

Staff Memorandum 2024-04
Crime Prevention, Intervention, and Disruption
and Related Matters

At its July 2024 meeting, the Committee on Revision of the Penal Code will consider crime prevention, intervention, and disruption, with an emphasis on gun violence.

This memorandum gives general background and staff recommendations for the Committee’s consideration. A supplement to this memorandum, which will be released shortly, will present written submissions from invited panelists.

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Introduction

The Committee's July meeting will cover policies that prevent crime from occurring, assist victims outside of the court process, and disrupt more sophisticated criminal operations. Some of these policies exist only in California, like the Armed and Prohibited Person System (APPS) that helps ensure firearms are removed from people who are prohibited from having them, or had their genesis in California, like Trauma Recovery Centers for victims.

This memorandum covers a lot of ground and the policies considered in it are not the only ones that have salutary effects on public safety. The topics have been selected by staff as those likely to benefit from the Committee's goal of making recommendations that improve public safety while reducing unnecessary incarceration and improving equity.

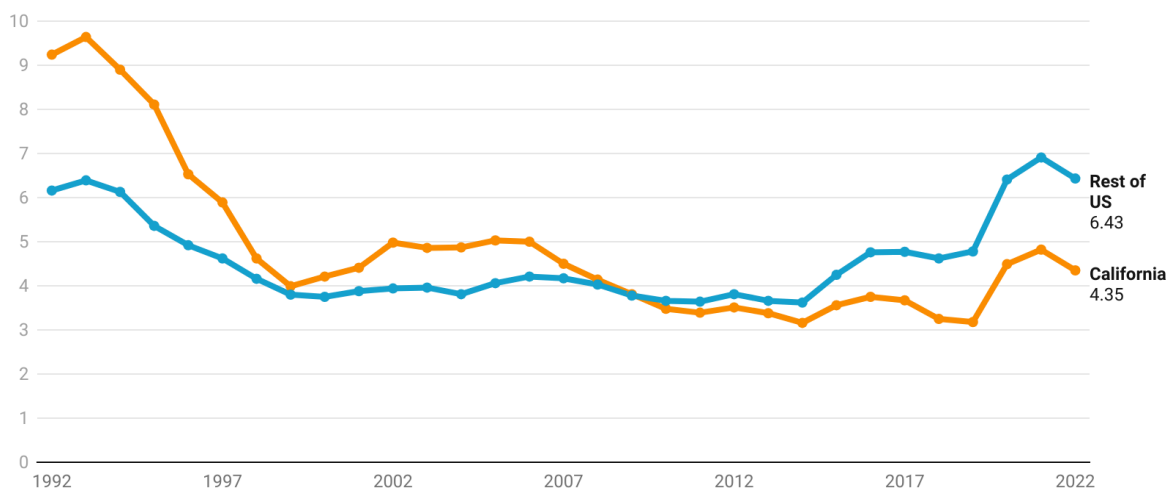
Crime Prevention and Response

California gun violence data

California's gun homicide death rate in 2022 was 33% below that of the rest of the United States and the state achieved a near-record low gun homicide rate in 2019.¹ Significant increases in gun homicides began in March 2020 but fell 10% from 2021 to 2022.² In 2023, there were 1,334 gun homicides in California, a 15% decrease from the year before.³

Firearm homicide rates, California vs. the rest of the United States, 1992–2022

Rate is age-adjusted per 100,000 population



Source: California Department of Justice Office of Gun Violence Prevention, Data Report: The Impact of Gun Violence in California, 10 (August 2023) (using data from CDC WONDER and Giffords Law Center). Note that 2022 data is provisional. • Created with Datawrapper

¹ California Department of Justice, Office of Gun Violence Prevention, *Data Report: The Impact of Gun Violence in California*, 6 (August 2023).

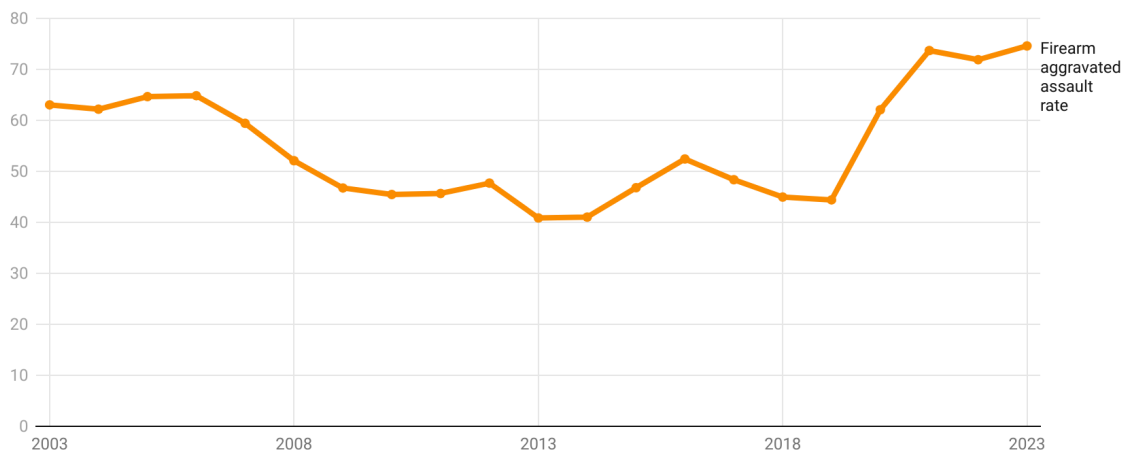
² *Id.*

³ California Department of Justice, *2023 Homicide in California*, Table 18 (July, 2024).

There are many more firearm assaults that do not result in death each year: in 2023, there were over 29,000 reported firearm assaults.⁴

California firearm aggravated assault rate, 2003–2023

Rate is per 100,000 population



Source: California Department of Justice, Crime in California reports • Created with Datawrapper

Finally, While California maintains a relatively low firearm suicide rate compared to the rest of the country, each year, nearly 1,600 people die by gun suicides in the state.⁵

Characteristics of gun violence victims

Gun violence is not borne equally across communities. In 2023, 29% of gun homicide victims in California were Black despite Black people accounting for less than 5% of the population, and 50% were Hispanic despite Hispanic people accounting for just 40% of the population.⁶ Among people hospitalized for nonfatal firearm assault injuries in California from 2020–2021, 36% were Black and 43% were Hispanic.⁷

There is significant variation in gun homicide rates within different counties, cities, and neighborhoods. For example, an analysis by Giffords, a gun violence research and advocacy organization, found that half of gun homicides in Los Angeles occurred in geographic areas accounting for only 3% of the city's total population.⁸ While California's statewide firearm homicide rate from 2016–2020

⁴ California Department of Justice, *2023 Crime in California*, Table 7 (July 2024).

