



## **SEIZURES AND RETURNS OF FIREARMS BY LAW ENFORCEMENT**

### **A Guide for Gun Owners, Law Enforcement, and Attorneys**

Your firearms are your personal property. And like all property, law enforcement cannot deprive you of your firearms without due process of law. But in California, current laws can still deprive you of your firearms and Second Amendment rights if you have merely been accused of a crime, have had a restraining order filed against you, or for other reasons. This can result in your entire gun collection is seized by law enforcement, including your great grandfather's service revolver from World War I. And in worse case scenarios the law enforcement agencies can and have destroyed a person's firearm collection without their knowledge. Think it could never happen? Think again.

While most seizures of firearms by law enforcement are both constitutional and legal, there are occasions when they are not.<sup>1</sup> And depending on the law enforcement agency, it may be difficult to get the firearms returned to you.<sup>2</sup> For that reason, it is important for gun owners to understand how seizures and returns of firearms by law enforcement are handled in California.

---

<sup>1</sup> As one example, in 2003 the California Department of Justice ("DOJ") began seizing Robinson Armament Model M96 firearms, claiming they were illegal "assault weapons." Attorneys for Robinson Armament challenged DOJ's position and ultimately prevailed, with DOJ returning the seized firearms to their owners.

<sup>2</sup> While a local law enforcement agency is prohibited from requiring gun owners to pursue legal action as a condition of having their lawfully owned firearms returned to them, legal actions are sometimes necessary. Pen. Code § 33880(e) (law enforcement "shall not require a legal owner to request a poststorage hearing as a requirement for release of the firearm or ammunition to the legal owner"). But it is often not worth spending thousands of dollars in legal fees to recover a firearm valued at only a few hundred dollars.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

The following information has been prepared for gun owners, members of the public, and law enforcement to better understand how firearms can be seized under current California law and the process for their return to its owner while in the custody of law enforcement. By understanding California's these laws, gun owners can prevent the unnecessary destruction of their firearms, as well as avoid wasting time and resources when navigating the process.

## I. A BRIEF HISTORY OF CALIFORNIA'S FIREARM SEIZURE AND RETURN STATUTES

Modern California laws regarding the seizure and return of firearms started with the 1989 case of *Bryte v. City of La Mesa*.<sup>3</sup> In *Bryte*, the court held the predecessor to Welfare and Institutions Code section 8102 violated due process because it allowed for the seizure of firearms without providing adequate access to a hearing for their return.<sup>4</sup> Prior to *Bryte*, the law permitted automatic forfeiture unless the owner filed a judicial action for the return of their property. Because such judicial action required "preparation of formal pleadings, the payment of a filing fee, and subsequent participation in all the formal procedural devices of a superior court action," the court invalidated the law.<sup>5</sup> What's more, the court noted that in order to pass constitutional muster, such a law must expressly "provide for notice of the time and place of hearing where the parties may present in a regular and orderly manner issues of law and fact."<sup>6</sup>

Welfare and Institutes Code section 8102 was thus amended to require firearms be returned unless the law enforcement agency files a timely petition to determine whether doing so "would be likely to result in

---

<sup>3</sup> 255 Cal. Rptr. 64 (Ct. App. 1989).

<sup>4</sup> *Id.* at 65-66.

<sup>5</sup> *Id.* at 66.

<sup>6</sup> *Id.* See also *Menefee & Son v. Dep't of Food and Agriculture*, 245 Cal. Rptr. 166 (Ct. App. 1988). Cf. *People v. Jackson*, 326 N.E.2d 138 (Ill. App. 1975) (holding state must return firearm or bear burden of showing that firearm was contraband subject to forfeiture); *States Marine Lines, Inc., v. Schultz*, 498 F.2d 1146 (4<sup>th</sup> Cir. 1974) (holding government must either institute proceedings for forfeiture or return property promptly).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

endangering the person or others, and [sends] a notice advising the person of his or her right to a hearing on the issue.”<sup>7</sup> These revisions are what would later become the model on which many similar California firearm seizure statutes are patterned.<sup>8</sup>

California laws regarding the seizure and return of firearms were again changed in 2004 to establish uniform procedures for the return of firearms to their owners.<sup>9</sup> As a result of this change, individuals whose firearms are in the custody or control of a court or law enforcement agency must first file an application (along with a requisite fee) to the California Department of Justice (“DOJ”) in order to determine their eligibility to possess a firearm before having their firearms returned.<sup>10</sup> The changes detail the information that must be furnished to DOJ in the application and make the intentional falsification of such information a misdemeanor.<sup>11</sup>

---

<sup>7</sup> Welf. & Inst. Code § 8102. These procedures are summed up in detail in *People v. One Ruger .22 Caliber Pistol*, 100 Cal. Rptr. 2d 780, 782 (Ct. App. 2000):

Unlike the former statute, section 8102 now places the onus upon law enforcement to initiate the forfeiture proceeding, which consists of a single hearing limited to determining whether a return of the firearms “would be likely to result in endangering” their owner or other persons. At the time the weapon is seized, the seizing agency must notify the person from whom the weapon is seized “of the procedure for the return of any firearm or other deadly weapon which has been confiscated.” If the person is released at the time of the taking, the burden is on the designee of the facility in which the person has been held to give such notice. Absent a showing of good cause, the agency has 30 days from the date of the release as specified to initiate a petition for a hearing to determine whether “the return of a firearm or other deadly weapon would be likely to result in endangering the person or others,” and to give the person notice of such hearing. Thereafter, the law enforcement agency must notify the person of his or her duty to respond in 30 days to the court clerk if a hearing is desired. If such a response is made, the hearing shall be set by the clerk within 30 days of the request. Should the agency fail to initiate proceedings as specified, “it shall make the weapon available for return.”

Internal citations omitted.

<sup>8</sup> See, e.g., Bus. & Prof. Code § 25363 (requires notice and opportunity to be heard before state may initiate forfeiture proceedings to destroy alcoholic beverages), Fin. Code § 1781 (requires notice and hearing before a foreign bank’s license may be revoked).

<sup>9</sup> Assemb. Bill No. 2431, 2003-2004 Leg., Reg. Sess. (Cal. 2004).

<sup>10</sup> Pen. Code § 33850(a) (formerly Pen. Code § 12021.3(a)(1)).

<sup>11</sup> *Id.*

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

While the application fee required by this change creates an arguably unnecessary expense for gun owners to effect the return of their property, the positive aspects of the change are its codification of the right to sell firearms even if they cannot, or do not wish, to have the gun returned in addition to the establishment of a uniform procedure for law enforcement officials to follow. The law also puts the burden on law enforcement agencies and courts—not the individuals—to verify any gun is not reported as lost or stolen before its return.<sup>12</sup>

These procedures have remained largely unchanged since 2004 and remain in effect today. There are, however, additional details to consider which are discussed in greater detail below.

