databases. However, Justice's mental health unit manual states the expectation that all reports from mental health facilities and courts should be entered within one to two days of Justice receiving the report. For the period from 2010 through 2012, we found that for the 12 mental health reports we reviewed that were entered in the mental health database, staff took an average of three business days to make the entries.[23] Separately, the criminal information unit has adopted a policy to enter criminal history reports within 90 calendar days. It based this time frame on a 1985 court decision that ordered Justice to enter criminal history reports into the criminal history system no more than 90 days after receipt. For the seven criminal history reports we reviewed in the same three-year period, we found that the criminal information unit entered them into the criminal history system between 29 and 65 days after receipt. Although we understand that this unit is the central repository for all arrest and disposition information in the State, the unit's time to process mental health-related reports is significantly longer than the average processing time we found in the mental health unit. Because it is

Although the criminal information unit is the central repository for all arrest and disposition information in the State, the unit's time to process mental health-related reports is significantly longer than the average processing time we found in the mental health unit.

[23] The mental health reports we reviewed were from mental health facilities, courts, and local law enforcement.

important for Justice to review information about prohibiting events as quickly as possible, we believe a review of whether the criminal information unit can prioritize the entry of reports it receives about court mental health determinations is warranted.

Justice's Mental Health Unit Did Not Retain All Required Records and It Lacks Sufficient Controls Over Electronic Record Deletions

Justice did not keep its paper records in accordance with the time period it identified as necessary on its record retention schedule. The *State Administrative Manual* requires every state agency to establish time periods for retaining its documents. Further, the California Department of General Services' *Record Management Handbook*, which supplements information in the *State Administrative Manual*, directs the agency to determine the immediate and future usefulness of the records to the agency as well as to the entire state government. Justice developed a retention schedule that required the mental health unit to keep most types of mental health facility and court-reported information it received for the current year plus six months. Thus, information it received in 2012 should be retained until July 1, 2013. The retention schedule also states that the mental health unit will keep law enforcement reports for a six-month period. However, with the exception of law enforcement reports, the mental health unit did not maintain paper reports of firearm prohibitions in accordance with its record retention schedule. For example, we found during our search for these items in April 2013 that Justice had not kept mental health facility or court reports it received from January 2012 through July 2012. Justice's assistant bureau chief stated that once the information from a paper document is entered into the mental health database, Justice considers the electronic record the official record, and there is no longer a need to keep the paper document. However, as we discussed previously, Justice has not ensured that it performs quality control reviews of the entries into its mental health database.[24] In such a situation, retention of paper records could serve as a secondary record of prohibiting information.

Justice does not know why it did not retain until July 1, 2013, all paper records received during 2012, as its retention schedule states it should have.

In general, Justice does not know why it did not retain until July 1, 2013, all paper records received during 2012, as its retention schedule states it should have. The current mental health unit manager indicated that staff may not have correctly understood the retention schedule. He further stated that there have not been any requests for information regarding these reports that would require double-checking the original documents Justice received. However,

[24] The lack of original documents also limited our testing of the reports that staff in the mental health unit enter into the mental health database, as we describe in the Scope and Methodology.

prematurely destroying the paper records also means that Justice cannot perform its own quality control review of the entries to the mental health database.

Additionally, although the assistant bureau chief stated that the electronic record of a prohibition is the official record, Justice lacks sufficient internal controls to ensure that staff modifications to electronic records in the mental health database are appropriate. Justice's staff can delete most records from the mental health database without obtaining supervisory approval. The mental health unit's manual discusses when records should be deleted, such as when a court releases an individual from his or her firearm prohibition (including early terminations of conservatorships), and when removing previous law enforcement reports so that the mental health database reflects only the most recently reported prohibition. According to the mental health unit manager, there is no report that he or anyone else reviews that identifies the database records that staff delete, but he trusts his staff to know which database records should be deleted. Although some deletions are appropriate, such as deletions related to the restoration of firearm rights by a court, unless Justice conducts a supervisory review to verify whether deletions are appropriate, Justice has no means to determine whether staff are appropriately modifying firearm prohibition records.

According to the mental health unit manager, there is no report that he or anyone else reviews that identifies the database records that staff delete.

Justice Does Not Have Current, Reliable System Documentation

Another important task that Justice has yet to accomplish is updating necessary system documentation of the APPS database and the mental health database, as the *State Administrative Manual* requires. System documentation provides critical information—such as a data dictionary that describes the data elements stored in the system—which enables staff to efficiently and effectively develop, modify, and use the system. When we asked for such system documentation, Justice responded that it did not have up-to-date documentation for these systems.

Not having current, reliable documentation causes inefficiencies that could be costly. Justice experienced this during the audit when we attempted to obtain information about data contained in the APPS database and the mental health database. Lacking current, reliable documentation, Justice had to gather several individuals who had knowledge about these systems and review programming source code to respond to our inquiries. It took several meetings and multiple follow-up discussions to resolve questions that could have been answered easily if Justice had maintained current system documentation. This condition is made more serious by staff turnover, which we also observed during the audit.

Until it develops current, reliable system documentation for the APPS database and the mental health database, Justice may experience the loss of efficiency and effectiveness when troubleshooting or modifying these databases.

Specifically, when a key employee left during the audit, Justice lost a wealth of undocumented system knowledge, although Justice continued to consult with this employee to answer some of our questions. Information technology employees often have unique skills that are in high demand, and as a result, Justice leaves itself vulnerable by relying on the undocumented system knowledge of employees who may not be there to consult in the future. Until it develops current, reliable system documentation for the APPS database and the mental health database, Justice may experience the loss of efficiency and effectiveness when troubleshooting or modifying these databases.

Justice Implements Federal Prohibitions

The law that required Justice to establish the APPS database sets forth the manner in which Justice should identify and record information, and the guidance from the APPS unit's manual is consistent with the requirements. For example, the law requires Justice to determine whether an individual who is prohibited by state or federal law owns or possesses a firearm and prescribes the specific information that must be entered into the APPS database, such as the basis of the firearm prohibition and a description of the owned or possessed firearm. We found that the manual provided staff direction to enter the required information into the APPS database. In addition, we found that the mental health unit's manual and the criminal information unit's procedures contain guidance for how staff should process the information and that the guidance is consistent with state law's requirement that Justice identify armed prohibited persons.

We also observed that Justice acts to comply with federal laws relating to background checks for firearm purchases and federal prohibitions on firearm possession. The Brady Handgun Violence Prevention Act, enacted in 1993, mandates that a firearm purchaser must be checked against the National Instant Criminal Background Check System (NICS) records. The checks are to ensure that the individual does not have a criminal record or is not otherwise ineligible to make a purchase. Further, the California Penal Code authorizes Justice to participate in the NICS program, and Justice performs these background checks when requested by firearm dealers in the State. In addition to receiving prohibiting information from NICS, Justice also communicates prohibiting events that occur in California to NICS if the event also has a federal prohibition. Further, when it determines an individual is prohibited from owning a firearm, Justice applies federal prohibitions to that individual if the duration of the federal prohibition is longer than California's prohibition. Although state law applies mental health prohibitions that are generally limited in duration, many

types of mental health prohibiting events we reviewed during this audit may establish a lifetime prohibition under federal law. According to Justice's assistant bureau chief, the application of federal prohibitions as part of Justice's armed prohibited persons program is a natural extension of accessing NICS as the California Penal Code authorizes.