⁵ California Department of Justice, Office of Gun Violence Prevention, *Data Report: The Impact of Gun Violence in California*, 9 (analyzing U.S. Centers for Disease Control and Prevention data) (August 2023). See also Everytown for Gun Safety, *Gun Violence in California* (May 2023).

⁶ California Department of Justice, *2023 Homicide in California*, Table 19 (July 2024); U.S. Census Bureau, 2022 American Community Survey 1-Year Estimates.

⁷ Office of Gun Violence Prevention, *Data Report: The Impact of Gun Violence in California*, 33 (analyzing California Department of Public Health data).

⁸ Giffords Law Center to Prevent Gun Violence, *In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence* (September 2021).

was 3.8 per 100,000, individual counties ranged from less than 1 per 100,000 to slightly over 9 per 100,000.⁹ The highest rates were in Kern (9.1), San Joaquin (7.4), and Fresno (6.6).¹⁰

A recent analysis of firearm homicide rates in the United States by the Centers for Disease Control and Prevention found that counties with the highest poverty level had firearm homicide rates 4.5 times as high as counties with the lowest poverty level.¹¹ In California, 85% of people hospitalized for nonfatal gun assault injuries had publicly insured health care or were uninsured, indicating that gun violence disproportionately impacts people and communities with lower incomes.¹²

Victims who survive being shot are at greater risk of being shot and killed in the future. A study of gun violence victims in California found that the gun homicide rate was 60 times higher for people who had survived one shooting, and over 120 times higher for people who had survived multiple shootings.¹³ In another study, researchers found that for gun assault patients who survived an initial shooting but died within 5 years of being discharged from the hospital, 79% were killed in a subsequent homicide.¹⁴

⁹ See Office of Gun Violence Prevention, *Data Report: The Impact of Gun Violence in California*, 15 (analyzing California Department of Public Health data).

¹⁰ *Id.*

¹¹ Centers for Disease Control & Prevention, *Firearm Deaths Grow, Disparities Widen*, June 6, 2022.

¹² Office of Gun Violence Prevention, *Data Report: The Impact of Gun Violence in California*, 33.

¹³ Veronica Pear, et al., *Risk Factors for Assaultive Reinjury and Death Following a Nonfatal Firearm Assault Injury: A Population-Based Retrospective Cohort Study*, *Prev Med*, Vol. 139 (2020).

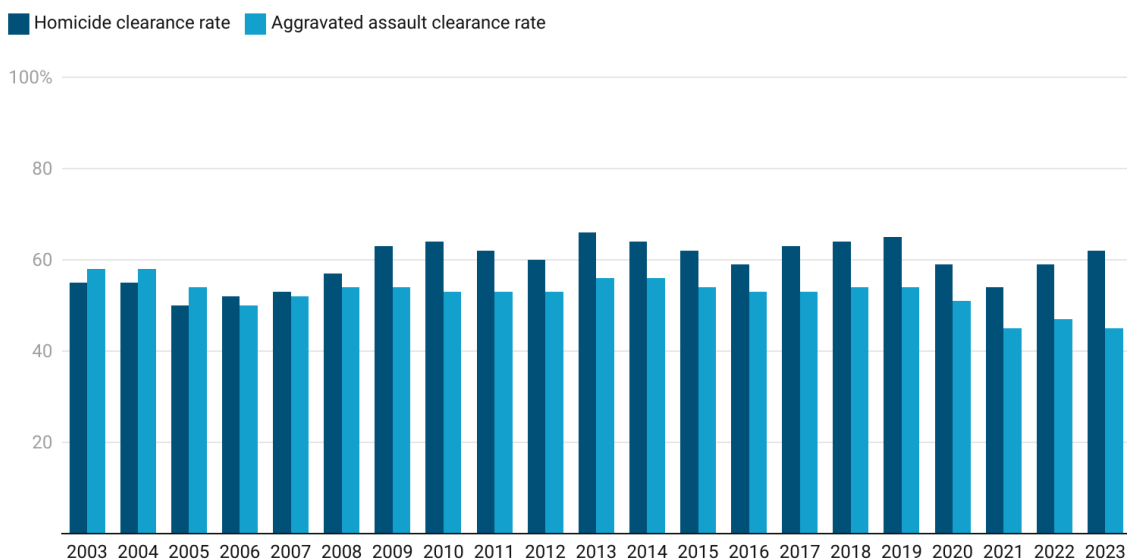
¹⁴ Jahan Fahimi, et al., *Long-Term Mortality of Patients Surviving Firearm Violence*, *Inj. Prev.* Vol. 22 (2) (2016).

Low clearance rates and the cycle of violence

Many gun assaults and homicides do not result in an arrest. In California, 62% of homicides were “cleared” by law enforcement in 2023.¹⁵ Only 45% of aggravated assaults were cleared by law enforcement in 2023, compared to 56% in 2013.¹⁶ (And these clearance rates are relatively high for violent crime: robberies had a 28% clearance rate and rape offenses 27%.¹⁷) A recent Washington Post analysis of homicide data over ten years from 55 large cities across the United States found that half of murders did not result in an arrest and that murders of Black victims were the least likely to result in an arrest.¹⁸

Homicide and aggravated assault clearance rates, 2003–2023

An offense is “cleared” if someone is arrested and charged for the offense. Offenses can also be cleared by “exceptional means” if a perpetrator is identified but cannot be prosecuted, such as if they are deceased.



Source: California Department of Justice, Crime in California reports • Created with Datawrapper

¹⁵ California Department of Justice, *2023 Crime in California*, Table 15 (July 2024). An offense is considered “cleared” when at least one person involved in the commission of the offense is arrested, charged, and brought to court for prosecution. California Department of Justice, *CJSJ CRIMES Context*.

¹⁶ California Department of Justice, *2023 Crime in California*, Table 15 (July 2024). Aggravated assaults include assaults with firearms but also assaults with other weapons and those likely to cause great bodily injury. California Department of Justice, *CJSJ CRIMES Context*.

¹⁷ California Department of Justice, *2023 Crime in California*, Table 15 (July 2024).

¹⁸ Washington Post Investigative Team, *Murder with Impunity*, January 7, 2019. Of the nearly 26,000 unsolved murders analyzed over a 10-year period, more than 18,600 of the victims were Black.

