

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1237 (Ting) – As Introduced February 19, 2021

SUBJECT: Information access: research institutions: firearms

SUMMARY: This bill would require the Department of Justice (DOJ) and other state agencies to provide to the University of California Firearm Violence Research Center, and would authorize DOJ and other state agencies to provide to other nonprofit bona fide research institutions concerned with the study and prevention of violence, specified information including personal information (PI) related to firearm and ammunition ownership and individual restrictions thereto. Specifically, **this bill would:**

- 1) Specify that the center for research into firearm-related violence established by existing law be named the California Firearm Violence Research Center at UC Davis.
- 2) Require DOJ to maintain all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime, for a period of 25 years rather than 10 years.
- 3) Require DOJ to share all information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime with the California Firearm Violence Research Center at UC Davis; and authorizes DOJ, in its discretion, to share the same information with any other nonprofit bona fide research institution or public agency concerned with the study and prevention of violence.
- 4) Require that Criminal Offender Record Information (CORI) be provided to the California Firearm Violence Research Center at UC Davis; and specify that material identifying individuals shall only be provided for research or statistical activities and shall not be revealed or used for purposes other than research or statistical activities, and reports or publications derived therefrom shall not identify specific individuals.
- 5) Require, unless expressly and specifically prohibited by statute, that state agencies, including, but not limited to, the DOJ, the State Department of Public Health, the State Department of Health Care Services, the Office of Statewide Health Planning and Development, and the Department of Motor Vehicles, provide to the California Firearm Violence Research Center at UC Davis, upon proper request, the data necessary for the center to conduct its research, including material identifying individuals, provided that it is used for research or statistical activities and shall not be revealed or used for purposes other than research or statistical activities, and reports or publications derived therefrom shall not identify specific individuals.
- 6) Require DOJ to share information that is maintained in the California Restraining and Protective Order System, or any other gun violence restraining order data maintained by DOJ, with researchers affiliated with the California Firearm Violence Research Center at UC Davis; and provide DOJ with discretion, as specified, to provide that information to any other

nonprofit bona fide research institution or public agency concerned with the study and prevention of violence, for academic and policy research purposes, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom shall not identify specific individuals.

- 7) Require DOJ to share information contained in the Prohibited Armed Persons File with researchers affiliated with the California Firearm Violence Research Center at UC Davis; and provide DOJ with discretion, as specified, to provide that information to any other nonprofit bona fide research institution or public agency concerned with the study and prevention of violence, for academic and policy research purposes, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom shall not identify specific individuals.
- 8) Require DOJ to retain information pertaining to all sales and transfers of ownership of ammunition for a period of not less than 25 years in the Ammunition Purchase Records File.
- 9) Require DOJ to share information in the Ammunition Purchase Records File with researchers affiliated with the California Firearm Violence Research Center at UC Davis; and provide DOJ with discretion, as specified, to provide that information to any other nonprofit bona fide research institution or public agency concerned with the study and prevention of violence, for academic and policy research purposes, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom shall not identify specific individuals.
- 10) Require DOJ to retain information pertaining to all sales and transfers of ownership of a firearm precursor part for a period of not less than 25 years in the Firearm Precursor Part Purchase Records File.
- 11) Require DOJ to share information contained in the Firearm Precursor Part Purchase Records File with researchers affiliated with the California Firearm Violence Research Center at UC Davis; and provide DOJ with discretion, as specified, to provide that information to any other nonprofit bona fide research institution or public agency concerned with the study and prevention of violence, for academic and policy research purposes, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom shall not identify specific individuals.
- 12) Require DOJ to share reports about persons who have been taken into custody because they are a danger to themselves or others on account of a mental health disorder, as specified, with the California Firearm Violence Research Center at UC Davis; and provides DOJ with discretion, as specified, to provide that information to any other nonprofit bona fide research institution or public agency concerned with the study and prevention of violence, for academic and policy research purposes, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom shall not identify specific individuals.
- 13) Require the State Department of State Hospitals (DSH) to share records of information that is necessary to identify persons who are a danger to themselves or others on account of a

mental health disorder, as specified, with the California Firearm Violence Research Center at UC Davis; and provides DSH with discretion, as specified, to provide that information to any other nonprofit bona fide research institution or public agency concerned with the study and prevention of violence, for academic and policy research purposes, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom shall not identify specific individuals.