The federal prohibition generally remains even after the state prohibition ends. Federal firearm prohibitions related to mental health include, among other things, an individual whom the court has found to be incompetent to stand trial or who has been involuntarily committed to a mental institution. For example, an individual whom a California court has placed under conservatorship due to mental illness, because he or she lacks the capacity to manage his or her own affairs, is prohibited from owning a firearm until his or her federal ownership rights are restored. Federal rights restoration is necessary even when California courts have restored an individual's rights under state law through a certificate or court order stating that the individual may possess a firearm or other deadly weapon. Therefore, although Justice processes court reports that restore an individual's firearms rights under state law, the individual remains on the armed prohibited persons list and is prevented from purchasing a firearm in the future because of the federal prohibition.

Federal firearm prohibitions related to mental health include, among other things, an individual whom the court has found to be incompetent to stand trial or who has been involuntarily committed to a mental institution.

The federal government has decided to restore firearm rights through state restoration processes, provided that the state processes meet federal requirements. According to information published by the United States Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the United States Attorney General has the authority to grant relief from the federal firearm prohibitions, and the United States Attorney General delegated this authority to the ATF. However, the information states that, since October 1992, the ATF has not had funding to investigate or act upon applications for relief that applicants submit. As an alternative, states have the ability to provide relief from the federal prohibitions if the state's restoration program meets the requirements of the NICS Improvement Amendments Act of 2007.

According to Justice's assistant bureau chief, federal authorities do not recognize California's restoration of firearm rights because California's restoration process does not include all elements the federal government requires of a restoration process. However, Justice could not provide us an analysis or support for why it believes that federal authorities do not recognize California's firearm rights restoration processes. In response to our questions, the assistant bureau chief submitted a specific request to the ATF in July 2013 to verify Justice's understanding that the ATF will not recognize the California restoration process for individuals

who were previously held involuntarily at mental health facilities. According to the assistant bureau chief, as of September 2013, the ATF has not responded to the request.

Justice continues to apply federal prohibition time periods to individuals whose rights have been restored under state law. As a result, individuals in California who have had their firearm rights restored under state law remain indefinitely prohibited under federal law from possessing or purchasing a firearm. Although this issue may be of interest to policy makers, without clear guidance about how the California restoration process fails to meet federal criteria, Justice is unable to inform these policy makers with certainty about what legislative change may be required to completely restore firearm rights.

Justice Is Making Efforts to Confiscate Firearms From Individuals on the Armed Prohibited Persons List

Although Justice indicates that its enforcement agents work daily on confiscating firearms from prohibited persons, Justice had completed three statewide confiscation sweeps since the beginning of 2011.

After Justice identifies armed prohibited persons who have a mental illness, it stores that information in the APPS database. A Justice report as of July 2013 shows that more than 20,800 prohibited persons were in the APPS database, representing more than 42,000 firearms. This count reflects individuals who were prohibited for any reason, not just those who were prohibited because they had a mental illness. Although Justice indicates that its enforcement agents work daily on confiscating firearms from prohibited persons, Justice had completed three statewide confiscation sweeps since the beginning of 2011. A May 2013 press release noted that Justice enforcement agents confiscated nearly 4,000 firearms from prohibited persons over the previous two years. However, as we discuss in the Introduction, Justice has indicated that a lack of resources has hampered its efforts to remove firearms from the individuals it identifies as armed and prohibited. In May 2013, to address this need, the governor signed into law a $24 million appropriations bill to advance Justice's efforts to confiscate firearms by addressing a backlog of armed prohibited persons in the APPS database. In addition to providing funding, the new law requires Justice to annually report to the Legislature the progress made in several areas, including the number of agents hired for enforcement and the number of firearms recovered. These reports are to begin no later than March 1, 2015, and are to focus on statistics for the preceding calendar year.

As of late June 2013 Justice reported that it had 33 enforcement agents working to confiscate firearms from individuals on the armed prohibited persons list. These officers work out of six regional field offices located around the State, and they target specific geographic areas when they confiscate firearms.

Justice investigates individuals on the armed prohibited persons list before attempting confiscation. According to the assistant chief over enforcement in the Bureau of Firearms, each individual on the armed prohibited persons list is reviewed to ensure that information about his or her firearms, address, and the reason for prohibition are correct and up to date. He stated that sometimes agents will identify multiple addresses where an individual may be living and the agents must carry out investigative work in the field to determine the person's actual location. As of August 2013 he noted that by transferring staff within Justice, Justice has already filled about one-third of the approximately 30 new enforcement agent positions that it plans to fill with the appropriation. He stated that new hires for the remaining positions would likely complete the examination processes in October 2013 and begin training for their positions at that time.

As discussed in Chapter 1, before this audit many required reporters were unaware that they should send information to Justice about individuals with mental illness, and Justice itself had not done all that it should to obtain this critical information. Further, Justice has not implemented certain essential controls, such as supervisory reviews, to ensure that it correctly handles decisions about prohibited persons. If Justice and the courts take the corrective actions we recommend, Justice will likely see an increase in the number of reports it receives, which will put further pressure on Justice's efforts to confiscate firearms from armed prohibited persons with mental illness. Any increase in the level of reporting will assist Justice in identifying armed prohibited persons that it would not have known about otherwise. This increase in the number of reported persons could assist Justice in stopping persons with mental illness from obtaining or possessing a firearm. However, for those persons who are currently armed and prohibited, any improvements made to the reporting and identification of armed prohibited persons will not ultimately improve public safety without a corresponding focus on the confiscation of firearms.

Recommendations

To ensure that it makes correct determinations about whether an individual is an armed prohibited person, by January 31, 2014, Justice should implement quality control procedures over APPS unit staff determinations. These procedures should include periodic supervisory review of staff determinations to ensure that staff decisions correctly identify all armed prohibited persons.

To maximize Justice's ability to identify armed prohibited persons, Justice should pursue a cost-effective method of reviewing alias information in the DMV database.

To ensure that its implementation of reviews of armed prohibited persons is consistent with state law, Justice should seek legislative change to confirm whether its practice of reviewing firearm records only back to 1996 is appropriate.

To reduce the risk that it may not identify an armed prohibited person, Justice should revise its electronic matching process to use all personal identifying numbers available in its databases.

To ensure that timely information is available for its efforts to identify armed prohibited persons and confiscate their firearms, Justice should manage staff priorities to meet both its statutory deadline for firearms background checks and its internal deadline for initially reviewing potential prohibited persons. Justice should report annually to the Legislature about the backlog of unreviewed potential prohibited persons and what factors have prohibited it from efficiently reviewing these persons.

To ensure that potential armed prohibited person cases do not wait too long for their first review by the APPS unit, by December 31, 2013, Justice should revise its goal for the daily queue to a more challenging level of no more than a maximum of 400 to 600 cases. Justice should monitor its performance against this goal and manage staff priorities as needed to meet it.

To ensure that it can adequately demonstrate that it has made efforts to address outstanding APPS database cases, Justice should require APPS unit staff to document key efforts to resolve these cases and retain this documentation.

To ensure that it regularly follows up and attempts to resolve APPS database cases that remain outstanding, by December 31, 2013, Justice should establish a specific time interval for how long cases can remain pending for review before becoming a higher priority for follow-up work and how often, at a minimum, its staff should perform follow-up work on these higher priority cases. Justice should establish a written policy that addresses both of these expectations.