Research suggests that low clearance rates make it more likely for survivors of shootings to resort to vigilantism, fueling a cycle of shootings that spread through communities and social networks.¹⁹ This dynamic also contributes to a significant overlap between those who have been victims of a shooting and those who commit gun violence.²⁰ While most victims of gun violence do not go on to commit a gun offense, most people who commit gun violence have been victims of violence themselves.²¹ A recent survey of young adults in Chicago found that men who had been shot or shot at in the past year were 300% more likely to report that they had carried a gun.²²

Gun violence interventions and effectiveness

Research shows that community gun violence is committed by a relatively small number of people. An analysis of data from nearly two dozen cities across the United States found that on average, at least half of homicides and nonfatal shootings in these cities were committed by and/or against people accounting for less than 1% of the city population.²³

Understanding this dynamic, law enforcement agencies and community organizations have implemented targeted approaches to gun violence that focus on the limited number of people at the highest risk. In California, several evidence-based intervention and prevention strategies have been used with varying degrees of success. These strategies can be grouped into three main types:

- **Group-violence interventions (focused deterrence):** This model uses a “carrot and stick” approach to offer people identified as being at high risk for committing and/or being a victim of violence access to a diverse range of social services while communicating a strong anti-violence message that promises swift and certain action from law enforcement if the violence continues.²⁴ The strategy requires a partnership between law enforcement, community members, and social service providers.²⁵

¹⁹ Melissa Tracy, et al., *The Transmission of Gun and Other Weapon-Involved Violence Within Social Networks*, *Epidemiol Rev.*, Vol. 38(1) (2016). See also Giffords Law Center to Prevent Violence, *In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence* (September 2021).

²⁰ Shani Buggs, et al., *Social and Structural Determinants of Community Firearm Violence and Community Trauma*, *Ann. of the Am. Academy of Political and Social Science*, Vol. 704(1) (2023).

²¹ See Council on Criminal Justice, Violent Crime Working Group, *Victimization, Trauma, Mental Health, and Violent Crime* (November 2021).

²² Jocelyn Fontaine, et al., “*We Carry Guns to Stay Safe*”: *Perspectives on Guns and Gun Violence for Young Adults Living in Chicago’s West and South Sides*, Urban Institute, 5 (October 2018).

²³ Stephen Lurie, et al., *The Less Than 1%: Groups and the Extreme Concentration of Urban Violence*, National Network for Safe Communities (November 2018).

²⁴ Giffords Law Center to Prevent Gun Violence, *Investing in Intervention: The Critical Role of State-Level Support in Breaking the Cycle of Urban Gun Violence*, 15 (December 2017).

²⁵ Giffords Law Center to Prevent Gun Violence, *Healing Communities in Crisis*, 25 (March 2016).

Focused deterrence was first implemented in Boston in the 1990s as “Operation Ceasefire;” evaluation of the program found that it was associated with a 61% decline in youth homicide.²⁶ Since then, a strong body of empirical research has consistently demonstrated that focused deterrence results in significant reductions in violent crime.²⁷ In California, the City of Oakland implemented the Ceasefire strategy from 2011 to 2019. Evaluation of the Ceasefire program found that it was associated with an over 30% reduction in citywide gun homicides between 2012 and 2017.²⁸

- **Community violence intervention (CVI):** This model uses a public health approach to treat violence as a communicable disease transmitted from person to person. It seeks to stop the spread of violence by using community-based outreach and interventions not directly connected to or supported by law enforcement.²⁹ One example of CVI is the Advance Peace program that has been used in several California cities including Stockton, Sacramento, and Richmond with promising results.³⁰ While the CVI model has been shown to significantly reduce violent crime in some cities, the research supporting this model is mixed and not as robust as that supporting the GVI model.³¹
- **Hospital-based interventions:** These interventions focus on people who have been hospitalized for violent injuries such as gunshot wounds. Hospital-based interventions are conducted by “credible messengers” who meet survivors at their bedside to offer resources that can decrease the likelihood of re-injury or retaliation. The violence prevention program Youth ALIVE! Developed the nation’s first hospital-based intervention program in 1994 in Oakland.³² A 2004 evaluation of the program found that participants were 70% less likely to be arrested and 60% less likely to have criminal involvement than a control group.³³

²⁶ Anthony Braga, et al., *Problem-Oriented Policing, Deterrence, and Youth Violence: An Evaluation of Boston’s Operation Ceasefire*, J. of Res. in Crime and Delinquency, 38(1), 195–225 (August 2021).

²⁷ Anthony Braga, David Weisburd, and Brandon Turchan, *Focused Deterrence Strategies and Crime Control*, Criminology and Public Policy 17(1) (January 2018).

²⁸ Anthony Braga, et al., *Oakland Ceasefire Evaluation: Final Report*, 2 (May 2019).

²⁹ Mia Dawson, Asia Ivey, and Shani Buggs, *Relationships, Resources, and Political Empowerment: Community Violence Intervention Strategies that Contest the Logistics of Policing and Incarceration*, Frontiers in Public Health 11:1143516, 4 (April 2023).

³⁰ See UC Berkeley Center for Global Healthy Cities, *Advance Peace 2023 All City Summary* (April 2024).

³¹ See Jeffrey A. Butts, et al., *Cure Violence: A Public Health Model to Reduce Gun Violence*, *Annual Review of Public Health*, 36:39–53 (January 2015).

³² Giffords Law Center to Prevent Gun Violence, *Healing Communities in Crisis*, 38 (March 2016).

³³ Marla Becker, et al., *Caught in the Crossfire: The Effects of a Peer-Based Intervention Program for Violently Injured Youth*, *Journal of Adolescent Health*, 34(3) 177–83 (March 2024).

CalVIP

The California Violence Intervention and Prevention Grant (CalVIP) is a state-funded program that provides grants to cities and community-based organizations to support evidence-based violence reduction initiatives. The Legislature created the CalVIP program in 2017 to replace the California Gang Reduction, Intervention, and Prevention (CalGRIP) program, which provided similar grants but only to cities for efforts focused on gang-related crime.³⁴ CalVIP was established to focus on evidence-based violence prevention strategies as opposed to anti-gang-affiliation activities.³⁵ The legislation creating CalVIP also authorized community-based organizations to apply for grants.³⁶

The state has made significant recent investments in improving CalVIP:

- In 2019, the Legislature codified CalVIP into the Penal Code, making it a more permanent aspect of the state's approach to public safety.³⁷
- In 2021, the Budget Act provided a one-time augmentation of \$200 million across three years for CalVIP.³⁸
- In 2023, the Legislature narrowed the focus of CalVIP to specifically address community gun violence as opposed to community violence generally and removed the sunset date of the program.³⁹ The legislation also increased the maximum grant amount, extended the grant cycle to three years, and authorized up to 5% of funds awarded for CalVIP each year to be used for providing technical support.⁴⁰ The technical support is provided through contracts with third-party organizations and not directly by CalVIP.⁴¹
- Additional legislation in 2023 imposed an 11% tax on all firearm sales in the state beginning in July 2024 to provide ongoing funding for CalVIP grants.⁴² The tax is expected to generate nearly \$160 million annually and \$75 million must be appropriated to CalVIP annually.⁴³

³⁴ AB 1603 Senate Public Safety Analysis, 5, June 24, 2019.

³⁵ *Id.*

³⁶ AB 1603 (Wicks 2019).

³⁷ *Id.* (creating Penal Code § 14131).

³⁸ SB 129 (State Budget Act 2021-22).