- 14) State that all material identifying individuals contained in the various data and databases described above shall be provided if it is necessary for the California Firearm Violence Research Center at UC Davis to conduct its research; and specify that material identifying individuals shall only be provided for research or statistical activities and shall not be revealed or used for purposes other than research or statistical activities, and reports or publications derived therefrom shall not identify specific individuals. Reasonable costs to the department associated with the department's processing of that data may be billed to the researcher. If a request for data or letter of support for research using the data is denied, the department shall provide a written statement of the specific reasons for the denial.

EXISTING LAW:

- 1) Establishes the California Firearm Violence Research Center and makes legislative findings and declarations regarding the threat firearm violence poses to public safety and public health, as well as the principles to be addressed by the research center. (Pen. Code Secs. 14230 – 14231.)
- 2) Authorizes DOJ to provide every public agency or bona fide research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders, with criminal offender record information, including criminal court records, as required for the performance of its duties, so long as any material identifying individuals is not transferred, revealed, or used for purposes other than research or statistical activities and reports or publications derived therefrom do not identify specific individuals, and provided that the agency or body pays the cost of the processing of the data, as determined by the Attorney General. (Pen. Code Sec. 13202(a).)
- 3) States that, subject to the conditions and requirements established by law, state agencies, including, but not limited to, the DOJ, the State Department of Public Health, the State Department of Health Care Services, the Office of Statewide Health Planning and Development, and the Department of Motor Vehicles, shall provide to the California Firearms Research Center, upon proper request, the data necessary for the center to conduct its research. (Pen. Code Sec. 14231(c).)
- 4) Requires law enforcement agencies, as defined, to report to DOJ all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime, within seven calendar days of obtaining the information and requires DOJ maintain such information for a period of 10 years. (Pen. Code Sec. 11108.3(a) and (d).)
- 5) States that DOJ shall make information relating to gun violence restraining orders that is maintained in the California Restraining and Protective Order System, or any similar

database maintained by the department, available to researchers affiliated with the University of California Firearm Violence Research Center, or, at the department's discretion, to any other nonprofit educational institution or public agency immediately concerned with the study and prevention of violence, for academic and policy research purposes, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom shall not identify specific individuals. (Pen. Code Sec. 14231.5.)

- 6) Requires the Attorney General to establish and maintain an online database known as the Prohibited Armed Persons File, for the purpose of cross-referencing persons who have ownership or possession of a firearm on or after January 1, 1996, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code Sec. 30000(a).)
- 7) Provides that the information contained in the Prohibited Armed Persons File shall only be available to specified entities through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Pen. Code Sec. 30000(b).)
- 8) Requires an ammunition vendor to electronically submit to DOJ specified information for all sales and transfers of ownership of ammunition and requires DOJ to retain this information in a database to be known as the Ammunition Purchase Records File. (Pen. Code Sec. 30352(b).)
- 9) Requires a firearm precursor part vendor to electronically submit to DOJ specified information for all sales and transfers of ownership of firearm precursor parts and requires DOJ to retain this information in a database to be known as the Ammunition Purchase Records File. (Pen. Code Sec. 30452(b).)
- 10) Provides that a person who, as a result of a mental health disorder, is a danger to others or themselves, may be taken into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. (Welf. & Inst. Code Sec. 5150(a).)
- 11) Requires a facility designated by a county for evaluation and treatment that admits a person who is a danger to themselves or others as a result of a mental health disorder to submit a report, within 24 hours of the admission, to the DOJ containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted, and states that any report submitted pursuant to this paragraph shall be confidential, except for purposes of specified court proceedings and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm. (Welf. & Inst. Code Sec. 8103(f)(2)(A) – (B).)
- 12) Requires DSH to maintain and make available to DOJ records that are necessary to identify persons who are prohibited from owning or possessing a firearm or ammunition or a deadly weapon. (Welf. & Inst. Code Sec. 8104.)