To ensure that it meets its goal of eliminating the historical backlog of reviewing firearms owners by the end of 2016, Justice should manage its staff resources to continually address the backlog, and should notify the Legislature if it believes that it will not be able to fully process this backlog by its goal date. To help guide this effort, Justice should establish benchmarks that will indicate whether it is on track to meet its goal.

To ensure that it processes all reports it receives about persons with mental illness, by January 31, 2014, Justice's mental health unit should develop and implement quality control procedures over staff entry of reports into the mental health database. These procedures should include periodic supervisory review to ensure that all reports are entered correctly. Additionally, Justice should conduct a supervisory review of all staff decisions to delete records from the database before their deletion.

To ensure that mental health determinations reported to its criminal information unit are quickly available for review, Justice should assess whether the criminal information unit can prioritize the entry of reports regarding mental health determinations without a negative effect on the entry of all other criminal information into its system.

To ensure that information about individuals with mental illness does not go unexamined, Justice should document its effort to offer training to mental health facilities that continue to report on paper, and it should ensure that individuals whom these facilities report on paper are promptly entered into the mental health database.

To ensure that it retains appropriate records related to mental health firearms prohibitions, by March 31, 2014, Justice should review its record retention schedule for documents used by the mental health unit and adjust any retention periods it determines are inappropriate. Justice should then ensure that its mental health unit follows its retention schedule.

Justice should update and maintain its system documentation for the mental health and APPS databases to ensure that it can efficiently and effectively address modifications and questions about these databases.

To ensure that it fully supports its decision to apply federal prohibition terms to individuals, Justice should review all applicable federal and state laws and continue to seek clarification from the ATF and any other appropriate federal agencies to determine whether California's firearms restoration process meets federal criteria and, if not, why it does not. Justice should issue a report to the Legislature, within one year, detailing the results of its review and, if applicable, communicate why California's restoration process does not meet federal criteria and the impact that it has on prohibited persons who live in California.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Date:	October 29, 2013
Staff:	Karen L. McKenna, CPA, Audit Principal Bob Harris, MPP Myriam K. Arce, MPA, CIA Kelly Chen Richard S. Marsh, MST
Legal Counsel:	Stephanie Ramirez-Ridgeway, Sr. Staff Counsel
IT Audit Support:	Michelle J. Baur, CISA, Audit Principal Lindsay M. Harris, MBA

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF FIREARMS
4949 Broadway
SACRAMENTO, CA 95820
Public: (916) 227-4010
Email: Stephen.Lindley@doj.ca.gov

October 10, 2013

Elaine M. Howle, CPA*
State Auditor
Bureau of State Audits
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: BSA Report 2013-103

Dear Ms. Howle,

The Department of Justice (DOJ) has reviewed the Bureau of State Audits' (BSA) draft report titled "*Department of Justice - Mentally Ill Prohibited Persons*" and appreciates the opportunity to respond to the report. ①

By way of background, in 1999, due to the proliferation of gang violence and mass shootings in both California and across the nation, DOJ began studying high profile shootings to identify ways to reduce the number of these violent events. The study revealed an important similarity in the cases—the shooter was often a law-abiding citizen when he or she purchased or acquired their firearm but subsequently became prohibited from possessing firearms due to a mental health determination, a criminal conviction, or becoming the subject of a restraining or protective order. DOJ soon realized that if it had the means (e.g., funding for personnel and database enhancements) and the legal authority to immediately determine whether persons who lawfully purchased firearms subsequently became prohibited from owning, the violence could be curtailed.

Accordingly, DOJ sponsored Senate Bill 950 (Brulte/Scott, 2001). This bill was ultimately signed into law and authorized DOJ to cross-reference its database of persons who own handguns as reflected in DOJ's Consolidated Firearms Information System (CFIS) with its databases of persons who are prohibited by law from doing so. In 2003, DOJ obtained spending authority to build the Armed Prohibited Persons System (APPS) database. In November 2006, development was completed and the APPS database was implemented. California is the only state in the nation with a program like APPS.

At the time of implementation, APPS immediately identified approximately 6,800 armed and prohibited persons. Since that time, APPS has grown to approximately 21,000 armed and prohibited persons and DOJ has conducted nearly 11,000 investigations, resulting in the seizure of over 12,000 firearms and nearly 1 million rounds of ammunition from armed and prohibited persons throughout California.

APPS grows by approximately 3,000 persons per year, but California local law enforcement does not have sufficient resources to proactively locate and contact armed and

* California State Auditor's comments begin on page 79.

prohibited persons. To address this problem, Attorney General Harris sponsored Senate Bill 819 in 2011 to fund increased enforcement efforts. After its enactment, Attorney General Harris ordered a series of sweeps that successfully took firearms out of the possession of persons prohibited due to their criminal histories or mental health. After the success of these sweeps, Attorney General Harris sought and received additional resources from the Legislature in January 2013, via Senate Bill 140, to hire 36 additional agents for the APPS program. This will enable DOJ to increase enforcement operations in Los Angeles, San Francisco, Sacramento, Fresno and Riverside to 70 special agents dedicated to APPS.

In response to the BSA's specific recommendations identified in the report, DOJ submits the following responses:

CHAPTER 1 RECOMMENDATIONS:

BSA Recommendation:

To ensure that it has the necessary information to identify armed prohibited persons with mental illness, the Department of Justice (Justice) should coordinate with the Administrative Office of the Courts (AOC) at least once a year to share information about court reporting levels and to determine the need to distribute additional information to courts about reporting requirements and the manner in which to report. In coordinating with the AOC about potential underreporting, at a minimum Justice should consider trends in the number of reports each court sends and the number of reports that it might expect to receive from a court given the court's size, location, and reporting history. Whenever Justice identifies a court that it determines may not be reporting all required information, it should request that the court forward all required case information.

DOJ Response:

The Department of Justice (DOJ) agrees with this recommendation, and did, on August 27, 2013, issue an information bulletin to the 58 superior courts to reiterate state-mandated responsibilities regarding the reporting of persons prohibited from owning/possessing firearms to DOJ. DOJ will also work with the AOC to establish regular meetings to discuss underreporting within the state's court system. To facilitate this relationship and obtain the necessary information, DOJ will pursue enhancements to the Mental Health Reporting System (MHRS) to provide on-demand reports which specifically track reporting by each superior court. The on-demand reports will facilitate DOJ's ability to analyze court reporting activities so that DOJ is able to identify which courts are possibly underreporting.

While DOJ cannot compel courts to submit mental health determinations, DOJ will take the following actions to monitor and encourage timely submission of mental health determinations: (1) DOJ will process quarterly reports for each superior court to determine possible underreporting of mental health determinations; (2) DOJ will immediately notify both the AOC and the presiding judge of superior court of our findings regarding possible

underreporting; (3) DOJ will seek a timely explanation from the AOC and the presiding judge of the individual court about the suspected underreporting; (4) DOJ will offer training to court employees regarding the timely reporting of mental health determinations to DOJ; and (5) DOJ will keep records of its communications with the AOC and the presiding judge regarding the suspected underreporting.

BSA Recommendation:

To ensure that it keeps an accurate and up-to-date list of all mental health facilities that are required to report individuals with mental illness, at least twice a year Justice should update its outreach list of mental health facilities by obtaining a list of facilities from the Department of Health Care Services.