## II. LAW ENFORCEMENT SEIZURE OF FIREARMS IN CALIFORNIA: GENERAL FRAMEWORK

As a threshold matter, how and why a firearm was seized determines the process for seeking its return, usually pursuant to a warrant or when law enforcement has probable cause to believe the firearm was used to commit a crime.<sup>13</sup> Absent either of these situations, California law allows the seizure of a person's firearms in the following situations:

- At the scene of a domestic violence incident involving a threat to human life or a physical assault<sup>14</sup>;
- When the person is detained for a mental examination or is a person described in Welfare and Institutions Code sections 8100 or 8103 (more commonly known as a 5150 or 5250 hold) and is found to own or possess any firearm or any other deadly weapon<sup>15</sup>;

---

<sup>12</sup> Pen. Code § 33855(b).

<sup>13</sup> Under California law, a warrant for the seizure of firearms can be issued for a number of reasons, including when the person was arrested at the scene of a domestic violence incident, is a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code, is subject to a protective order under the Family Code or “Gun Violence Restraining Order,” or is otherwise prohibited from owning or possessing firearms and the court has made a finding pursuant to subdivision (c) of Penal Code section 29810 that the person has failed to relinquish their firearms. See Pen. Code § 1524(a)(9-15).

<sup>14</sup> Pen. Code § 18250(a). It is worth noting that only firearms “in plain sight or discovered pursuant to a consensual or other lawful search” may be seized. *Id.*

<sup>15</sup> Welf. & Inst. Code § 8102.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

- When the person is served a protective order under Family Code section 6218<sup>16</sup>; or,
- When serving a “Gun Violence Restraining Order.”<sup>17</sup>

While not an exhaustive list, these are among the more common reasons that law enforcement seizes firearms from otherwise law-abiding gun owners, absent a warrant or probable cause. And although California law allows law enforcement to seize firearms in such circumstances, the seizure may still be challenged on Fourth Amendment grounds.<sup>18</sup> For this reason, it is critical to *never give consent* to law enforcement seizure of any firearms without a warrant, as giving consent will waive any potential Fourth Amendment claim.

When seizing firearms, every law enforcement agency is likely to have their own unique policies that they will apply in these situations. Regardless of these policies, California requires law enforcement to issue a property receipt for any firearm taken into custody. The receipt must:

- Describe the firearm taken into custody;
- List the serial number or other identification markings;
- Indicate where the firearm may be recovered, any applicable time limits for recovery, and the date after which the owner may recover the firearm pursuant to the laws governing the return of a firearm.<sup>19</sup>

---

<sup>16</sup> Pen. Code § 18250(a).

<sup>17</sup> Pen. Code § 18250(a). Other types of protective orders, including civil harassment and elder abuse restraining orders, also trigger a firearm prohibition.

<sup>18</sup> See, e.g., *Terry v. Ohio*, 392 U.S. 1 (1968). Before law enforcement can seize property, the Fourth Amendment requires either a warrant or an exception to the warrant requirement. One such exception is when the individual gives officers their voluntary consent to search and/or seize property. Otherwise, any searches or seizures absent a warrant are presumed unreasonable. See *Mincey v. Arizona*, 437 U.S. 385, 390 (1978). **For more information, refer to the [upcoming?] Gun Owner’s Guide to Police Encounters book.**

<sup>19</sup> Pen. Code § 33800. Note that the failure of a law enforcement agency to issue a property receipt does not itself violate an individual’s right to procedural due process. See *Rodriquez v. City of San Jose*, 773 Fed.Appx. 994 (9th Cir. 2019) (holding that procedural due process claims require a deprivation of a constitutionally protected liberty or property interest and a denial of adequate procedural protections, but that Penal Code section 33800 and its related provisions do not provide “an additional property interest” in any firearms seized).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

## A. Relinquishment of Firearms Following Conviction of Prohibiting Offense

In addition to firearms being involuntarily seized by law enforcement, California law also requires individuals to relinquish their firearms upon conviction of any offense rendering them ineligible to own or possess firearms under California law.<sup>20</sup> Upon such a conviction, the court will provide a Prohibited Persons Relinquishment Form.<sup>21</sup> The form serves the following purposes:

- Informs the defendant they are prohibiting from owning, purchasing, receiving, possessing, or having under their custody or control any firearms, ammunition, and ammunition feeding device, and that they must relinquish all such devices through a designee;
- Inform the defendant that any cohabitant who owns firearms must store them in accordance with Penal Code section 25135 (in a manner that is inaccessible to the defendant);
- Require the defendant to declare any firearms they own or possess at the time of conviction and provide all reasonably available information about the location of the firearms to enable a designee or law enforcement official to locate the firearms<sup>22</sup>;
- For any declared firearms, the form requires the defendant to name a local law enforcement agency or consenting third party as a designee and grant them power of attorney for the purposes of transferring or disposing of the firearms;
- Require the designee to indicate their consent and to declare under penalty of perjury that they are not prohibited from owning or possessing firearms;
- Require the designee to state the date each firearm was relinquished and the name of the party to whom it was relinquished, and to attach receipts from the law enforcement agency or licensed firearms dealer who took possession; and,

---

<sup>20</sup> Pen. Code § 29810; See also Pen. Code §§ 29800-29805 (specified convictions resulting in firearm prohibition).

<sup>21</sup> While this form does not appear to be accessible via DOJ's website, a copy can be viewed online at the California Courts website. See <https://www.courts.ca.gov/documents/bof1022.pdf>. In addition, courts should also provide the person with a Designee Firearm Relinquishment Information form and Firearms Disposition Receipt. Some courts may then also use a Prohibited Persons Relinquishment Form Findings noting the individual's compliance or non-compliance with these requirements.

<sup>22</sup> The requirement that an individual disclose any firearms they have may violate the self-incrimination clause of the Fifth Amendment. However, this has yet to be challenged in court on those grounds.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

- Inform the defendant and the designee of the obligation to submit the completed form to the assigned probation officer within the designated time period.<sup>23</sup>

Once a person is convicted of an offense that results in a firearm prohibition, courts assign the matter to a probation officer who will investigate whether AFS or other information reveals the defendant's ownership, possession, custody, or control of any firearms.<sup>24</sup> The probation officer must then report to the court whether the defendant complied with these requirements.<sup>25</sup> If the court finds the defendant failed to do so, it must then order a search for and removal of any firearms believed to be in the individual's possession.<sup>26</sup>

Firearms surrendered to a law enforcement agency pursuant to these requirements must be retained by the agency for 30 days.<sup>27</sup> Afterwards, the firearm is subject to destruction, retention, sale, or other transfer by the agency (unless ordered otherwise by the court or prosecutor, or if the individual provides written notice of an intent to appeal the conviction).<sup>28</sup>

In this situation, it is usually advantageous to sell any firearms to a California licensed firearms dealer or store them with a California licensed firearms dealer to ensure their value is recovered.<sup>29</sup>

---

<sup>23</sup> Pen. Code § 29810(b)7. The court has the power to deviate from any of these requirements if the defendant can show that good cause exists to allow for a different disposition method. Pen. Code § 29810(f).

<sup>24</sup> Pen. Code § 29810(c).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* Note that this relies on the accuracy of AFS which is notoriously inaccurate and unreliable. Such inaccuracies can often lead to problems for those subject to these requirements.