³⁹ AB 762 (Wicks 2023).

⁴⁰ *Id.*

⁴¹ Penal Code § 14131(l).

⁴² AB 28 (Gabriel 2023).

⁴³ See Senate Committee on Appropriations AB 28 Analysis, September 1, 2023; Revenue and Taxation Code § 36005(c)(1). On July 2, 2024, a lawsuit was filed challenging the tax on grounds that it violates the Second Amendment to the United States constitution. See Ruben Vives, *Gun rights groups sue to block California's new tax on firearms*, Los Angeles Times, July 4, 2024.

While grants awarded by CalVIP must be used to develop or support evidence-based community gun violence initiatives, a wide range of programs are supported including hospital-based violence intervention programs, street outreach programs, and focused deterrence strategies.⁴⁴ For each grant cycle, an executive steering committee of volunteers selects grant recipients.⁴⁵ When selecting grant recipients, CalVIP is required to give preference to proposals demonstrating the greatest likelihood of reducing the incidence of homicides, shootings, and aggravated assaults in the applicant's community without contributing to mass incarceration.⁴⁶ In the most recent grant cycle (October 1, 2023 to December 31, 2025), CalVIP awarded 5 cities and 24 community-based organizations grants totaling over \$50 million.

Diversion for gun possession

In communities with high levels of violence, individuals may illegally carry guns due to fear of victimization.⁴⁷ In a recent survey of young adults in Chicago neighborhoods experiencing high rates of gun violence, one-third of survey respondents reported carrying a gun.⁴⁸ Of those who carried a gun, 72% reported prior victimization, and 37% reported being shot or shot at in the previous year.⁴⁹

In California, arrests for weapons possession account for nearly 10% of arrests each year.⁵⁰ These arrests can provide an opportunity to offer interventions that help prevent future violence, like gun diversion. A recent analysis of a prosecutor-led gun diversion program in Minneapolis, Minnesota, has shown that people who completed diversion for gun possession offenses were less likely to be convicted of a new offense within two years than a comparison group.⁵¹

California's Penal Code allows judges to grant diversion for many misdemeanor offenses — including some gun possession ones⁵² — but courts and prosecutors

⁴⁴ Penal Code § 14131(c).

⁴⁵ Penal Code § 14131(k). The committee must include people who have been impacted by community gun violence, formerly incarcerated people, subject matter experts, the director of the Office of Gun Violence Prevention, and at least three people with direct experience in implementing evidence-based community gun violence reduction initiatives. *Id.*

⁴⁶ Penal Code § 14131(g).

⁴⁷ See Melissa Barragan, et al., “*Damned if You Do, Damned if You Don’t*”: Perceptions of Guns, Safety, and Legitimacy Among Detained Gun Offenders, *Criminal Justice and Behavior*, 43(1) 140–155 (October 2015).

⁴⁸ Jocelyn Fontaine, et al., “*We Carry Guns to Stay Safe*”: Perspectives on Guns and Gun Violence from Young Adults Living in Chicago’s West and South Sides, Urban Institute (October 2018).

⁴⁹ *Id.*

⁵⁰ Magnus Lofstrom, Brandon Martin, and Andrew Skelton, *Arrests in California*, Public Policy Institute of California (January 2024).

⁵¹ Matthew Epperson, et al., *An Examination of Recidivism Outcomes for a Novel Prosecutor-Led Gun Diversion Program*, *Journal of Criminal Justice* (2024).

⁵² See Penal Code §§ 1001.95–1001.97. Several gun possession offenses — including carrying a concealed firearm (Penal Code § 25400), carrying a loaded firearm in public (Penal Code § 25850),

may be reluctant to pursue diversion in these cases due to the perceived risk to public safety.⁵³ A recent report by researchers at the University of Chicago found only a handful of prosecutor-led gun diversion programs nationwide.⁵⁴

Trauma Recovery Centers

Trauma caused by being a crime victim or survivor can lead to substance abuse, mental health conditions, and loss of income, employment, and housing.⁵⁵ These consequences result in an increased mortality rate for victims of violent crime.⁵⁶

First developed in San Francisco, Trauma Recovery Centers (TRC) provide trauma-informed mental health treatment and case management to victims of crime in underserved communities who may be reluctant to participate in the traditional criminal legal process.⁵⁷ In a randomized controlled trial of the University of California, San Francisco TRC model, researchers found that:⁵⁸

- 77% of victims who received TRC services engaged in mental health treatment, compared to only 34% of those who received customary care.
- TRC services increased the rate of sexual assault victims receiving mental health services from 6% to 71%.
- TRC clients were four times more likely to apply for victim compensation.
- Homelessness was reduced 41% more among TRC clients.
- 44% more TRC clients cooperated with the District Attorney.
- 56% more TRC clients returned to employment.

and prohibited person in possession of a firearm (Penal Code § 29805) — can be charged as misdemeanors.

⁵³ At least one county, San Luis Obispo, presumptively excludes gun possession offenses from court-initiated misdemeanor diversion. See San Luis Obispo Superior Court, *Court Misdemeanor Diversion Guidelines*.

⁵⁴ University of Chicago Smart Decarceration Project, *Principles of Prosecutor-Led Gun Diversion Programming: The National Landscape and Current Trends* (2021).

⁵⁵ Alicia Boccellari, et al., *State-Provided Crime Victim Services Do Not Meet the Mental Health Needs of California's Disadvantaged Crime Victims*, California Policy Research Center, University of California, 7 (April 2007).

⁵⁶ Alicia Boccellari et al., *Another "Lethal Triad" — Risk Factors for Violent Injury and Long-Term Mortality Among Adult Victims of Violent Injury*, *Journal of Emerging Medicine* (May 2018).

⁵⁷ Alicia Boccellari, et al., *State-Provided Crime Victim Services Do Not Meet the Mental Health Needs of California's Disadvantaged Crime Victims*, California Policy Research Center, University of California, 20 (April 2007).

⁵⁸ *Id.* at 26.

The Legislature and California voters have taken several steps to expand and support the development of TRCs throughout the state:

- From 2001 to 2005, the state funded the UCSF TRC as a pilot project.⁵⁹
- In 2013, the Legislature directed the California Victim Compensation Board (CalVCB) to award up to \$2 million per year in grants to TRCs.⁶⁰
- In 2014, Proposition 47 directed that 10% of savings from prison and jail sentencing changes be allocated to CalVCB to make additional grants funding TRCs.⁶¹
- In 2017, the Legislature codified minimum standards and best practices for TRCs, using the University of California, San Francisco TRC as the model.⁶²

Currently, CalVCB funds 22 TRCs throughout the state.⁶³ While current law allows CalVCB to award grants for a three-year cycle, the most recent cycle awarded grants for a two-year period.⁶⁴ The number and amount of grants issued are determined by CalVCB; TRCs that have previously been awarded grants are not guaranteed continued funding.⁶⁵

⁵⁹ AB 1740 (Ducheny 2000); AB 2491 (Jackson 2000).