DOJ Response:

DOJ agrees with this recommendation and, after reviewing the BSA's draft audit report, contacted by phone the 22 facilities BSA identified that had not submitted mental health determinations to DOJ. We learned that five of these facilities had changed their name but were continuing to report to DOJ under their prior name, thus leading to confusion as to the correct facility submitting the report. As for the other 17, while approved to provide treatment to reportable individuals, 12 did not believe they have a reporting requirement because they do not conduct the type of assessment that often leads to a mental health determination. We are awaiting return phone calls from the remaining five facilities identified by BSA. ②

DOJ will also send a letter to the director of DHCS (1) requesting an updated list of statewide mental health facilities and advising DHCS of the statutory provisions regarding state mandated mental health facility reporting requirements, and send a letter seeking an updated list of statewide mental health facilities on the first day of every January and June thereafter; (2) recommending that DHCS incorporate information about state mandated mental health facility reporting requirements into its mental health facility licensing materials and conditions to ensure that both newly-licensed and existing mental health facilities are immediately informed of their responsibilities under California law; and (3) recommending that DHCS provide DOJ with the contact information of any newly-licensed mental health facility within 30 days of its licensure.

BSA Recommendation:

As soon as it identifies mental health facilities that have not yet received information about reporting requirements and the electronic reporting system, Justice should send these facilities the related information.

DOJ Response:

DOJ agrees with this recommendation and will continue notifying statewide mental health facilities of the state's reporting requirements by working with DHCS to identify known mental health facilities operating within the state. Accordingly, as mentioned above, DOJ will

contact DHCS and advocate that information about state mandated mental health facility reporting requirements be incorporated into the training materials and licensing conditions given to newly-licensed mental health facilities, as well as any information that is given to existing mental health facilities upon the renewal of their licenses, if applicable.

BSA Recommendation:

To ensure that it continues to receive information from facilities that currently report individuals with mental illness and that should continue to report such individuals, by January 31, 2014, at a least twice a year Justice should implement a review of the number of reports it receives from individual mental health facilities. These reviews should focus on identifying any significant drops in a facility's reporting levels and include follow up with facilities that may require additional assistance in reporting.

DOJ Response:

DOJ agrees with this recommendation and will request needed system enhancements to the mental health database to obtain court and mental health facility reporting statistics via on-demand reports. Currently, DOJ's ability to generate this information is limited to writing complex computer programs to extract the information each time it is needed. DOJ will begin the work to enhance the Mental Health Database to include the reporting requirements discussed above as quickly as possible. In the interim, DOJ will immediately contact DHCS to identify all known facilities and forward letters advising each of the reporting requirements.

While DOJ cannot compel mental health facilities to submit mental health determinations they are statutorily required to provide (see Welf. & Inst. Code, §§ 8103, subds. (f)(2)(B), (g)(2)(B), 8105, subd. (b)), DOJ will take the following steps to monitor and encourage the timely submission of mental health determinations: (1) DOJ will process quarterly reports for each mental health facility to determine possible underreporting of mental health determinations; (2) DOJ will immediately notify both DHCS and the mental health facility of our findings regarding possible underreporting; (3) DOJ will seek a timely explanation from DHCS and the mental health facility about the suspected underreporting; (4) DOJ will offer training to mental health facility employees regarding the timely reporting of mental health determinations to DOJ; and (5) DOJ will keep records of its communications with DHCS and the mental health facility regarding the suspected underreporting. And, similar to our proposed relationship with AOC, DOJ will seek regular meetings with DHCS to discuss underreporting mental health facilities.

DOJ will evaluate its available resources in an effort to determine whether additional staffing will be needed to fully implement this recommendation.

BSA Recommendation:

To ensure that all applicable information from State Hospitals is communicated to Justice, by March 31, 2014, Justice and State Hospitals should establish a written understanding

of the method and frequency with which State Hospitals will report prohibited individuals to Justice.

DOJ Response:

DOJ agrees with this recommendation and will work with the state hospitals to establish regular meetings to discuss the timely reporting of mental health determinations. DOJ will send a letter to the Director of the Department of State Hospitals to discuss the method and frequency with which state hospitals can report prohibited persons to DOJ. ③

CHAPTER 2 RECOMMENDATIONS:

BSA Recommendation:

To ensure that it makes correct determinations about whether an individual is an armed prohibited person, by January 31, 2014, Justice should implement quality control procedures over APPS unit staff determinations. These procedures should include periodic supervisory review of staff determinations to ensure that staff decisions correctly identify all armed prohibited persons.

DOJ Response:

DOJ agrees with this recommendation and will evaluate its current resources in an effort to determine whether additional staffing will be needed to fully implement this recommendation. DOJ anticipates that to meet minimum quality control standards of at least 10% of all APPS reviews, DOJ would need to conduct an additional 10,500 reviews annually. To accomplish this minimum standard, DOJ would likely need to hire additional staff.

BSA Recommendation:

To maximize Justice's ability to identify armed prohibited persons, Justice should pursue a cost-effective method of reviewing alias information in the DMV database.

DOJ Response:

DOJ agrees with this recommendation and will seek a cost-effective method to appropriately utilize the alias information in the DMV database.

BSA Recommendation:

To ensure that its implementation of reviews of armed prohibited persons is consistent with state law, Justice should seek legislative change to confirm whether its practice of reviewing firearm records only back to 1996 is appropriate.

DOJ Response:

DOJ agrees with this recommendation and will pursue legislative clarification to the statute to reflect the correct date of 1996. However, DOJ believes that its current practice is consistent with state law. Specifically, while Penal Code section 30000 requires DOJ to cross-reference persons who have ownership or possession of a firearm after January 1, 1991 by utilizing the information contained in the Consolidated Firearms Information System (CFIS), this database was not implemented until 1996, and thus there are no records available via CFIS going back to January 1, 1991. DOJ does, however, review assault weapon registrations going back to 1989 as those records contain verifiable identification information (i.e., a thumbprint), while the historical DROS information (i.e., pre-1996) does not.

BSA Recommendation:

To reduce the risk that it may not identify an armed prohibited person, Justice should revise its electronic matching process to use all personal identifying numbers available in its databases.

DOJ Response:

The DOJ agrees with this recommendation and has already submitted a management change request to the Hawkins Data Center to correct this system development oversight.

BSA Recommendation:

To ensure that timely information is available for its efforts to identify armed prohibited persons and confiscate their firearms, Justice should manage staff priorities to meet both its statutory deadline for firearms background checks and its internal deadline for initially reviewing potential prohibited persons. Justice should report annually to the Legislature about the backlog of unreviewed potential prohibited persons and what factors have prohibited its ability to efficiently review these persons.

DOJ Response:

DOJ agrees with this recommendation and will evaluate its current resources to accomplish the legislative priorities it identifies. In addition, DOJ will, in compliance with the provisions of Senate Bill 140, provide a report to the legislature in March 2015 regarding our efforts to eliminate the APPS backlog.

DOJ is deeply committed to its responsibility to timely process Dealer's Record of Sale (DROS) transactions, as well our obligation to timely determine who is armed and prohibited. DOJ has consistently met its statutory obligations to complete DROS background checks within the 10-day statutory time frame (see Pen. Code, §§ 26815, 28220) despite being inundated with work due to record-breaking increases in firearm sales within California. Historically, DOJ will see an increase in firearm sales following certain triggering events: state and national elections;

threats of new and restrictive gun laws; catastrophic events, such floods, fires, and earthquakes; and gun violence, such as the riots following the Rodney King verdict, the Aurora theater shooting, and the Sandy Hook Elementary School shooting. Sales of firearms are volatile, and DOJ makes every effort to manage its resources to address workload fluctuations.