13) Provides that a state agency shall not disclose any PI in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed to the University of California, a nonprofit educational institution, or, in the case of education-related data, another nonprofit entity, conducting scientific research, if the request for information is approved by an institutional review board, and all the following criteria have been satisfied:

- The researcher has provided a plan sufficient to protect PI from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect PI from reasonable anticipated threats to the security or confidentiality of the information;
- The researcher has provided a sufficient plan to destroy or return all PI as soon as it is no longer needed for the research project, unless the researcher has demonstrated an ongoing need for the PI for the research project and has provided a long-term plan sufficient to protect the confidentiality of that information; and,
- The researcher has provided sufficient written assurances that the PI will not be reused or disclosed to any other person or entity, or used in any manner, not approved in the research protocol, except as required by law or for authorized oversight of the research project. (Civ. Code Sec. 1798.24(t)(1).)

14) Requires an institutional review board to, at a minimum, accomplish all of the following as part of its review and approval of the research project for the purpose of protecting PI held in agency databases:

- Determine whether the requested PI is needed to conduct the research;
- Permit access to PI only if it is needed for the research project;
- Permit access only to the minimum necessary PI needed for the research project;
- Require the assignment of unique subject codes that are not derived from PI in lieu of social security numbers if the research can still be conducted without social security numbers; and,
- If feasible, and if cost, time, and technical expertise permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of PI. (Civ. Code Sec. 1798.24(t)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to protect public health and safety through facilitation of research related to firearm violence by clarifying the availability of certain records regarding firearm purchases, uses, and restrictions, including PI, to the University of California Firearm Violence Research Center and to other bona fide nonprofit research institutions concerned

with the study and prevention of violence. This bill is sponsored by the Brady Campaign to Prevent Gun Violence.

2) **Author's statement:** According to the author:

Existing law requires DOJ and other state agencies to share data related to gun violence with the UC Violence Research Center and other bona fide research centers. This includes material identifying individuals, so long as the reports do not identify individuals.

California collects and archives a uniquely rich body of data on potential risk factors for and causes, characteristics, and consequences of gun violence. This data includes records of firearm transactions, crimes involving firearms, armed and prohibited persons, risk protection orders, concealed weapon permit applications, firearm-related deaths and injuries, and other valuable information. California's firearm violence related data has made possible important research that cannot be conducted in any other state. Results from this research have informed firearm safety laws and policies in California and elsewhere, provided an important resource for law enforcement as well as public health and health care professionals, and made major contributions to advancing understanding of firearm violence. This has helped improve the health and safety of Californians and Americans.

The California Department of Justice (DOJ) has a 30 year history of sharing data related to firearms with bona fide research institutions for the study of gun violence. Despite existing law requiring state agencies to share this data with researchers, DOJ has stopped sharing this valuable information and is adding barriers to access the data. AB 1237 seeks to ensure this data is shared with researchers.

3) **The University of California Firearm Violence Research Center:** In 2016, this Legislature passed budget trailer bill AB 1602 (Com. on Budget, Ch. 24, Stats. 2016), which, among other things, enacted the California Firearm Violence Research Act (CFVRA). (Pen. Code Sec. 14230 et seq.) The CFVRA expressed the intent of the Legislature to establish a center for research into firearm-related violence administered by the University of California; provided guiding principles for the center pertaining to the conduct of research with a mission to provide scientific evidence on sound firearm violence prevention policies and programs to inform the work of the Legislature; required certain information to be reported to the Legislature every five years pertaining to the center's research; and provided that "subject to the conditions and requirements established elsewhere in statute, state agencies, including, but not limited to, [DOJ], the State Department of Public Health, the State Department of Health Care Services, the Office of Statewide Health Planning and Development, and the Department of Motor Vehicles, *shall* provide to the center, upon proper request, the data necessary for the center to conduct its research."