⁶⁰ SB 71 (Committee on Budget and Fiscal Review 2013–14).

⁶¹ California Proposition 47 (2014) (creating Government Code § 7599.2(a)(2)).

⁶² AB 1384 (Weber 2017).

⁶³ California Victim Compensation Board, *Trauma Recovery Centers*.

⁶⁴ California Victim Compensation Board, *Grant Notice of Funds Available: 2023 CalVCB Trauma Recovery Center*.

⁶⁵ *Id.* Government Code § 13963.1(b), (d), (e), (f).

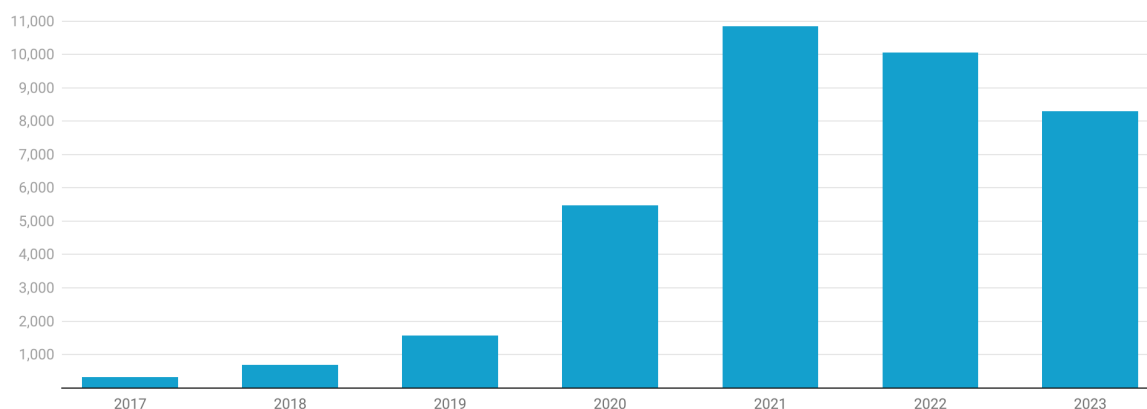
Firearm Prohibitions and Relinquishment

In addition to preventing violence from occurring with the strategies described above, California also addresses gun violence by keeping firearms out of the hands of people who are a risk to themselves or others. In one study in California, denial of handgun purchases for people who had committed violent misdemeanors was associated with a decrease in risk of arrest for new gun and/or violent crimes, across age, sex, and prior criminal activity.⁶⁶ State laws that prohibit people who were convicted of domestic violence offenses from possessing firearms have also led to reductions in firearm homicides against intimate partners, particularly against pregnant and postpartum partners.⁶⁷

Prohibiting the legal purchase of firearms by high-risk people has improved public safety, but a significant number of firearms used in criminal activity were not legally purchased.⁶⁸ In particular, the use of “ghost guns” — firearms privately-manufactured without a serial number — in criminal offenses has seen a disturbing increase in recent years in California, as the below chart shows.

Ghost guns recovered by law enforcement, 2017–2023

A “ghost gun” is a privately-made firearm assembled without a lawful serial number.



Data includes firearms recovered by law enforcement that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime.
Source: California Department of Justice, Crime Guns in California, Figure 6 (July 2024). • Created with Datawrapper

⁶⁶ Garen J. Wintemute, Mona A. Wright, Christiana M. Drake, and James J. Beaumont, *Subsequent Criminal Activity Among Violent Misdemeanants Who Seek to Purchase Handguns*, *Journal of American Medical Association*, February 28, 2021, 258(8).

⁶⁷ M. Zeoli, et al., “Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide,” *American Journal of Epidemiology* 187, no. 11 (2018); Wallace, Maeve E et al. “Firearm Relinquishment Laws Associated With Substantial Reduction In Homicide Of Pregnant And Postpartum Women.” *Health affairs (Project Hope)* vol. 40,10 (2021): 1654-1662.

⁶⁸ Mariel Alper & Lauren Glaze, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016*, Bureau of Justice Statistics (January 2019); Hannah Laqueur et al., *Trends and Sources of Crime Guns in California: 2010–2021*, *J. of Urban Health*, Vol. 100, 879–891, 886 (2023).

Prohibition and relinquishment processes

Prohibition and relinquishment of firearms can occur after a court has issued a civil protection order or after a person has been convicted in criminal court, with different rules in each context.⁶⁹

Research shows that requiring the surrender of firearms, not just the prohibition on possession and ownership, are associated with lower homicide rates.⁷⁰ Accordingly, the best time to remove a firearm from a person prohibited from having one is at or near the time they become prohibited, such as when served with a restraining order or at the time of conviction.⁷¹ Doing so immediately increases public safety and avoids the need for a later investigation.

Civil orders

Prohibition

For almost 30 years, federal law has prohibited the possession of firearms by people subject to domestic violence restraining orders, a policy recently upheld by the United States Supreme Court in *United States v. Rahimi*.⁷² While all 50 states have a protection order process available to some survivors of domestic violence, California has significantly expanded protection orders and their corresponding firearm prohibitions to other people who may be in danger from another person.⁷³

The civil protection order process typically begins with the petitioner filing a form with the court and requesting relief. If a court finds sufficient evidence that the respondent has engaged in certain kinds of dangerous conduct,⁷⁴ such as a neighbor or classmate making threats of violence, or an acquaintance engaging in stalking behavior, the court may issue a protection order that requires the individual to give up their firearms and

⁶⁹ Firearm prohibition can also be ordered as a result of mental health interventions. See generally California Department of Justice, *Armed and Prohibited Persons System Report 2023*, 55–56, 59 (listing prohibitions due to mental health status).

⁷⁰ Carolina Díez, et al., *State Intimate Partner Violence–Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015*, *Ann. of Int. Medicine* 167, no. 8 (2017): 536–43.

⁷¹ *APPS Report*, 3.

⁷² 18 U.S.C. § 922(g)(8); *United States v. Rahimi*, 602 U.S. ____ (June 21, 2024) (a person may be temporarily disarmed when a court has found they pose a credible threat to public safety without violating the Second Amendment to the United States constitution).