For example, during the time period discussed in the audit (December 2012), DOJ processed over 125,000 DROS background checks. This represented an 88% increase over the same period in 2011 when DOJ processed nearly 67,000. In fiscal year (FY) 2012/2013, DOJ processed 949,602 DROS background checks, a 40% increase over the prior FY where DOJ processed nearly 677,000 DROS background checks. Such workload increases are impossible to predict and are not easily addressed given the state's complex and lengthy civil service hiring process. Consequently, redirecting both resources and workload priorities is DOJ's only option for responding to gun purchase trends while also working to eliminate the APPS backlog.

BSA Recommendation:

To ensure that potential armed prohibited person cases do not wait too long for their first review by the APPS unit, by December 31, 2013, Justice should revise its goal for the daily queue to a more challenging level, of no more than a maximum of 400 to 600 cases. Justice should monitor its performance against this goal and manage staff priorities as needed to meet it.

DOJ Response:

DOJ agrees with this recommendation and will continue to utilize its resources to maximize public safety by keeping firearms out of the hands of prohibited persons and subsequently disarming those who have been identified as having them. As reflected in the audit finding, DOJ often must redirect its resources and priorities based on actual workload due to fluctuations in the sales of firearms. Also as indicated in the audit finding, DOJ has received additional personnel resources through the state budget process needed to address the increase in DROS and has therefore redirected APPS staff back to APPS workload. Accordingly, DOJ has and will continue to monitor and adjust APPS processing goals as necessary.

It is important to remember that DROS background checks must be completed within 10 days of receipt of a completed application or fee to determine whether an individual seeking to purchase a firearm is prohibited from possessing, owning, purchasing, or receiving a firearm.

BSA Recommendation:

To ensure that it can adequately demonstrate that it has made efforts to address outstanding APPS database cases, Justice should require APPS unit staff to document key efforts to resolve these cases and retain this documentation.

Elaine M. Howle, State Auditor
October 10, 2013
Page 8

DOJ Response:

DOJ agrees with the recommendation and will take immediate action to require APPS personnel to document their key efforts to resolve APPS cases and require such documentation be retained with the person's APPS file. Specifically, DOJ will (1) require each APPS analyst to document the date, time, agency and person contacted in its efforts to obtain needed information on each APPS case; (2) require the APPS unit supervisor to develop a master spreadsheet for the unit analyst to access and record this information electronically; (3) require the APPS unit supervisor to review the spreadsheet weekly; (4) require the APPS unit manager to review the spreadsheet monthly to ensure that resolution goals are being met by DOJ staff.

BSA Recommendation:

To ensure that it regularly follows up and attempts to resolve APPS database cases that remain outstanding, by December 31, 2013, Justice should establish a specific time interval for how long cases can remain pending for review before becoming a higher priority for follow-up work and how often, at a minimum, its staff should perform follow-up work on these higher priority cases. Justice should establish a written policy that addresses both of these expectations.

DOJ Response:

DOJ agrees with this recommendation and will, by December 31, 2013, establish a written policy that addresses both the length of time a case can remain "pending for review" and how often staff should perform work on these cases. However, DOJ's ability to meet specific timeframes for resolving these cases is dependent on DOJ's acquisition of certain records from outside sources over which DOJ has no authority. Thus, while DOJ may enact a specific time interval for escalation, other government agencies may not be on the same schedule, and thus may not provide the information to DOJ within our preferred time period.

BSA Recommendation:

To ensure that it meets it goal of eliminating the historical backlog reviewing firearms owners by the end of 2016, Justice should manage its staff resources to continually address the backlog, and should notify the Legislature if it believes that it will not be able to fully process this backlog by its goal date. To help guide this effort, Justice should establish benchmarks that will indicate whether it is on track to meets its goal.

DOJ Response:

DOJ is committed to eliminating the APPS historical backlog by 2016. As previously indicated, DOJ will continue to monitor and respond to workload fluctuations impacting APPS processing. Additionally, DOJ will establish realistic goals as necessary to complete the backlog by 2016.

Elaine M. Howle, State Auditor
October 10, 2013
Page 9

BSA Recommendation:

To ensure that it processes all reports that it receives about persons with mental illness, by January 31, 2014, Justice's mental health unit should develop and implement quality control procedures over staff entry of reports into the mental health database. These procedures should include periodic supervisory review to ensure that all reports are entered correctly. Additionally, Justice should conduct a supervisory review of all staff decisions to delete records from the database before their deletion.

DOJ Response:

DOJ agrees with this recommendation and will develop quality review guidelines for staff.

BSA Recommendation:

To ensure that mental health determinations that are reported to its criminal information unit are quickly available for review, Justice should assess whether the criminal information unit can prioritize the entry of reports regarding mental health determinations without a negative effect on the entry of all other criminal information into its system.

DOJ Response:

DOJ agrees with this recommendation and will assess its resources to prioritize the entry of mental health determinations while maintaining or exceeding the current ACHS update time frames.

BSA Recommendation:

To ensure that information about individuals with mental illness does not go unexamined, Justice should document its effort to offer training to mental health facilities regarding the electronic reporting requirement and it should ensure that individuals whom these facilities report on paper are promptly entered into the mental health database.

DOJ Response:

DOJ agrees with this recommendation and will continue to offer training to mental health facilities regarding the reporting requirements. DOJ has offered such training since 1991, and began providing training on the electronic reporting requirements in 2010. DOJ will document all training it provides to mental health facilities. DOJ will continue its efforts to ensure all mental health reports are updated into MHFPS in a timely manner. ④

Elaine M. Howle, State Auditor
October 10, 2013
Page 10

BSA Recommendation:

To ensure that it retains appropriate records related to mental health firearms prohibitions, by March 31, 2014, Justice should review its record retention schedule for documents used by the mental health unit and adjust any retention periods it determines are inappropriate. Justice should then ensure that its mental health unit follows its retention schedule.

DOJ Response:

DOJ agrees with this recommendation and will review and update its record retention schedule to reflect actual document handling and destruction activities and train mental health unit staff to ensure the schedule is followed.

BSA Recommendation:

Justice should update and maintain its system documentation for the mental health and APPS databases to ensure that can efficiently and effectively address modifications and questions about these databases.

DOJ Response:

DOJ agrees with this recommendation and will review and update its system documentation for both MHFPS and APPS databases.

BSA Recommendation:

To ensure that it fully supports its decision to apply federal prohibition terms to individuals, Justice should review all applicable federal and state laws and continue to seek clarification from the ATF and any other appropriate federal agencies to determine whether California's firearms restoration process meets federal criteria and if not, why it does not. Justice should issue a report to the Legislature, within one year, detailing the results of its review and, if applicable, communicate why California's restoration process does not meet federal criteria and the impact that it has on prohibited person who live in California.

DOJ Response:

DOJ agrees with this recommendation and will continue to make efforts to confirm with the federal government regarding whether California's firearm restoration process meets the requirements of the NICS Improvement Amendment Act of 2007. DOJ, however, has independently determined that California's firearm restoration process does not meet the federal criteria because the standard of review for appeals of decisions denying the restoration firearm rights due to mental health determinations is a "substantial evidence" standard (see *People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1553) rather the federally-required "de novo" standard.

(5)

Elaine M. Howle, State Auditor
October 10, 2013
Page 11

Changing the standard of review would require a change to the statutory scheme, and this function rests solely with the legislature.