<sup>27</sup> Pen. Code § 29810(i).

<sup>28</sup> *Id.* Another exception applies if the firearm was reported as lost or stolen, in which case the firearm shall be returned to its lawful owner as soon as it has served its use as evidence.

<sup>29</sup> When faced with a potential conviction that will result in a firearm prohibition, individuals may also want to preempt any such requirements by selling or transferring their firearms via a private party transaction, intrafamilial transfer, or otherwise. Not only will this ensure some or all the firearms value is recovered but will also allow the individual to determine who the firearms are ultimately sold or transferred to.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

## B. Relinquishment of Firearms Following Service of Restraining Order

If you are served with a restraining order, even if the restraining order itself is temporary until a formal hearing can be held, you are nevertheless considered prohibited under California law from owning or possessing firearms.<sup>30</sup> Generally, the following restraining orders carry a prohibition against owning or possessing firearms:

- Civil harassment restraining orders pursuant to the Code of Civil Procedure;
- Workplace violence restraining orders issued pursuant to the Code of Civil Procedure;
- Restraining orders sought by schools following off-campus credible threats of violence;
- Domestic Violence restraining orders issued pursuant to the Family Code;
- Victim/witness intimidation restraining orders issued pursuant to the Penal Code;
- Elder abuse restraining orders issued pursuant to the Welfare and Institutions Code; and,
- “Gun Violence Restraining Orders” issued pursuant to the Penal Code.<sup>31</sup>

In the case of a “Gun Violence Restraining Order” (“GVRO”), a law enforcement officer serving the order must request that all firearms and ammunition be “immediately surrendered.”<sup>32</sup> In the event no request is made, within 24 hours of being served, firearms must be surrendered to a local law enforcement agency, sold to a licensed firearms dealer, or stored with a licensed firearms dealer.<sup>33</sup> And within 48 hours of being served, the individual must file a “Proof of Firearms Turned In, Sold, or Stored” form with the court that issued the restraining order.<sup>34</sup>

---

<sup>30</sup> See, e.g., Pen. Code § 18120(a), (c)(1) In addition to firearms, possession of ammunition feeding devices while subject to any of these restraining orders is also prohibited.

<sup>31</sup> Civ. Proc. Code § 527.9(b); Pen. Code §§ 18120, 29830.

<sup>32</sup> Pen. Code § 18120(b)(2).

<sup>33</sup> See, e.g., Pen. Code § 18120(b)(2).

<sup>34</sup> *Id.*; See also *GV-800: Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored*, Judicial Council of California, <https://www.courts.ca.gov/documents/gv800.pdf> (Rev. Sept. 1, 2019). Identical forms are used for Civil Harassment, Domestic Violence, Elder Abuse, and other types of restraining order proceedings.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.



Again, it is usually preferable to sell firearms to a California licensed firearms dealer or store them with a California licensed firearms dealer instead of surrendering them to law enforcement. That said, any firearms in custody of law enforcement because of a GVRO may still be sold or transferred to a licensed firearms dealer in accordance with California law.<sup>35</sup>

### **C. Welfare Checks**

In 2015, the California legislature adopted Senate Bill 505 to encourage law enforcement agencies to perform “welfare checks” on individuals believed to be a danger to themselves or others.<sup>36</sup> The law requires agencies to “develop, adopt, and implement written policies and standard protocols for purposes of performing such checks, and encourage officers to conduct a search of DOJ’s AFS database whenever “reasonable” to determine if the person may have any firearms in their possession.<sup>37</sup> While a welfare check itself does not necessarily mean a person’s firearms will be confiscated, it can often lead to confiscation.

### **D. Detention Upon Discovery of Prohibited Firearm**

If a law enforcement officer has “reasonable cause” to believe a person possesses a firearm in violation of any firearm law, such as a machinegun or short-barreled rifle, California law allows the officer to detain the person and determine whether a crime relating to the firearm has been committed.<sup>38</sup> As used here, “reasonable cause” requires specific and articulable facts that some offense relating to firearms has taken place or is

---

<sup>35</sup> Pen. Code § 18120(c)(2).

<sup>36</sup> Codified at Penal Code section 11106.4.

<sup>37</sup> Pen. Code § 11106.4(a). “Reasonable” is defined for these purposes to mean “the officer could conduct the firearm registry check without undue burden on the execution of the officer’s other duties, that there are no exigent circumstances demanding immediate attention, and that the peace officer has access to, or can reasonable ascertain, relevant identifying information.” Pen. Code § 11106.4(b).

<sup>38</sup> Pen. Code § 833.5(a).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

occurring.<sup>39</sup> And if the person is ultimately convicted for a violation of any offense relating to the possession of the firearm, the firearm will be deemed a nuisance and disposed of pursuant to Penal Code sections 18000 and 18005.<sup>40</sup>

### **E. Confiscations Related to The Armed Prohibited Person System**

Once a person becomes prohibited from owning or possessing firearms under state or federal law in California, that person's name is entered into the California Department of Justice's ("DOJ") Automated Criminal History System. DOJ will then cross-reference the person's name with their Consolidated Firearms Information System, which includes the Automated Firearms System ("AFS"), a database of Dealer Record of Sale ("DROS") transactions intrafamilial transfers, and "assault weapon" registrations. If the person's name matches an entry in AFS, then the person will be listed in DOJ's Prohibited Armed Persons File. Collectively, this process of identifying potentially armed prohibited persons is known as the Armed Prohibited Person System ("APPS").

But APPS is only as reliable as those systems which it is built upon. And DOJ's AFS database is riddled with errors and omissions. While AFS is designed to track the transaction history of a firearm, a subtle difference between two entries involving the same firearm will be treated as a wholly separate firearm. This error often occurs in private party transactions where the firearm information as originally entered in AFS does not match that as being entered in connection with the private party transaction. Barrel lengths might be measured differently, colors may have faded, and even an "8" in a serial number can be mistaken for a "B" or vice-versa. What's more, long gun transactions prior to 2014 were not even recorded in AFS, nor were private party handgun sales prior to 1990.

---

<sup>39</sup> *Id.*

<sup>40</sup> Pen. Code § 833.5(e).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

Assuming an AFS entry exists and is correct, that mere entry does not indicate ownership or possession of the firearm. As DOJ expressed in an information bulletin to California law enforcement agencies, an “AFS transaction record simply means that on the date of transaction (DOT), the individual was eligible to own/possess firearms. *It does not indicate ownership of the firearm.*”<sup>41</sup> DOJ officials have reiterated this point under oath in testimony about the use of AFS records as the basis for a warrant in connection with APPS, stating that an AFS record “doesn’t mean there’s an actual firearm in the house” and being listed in APPS “isn’t probable cause for [DOJ] to take action.”<sup>42</sup>

Not surprisingly, the APPS program has resulted in wholly unnecessary contacts by law enforcement. As such, any person contacted by a DOJ APPS team should exercise their rights and deny consent to enter and search. Absent any other information, an APPS team should not be able to obtain a warrant if the person refuses to provide their consent. Nevertheless, we are aware of at least one instance where DOJ sought and obtained a warrant from a judge on the sole basis that AFS indicated possession, despite that person’s previous notification to DOJ, under penalty of perjury, that he no longer possessed the firearm.