Since the passage of the CFVRA, the Violence Prevention Research Program at UC Davis, which has worked closely with DOJ over the past 30 years to perform this type of research, was designated to house this research center, and the center has recruited faculty and other researchers who have produced a vast corpus of rigorous, impartial, high-impact publications to help inform policymaking related to firearms and violence more generally. In part, the program's ability to conduct this research relied on its relationship with DOJ and other state

agencies that allowed for the receipt of certain sensitive data, and the center has sought to continue this relationship.

- 4) **Proposition 63 and access to firearm data for research:** In 2016, the same year AB 1602 was passed by the Legislature, voters approved Proposition 63, a ballot measure that enacted The Safety for All Act of 2016. This Act was intended to make certain reforms to California’s gun safety laws; to strengthen measures to prevent prohibited persons from possessing guns and ammunition; to subject those who buy ammunition in this State to background checks; to require stores that sell ammunition to report lost or stolen ammunition within 48 hours; to permit California to share information with federal law enforcement related to persons prohibited from owning firearms; to require the reporting of lost and stolen firearms to law enforcement; to improve enforcement of laws requiring people to relinquish firearms once deemed ineligible to possess them; and to make military-style ammunition magazines illegal to possess. The Proposition provided that it could be amended by a 55% vote of both houses of the Legislature and the signature of the Governor, “so long as such amendments are consistent with and further the intent of this Act.”

In 2017, Xavier Becerra took office as Attorney General, and, according to Dr. Garen Wintemute, the director of the center, the willingness of DOJ to share data in accordance with the mandate provided in the CFVRA, and in the manner it had consistently done for three decades, promptly evaporated. In contrast to years prior, DOJ began consistently reject requests for certain information related to the enforcement of gun safety laws.

According to a March 2021 article in *The Guardian*, DOJ has cited privacy concerns as the justification for restricting access to the data, and indicated its belief that current California law does not permit the DOJ to release certain kinds of data to researchers:

“The California department of justice values data-driven research and its role in pushing forward informed public policy to help combat problems like gun violence,” [DOJ] said in a statement. “We also take seriously our duty to protect Californians’ sensitive personally identifying information, and must follow the letter of the law regarding disclosures of the personal information in the data we collect and maintain.”¹

Dr. Wintemute said that the DOJ’s explanation of their rejection of requests for data that had in the past been approved relied on its interpretation of a provision of law introduced by Proposition 63, which reads:

Commencing July 1, 2017, upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, [DOJ] shall submit the name, date of birth, and physical description of the person to the National Instant Criminal Background Check System Index, Denied Persons Files. *The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.* (Pen. Code Sec. 28220(g); emphasis added.)

¹ Lois Beckett, “California attorney general cuts off researchers’ access to gun violence data,” *The Guardian*, Mar. 11, 2021, <https://www.theguardian.com/us-news/2021/mar/10/california-xavier-becerra-gun-violence-data>, [as of Apr. 18, 2021].

As DOJ allegedly explained, because Proposition 63 passed the same year as AB 1602, the language in AB 1602 which makes the disclosure of data mandated by the provision “subject to the conditions and requirements established elsewhere in statute” (Pen. Code Sec. 14231(c)) makes disclosure subject to any restrictions Proposition 63 imposed on the sharing of that data. Apparently, DOJ interpreted the provision above to imply that any information that was provided to DOJ demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law could not be disclosed, except for the purpose of enforcing federal or state firearms law, which did not include research. In other words, rather than “the information provided” referring to information provided by DOJ to the National Instant Criminal Background Check System Index, DOJ interpreted “the information provided” to refer to the information received by DOJ that demonstrates that a person is prohibited from possessing a firearm, and any associated records.