* * * * *

Again, thank you for the opportunity to review and comment on this draft audit report. If you have any questions or concerns regarding this matter, you may contact me at the telephone number listed above.

Sincerely,

STEPHEN J. LINDLEY, Chief
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General

cc: Nathan R. Barankin, Chief Deputy Attorney General
Elizabeth L. Ashford, Chief of Staff
Larry Wallace, Director, Division of Law Enforcement
Andrew J. Kraus III, CPA, Director of Office of Program Review and Audits
Steve Buford, Assistant Bureau Chief, Bureau of Firearms
Kimberly Granger, Deputy Attorney General IV, Bureau of Firearms

Blank page inserted for reproduction purposes only.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF JUSTICE

To provide clarity and perspective, we are commenting on the Department of Justice's (Justice) response to our audit. The numbers below correspond to the numbers we have placed in the margin of Justice's response.

The draft report Justice reviewed did not include the title of our report because the title includes conclusions we reach about other entities. The title Justice refers to in its response reflects the description of the subject of the audit that was included in the audit scope and objectives approved by the Joint Legislative Audit Committee. ①

Justice's response indicates that it is now conducting the type of research and outreach that we expected it would be conducting before the audit began. However, Justice misstates how we identified the 22 facilities we discuss. We did not identify these as facilities, "that had not submitted mental health determinations to DOJ." As we explain on page 32, we identified these 22 facilities by comparing a list of approved mental health facilities to the outreach list Justice used to communicate with facilities. We compared names and addresses from both lists and found 22 facilities on the list of approved facilities that were not on Justice's outreach list. We recommend on page 40 that Justice obtain a list of approved mental health facilities at least twice a year so that it can keep its outreach list up to date. We also recommend that whenever it identifies facilities that have not yet received information about reporting requirements, Justice should send these facilities this information. The details about these 22 facilities Justice indicates that it has learned may be beneficial to its outreach efforts; however, it did not know this level of detail until we noted that its process for maintaining its outreach list could be improved. ②

Justice outlines encouraging initial steps it will take to implement our recommendation that it develop a written understanding with the California Department of State Hospitals (State Hospitals) regarding how often and by what method State Hospitals will report persons with mental illness. However, as we note on page 38, both departments could benefit from a formal agreement about these issues. As it moves forward with implementing this recommendation, it will be important for Justice to move beyond the discussions it outlines in its response and propose a formal written agreement. ③

④ Justice's response refers to its regular efforts to train mental health facilities, which we discuss on page 35. However, our concern, which we note on page 55, was that Justice could not provide evidence that it followed up with mental health facilities that continued to submit paper reports after the electronic reporting requirement took effect and that it identified them as needing training. Therefore, we have made a slight revision to our recommendation to focus attention on this particular concern.

⑤ At the time of our review, Justice could not provide us an analysis of this issue or support for why it believed that California's firearm restoration process does not meet federal criteria, as we state on page 61. Justice indicates that it has now independently determined why California's firearm restoration process does not meet the federal criteria and indicates that resolving the issue would require a statutory change. As we recommend on page 65, Justice should continue to reach out to the federal government and report to the Legislature, within one year, about the results of its review. Doing so would assist the Legislature in considering any needed changes to state law.

State of California
HEALTH AND HUMAN SERVICES AGENCY

EDMUND G. BROWN JR.
GOVERNOR

DIANA S. DOOLEY
SECRETARY

Aging

Child Support Services

Community Services and Development

Developmental Services

Emergency Medical Services Authority

Health Care Services

Managed Health Care

Managed Risk Medical Insurance Board

Public Health

Rehabilitation

Social Services

State Hospitals

Statewide Health Planning and Development

October 10, 2013

Elaine M. Howle, State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814
Attn: Karen McKenna

To Whom It May Concern;

Enclosed you will find a document and compact disk from California Department of State Hospitals in response to Bureau of State Audits draft report on an audit on the reporting of persons with mental illness to the Department of Justice as requested by the Joint Legislative Audit Committee. If you have any questions or concerns, please feel free to contact me. Thank you.

Sincerely,

(Signed by: Amber Ostrander)

Amber Ostrander
Associate Governmental Program Analyst
916-651-8059
amber.ostrander@chhs.ca.gov

STATE OF CALIFORNIA — DEPARTMENT OF STATE HOSPITALS - SACRAMENTO EDMUND G. BROWN JR., GOVERNOR

ADMINISTRATIVE SERVICES DIVISION
1600 Ninth Street, Suite 150
Sacramento, CA 95814

October 9, 2013

Elaine M. Howle
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: Draft Audit Recommendation

Dear Ms. Howle:

The Department of State Hospitals (DSH) is currently successfully sharing with the Department of Justice (DOJ) the required information about prohibited persons on an ongoing basis. DSH currently monitors its Admissions, Discharges, and Transfers System for reports of patients who must be reported to DOJ, and logs into DOJ's online reporting system to upload those reports as they are generated. DSH concurs with the recommendation that it would be beneficial to implement a formal agreement with DOJ regarding the method and frequency of the information sharing and is working with DOJ on an Interagency Agreement to effectuate this recommendation.

Sincerely,

Mark Beckley
Deputy Director

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director of the Courts

October 9, 2013

Ms. Elaine M. Howle, State Auditor*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Re: Audit Report 2013-103, Department of Justice—Mentally Ill Prohibited Persons

Dear Ms. Howle:

As always we appreciate the opportunity to comment on audit reports that have comments and recommendations concerning the judicial branch. The draft section of the report referenced above that was provided to the Administrative Office of the Courts (AOC) was reviewed and we have no changes to suggest.

We would like to reiterate that the courts do require at least two court days to report to the Department of Justice (DOJ), not the proposed reporting within 24 hours of a prohibiting event. Given the unprecedented budget cuts to the judicial branch, limited business hours and staff, and other resource issues, the shorter deadline is not recommended. Also as indicated to your staff, many courts do not have electronic reporting capabilities; when funding is available for it, reporting capabilities can be addressed. ①

As recommended, the AOC expects to coordinate with DOJ at least once a year to obtain information about court reporting levels and plans to incorporate new DOJ procedures and forms into court training. The AOC will continue to provide technical assistance to the courts in complying with the requirement to report prohibited individuals and will continue to assist the

* California State Auditor's comment appears on page 85.

Ms. Elaine M. Howle
October 9, 2013
Page 2

courts in taking all appropriate steps with the resources they have to ensure compliance with the law.

Thank you for your continued assistance and your staff's continued communications. Please feel free to contact John Judnick, Senior Manager of Internal Audit Services of the AOC, if you have any questions, concerns, or need for additional information.

Very truly yours,

Steven Jahr
Administrative Director of the Courts

SJ/JJ
cc: Jody Patel, AOC Chief of Staff
Curtis L. Child, AOC Chief Operating Officer
Curt Soderlund, AOC Chief Administrative Officer
Cory T. Jasperson, Director, AOC Office of Governmental Affairs
John Judnick, Senior Manager, AOC Internal Audit Services

Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE ADMINISTRATIVE OFFICE OF THE COURTS

To provide clarity and perspective, we are commenting on the Administrative Office of the Courts' (AOC) response to our audit. The number below corresponds to the number we have placed in the margin of the AOC's response.

The AOC reiterates its perspective, which we have included on page 30, that because of resource constraints, a shorter deadline for courts to report prohibited persons to the Department of Justice is not recommended. Nevertheless, because it is important for public safety that prohibiting events be reported promptly, we stand by our recommendation that the Legislature amend state law to require each reporting entity to report within 24 hours of a prohibiting event. ①

Blank page inserted for reproduction purposes only.