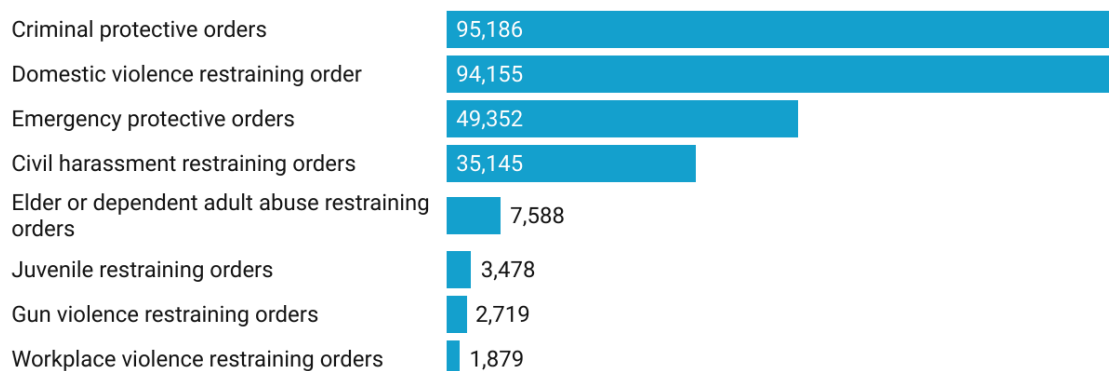
⁷³ California Department of Justice, Office of Gun Violence Prevention, *Pathways to Safety: California’s Nine Court Protection Orders to Prevent Gun Violence*, 8 (June 2024).

⁷⁴ For example, a civil harassment restraining order may be issued when there is “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.” Code of Civil Procedure § 527.6(b)(3).

blocks them from acquiring new firearms while the order is in effect.⁷⁵ Depending on the order and the circumstances, the order may last for a few days as an emergency order or multiple years as a permanent order.⁷⁶

The total number of protection orders issued with provisions limiting a person's access to firearms increased by 20% between 2020 and 2023.⁷⁷ The largest increase was in gun violence restraining orders (GVROs) — also called a “red flag law” — but GVROs were less than 1% of protection orders issued with firearm provisions in 2023. More than half of all GVROs issued in California from 2016 to 2023 were issued in the last two years and of the almost 9,000 orders issued statewide in that time, 44% were issued in just two counties, Santa Clara and San Diego.⁷⁸

Protection orders issued with firearm provisions, 2023



Source: California Department of Justice, Office of Gun Violence Prevention, *Pathways to Safety*, 32, 41, 46, 50, 55, 63, 69, 74, 81 (June 2024) • Created with Datawrapper

Relinquishment

The relinquishment process moves quickly in the civil context. For example, upon issuing a GVRO, a court orders the respondent to relinquish any firearms in their possession within 24 hours of being served with the order.⁷⁹ The law enforcement officer or firearms dealer who takes possession of the firearm issues a receipt and the respondent must, within 48 hours of being served, file the receipt with the court that issued the order.⁸⁰

⁷⁵ Office of Gun Violence Prevention, *Pathways to Safety*, 47.

⁷⁶ *Id.* at 10–11.

⁷⁷ *Id.* at 78.

⁷⁸ *Id.* at 30.

⁷⁹ Penal Code § 18120.

⁸⁰ *Id.* The timeline for relinquishment for other civil orders is the same. See e.g. Penal Code § 18120(b) (GVRO); Family Code § 6389(c)(2) (DVRO); Welfare & Institutions Code §§ 15657.03(u)(2) (EARO).

Criminal convictions

Prohibition

California prohibits individuals from owning and possessing firearms as a result of certain criminal convictions. A person who has been convicted of any felony offense (whether under California law, federal law, or any other state law),⁸¹ a misdemeanor crime of domestic violence, and certain misdemeanors involving violence and firearms are disqualified from accessing weapons for life.⁸² A conviction for a number of other misdemeanor offenses, such as assault, battery, criminal threats, stalking, and non-violent weapons offenses like making a false report about a lost or stolen firearm, leads to a 10-year prohibition.⁸³

Relinquishment

Relinquishment in the criminal context is controlled by Proposition 63, an initiative passed by the voters in November 2016. Proposition 63 strengthened background checks for the purchase of ammunition and created a court process, with the assistance of the local probation department, to ensure people who are prohibited from owning firearms after conviction relinquish any in their possession. Current law now requires that once convicted for a firearm-prohibiting offense, a person must relinquish firearms within 48 hours (or within 14 days if in custody).⁸⁴

At the time of conviction of any eligible offense, defendants are provided with a Department of Justice form, which includes information on how to surrender their firearms, that should be returned to a court-assigned probation officer.⁸⁵ Failing to timely file the form is an infraction punishable by \$100.⁸⁶

Prior to final disposition, the probation officer must report to the court and the prosecutor whether the defendant has relinquished their firearms.⁸⁷ Courts are required to verify that relinquishment occurred before final disposition of the case and if the court finds probable cause that the defendant failed to relinquish all firearms, the court must order a search warrant or extend the time for proof of relinquishment.⁸⁸

⁸¹ Penal Code § 29800(a)(1), (a)(3); 18 U.S.C. § 922(g)(1).

⁸² See Penal Code §§ 29800, 29805.

⁸³ Penal Code § 29805(a), (c), (d), (e), (f).

⁸⁴ Penal Code § 29810(a)(1).

⁸⁵ Penal Code § 29810(a)(2) & (3).

⁸⁶ Penal Code § 29810(c)(5). See also *People v. Villatoro*, 44 Cal.App.5th 365 (2020).

⁸⁷ Penal Code § 29810(c)(2).

⁸⁸ Penal Code § 29810(c)(3) & (4).

And as of this year, if “additional investigation is needed,” the court must also make a referral to the prosecutor.⁸⁹ Though the statute is silent on what steps the prosecutor is to take, they will presumably begin an investigation into whether the person still has the firearm and whether additional criminal charges are appropriate.

California’s Armed and Prohibited Person System (APPS)

Despite these laws in both the civil and criminal contexts, firearms are not promptly surrendered by thousands of people each year. Since 2006, California’s Armed and Prohibited Persons System (APPS) database has identified people who legally acquired firearms but then later became prohibited from possessing them and failed to relinquish them.

APPS has approximately 50 agents and supervisors to find and seize firearms from people who are not allowed to possess them.⁹⁰ In 2023, they recovered 1,443 firearms.⁹¹ To compare, in 2023, there were approximately 820,000 firearms legally sold in the state.⁹²

Each year, large numbers of people are added to and removed from APPS. In 2023, 9,051 people were removed from the APPS database — 5,353 people were no longer prohibited, 3,449 were disassociated from all known firearms, and 249 people died — and 8,633 people were added.⁹³ As of January 1, 2024, 23,451 people in California were considered armed and prohibited: 50% were prohibited due to a felony conviction, 10% for a qualifying misdemeanor conviction, 21% for a violation of federal law,⁹⁴ 20% for a mental health triggering event, 14% for a restraining order, and 2% for specific probation conditions.⁹⁵

⁸⁹ Penal Code § 29810(c)(3)(C). The statute also provides for extensions of time to show relinquishment. Penal Code § 29810(c)(3)(B).

⁹⁰ *APPS Report*, 4.

⁹¹ *APPS Report*, 53.