In March 2021, DOJ proposed a change to its regulations that would formalize their internal policies restricting access to certain identifying information associated with firearm ownership and violence. This rule is still under review.²

This bill would make changes to various statutes providing for the collection and reporting of information relating to firearms, as well as the CFVRA, to more explicitly require DOJ to share such information, including PI, with the center, and to authorize DOJ to share such information with other bona fide nonprofit research institutions.

- 5) **AB 1237 would more explicitly require state agencies to provide firearm data to the center for research purposes, including PI:** As the bill is currently in print, AB 1237 would amend the CFVRA to, among other things, strike the qualifier that the mandate for state agencies to provide the center with data necessary to conduct its research is “subject to the conditions and requirements established elsewhere in statute,” instead substituting “unless expressly and specifically prohibited in statute.” This changed would apply as well to the authorization for state agencies to share such data with “nonprofit bona fide research institutions,” as well, though these terms are not defined in the bill. The bill would also specify that, where material identifying individuals is necessary for the center to conduct its research, that material *shall* be provided, and provide that material identifying individuals shall only be provided for research or statistical activities, and reports or publications derived therefrom shall not identify specific individuals. “Research and statistical activities” are not defined in the bill, and do not appear to be defined elsewhere in the Penal Code. State agencies would be required to provide such data in a timely manner, and, if a request for data or letter of support for research using the data is denied, provide a written statement of the specific reasons for the denial. AB 1237 would further require the DOJ to establish procedures to implement an existing provision of the Information Practices Act of 1977, which generally prohibits the sharing of PI by state agencies without consent except under specified circumstances, as it pertains to the permitted sharing of PI with the UC, a nonprofit educational institution, or another nonprofit entity conducting scientific research. The bill would rename the University of California Firearm Violence Research Center to the “California Firearm Violence Research Center at UC Davis.”

² Katie Orr, “AG Becerra Takes Heat for DOJ’s Move to Restrict Release of Gun Violence Data,” *KQED*, Mar. 12, 2021, <https://www.kqed.org/news/11864335/ag-becerra-takes-heat-for-dojs-move-to-restrict-release-of-gun-violence-data>, [as of Apr. 18, 2021].

In addition to these general permissions, AB 1237 would also make changes to specific statutes related to the collection and reporting of specified firearm-related information in order to explicitly require that the particular information in question be provided to the center to the extent necessary to conduct its research, and to nonprofit bona fide research institutions at the discretion of the department. These include information contained in the Prohibited Armed Persons File (Pen. Code Sec. 30000); information necessary to identify and trace the history of all recovered firearms that are illegally processed, have been used in a crime, or are suspected of having been used in a crime (Pen. Code Sec. 11108.3); criminal offender record including criminal court records (Pen. Code Sec. 13202); information that is maintained in the California Restraining and Protective Order System, or any other gun violence restraining order data (Pen. Code Sec. 14231.5); information related to ammunition purchases and transfers of ownership (Pen. Code Sec. 30352); information related to firearm precursor part purchases and transfers of ownership (Pen. Code Sec. 30452); and information related to individuals have been taken into custody for involuntary mental health detentions pursuant to the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code Sec. 5150, et seq.) In all of these cases the bill would require:

Where material identifying individuals is necessary for the center to conduct its research, that material *shall* be provided. Material identifying individuals shall only be provided for research or statistical activities and shall not be revealed or used for purposes other than research or statistical activities, and reports or publications derived therefrom shall not identify specific individuals. Recognizing the time-sensitive nature of the center's research, data shall be provided in a timely manner. Reasonable costs to the state agency associated with the agency's processing of that data may be billed to the center. If a request for data or letter of support for research using the data is denied, the state agency shall provide a written statement of the specific reasons for the denial.