SHERRI R. CARTER
EXECUTIVE OFFICER / CLERK

111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014
(213) 974-5401

Superior Court of California
County of Los Angeles

October 9, 2013

Elaine M. Howle, CPA
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Dear Ms. Howle:

RE: Audit of the Reporting of Persons with Mental Illness to the Department of Justice

Thank you for bringing these issues to our attention. The Court acknowledges the procedural deficiencies and has already taken steps to remedy them. Discussions are underway to identify quality control procedures. We will implement these measures by the suggested dates.

Sincerely,

SHERRI R. CARTER
Executive Officer/Clerk

Blank page inserted for reproduction purposes only.

Superior Court of California
County of San Bernardino

COURT EXECUTIVE OFFICE
303 West Third Street, Fourth Floor
San Bernardino, CA 92415

STEPHEN H. NASH
COURT EXECUTIVE OFFICER

PHONE (909) 708-8747
FAX (909) 708-8784

October 9, 2013

Elaine M. Howle, CPA*
California State Auditor
621 Capitol Mail, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle:

The following is our response to the Audit of Reporting of Persons with Mental Illness to the Department of Justice.

ISSUE:

The San Bernardino Superior Court Did Not Report Findings That Individuals Were Mentally Incompetent.

RESPONSE:

PC1026, PC1370, PC1372 and Mentally Disordered Offender Cases: The court reviewed and revised our current procedures in reporting the mental incompetency cases. These include PC1026, PC1370, PC1372 and Mentally Disordered Offender cases. These changes will ensure full reporting consistent with statutory requirements. It should be noted that these cases are defendants who are incarcerated and if they are found to be incompetent to stand trial, they remain incarcerated at the county mental facility and have no access to weapons. The court has revised our procedures in reporting the mental incompetency cases as well as the return to mental competency cases. The procedures have been communicated to staff in the Criminal Division court wide and follow-up training will be provided to all criminal division staff.

* California State Auditor's comment appears on page 93.

ISSUE:

Incomplete Reporting

RESPONSE:

180 Day Post Certification Cases: The court has implemented procedures for the Probate Division with regard to the 180 day post certification hearings. It should be noted that it is not the court's normal practice for our county to process 180 day post certification cases. Even though it is not a normal practice, we have prepared procedures to ensure required reporting in the event that this practice is used in the future. The procedures have been communicated to staff in the Probate and Guardianship Division.

5350 Conservatorship Early Termination Cases: The court has revised our current procedures to include the 5350 conservatorship early termination in our reporting. The 5350 conservatorship early termination are now being reported. The procedures have been communicated to staff in the Probate and Guardianship Division and follow-up training will be provided to all the Probate and Guardianship Division staff.

Conservatorship Cases: Though we were in full compliance in our reporting to the Department of Justice, we determined that we could provide better documentation by including the date that the Reporting Form BOF4076 was mailed. We have included an additional step in our procedures to note the date the form was mailed in our Case Management System. The procedures have been communicated to staff in the Probate and Guardianship Division and follow-up training will be provided to all Probate and Guardianship Division staff.

ISSUE:

Timeliness of Court's Reporting

RESPONSE:

Currently, the statute states that reporting is required to be reported immediately, although "immediately" is not specifically defined. The court, in meeting this requirement, ensures that
① the reporting is completed within 7 days. In practice, the report (BOF4076) is mailed within 1 day and any electronic reporting is done within the period of downloading, which is within 7 days. In addition, a determination that "Firearms Prohibited" is entered by the Judicial Assistant via minute code.

Elaine M. Howle, CPA
California State Auditor
October 9, 2013
Page 3 of 3

ISSUE:

Recommendations

RESPONSE:

The court has implemented all new and revised procedures and will ensure that we are in full compliance by December 31, 2013. Follow-up training will be provided to staff regarding all new and revised procedures.

The court will ensure that all court locations are in compliance with the revised procedures in reporting of persons with mental illness to the Department of Justice by March 31, 2014. Follow-up training will be provided to all Criminal Division staff regarding these revised procedures.

If you should have any questions regarding this response, please contact me at 909-708-8767.

Sincerely,

STEPHEN H. NASH
Court Executive Officer

SHN:sb

Blank page inserted for reproduction purposes only.

Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE SAN BERNARDINO SUPERIOR COURT

To provide clarity and perspective, we are commenting on San Bernardino Superior Court's (San Bernardino Court) response to our audit. The number below corresponds to the number we have placed in the margin of San Bernardino Court's response.

1 Although San Bernardino Court asserts it meets its seven-day definition of *immediately*, as we discuss on page 29, we were not able to calculate the number of days it took the court's probate division to submit reports to Justice because staff only recorded the date of the court determination on the firearm report form and San Bernardino Court did not keep any additional record of when the report form was mailed. Our conclusions on timeliness of reporting were limited to the probate division because, as we state on page 24, we did not find evidence that the criminal division reported any of the 15 court determinations we reviewed. In its response, the court acknowledges that it could better document the date that reports are mailed and plans to note this date in its case management system.

Blank page inserted for reproduction purposes only.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
400 McAllister Street, Room 205
San Francisco, CA 94102-4512
Phone: 415-551-5707
FAX: 415-551-5701

T. MICHAEL YUEN
COURT EXECUTIVE OFFICER

October 8, 2013

Ms. Elaine M. Howle, CPA*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: Response to Audit of the Reporting of Persons With Mental Illness to the Department of Justice

Dear Ms. Howle:

Thank you for the opportunity to provide a response to excerpts pertaining to the San Francisco Superior Court from a draft report of an audit your office performed on the reporting of persons with mental illness to the Department of Justice. The Court makes the following responses to clarify the facts in your report and further explain the roles and responsibilities of the Court in the justice system.

1. The following statement leaves the impression that none of the conservatees have a firearms restriction: *"Therefore, according to the information the court provided, none of the individuals it placed under these conservatorships from 2010 through 2012 were [sic] prohibited from possessing a firearm by the court's conservatorship order, and we did not include them in the table."* In fact, all of the individuals placed under conservatorship from 2010 through 2012 are prohibited from possessing a firearm because all conservatorships in San Francisco arise from a 5150 hold, a 5250 hold, a finding of incompetent to stand trial, or not guilty by reason of insanity and such individuals already possess a reported firearms restriction and a federal prohibition. ①

   The Court makes orders based upon petitions the District Attorney files on behalf of its client, the Office of Conservatorship Services. These petitions request specific relief from the Court. Historically, the District Attorney and its client, the Office of the Conservatorship Services, have not asked for a firearm prohibition because the individuals already have a firearms restriction arising out of a 5150 hold, a 5250 hold, a finding of not guilty by reason of insanity, or incompetent to stand trial, all of which are reported.

2. The report states "*Therefore, the fact that San Francisco Court did not order a single firearm prohibition during the three-year period we reviewed stands in stark contrast to other courts in the state."* Unlike San Francisco, petitions filed by the District Attorney or by County Counsel in other counties seek a firearms restriction. The Court's orders reflect the relief sought. The Court has already initiated discussions with all parties, including the Public Defender, to have the District Attorney and its client, the Office of Conservatorship Services, review its petition and the relief requested.

* California State Auditor's comments begin on page 97.