⁹² Daniel Nass & Champe Barton, *How Many Guns Did Americans Buy Last Month?*, The Trace. Private gun sales not included.

⁹³ *APPS Report*, 52.

⁹⁴ These individuals are prohibited only under the federal Brady Handgun Violence Prevention Act and state and local law enforcement do not have authority to investigate a violation of only federal law. For example, under federal law a person is prohibited from owning or possessing a firearm if they were dishonorably discharged from the military or are undocumented, but these are not prohibited categories under California law. *APPS Report*, 46–47.

⁹⁵ *APPS Report*, 4. A person can be prohibited in more than one category.

Of all the people in APPS on January 1, 2024, 38% (8,903) had “active” cases, meaning they were awaiting investigation or being investigated, while the remaining 62% (14,548) cases were “pending,” which essentially means an investigation would not be productive.⁹⁶ Of the pending cases, more than 6,000 were unable to be cleared because APPS agents had investigated all leads and were unable to recover all firearms associated with the prohibited person.⁹⁷

Armed and Prohibited Person System (APPS) case status



Data is as of January 1, 2024. “Active” case are those involving individuals believed to reside in the state of California who are prohibited from possessing a firearm and have not yet been investigated or are in the process of being investigated.

Source: California Department of Justice, APPS Report 2023, 4, 17 (March 2024). • Created with Datawrapper

In addition to a recently-convicted person intentionally failing to relinquish a firearm, firearms may not be promptly surrendered because the prohibited person no longer possesses the relevant firearm because it was sold, stolen, or lost. When a person gifts or sells their registered firearm to another person, they must do so through a licensed firearms dealer and report it to the Department of Justice.⁹⁸ And if a registered firearm is lost or stolen, the owner is required to file a police report and report the loss within 5 days.⁹⁹ Practitioners that Committee staff consulted indicated that many of these events are not reported to the Department of Justice, leading to inaccurate information in APPS.

⁹⁶ *Id.* at 15.

⁹⁷ *Id.* at 17.

⁹⁸ Penal Code § 27545.

⁹⁹ Penal Code § 25250(a). This requirement was added by Proposition 63 in 2016.

Recent developments

Efforts to improve APPS and the relinquishment process are ongoing:

- SB 320 (Eggman 2021) required that information about how to relinquish firearms be provided to people subject to domestic violence restraining orders and required courts to make findings about whether the respondent has complied and if not, refer the violation to the prosecuting attorney.
- A pending bill, SB 899 (Skinner), would apply the procedural requirements from SB 320 to all civil firearm-prohibiting orders so that information and follow-up is consistent.
- The Budget Act of 2022 allocated \$40 million to the Judicial Council to support court-based firearm relinquishment programs. Funding priority was directed towards domestic violence and gun violence restraining orders.¹⁰⁰
- Beginning in 2024, AB 732 (Mike Fong) shortened timeframes for firearm relinquishment for recently-convicted people, required local law enforcement to make quarterly reports to the Department of Justice on steps taken to verify that individuals in APPS in their jurisdiction are no longer in possession of firearms, and required referral to local prosecutors if firearms are not relinquished after conviction.

¹⁰⁰ See Letter from Judicial Council of California, *Re: Report on Allocation of Funding in Fiscal Year 2022–23 for Court-Based Firearm Relinquishment Program*, October 1, 2023.

Asset Forfeiture

In addition to policies that prevent crime and help victims, California law contains a powerful tool to disrupt more sophisticated criminal operations: asset forfeiture. California's asset forfeiture laws, like most states and the federal government, allow police and prosecutors to permanently keep cash, cars, homes, and other property that is involved in a crime. Asset forfeitures can happen as part of resolving criminal charges, but in many cases a conviction is not required and can instead occur as "civil" asset forfeiture. In 2023, more than \$41 million was seized in California under state law.¹⁰¹

Because asset forfeiture is permissible without the higher procedural protections provided by a criminal case, the practice has long been criticized as allowing arbitrary exercises of government power without any evidence that the practice disrupts criminal activity or reduces drug use.¹⁰² The Legislature's last significant engagement with California's asset forfeiture practices was in 2016 with the passage of SB 443 (Mitchell), which expanded some due process protections and limited when local law enforcement agencies could receive a share of federally forfeited property.¹⁰³

California law still has room to improve the fairness of its asset forfeiture process. There are no minimum requirements on the value of property that can be seized — meaning that very small amounts of money can be taken, which may be difficult for a low-income person to challenge or not worth the cost to challenge in court. Cash seizures in small amounts still occur with regularity: in 2023, forfeitures in amounts under \$2,500 occurred in almost all of California's

¹⁰¹ California Department of Justice, *Asset Forfeiture Report: Calendar Year 2023*, Table 1.

¹⁰² Brian D. Kelly, *Does Forfeiture Work? Evidence from the States*, Institute for Justice, 5 (February 2021). A study of forfeiture data from five states that use forfeiture extensively — Arizona, Hawaii, Iowa, Michigan, and Minnesota — found no evidence that forfeiture proceeds help police reduce crime, either by helping police solve more crimes or reducing drug use. The same study also found that police make greater use of forfeiture in response to fiscal stress — a one percentage point increase in unemployment, was associated with an 11% to 12% increase in forfeiture activity. Kelly, *Does Forfeiture Work*, 7, 21.

¹⁰³ Forfeiture is permissible under federal law and state agencies can receive a portion of the forfeiture if they are involved in the investigation that led to the forfeiture. In 2022, \$40.7 million more was received by California agencies for forfeitures under federal law. Department of the Treasury, *Treasury Forfeiture Fund, Accountability Report: Fiscal Year 2022*, 49; Department of Justice, *Equitable Sharing Payments of Cash and Sale Proceeds by Recipient Agency for California*, Fiscal Year 2022. SB 443 allows state agencies to participate in federal forfeitures only if those forfeitures meet the due process protections under state law. See Health & Safety Code § 11471.2. Federal law — which cannot be modified by state law — also controls how proceeds from asset forfeitures under federal law can be used. United States Department of Justice, *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies*, March 2024, 16.

counties.¹⁰⁴ Compounding this problem, amounts less than \$25,000 in drug cases can be seized without any judicial oversight if no one objects to the forfeiture.¹⁰⁵

Statewide data on how forfeited money is used is limited.¹⁰⁶ In 2023, the Department of Justice reported a total of 1,409 asset forfeitures initiated by local prosecutors in 45 counties (which may be completed in the same year or the next year) for a total value of \$41.4 million in assets seized.¹⁰⁷ But the report does not indicate the types of property forfeited or how forfeiture funds are spent.