### III. PROTECTING PROPERTY INTERESTS BY MAINTAINING PERSONAL FIREARM RECORDS

Because law enforcement may not always issue a property receipt when seizing firearms, it is good practice for gun owners to keep up to date records of their firearm acquisitions. This can potentially make or break a person’s efforts to get their firearms returned. Since 2014, all lawful firearm transactions conducted in

---

<sup>41</sup> *2009-BOF-03: Critical Changes to the Law Enforcement Gun Release (LEGR) Program*, California Department of Justice, Division of Law Enforcement (Jan. 4, 2010), available online at <https://www.michellawyers.com/wp-content/uploads/2019/01/Info-Bulletin-re-Changes-to-LEGR-Program.pdf> (emphasis added).

<sup>42</sup> *Silvester v. Harris*, Case No. 11-2137, Reporter’s Transcript of Proceedings – Testimony of Steven Buford (March 26, 2014); See also *Id.*, Reporter’s Transcript of Proceedings – Testimony of Blake Graham (March 26, 2014).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

California have been recorded in AFS. While gun dealers usually provide a copy or receipt of the transaction to a buyer/transferee, there has never been a requirement to keep those documents on hand. Nevertheless, it is advisable to do so for many reasons aside from seeking their return.

Should you wish to review your AFS records, you can request a copy from DOJ using the “Automated Firearms System (AFS) Request for Firearm Records” form.<sup>43</sup> Know that current processing times for this form are reported to take anywhere from 3-5 months, so be prepared for a long wait. Once you receive your AFS records and have reviewed them for accuracy, you can then decide if you want to correct any errors by submitting either a “Firearm Ownership Report”<sup>44</sup> form or “Notice of No Longer in Possession”<sup>45</sup> form as appropriate. But before taking any such action, consult an experienced firearms attorney to discuss your situation in greater detail.

If your firearms are not recorded in AFS, and you do not wish to voluntarily report their ownership to DOJ, then you should keep any sales receipts or transfer records with your personal files including any registration confirmations received from DOJ. Although you are not legally required to keep ownership records or have your firearms recorded in AFS that were not required to be recorded when first acquired (other than “assault weapons” and .50 BMG rifles), maintaining records will be useful should your firearms ever wind up in

---

<sup>43</sup> *BOF 053 (Rev. 05/2019): Automated Firearms System (AFS) Request for Firearm Records*, California Department of Justice, Bureau of Firearms, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/AFSPublicCitizen.pdf> (May 2019).

<sup>44</sup> *BOF 4542A (Rev. 05/2019): Firearm Ownership Report*, California Department of Justice, Bureau of Firearms, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/volreg.pdf> (May 2019).

<sup>45</sup> *BOF 4546 (Rev. 07/2017): Notice of No Longer in Possession*, California Department of Justice, Bureau of Firearms, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/bof-4546-nlip-09-2016.pdf> (July 2017).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

law enforcement custody or become lost or stolen. What's more, should your firearms ever become lost or stolen, having all firearm identification information can be beneficial when submitting a police report.<sup>46</sup>

If you decide to maintain your own personal records, we suggest you record at least the make, model, serial number, type, caliber, date of acquisition, cost, purchase location, and subsequent disposition information of your personally owned firearms.<sup>47</sup> But we also encourage gun owners to keep records of any accessories installed on their firearms, particularly optics which can be as expensive, if not more, than the firearm itself. Additionally, for firearms that retain a significant value based on their condition, such as curios, relics, and historical firearms, it is good practice to keep records of their condition (such as high-resolution photographs with dates). Such documentation will be extremely useful in preserving any claims should your firearms be damaged, lost, or destroyed while in police custody.<sup>48</sup>

### A. Proper Storage of Firearms

In addition to maintaining personal firearm records, proper storage of firearms is critical. While the safety reasons for doing so should be self-explanatory, ensuring all firearms are stored in accordance with state and local laws will prevent law enforcement from seizing a firearm in connection with a violation of those laws.

---

<sup>46</sup> California law requires individuals to report the theft or loss of a firearm within 5 days of when it became known or reasonable should have been known that the firearm was lost or stolen. Pen. Code § 25250(a). What's more, being able to provide law enforcement with identifying information of the firearm (such as a serial number) will significantly increase the likelihood of the firearm being returned to you should it ever be recovered.

<sup>47</sup> The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") has a publicly available form that can be printed or stored electronically for this purpose. See <https://www.atf.gov/firearms/docs/guide/personal-firearms-record-atf-p-33128>. But you can use any method you so choose.

<sup>48</sup> The California Supreme Court has ruled that law enforcement agencies act as a "bailee" when seizing property that is not contraband. *Minsky v. City of Los Angeles*, 11 Cal. 3d 113, 121 (1974). This means the agency can be held civilly liable for any damages the agency's negligence or recklessness causes in handling, transporting, or storing firearms. *Id.* It is for this reason that having evidence of a firearms condition and configuration prior to its seizure by law enforcement can be useful in making such a claim, if necessary.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

In general, California law prohibits individuals from storing their firearms in a manner where a prohibited person or child is known or reasonably should have been known to gain access to it.<sup>49</sup> Note that this restriction does not provide express instructions on how to store your firearms.<sup>50</sup> That said, defenses include when the firearm is kept in a locked container (such as a gun safe) or is disabled with a firearm safety device (such as a trigger lock).<sup>51</sup> Gun owners should also be aware that some local jurisdictions place additional restrictions on how firearms are stored in one's home, often expressly requiring all firearms to be stored in a locked container or disabled with a trigger lock even when children or prohibited persons are not present.<sup>52</sup> By ensuring your firearms are stored in accordance with all state and local laws, you can avoid the potential for confiscation of your firearms in the event they are discovered by law enforcement if you are contacted for any reason.

#### IV. DISPOSAL OR DESTRUCTION OF SEIZED FIREARMS BY LAW ENFORCEMENT

After seizing a firearm, California law enforcement agencies are generally not required to retain it for more than 180 days after the owner has been notified (by either a court or the agency itself) that the firearm can

---

<sup>49</sup> See Pen. Code §§ 25000-25225.

<sup>50</sup> Note that California law expressly forbids the possession of an “assault weapon” or .50 BMG rifle unless registered to the individual as such and places specific conditions on their continued possession. See Pen. Code § 30945. What this means in the context of California’s storage requirements is that lawful owners of such firearms should store them in a manner to prevent access by others. Failure to do so could constitute the unlawful transfer and subject the firearm to confiscation if accessible by a non-registered owner.

<sup>51</sup> See Pen. Code §§ 25105, 25135.