- 6) **AB 1237 in practice:** The practical effect of this bill is difficult to predict. On March 24, Governor Newsom announced the nomination of Asm. Rob Bonta for the position of Attorney General, succeeding Becerra, who resigned from the position to become the U.S. Secretary of Health and Human Services. If Bonta is confirmed for the position, it remains to be seen whether he will continue to pursue the same regulations, or even similarly interpret the operative statutes. In the event Bonta elects to resume the status quo ante from before Becerra's term, this bill could have little practical effect. However, in the event he continues with similar policies and interpretations, these provisions seem likely to clarify the Legislature's intent to require the provision of firearm information to the center, and to permit such information to be shared with nonprofit bona fide research institutions.

Though this bill attempts to restore the status quo ante, whether or not it would expand the range of data to which the center and other research institutions have access is also an open question. Even if it would accomplish its goal, the bill raises some questions as to the priorities of this State government with respect to privacy and public safety. In many cases, these objectives can peacefully coexist, but in the case of these records, sharing of such information necessarily comes at the cost of the privacy of those individuals whose PI are shared without their informed consent. It is true that both the Information Practices Act and existing laws policies relating to institutional review and the protection of human subjects in research provide rigorous attention to the possible harms that could befall human subjects, even if their participation is limited to the use of their PI. However, any sharing of PI without consent is by definition an infringement on the right to privacy, which requires

scrutiny as to whether the objective it seeks to accomplish is substantial and legitimate, and whether the approach is as narrowly tailored as possible to accomplish those ends.

It is difficult to conceive of a more compelling government interest than the protection of the health and safety of its constituents, and previous research by the center and others provides overwhelming evidence that the regulation of firearms is inextricably linked to these goals. Thus, whether the approach taken by AB 1237 to accomplish that objective is narrowly tailored to that goal to minimize infringement on civil liberties is a critical question. California's uniquely stringent policies related to gun ownership and use, and the data yielded by those policies, provides an unprecedented resource for performing detailed research into the relative effectiveness of gun violence prevention policies. The benefits of understanding such research expands beyond the borders of California, and can inform policy across the United States, and indeed, the world. Supporting this research does not seem unreasonable as an approach to accomplishing this end.

That being said, one must also consider whether the infringement on civil liberties to accomplish that end is minimized by the practical effects this bill would have. To ensure the bill is sufficiently narrowly tailored to accomplish its objectives while minimizing infringement on the privacy rights of Californians, this Committee suggests the following amendments that seek to appropriately consider privacy rights while still providing for the conduct of valuable research in the interest of public safety and health.

- 7) **Author's amendments:** Amendment 1: In some places, the language of the bill in print is vague as to the boundaries of the center's authority to request information that any state agency must provide. In particular, while most of the bill's provisions are limited to a specific category of information, the changes the bill makes to the CFVRA are much more general, and could be read to provide virtually unlimited access to any PI from any state agency, so long as it is necessary for research. The bill would strike the qualification that the mandate for state agencies to provide requested information to the center be "subject to the conditions and requirements elsewhere in law," which presumably provide several avenues for the protection of the most sensitive of that information. Instead, it would replace that qualification with "unless expressly and specifically prohibited elsewhere in statute." Staff has not identified any existing statute that "expressly and specifically" prohibits the sharing of information between a given state agency and the center, making the authority of the center request PI effectively unqualified. Additionally, the language expressing the intent of the Legislature that "the center *shall* have access to data kept by other state agencies for the conduct of its research" is located in a separate subdivision from the critical qualifications, and may thus, due to the use of the word "shall," be read to imply that such intent is considered separately from these qualifications. To resolve both of these issues, the Author offers the following amendment, which would revert back to the existing qualifying language, and move and adjust the intent language to be more consistent with the measured approach this Legislature generally takes when considering such complex issues.