The report states: *"Such an effort appears necessary given the differences between the practices at the San Francisco Court and other courts we surveyed."* A court's orders are not a matter of "*practice*" but must be based upon the relief requested by the parties to the case. As noted, the Court has asked the District Attorney's Office and the Office of Conservatorship Services to review their petitions.

3. The report states *"We found, as indicated in survey responses, that even some courts in counties with smaller populations than San Francisco had at least some prohibition orders over the three years we reviewed."* The comparison of smaller and larger counties is not relevant, as the work of courts is determined by what court users file with or present to each court – not population of the county. Thus, what is relevant is the petition presented to each court which forms the basis of the court's ability to act. ②

4. The report concludes: "*San Francisco Court should work with the district attorney and the Office of Conservatorship Services to ensure that the court is sufficiently considering whether individuals should be prohibited from possessing a firearm.*" The Auditor fails to recognize the separation of powers of the branches of government. The judicial branch cannot dictate to the District Attorney what petitions to bring or what relief it should seek. Moreover, it is unethical and improper for the Court to *"work with the district attorney and the Office of Conservatorship Services"* to achieve a particular result for one party only. Finally, it is improper and unethical for the District Attorney to attempt to collaborate with the Court to ensure that the Court is "*sufficiently considering*" an issue. As mentioned in point number two above, the Court has responsibly and ethically initiated discussions with all parties – not just one as recommended by the Auditor – regarding this matter. ③

5. The report states: *"Where appropriate, the court should include prohibitive language in orders relating to those cases and promptly report these individuals to justice."* Again, the Court cannot dictate to a party the relief it should seek. The Court previously pointed out to the State Auditor that the Office of the Attorney General did not provide instructions and forms to the San Francisco Court for reporting firearms restrictions until September 5, 2013. The Court immediately implemented use of the forms. ④

I hope the Court's responses are clear and provide greater insight for your office on the Court's role in the justice system. If you have any questions about our responses, please contact Stella Pantazis, Managing Attorney, at 415-551-3977.

Sincerely,

(Signed by: T. Michael Yuen)

/s/
T. Michael Yuen
Court Executive Officer

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE SAN FRANCISCO SUPERIOR COURT

To provide clarity and perspective, we are commenting on the San Francisco Superior Court's (San Francisco Court) response to our audit. The numbers below correspond to the numbers we have placed in the margin of San Francisco Court's response.

San Francisco Court contends that our statement leaves the impression that none of the conservatees have a firearm restriction. This is incorrect. This sentence, which appears on page 19, clearly states that the court's conservatorship orders did not prohibit these individuals. It does not suggest that these individuals were not prohibited for any other reason. In fact, on page 19 we include the court's managing attorney's perspective that all conservatorships for San Francisco Court arise from prior events that would already prohibit an individual from possessing a firearm. However, as we state on that same page, this does not mean that it may not be appropriate for a firearm prohibition to be imposed as part of the conservatorship order. Finally, in its response San Francisco Court refers to a 5150 hold and a 5250 hold. These are involuntary holds of an individual at a mental health facility under California Welfare and Institutions Code, sections 5150 and 5250. In our report, we refer to these as involuntary holds, as we do in our discussion of San Francisco Court on page 19. ①

Despite the court's assertion, the comparison of San Francisco Court to courts in other counties of the State is relevant when considering whether the fact that San Francisco Court did not order a single firearm prohibition in any of its more than 2,100 conservatorship orders from 2010 through 2012 is indicative of a condition that requires review. ②

Contrary to San Francisco Court's assertion, we do not fail to recognize the separation of powers and our recommendation is neither unethical nor improper. Additionally, San Francisco Court is incorrect in its assertion that our recommendation on page 38 directs the court to, "dictate to the district attorney what petitions to bring or what relief it should seek." Our recommendation also does not direct the court to work with the district attorney and the Office of Conservatorship Services to "achieve a particular result for one party only." Further, we find San Francisco Court's comments puzzling because, as the court indicates in the first page of its response, it has already initiated discussions with the relevant parties to review the petitions that are presented to the court. We acknowledge those efforts on pages 19 and 20, by noting that the managing attorney explained to us that the ③

court had initiated efforts to have the district attorney and the Office of Conservatorship Services revise the petition form that they submit to the court to specifically include the request for a prohibition if warranted. Finally, our recommendation focused on the court working with the district attorney and the Office of Conservatorship Services because those were the entities that the court's managing attorney explained were responsible for submitting petitions to the court. However, we encourage the court to address this issue with as many parties as it determines are necessary.

④ San Francisco Court incorrectly characterizes our recommendation. We do not recommend that the court direct any party to seek the prohibition. On page 38, we recommend that, where appropriate, the court include a firearm prohibition in its conservatorship orders. Further, the court mentions that it did not receive reporting instructions and forms from the Department of Justice (Justice) until September 2013. This information is irrelevant to the more than 2,100 conservatorship orders we discuss on page 19 because, according to the information the court provided, these conservatorship orders did not contain a finding prohibiting the conserved individuals from possessing a firearm as the finding was not requested in the petitions the district attorney and the Office of Conservatorship Services filed with the court. Therefore, even if the court had received instructions and forms from Justice for reporting firearm restrictions, because there was no such restriction requested in the petitions and included in the conservatorship orders, no reporting was required. Moreover, since it is the court's responsibility to comply with state law regarding reporting firearm prohibitions, in the future if it does not believe it has sufficient information to do so, it should follow up with Justice and any other entity, as needed, to ensure it is accurately reporting as state law requires.

Superior Court of California
County of Santa Clara

191 North First Street
San José, California 95113
(408) 882-2700

DAVID H. YAMASAKI
Chief Executive Officer

October 8, 2013

Elaine M. Howle, CPA
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: Superior Court Response – Santa Clara County

Dear Ms. Howle:

We have reviewed the excerpts of a draft report concerning our Court on an audit of the reporting of persons with mental illness to the Department of Justice. Please find enclosed our written responses to the three recommendations.

We look forward to receiving a copy of the final report.

If you have any questions, please do not hesitate to contact me.

Sincerely,

David H. Yamasaki
Chief Executive Officer

Enclosure

Superior Court of California, County of Santa Clara

Responses

Recommendation

To ensure that it reports all required prohibited persons to Justice, Santa Clara Court's probate division should revise its court policies and practices by December 31, 2013, so that it reports all the types of court determinations that state law requires. Further, Santa Clara Court's criminal division at its Hall of Justice should follow its new reporting and monitoring procedures to ensure that it reports all required determinations to Justice.

Response

Agree. Santa Clara Superior Court has begun revising its court policies and practices and will have them completed and implemented on or before December 31, 2013 for the probate division. Santa Clara Superior Court has implemented new reporting procedures at all criminal courthouses. A supervisor at each courthouse location monitors said procedures on a weekly basis to ensure compliance.

Recommendation

Santa Clara Court should review its compliance with state law's firearm prohibition reporting requirements at each of the other courthouse locations within its court and make the necessary adjustments to courthouse policies and practices so that it fully complies with state law by March 31, 2014.

Response

Agree. Santa Clara Superior Court has implemented new reporting requirements at each of the courthouse locations. A supervisor at each courthouse location monitors the procedures on a weekly basis to ensure compliance.

Recommendation

Santa Clara Court should follow the requirements in state law related to how quickly to report individuals to Justice.

Response

Agree. Santa Clara Court agrees to follow the requirements in state law related to how quickly to report individuals to Justice.

cc: Members of the Legislature
Office of the Lieutenant Governor
Little Hoover Commission
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press