<sup>52</sup> See, e.g., Los Angeles Mun. Code § 55.21 (prohibiting persons from keeping a handgun in a residence unless stored in a locked container, disabled with a trigger lock, carried on the person, or within proximity to the owner).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

be returned.<sup>53</sup> After 180 days, the law enforcement agency may then dispose of the firearm in accordance with California law, which can include destruction of the firearm.<sup>54</sup>

In general, when the firearm in question was an exhibit filed in any criminal action but is no longer needed, or is unclaimed or abandoned property which has been in the possession of the agency for at least 180 days, the firearm must either be sold or destroyed as provided for in Penal Code sections 18000 and 18005 which provides the following means of disposal:

- Unless ordered by a court or district attorney to the contrary, the law enforcement agency may offer the firearm for sale at public auction to California licensed firearm dealers if the firearms have value with respect to sporting, recreational, or collection purposes.
- If the firearm was stolen or is used in a manner as to constitute a “nuisance” without the prior knowledge of its lawful owner, it shall not be offered for sale and instead be restored to the lawful owner upon proof of ownership.
- If the firearm is of the type that cannot be sold to the public, or is not sold when offered for sale at public auction by the agency and if necessary to conserve local resources, the firearm shall be destroyed unless ordered otherwise by a court or a district attorney.<sup>55</sup>

Stolen firearms cannot be sold or destroyed unless reasonable notice is given to its lawful owner, provided the owner can be identified and their address can be reasonably ascertained.<sup>56</sup> And should a firearm be retained or destroyed pursuant to the above, the law enforcement agency is required to notify DOJ of the retention or destruction with a complete description of the firearm, including the manufacturer, model, caliber, and serial number.<sup>57</sup> Aside from the above, firearms can also be disposed of in one of the following manners:

---

<sup>53</sup> Pen. Code § 33875(a). Beginning July 1, 2020, this will also apply to any “ammunition feeding device” or ammunition that is also in possession of law enforcement.

<sup>54</sup> *Id.*

<sup>55</sup> Pen. Code § 18005(a-c). Any firearm that is deemed a “nuisance” by a court can also be sold or destroyed pursuant to this section. See Pen. Code § 29300.

<sup>56</sup> Pen. Code § 18005(d).

<sup>57</sup> Pen. Code § 34010.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

- Firearms useful to the military or National Guard may be delivered to such entities upon approval of the Adjutant General and the legislative body of the jurisdiction in which the agency is located.
- Surplus military equipment may be offered to the California State Military Museum and Resource Center (as well as any military branch museum).
- The law enforcement agency may retain and use them as they may be useful in carrying out the official duties of the agencies.
- Upon approval of a court, law enforcement agencies may either:
  - Release the weapons to any other law enforcement agency for use in carrying out their official duties;
  - Turn over to the criminalistics laboratory of DOJ or a local law enforcement agency for purposes of carrying out their official duties; or,
  - Turn the firearms over to the sheriff, who will then enter them into AFS and release the firearms to the basic training academy certified by the Commission on Peace Officer Standards and Training for purposes of instruction.<sup>58</sup>

### **A. Special Rules Applicable to Fish & Game Code Violations**

Any firearm in the possession of the Department of Fish and Wildlife that was used in the connection with a violation of any of California’s Fish and Game Code or related regulations are not considered a “nuisance” subject to destruction. Instead, such firearms (as well as any other “device” or “apparatus” used in connection with the violation) can be forfeit pursuant to Fish and Game Code section 12157. Any firearms ordered forfeit pursuant to this section must be “sold, used, or destroyed by the department.”<sup>59</sup> So unlike other firearm seizures, there is no 180-day notice requirement.

---

<sup>58</sup> See Pen. § Code 34005. Note that in general, any firearms transferred to another agency or department shall be destroyed when it is no longer needed by the agency for use in carrying out its official duties. See, e.g., Pen. Code § 34005(c)(1).

<sup>59</sup> Fish & Game Code § 12157(e).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.



## B. Special Rules Applicable to Mental Health Evaluations

As previously noted, law enforcement agencies are required to retain custody of a firearm seized from a person who has been detained or apprehended for examination of their mental condition, or if the person is one described in Welfare and Institutions Code sections 8100 or 8103.<sup>60</sup>

Generally, the procedures for the return, sale, or transfer of a confiscated firearm pursuant to this section is the same used in Penal Code section 33850 and the related sections discussed below. However, within 30 days of the release of a person detained or apprehended for examination of their mental condition, the law enforcement agency may initiate a petition with a court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others.<sup>61</sup> Should the law enforcement agency decide not to file a petition, any firearms shall be made available for return pursuant to Penal Code section 33850 and related sections.<sup>62</sup>

If the law enforcement agency files a petition, the individual will be given 30 days to ask for a formal hearing.<sup>63</sup> Failure to respond will result in a default order forfeiting the confiscated firearms.<sup>64</sup> If the individual files a response, the clerk will set a hearing no later than 30 days from the receipt of the request.<sup>65</sup> If the court

---

<sup>60</sup> Welf. & Inst. Code § 8102.

<sup>61</sup> Welf. & Inst. Code § 8102(c). The law enforcement agency can also make a request for an extension to file an application for an additional 30 days upon a showing of good cause. And while it is not expressly stated, the burden of proof placed upon the law enforcement agency making such a petition should be at least “clear and convincing,” (see, e.g., *Addington v. Texas*, 441 U.S. 418, (1979) (holding that to meet due process demands, the standard of proof must be greater than the “preponderance of evidence” standard)), California courts have not extended this protection and have instead held the lesser “preponderance of evidence” standard sufficient. See, e.g., *Foster City Police Department v. Mikhail Ilyin*, 2011 WL 1085174 (Cal. Ct. App. Mar. 24, 2011) (unpublished).

<sup>62</sup> Welf. & Inst. Code § 8102(d).

<sup>63</sup> Welf. & Inst. Code § 8102(e).

<sup>64</sup> *Id.*

<sup>65</sup> Welf. & Inst. Code § 8102(f).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

determines that the return of any firearm would likely endanger the person or others, the law enforcement agency may then destroy the firearm after 180 days, unless the person contacts the law enforcement agency to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Penal Code section 33870.<sup>66</sup>

In practice, this hearing process doesn't change the fact that the law enforcement agency cannot destroy seized firearms prior to the expiration of 180 days, nor does it prevent the individual from transferring the firearms to a dealer to recover their value. Additionally, it is likely the individual will be prohibited from owning or possessing firearms for a period of five years following their detention or apprehension regardless of any decision by the court.<sup>67</sup> As a result, the entire process is arguably a big waste of valuable judicial and law enforcement resources. Nevertheless, if you are served a hearing notice pursuant to Welfare and Institutions Code section 8102, be sure to speak with an attorney well-versed in California firearm laws to discuss your options.

### **C. Special Rules Applicable to Firearms Seized as Result of Issuance of GVRO**

If a firearm was seized or surrendered to law enforcement following the issuance of a GVRO, any firearms or ammunition shall be returned to the restrained person in accordance with Penal Code section 33850 upon expiration of the restraining order.<sup>68</sup> But if a person other than the restrained person claims title to any firearms or ammunition seized as a result of a GVRO, and the law enforcement agency determines them to be the lawful owner, the firearms must be returned to them.<sup>69</sup>

---

<sup>66</sup> Welf. & Inst. Code § 8102(h).