Author's amendment:

On page 7, strike lines 6-10, inclusive, and after line 5 insert: "***(d)(1) It is the intent of the Legislature that the center be provided with access to data kept by state agencies that is necessary for the conduct of its research.***

(2) Subject to the conditions and requirements established"

Amendment 2: The following paragraph of the bill in print provides that “where material identifying individuals is necessary for the center to conduct its research, that material *shall* be provided.” This raises the possibility that while the preceding paragraph, as proposed to be amended, includes certain qualifications for the sharing of that information, in the case of material identifying individuals that is necessary for the center, the requirement that such information be shared supersedes those qualifications. In order to clarify that the ability of the center to access that information is subject to the specifications of the previous paragraph, the Author offers the following amendment:

Author’s amendment:

On page 8, strike the word “identifying” from line 34; insert in line 34 after the word “material”: “*described in subdivision (a) that identifies*”

Amendment 3: While public policy allows some specified limitations on the rights of those who have been convicted of serious crimes, and gun and ammunition owners and sellers have elected to involve themselves in this trade despite the barriers to entry related to registration, information related to the mental health status of those involuntarily detained for being suspected of being a danger to themselves or others does not fall into either of these categories. In fact, the Lanterman Petris Short Act’s specific purpose was to provide an alternative means of treating those suffering severe mental distress to avoid channeling them into the criminal justice system, and to minimize associated deprivations of liberty. In that respect, the provisions of the bill in print that provide the center with essentially unfettered access to state agency records pertaining to those involuntarily detained due to mental distress seem categorically different from the other data requested. Health information is generally considered to be some of the most sensitive information relating to individuals, and the individuals whose information would be shared would in no way have consented to the sharing of that information. It is true that the law provides for limitations on rights to gun ownership among those with a history of repeated involuntary detention in this manner, but, on balance, the limitation of that right appears far more directly tailored to the government interest of protecting its citizens. The deprivation of the right to privacy for those who have been subject to mental health holds, however, does not seem as appropriate to the circumstance. Accordingly, the Author offers the following amendment, striking the sections of the bill that provide the center with explicit and extensive access to these mental health records:

Author’s amendment:

- On page 17, strike lines 24-40, inclusive; strike pages 18-27, inclusive, in their entirety.
- On page 28, strike lines 1-26, inclusive.

Amendment 4: As discussed in Comment 4, the limitations imposed on the center’s access to firearm data hinge on a particular interpretation of the statute created by Proposition 63. That proposition specifies that it can be amended by a 55% majority of both houses of the Legislature and the Governor’s signature. To directly clarify the interpretation of that statute as consistent with DOJ policies preceding the limitations imposed under Becerra, the Author offers the following amendment:

Author's amendment:

On page 17, after line 23, insert:

“SEC. 11. Section 28220 of the Penal Code is amended to read:

[existing text of Pen. Code Sec. 28220(a)-(f), as amended November 8, 2016, by initiative Proposition 63, Sec. 5.1.]

(g) **(1)** Commencing July 1, 2017, upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, the department shall submit the name, date of birth, and physical description of the person to the National Instant Criminal Background Check System Index, Denied Persons Files. The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.

(2) Nothing in this subdivision shall be construed to prohibit the department from sharing information pertaining to a person that is prohibited from possessing a firearm if the department is otherwise expressly authorized or required by state law to share that information with the recipient party.”

Amendments 5 & 6: Finally, the Author offers the following minor technical and non-substantive amendments.

Author's amendments:

- On page 7, in line 26, insert after the word “center’s”: “***governing***”
- On page 7, strike lines 29 and 30, and insert: “***(3)***”

8) **Arguments in support:** This bill is supported by several gun control advocacy groups, and is sponsored by the Brady Campaign. As the sponsors argue:

Recently, DOJ has stopped sharing this important information and continues to create barriers to the study of gun violence. DOJ’s decision to cease providing firearm violence-related data to bona fide research organizations has important, real-world adverse effects. This data leads to evidence-based policies and programs that reduce deaths and injuries from gun crimes and California must continue to share this data so we to continue to improve our firearms policies and reduce gun violence.

