Legal Community Against Violence

expertise, information & advocacy to end gun violence

LCAV Model Resolution

URGING LAW ENFORCEMENT TO OBTAIN AND UTILIZE DEPARTMENT OF JUSTICE INFORMATION REGARDING PROHIBITED ARMED PERSONS (LOCAL GOVERNMENTS IN CALIFORNIA)

May 2009

About LCAV and Our Model Laws

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

LCAV serves governmental and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, www.lcav.org, is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

This report and model resolution do not offer, and are not intended to constitute, legal advice.

Executive Summary

Legal Community Against Violence (LCAV) has developed a model resolution for use by California jurisdictions urging law enforcement to receive information from the California Department of Justice (DOJ) regarding persons who legally purchased firearms in the jurisdiction, but who subsequently became prohibited from possessing them. In addition, the resolution urges law enforcement agencies who have received this information to seek training from DOJ regarding its use, and to retrieve illegally possessed firearms whenever possible.

Federal and state laws prohibit firearm possession by certain persons, such as felons, domestic violence misdemeanants, and persons involuntarily committed to mental institutions. California Penal Code § 12010 requires DOJ to maintain an online database identifying individuals who legally purchased firearms, but who subsequently fell into a prohibited category and did not relinquish their firearms as required by law.[1] This file is known as the Prohibited Armed

[1] References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model resolution below.

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Persons File ("the File"). In January 2009, DOJ estimated that the File currently contains approximately 13,000 cases, but could eventually expand to include the names of as many as 60,000 individuals as additional records are added to the system.

Penal Code § 12010 requires DOJ to make information about persons included in the File available to law enforcement officials upon request for the purpose of determining who is armed but prohibited from possessing firearms. In June 2007, DOJ implemented this requirement by allowing law enforcement agencies to sign up for secure mailboxes to receive monthly updated information from the File regarding armed persons in their jurisdiction who are prohibited by law from possessing firearms.

In addition, Penal Code § 12012 states that DOJ is required to assist local law enforcement agencies in investigations of persons who are armed and prohibited from possessing a firearm. DOJ provides training upon request to local law enforcement officers regarding how to use information in the File. As of December 2007, DOJ special agents had trained approximately 500 sworn local law enforcement officials in 196 police departments and 35 sheriff departments on how to use the File during firearm-related investigations.[2]

DOJ does not have the resources to investigate and disarm every person identified in the File, making additional action by local law enforcement agencies necessary to disarm persons identified in the File. This model resolution urges law enforcement to request monthly updates from DOJ regarding persons in the jurisdiction named in the File, to seek training from DOJ regarding use of information in the File, and to retrieve illegally possessed firearms whenever possible.

LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to pass this resolution or enact other measures to reduce gun violence. Please see www.lcav.org for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

[2] More information about the file can be obtained from the Unit that handles the File within the Bureau of Firearms in the Department of Justice at: 916-227-3944.

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Text of Model Resolution

_____ City Council/County Board of Supervisors*

Resolution No. ____

RESOLUTION URGING THE CHIEF OF POLICE/SHERIFF TO REQUEST MONTHLY UPDATES FROM THE DEPARTMENT OF JUSTICE (DOJ) REGARDING PROHIBITED ARMED PERSONS IN THE JURISDICTION, TO SEEK TRAINING FROM DOJ REGARDING USE OF THIS INFORMATION, AND TO RETRIEVE ILLEGALLY POSSESSED FIREARMS WHENEVER POSSIBLE

[Findings regarding the need for and benefits of this resolution should be included. Findings in support of a resolution are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

Whereas, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 others were hospitalized for non-fatal gunshot wounds;[3]

Whereas, federal and state laws prohibit firearm possession by certain persons, such as felons, domestic violence misdemeanants, and persons involuntarily committed to a mental institution,

Whereas, California Penal Code § 12010 requires the Department of Justice (DOJ) to maintain a database, known as the Prohibited Armed Persons File ("the File"), identifying individuals who legally purchased firearms, but who subsequently fell into a prohibited category and did not relinquish their firearms as required by law,

Whereas, Penal Code § 12010 requires DOJ to make the information in the File available to all California law enforcement agencies through the California Law Enforcement Telecommunications System (CLETS), and Penal Code § 12012 requires DOJ to provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm,

Whereas, between July 2002 and September 2004, DOJ made more than 250 arrests, and seized more than 3,600 firearms, including 1,020 illegal assault weapons, based on information contained within the File,[4]

Whereas, in June 2007, DOJ began providing law enforcement agencies with secure mailboxes, upon request, to receive monthly updated information from the File listing all armed persons in

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* Where the words "Chief of Police/Sheriff," "City/County" or similar variations appear, simply select the appropriate designation for your jurisdiction.

[3] California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), Firearm Injuries in California (2008).

[4] California Department of Justice, Office of the Attorney General, *Attorney General Lockyer Announces Governor Signature on Important Gun Safety Legislation,* News Release, Sept. 20, 2004.

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their jurisdictions who are prohibited by law from possessing firearms. Between June and August 2007 alone, over 100 law enforcement agencies signed up with DOJ for these secure mailboxes,[5]

Whereas, in January 2009, DOJ estimated that the File contains approximately 13,000 cases, but could eventually expand to include the names of as many as 60,000 individuals as additional offender records are added to the system,[6]

Whereas, DOJ does not have the resources to investigate and disarm every person identified in the File, making additional action by local law enforcement agencies necessary to further disarm persons identified in the File,

Whereas, DOJ provides training upon request to local law enforcement officers regarding the use of information from the File during firearm-related investigations. As of December 2007, DOJ special agents had trained approximately 500 sworn local law enforcement officials in 196 police departments and 35 sheriff departments on how to use the File during firearms investigations,[7]

Whereas, law enforcement agencies in jurisdictions that have signed up with the DOJ to receive monthly updated information from the File have not necessarily received training from the DOJ regarding use of this information or taken steps to retrieve illegally possessed firearms from persons identified in the File,

NOW, THEREFORE, BE IT RESOLVED: That the City Council/County Board of Supervisors by adoption of this resolution hereby urges the Chief of Police/Sheriff to sign up with DOJ to receive monthly updated information from the File listing all armed persons in the City/County who are prohibited by law from possessing firearms, if he/she has not done so already,

FURTHER RESOLVED: That the Chief of Police/Sheriff is encouraged to seek training from DOJ regarding the use of information from the File during firearms investigations,

FURTHER RESOLVED: That the Chief of Police/Sheriff is encouraged to investigate each person who is identified in the information from the File received from DOJ, and to retrieve illegally held firearms whenever possible.

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[5] Letter from Rick Oules, Director, California Department of Justice, Division of Law Enforcement, Bureau of Firearms, to Local Law Enforcement Officials re: Statewide Enforcement by DOJ Against Armed and Prohibited Persons, dated August 15, 2007.

[6] Telephone conversation with DOJ employees, January 22, 2009. In addition, on December 10, 2007, the Department of Justice issued a press release stating that the File had 9,000 cases as of that date, and could eventually expand to include 60,000 individuals as new offender records are added to the system. California Department of Justice, Office of the Attorney General, *Brown Cracks Down on Illegal Gun Possession, News Release,* Dec. 10, 2007, at: http://ag.ca.gov/newsalerts/release.php?id=1505&year=2007&month=12.

[7] *Id.*

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