<sup>67</sup> Welf. & Inst. Code § 8103(f)(1).

<sup>68</sup> Pen. Code § 18120(c)(1).

<sup>69</sup> Pen. Code § 18120(d).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

#### **D. Special Rules Applicable to Firearms Seized During Execution of a Warrant**

California law also provides that all property taken on a warrant must be retained by law enforcement subject to order of the court.<sup>70</sup> This means that any firearms (or any other items for that matter) seized in connection with a pending criminal matter will be held as evidence for as long as necessary until the court that issued the warrant orders otherwise.

While being held as evidence, seized firearms are not “available for return,” meaning the process to have them returned cannot be initiated. Nor should the law enforcement agency be able to initiate the process for their destruction. But as discussed in greater detail below, any person with an interest in firearms seized following the execution of a warrant **should notify the court of their interest** and request the court not issue an order for their destruction.

Additionally, although obtaining an order from a court to release the firearms is necessary, there are other requirements for securing the return of a firearm from a law enforcement agency.<sup>71</sup> These requirements are discussed in more detail below.

#### **E. Special Rules Applicable to Firearms Seized at Scene of Domestic Violence Incident**

Should a firearm be seized at the scene of a domestic violence incident, California law provides that the firearm must be held for at least 48 hours by law enforcement.<sup>72</sup> But if the firearm is ultimately not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, it must be made available for return after 48 hours after the seizure,

---

<sup>70</sup> Pen. Code § 1536.

<sup>71</sup> See, generally, Pen. Code §§ 33800-34010.

<sup>72</sup> Pen. Code § 18265(a).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

or as soon as thereafter possible, but no later than five business days.<sup>73</sup> Should the law enforcement agency fail to make the firearm available for return, California law allows the firearm's owner to pursue a civil action against the agency.<sup>74</sup> If successful, a claimant can recover reasonable attorney's fees.<sup>75</sup>

#### **F. Special Rules Applicable to Firearms Surrendered Following Prohibiting Convictions**

Since January 1, 2018, any firearm surrendered to law enforcement pursuant to Penal Code section 29810 is generally subject to destruction, retention, sale, or other transfer by the law enforcement agency after 30 days.<sup>76</sup>

Exceptions to this include:

- Upon the certificate of a judge of a court or record or district attorney of the county that the retention of the firearm is necessary or proper to the ends of justice;
- If the defendant provides written notice of an intent to appeal a conviction for the offense; or,
- If DOJ's AFS database indicates the firearm was reported lost or stolen by the lawful owner, in which case the firearm shall be returned to its lawful owner as soon as the firearm is no longer useful for evidence purposes.<sup>77</sup>

#### **V. DUE PROCESS AS APPLIED TO SEIZED FIREARMS**

California courts have repeatedly held that a firearm is "property" with the protection of the United States Constitution and the California Constitution.<sup>78</sup> As property, firearms may not be subject to forfeiture without due process of law. Of course, legislative regulation and limitation of the rights to acquire, enjoy, own

---

<sup>73</sup> Pen. Code § 18265(b). Note that the owner must still satisfy all the requirements of Penal Code section 33850 before the firearm can be released by LAPD.

<sup>74</sup> Pen. Code § 18265(c).

<sup>75</sup> *Id.*

<sup>76</sup> Pen. Code § 29810(i).

<sup>77</sup> *Id.*

<sup>78</sup> See, e.g., *Bryte v. City of La Mesa*, 207 Cal. App. 3d 687, 689 (1989) ("[t]here is no question but that firearms and weapons are "property" and, accordingly, that the due process clauses of the federal and state constitutions apply to their seizure").

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

and dispose of property are generally upheld, particularly with respect to firearms. But absent statutory authorization, infringement of property rights by a public agency exposes it to damage claims due to the constitutional or statutory violation. This is particularly true when a public employee or agency flouts statutory procedures.

The United States Supreme Court has recognized that even temporary deprivation of property without a hearing may implicate a due process violation.<sup>79</sup> As such, California must provide some form of due process for temporary seizures of firearms or risk liability.<sup>80</sup> Should the owner of a firearm be harmed as a result of its temporary but wrongful seizure, the California Court of Appeal has held that the owner must be compensated.<sup>81</sup> But even if the initial seizure was lawful, failure to return the property after the legal basis for retention ends violates due process. As stated by the California Supreme Court, “the government in effect occupies the position of a bailee when it seizes from an arrestee property that is not shown to be contraband.”<sup>82</sup>

---

<sup>79</sup> *Connecticut v. Doehr*, 501 U.E. 1, 12 (1991).

<sup>80</sup> See, generally, *North Georgia Finishing v. Di-Chem*, 419 U.S. 601, 606 (1985) (finding a due process violation where “a bank account, surely a form of property, was impounded and, absent a bond, put totally beyond use during the pendency of the litigation . . . without notice or opportunity for an early hearing”).

<sup>81</sup> *Sandrini Bros. v. Voss*, 7 Cal. App. 4th 1398 (1992) (property owners are entitled to compensation if their seized property is later determined to have been wrongly seized and the property is damaged during this temporary deprivation of property).

<sup>82</sup> *Minsky v. Los Angeles*, 11 Cal. 3d 113, 121 (1974).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

Law enforcement agencies must provide the owner of a seized firearm with notice and an opportunity to be heard before it is destroyed.<sup>83</sup> To the destroy property without legal authority, or without notice and opportunity for either the owners or the person from whom it was seized to be heard, violates due process.<sup>84</sup>

This is also true even when the owner or interested party has no right to the return of the firearm (such as when the person has been convicted of a prohibiting criminal offense). Such individual could demonstrate a constitutional deprivation by simply showing the agency with custody of the firearm had failed to notify them of the seizure, depriving the owner of the opportunity to contest that seizure.<sup>85</sup> In other words, when a firearm owner is not given notice and opportunity for a hearing, they may be entitled to at least nominal damages in addition to attorneys' fees, as well as any punitive damages that may be awarded in an action under section 1983 of Title 42 of the United States Code.<sup>86</sup>

---

<sup>83</sup> See, e.g., *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) (“[a] fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”) (citations omitted); See also *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.E. 306, 313 (1950) (“at a minimum [the Due Process Clause] require[s] that deprivation of . . . property . . . be preceded by notice and opportunity for hearing appropriate to the nature of the case”) (citations omitted).

<sup>84</sup> See, e.g., *Kash Enters., Inc. v. Los Angeles*, 19 Cal. 3d 294, 306 (1997) (holding that the seizure, retention and destruction of a newsrack without affording the owner either a pre-taking or post-taking hearing is an unconstitutional violation of the owner’s due process rights).

<sup>85</sup> *Ford v. Turner*, 531 A.2d 233 (D.C. 1987); See also *Property v. District of Columbia*, 948 F.2d 1327 (D.C. Cir. 1991) (holding that owner entitled to notice and opportunity to be heard before “junk” property was destroyed).