AB 1237 will play a crucial role in the research ultimately used to prevent the senseless loss of life due to gun violence. This measure does so with safeguards in place to stop the unlawful sharing of personal informational as well as provides a mechanism for DOJ to recover the costs associated with providing this data.

Giffords, another gun control advocacy group, adds:

Many studies into gun violence research are only possible in California. Our state is one of the few to maintain gun and ammunition sale records in a central database, to maintain an “Armed Prohibited Persons” database of individuals who have illegally retained their firearms, and to maintain electronic databases of court protective orders and other

firearm-prohibiting criminal and civil court orders. California has also been one of the first states to enact policies such as the Gun Violence Restraining Order, background checks on ammunition sales, relinquishment verification requirements, handgun safety standards, restrictions on military-style weapons, legislation to temporarily block firearm access by people convicted of hate crimes and other violent misdemeanors, or to meaningfully invest in community-based violence intervention initiatives, etc.

Our state was also the first to establish a state-supported Gun Violence Research Center. In short, we have a leading role to play in studying the impact of, and gaps in, these policies. But if California's own Firearm Violence Research Center cannot access records necessary to study these policies, they may never be able to do so anywhere.

AB 1237 will ensure that researchers can access the data necessary for lifesaving research, while protecting the privacy of any personal identifying information in these records.

- 9) **Arguments in opposition:** This bill is opposed by several gun rights groups. As Safari Club International California Coalition, California Sportsman's Lobby, and Outdoor Sportsmen's Coalition of California argue:

The identities of individuals and their personal information should not be provided to anyone by DOJ or other state entities other than to a law enforcement agency conducting an investigation that has a specific and lawful need for it. No-one else, not even a researcher, has sufficient justification to have access to it and it would be an unjustified intrusion into such a person's privacy. It is inconceivable that any broad-based research conducted by UCD would require as necessary and justifiable, any specific material identifying an individual or providing their private information in order for it to conduct its research.

Such research should not be about an individual and their personal information. It should be about a given broad-based subject area, where a specific individual's personal information is not relevant. It should be about such things as converting a large amount of data into a statistical evaluation that can be useful in finding solutions to a specific problem like firearms violence. An individual's name and personal information is not needed, and it would be an inappropriate invasion of their privacy for DOJ or other entity to provide it.

Gun Owners of California adds in opposition:

[AB 1237] would make a number of significant changes to current law that permit the Department of Justice (DOJ) to provide firearm-related violence information to the University of California at Davis' research center for academic purposes. AB 1237 takes the "permissive" nature of the law and instead, would mandate that DOJ provide data to UC Davis, and takes it a step further by also granting the Department *discretionary* powers to provide information to any other agencies or organizations concerned with the study and prevention of violence. By granting DOJ the authority to cherry pick to whom they provide data is prejudicial and undermines the entire concept of "research."

Privacy concerns are a significant issue as well, given that much of the data in question contains confidential information. While the law correctly prohibits an agency from

disclosing any personal details that would link information back to the individual to whom it pertains, there are exceptions, such as what DOJ can legally share with UC Davis regarding firearm-related violence. This is troubling in and of itself; privacy boundaries are already stretched thin, and this bill takes such concerns to an entirely new and concerning level.

10) **Double referral:** This bill was double-referred to the Committee on Public Safety where it was heard on April 14, 2021 and passed 6-2.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign
Brady Campaign California
Coalition to Stop Gun Violence
Friends Committee on Legislation of California
Giffords
Laguna Woods Democratic Club
National Association of Social Workers, California Chapter
San Diegans for Gun Violence Prevention
Scrubs Addressing the Firearm Epidemic (SAFE)
The Violence Prevention Coalition of Orange County
Women Against Gun Violence

Opposition

California Sportsman's Lobby (CSL)
Gun Owners of California, INC.
Outdoor Sportsmen's Coalition of California
Safari Club International, CA Coalition

Analysis Prepared by: Landon Klein / P. & C.P. / (916) 319-2200