Drug cases

After assets are forfeited in drug cases — which make up the large majority of forfeiture cases — California law directs the proceeds as follows:

- 65% to the law enforcement agencies that participated in the seizure. 15% of this must be deposited in a special local fund for programs “designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers.”
- 10% to the prosecutorial agency that processes forfeiture action.
- 24% to the state General Fund, of which up to \$10 million shall be made available for school safety and security. In FY 2022–23, this was \$12 million.¹⁰⁸
- 1% to the Environmental Enforcement and Training Account.¹⁰⁹

Non-drug cases

The California Control of Profits of Organized Crime Act, which allows for the forfeiture of proceeds that are acquired through criminal profiteering, or when specified crimes — including bribery, human trafficking, and grand theft — are committed for financial gain or advantage.¹¹⁰ After expenses are reimbursed,

¹⁰⁴ California Department of Justice, *Asset Forfeiture Report: Calendar Year 2023*, Table 3.

¹⁰⁵ Health and Safety Code § 11488.4(j)(5)(B).

¹⁰⁶ Anita Lee, *Potential Impacts of Recent State Asset Forfeiture Changes*, Legislative Analyst’s Office, 1 (January 2020).

¹⁰⁷ California Department of Justice, *Asset Forfeiture Report: Calendar Year 2023*, Table 1.

¹⁰⁸ Data provided by Legislative Analyst’s Office.

¹⁰⁹ Health and Safety Code § 11489(b)(2)(D). Prior to 2021, 1% was set aside for training law enforcement in the ethics and proper use of state asset forfeiture laws.

¹¹⁰ The statute includes 34 crimes. Penal Code § 186.2. This law is based on the federal Racketeering and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968, which includes more than 35 offenses. California’s statute has recently been amended to add certain gambling offenses (AB 1294 (Salas 2019)) and fraud offenses relating to COVID-19 insurance programs. (AB 1637 (Cooper 2022)).

proceeds are distributed to the local governmental entity that prosecuted the case (or state general fund if prosecuted by the Attorney General).¹¹¹

For some specified offenses, proceeds are deposited in targeted funds supporting victims. For example, proceeds from cases of causing a minor to engage in a commercial sex act are deposited in the Victim-Witness Assistance Fund to fund abuse and exploitation prevention and counseling.¹¹² Staff was unable to locate any data on how much is deposited into these funds.

Practices in other states

- In 2015, New Mexico eliminated civil forfeiture and directed all forfeiture proceeds from any criminal forfeitures to a general fund.¹¹³ An analysis by the Institute for Justice found that five years after New Mexico eliminated civil forfeiture, the state's overall crime rate did not rise, including drug possession, drug sales, and driving under the influence, and arrest rates did not decrease.¹¹⁴
- Nebraska, North Carolina, and Maine have abolished civil forfeiture and only allow only criminal forfeiture.¹¹⁵
- In 2021, Minnesota passed legislation that prohibits law enforcement from taking cash less than \$1,500 and limits forfeiture of cars in certain circumstances.¹¹⁶ The State Auditor, which is responsible for tracking forfeiture in Minnesota, explained that forfeitures of small dollar assets are not a large part of public safety budgets, but the amounts seized can be significant to individuals.¹¹⁷
- While most states distribute forfeiture funds to law enforcement, some states, including Wisconsin and North Carolina, direct funds to schools.¹¹⁸

¹¹¹ Penal Code § 186.8(c).

¹¹² Penal Code § 186.8(f).

¹¹³ Lisa Knepper et al, Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, 3d Edition, 5 (December 2020).

¹¹⁴ *Id.* at 32.

¹¹⁵ Lisa Knepper, *Policing for Profit*, 39; Me. Rev. Stat. Ann. tit. 15 § 5821. In North Carolina, civil forfeiture is still available in racketeering cases. N.C. Gen. Stat. § 75D-5.

¹¹⁶ Minn. Stat. § 609.5314(1).

¹¹⁷ Eric Rasmussen, *Auditor: Police Use of Controversial Forfeiture Law Declining in Minnesota*, KSTP TV, September 28, 2023.

¹¹⁸ Wis. Stat. § 961.55(5)(b); N.C. Const. art. IX, § 7.

Staff Recommendations

The Committee may wish to consider the following proposals to address the issues raised in this memorandum.

Crime Prevention and Response

- **Continue support of state violence intervention efforts.**
California has made significant investments in supporting gun violence interventions and should continue this progress by enhancing technical assistance and leadership capacities within CalVIP.
- **Establish prosecutor-led diversion for gun possession offenses.**
While the Penal Code does not prohibit diversion for many gun possession offenses, a law explicitly authorizing diversion coupled with grant funding from CalVIP to community partners could help establish this practice in California.
- **Evaluate the existing Trauma Recovery Center grant system.**
TRCs are an evidence-based way to help underserved crime victims. As the state continues efforts to expand the availability of TRCs throughout the state, it could evaluate the existing grant process, including the length of funding terms and how existing programs are supported.

Firearm Prohibitions and Relinquishment

- **Improve APPS data integrity by allowing courts to determine a convicted person no longer possesses a firearm.**
Current law does not describe what should occur after conviction when a defendant no longer possesses a firearm that records indicate is legally registered to them. The Penal Code could include a process to allow a court to determine the person no longer has the firearm, which would prevent another investigation from APPS that is likely to come to the same result.
- **Further support implementation of firearm relinquishment requirements after conviction.**
While the state has adopted mandatory processes to ensure that people convicted of eligible crimes do not remain armed, counties and probation departments may lack the necessary resources and training to ensure compliance. Additional training, coordination, and resources — as has been provided via budget action in the civil protective order relinquishment context — may reduce the number of people who remain armed and prohibited.

Asset Forfeiture

- **Allow use of forfeiture proceeds to support crime victims.**
A small percentage (15%) of the asset forfeiture proceeds that law enforcement receives must be set aside in a special local fund for programs to “combat drug abuse and divert gang activity.”¹¹⁹ This set-aside could be updated to also allow support for crime victims.
- **Update the criminal profiteering statute to include organized retail theft and illegal firearm sales.**
The California Control of Profits of Organized Crime Act, which covers forfeiture of profits acquired as a result of organized criminal activities, could be expanded to include organized retail theft¹²⁰ and the illegal sales of firearms.¹²¹
- **Exempt minimum cash amounts from forfeiture.**
Under current law, prosecutors can forfeit cash under \$25,000 administratively, without any judicial oversight and with the lowest burden of proof. Minnesota requires at least \$1,500 in value before property can be forfeited. California currently has no such minimum value rule but could set a similar statewide policy which would help protect due process.

Conclusion

The topics and approaches covered in this memorandum are a reflection of the complexities in preventing, intervening in, and disrupting crime. California has made significant progress in the last decades in improving public safety and assisting crime victims, but much work remains to be done. The Committee should consider the data and proposals here in making recommendations that will support progress on these urgent issues.

Respectfully submitted,

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¹¹⁹ Health & Safety Code § 11489(b)(2)(A)(i).

¹²⁰ Penal Code § 190.4.

¹²¹ Penal Code § 26500.