<sup>86</sup> *Id.* at 240; See also *Trevino c. Gates*, 888 F. Supp. 1509 (C.D. Cal. 1995) (awarding plaintiff \$500,000 in attorneys’ fees in action awarding \$1 compensatory damages and \$9,109 punitive damages); *Kellogg v. City of Gary*, 562 N.E.2d 685 (Ind. 1990) (awarding \$524,600 in attorneys’ fees along with compensatory and punitive damages in civil rights action involving firearms).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

Hearings given by an agency of its own accord are insufficient to satisfy due process requirements, as the procedure for such hearings must be provided for in the law itself.<sup>87</sup> As stated by the California Court of Appeal:

*The rule is well settled that to constitute due process of law in regard to the taking of property the statute should give the parties interested some adequate remedy for the vindication of their rights. A provision in the statute or ordinance providing a hearing ensures that the response of the administrative entity will be a steered and uniform procedure, rather than a haphazard one.*<sup>88</sup>

Persons whose firearms are confiscated or surrendered as a result of a criminal conviction still have the right to sell any firearms they legally owned prior to their conviction. As stated by the California Court of Appeal, “it is defendant, not the state, who has the right to designate disposition of the title” and that a “successor owner, if qualified, may obtain possession of the firearms.”<sup>89</sup> Thus, a person who legally owned their firearms before their conviction has the right to sell them to a non-prohibited person and collect the revenue from the sale.

#### **A. Firearms Designated “Nuisance”**

In general, firearms owned or possessed by prohibited persons or those used in the commission of a crime are designated a “nuisance” under California law upon conviction of the defendant.<sup>90</sup> Some firearms and firearm-related equipment are, by their nature, also labeled a “nuisance” under California law. This includes short-barreled rifles and shotguns, zip guns, can guns, wallet guns, unconventional pistols, multi-burst trigger

---

<sup>87</sup> *Bryte v. City of La Mesa*, 207 Cal. App. 3d 687, 689 (1989) (holding that a statute permitting peremptory seizure of property must contain a provision for administrative review or the statute will be found unconstitutional because of a lack of due process).

<sup>88</sup> *Phillips v. San Luis Obispo County Dep’t of Animal Regulations*, 183 Cal. App. 3d 372, 380 (1986) (also noting that “a hearing granted as a matter of discretion is no substitute for due process”).

<sup>89</sup> *People v. Beck*, 25 Cal. App. 4th 1095, 1106 (1994).

<sup>90</sup> Pen. Code § 29300(a). This can also include “attempted” commissions of a crime. *Id.*

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

activators, and so-called “large capacity” magazines.<sup>91</sup> Other firearms including “assault weapons,” .50 BMG rifles, machineguns, are also expressly labeled a “nuisance.”<sup>92</sup>

If a firearm is considered a “nuisance,” it must be surrendered to law enforcement. Because this generally results in the forfeiture of the firearm, due process requires notification to the firearm’s owner and a hearing.<sup>93</sup> When the owner of the firearm is convicted of an offense in which the firearm was illegally possessed or used, the conviction itself will likely satisfy due process requirements.<sup>94</sup> But if the owner is not convicted, or if the conviction does not establish that the firearm was used to commit a crime or was otherwise illegally possessed (meaning the use or possession of the firearm is unrelated to the conviction), due process requires a hearing before the firearm can be forfeited.<sup>95</sup>

Put simply, due process generally requires notice and hearing for firearms considered a “nuisance” under California law before the firearm can be forfeited. If you are unsure whether you have received proper notice and an actual hearing regarding your seized or otherwise surrendered firearms, consult with an attorney experienced in California’s firearm laws.

---

<sup>91</sup> See, generally, Pen. Code § 18010. See also Pen. Code § 16590.

<sup>92</sup> Pen. Code § 30800, 32750.

<sup>93</sup> See, e.g., *United States v. James Daniel Good Real Property*, 510 U.S. 43, 48-49 (1993) (noting that due process generally requires individuals “receive notice and opportunity to be heard before the Government deprives them of property”).

<sup>94</sup> See, e.g., *People v. Beck*, 25 Cal.App.4th 1095, 1101 (1994) (noting that some crimes “would in themselves demonstrate . . . that the defendant . . . ‘used [the weapon] in the commission’ of the crime”).

<sup>95</sup> *Id.* at 1103 (noting California “cannot expropriate private property by mere legislative enactment without violating preeminent principles of constitutional law” and that “[i]n the absence of a necessary factual determination . . . there was no basis for declaring defendant’s firearms a nuisance” as a result of unrelated marijuana cultivation conviction).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.



## i. “Contraband” Firearms

Like firearms declared a “nuisance” under California law, certain firearms that are unlawful to possess may be considered “contraband.” In general, a person is not entitled to the return of such property because California has “the right to detain any property which is unlawful to possess, and such right exists whether the property was lawfully seized or not.”<sup>96</sup>

However, there is a legal distinction between “contraband per se” (property that is intrinsically illegal such as illegal drugs), and “derivative contraband” (otherwise legal property used or possessed in an unlawful manner such as a vehicle used in the commission of a crime).<sup>97</sup> Property that is contraband per se is generally subject to seizure and destruction without notice or hearing to its owner.<sup>98</sup> Conversely, property that is derivative contraband can only be forfeited as law permits and when its owner is afforded due process.<sup>99</sup>

As a result, firearms are usually not contraband per se, but can be derivative contraband if they are unlawfully possessed. Surprisingly, a firearm owner can still hold a property interest in seized firearms even when the owner is prohibited from possessing them as a result of a prior conviction or other prohibiting

---

<sup>96</sup> *People v. Superior Court (McGraw)*, 100 Cal.App.3d 154, 157 (1979); *See also Ensoniq Corp. V, Superior Court*, 65 Cal.App.4th 1537, 1547 (noting that although both criminal defendants and nondefendants may move for the return of seized property because the search or seizure was unlawful, “only legal property may be returned to the person from whom it was taken”); Pen. Code § 1538.5(e) (stating “property shall be returned upon order of the court unless it is otherwise subject to lawful detention”).

<sup>97</sup> *One 1958 Plymouth Sedan v. Com. Of Pa.*, 380 U.S. 693, 699 (1965); *See also City of Garden Grove v. Superior Court*, 157 Cal.App.4th 355, 391 (2007) (holding return of defendant’s marijuana proper despite conflicting federal laws); *County of Butte v. Superior Court*, 175 Cal.App.4th 729, 744 (2009) (noting due process rights do not arise “from the seizure or destruction of contraband per se”). What’s more,

<sup>98</sup> *County of Butte, supra*, 175 Cal.App.4th at 744; *See also People v. One 1941 Chevrolet Coupe*, 37 Cal.2d 283, 286 (1951) (stating there “can be no forfeiture of property without notice to the owner and a hearing at which he can be heard, except in a few cases of necessity, i.e., property kept in violation of law which is incapable of lawful use”).

<sup>99</sup> *Once 1941 Chevrolet Coupe, supra*, 37 Cal.2d at 286 (1951) (noting when property is “innocent property, threatening no danger to the public welfare, the owner must be afforded a fair opportunity to be heard”).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

event.<sup>100</sup> And according to a recent United States Supreme Court decision, even convicted felons have the right to sell their confiscated firearms.<sup>101</sup>

## VI. THE RETURN OF FIREARMS IN CUSTODY OF A CALIFORNIA LAW ENFORCEMENT AGENCY

Should your firearms be confiscated or otherwise be possessed by law enforcement for any reason, California law requires certain procedures before the agency can return them. Of critical importance here are some additional steps gun owners should take to prevent the possibility of the authorities unnecessarily destroying your firearms.

### A. Law Enforcement Gun Release Process

As a threshold matter, California law requires any person who claims title to any firearm in custody or control of a court or law enforcement agency to submit an application, called a “Law Enforcement Gun Release Application” (“LEGR”), to DOJ to determine whether the individual is eligible to own or possess a firearm.<sup>102</sup> Since 2019, this application can only be submitted electronically via the California Firearms Application Reporting system (“CFARS”).<sup>103</sup> At this time, the processing fee for a LEGR application is \$20 for the first

---

<sup>100</sup> *United States v. Seifuddin*, 820 F.2d 1074, 1079 (9th Cir. 1987) (noting defendants in criminal case “could hold a property interest in the forfeited [firearms] without that interest being possessory”); *See also Beck, supra*, 25 Cal.App.4th at 1106 (“it is defendant, not the state, who has the right to designate disposition of the title” to the seized firearms).

<sup>101</sup> *Henderson v. United States*, 575 U.S. 622 (2015) (noting the “right to possess” a firearm is inherently different from “the right merely to sell or otherwise dispose of” the firearm).

<sup>102</sup> See Pen. Code § 33850. Note also that any “assault weapon” or .50 BMG rifle can only be returned to the person listed in AFS as the registered owner because no one else may lawfully possess such a firearm in California. See Pen. Code §§ 30910, 30935.

<sup>103</sup> See Pen. Code § 33850(a); See also <https://cfars.doj.ca.gov>. A copy of the original paper form is still available on DOJ’s website at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/legr.pdf>.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

firearm and \$3 for each additional firearm listed on the application.<sup>104</sup> Completing this application requires the applicant to provide the following information:

- Name, date and place of birth, gender, telephone number, and complete address;
- Citizenship information<sup>105</sup>;
- The firearm's make, model, caliber, barrel length, type, county of origin, and serial number<sup>106</sup>;
- The applicant's driver's license or identification card number issued by the Department of Motor vehicles<sup>107</sup>;
- The name of the court or law enforcement agency holding the firearm; and,
- The signature of the applicant and date of signature.<sup>108</sup>

As you can see from the above, LEGR applications require a significant amount of information regarding the firearm, demonstrating the importance of having this information on hand should the law enforcement agency fail to issue a property receipt. And even if you are issued a property receipt, the information regarding the firearm can be incorrect or inaccurate.

Assuming you satisfy all requirements, DOJ will send the applicant a Law Enforcement Gun Release – Firearms Eligibility Clearance Letter, which can then be presented to the law enforcement agency in custody of

---

<sup>104</sup> See <https://oag.ca.gov/firearms/pubfaqs#31>. These fees may be waived if the firearm was reported as lost or stolen and the lawful owner is seeking its return. See Pen. Code § 33855(d). But in order to avail oneself of this provision, the law enforcement agency who has custody of the firearm must notify DOJ. *Id.*

<sup>105</sup> If the applicant is not a U.S. citizen, country of citizenship and alien registration or I-94 number must be included.

<sup>106</sup> Unless the firearm is not a handgun and does not have a serial number or other identification mark, in which case the applicant must note this on the application.

<sup>107</sup> For nonresidents, a copy of the applicant's military identification with orders indicating that the individual is stationed in California, or a copy of the applicant's valid driver's license or identification card from their state of residence.

<sup>108</sup> Pen. Code § 33850(a)(1-6).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

the firearm.<sup>109</sup> Be warned, however, that such letters are only valid for a period of 30 days. Obtaining this letter from DOJ should therefore be one of the last steps taken in the return process.

Even if a person receives a determination from DOJ that they are eligible to own and possess firearms following the submission of a LEGR application, the law enforcement agency cannot return the firearm unless the following requirements are satisfied:

- If the agency has direct access to AFS, the agency must verify the firearm is not listed as stolen and is otherwise recorded in AFS in the name of the individual who seeks its return; and,
- The individual must pay the local law enforcement agency any fees equal to its administrative costs relating to the seizure, impounding, storage, or release of any firearm or ammunition.<sup>110</sup>

Although California law appears to suggest the firearm must be recorded in AFS under the individual's name, DOJ has previously stated this is not necessarily the case.

#### **i. Firearms Not Listed In AFS**

As stated in an information bulletin from DOJ's Division of Law Enforcement to all California Sheriffs and Chiefs of Police, all records of handguns transferred by a licensed dealer in California are generally maintained in AFS, but the requirement that firearms be listed in AFS as a condition of being returned by a law enforcement agency "may be problematic for long guns."<sup>111</sup> As explained by DOJ, it is "likely there is no record of a long gun in AFS" because DOJ was previously "prohibited from retaining records for transfers of long guns."<sup>112</sup> In fact, the only records of long guns in AFS at that time were registered "assault weapons," firearms

---

<sup>109</sup> DOJ is generally required by law to process LEGR applications within 30 days, but recent reports indicate current processing times of about 3 months. Pen. Code § 33865(b).

<sup>110</sup> Pen. Code §§ 33855(b), 33855(d).

<sup>111</sup> California Department of Justice, Division of Law Enforcement, *Critical Changes to the Law Enforcement Gun Release (LEGR) Program* (Jan. 4, 2010), available online at <http://michellawyers.com/wp-content/uploads/2019/01/Info-Bulletin-re-Changes-to-LEGR-Program.pdf>.

<sup>112</sup> *Id.* It was not until January 1, 2014, that all long gun transfers were recorded in AFS.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

reported as lost or stolen, firearms taken into law enforcement custody, and records of ownership that were voluntarily reported to DOJ.

What's more, setting aside any errors with existing AFS records, handgun transfers were not required to be processed by a California licensed firearms dealer prior to 1990. Meaning handguns acquired prior to 1990 may not have an existing AFS record.

As such, DOJ's bulletin made clear that even if AFS does not have a record for a firearm transaction, the law enforcement agency or court may still return a firearm to an individual who can present adequate proof of ownership, "such as a sales receipt from a licensed firearms dealer or other evidence" that the firearm was sold or transferred in a lawful manner.<sup>113</sup> Nevertheless, many law enforcement agencies still incorrectly require individuals seeking the return of their firearm to voluntarily register it with DOJ.

## ii. *Churchill v. Harris*

In prior versions of LEGR applications, DOJ included superfluous statements that created widespread confusion for law enforcement and the public. These statements even influenced some agencies to adopt illegal policies and procedures for firearm return and release. Ultimately, gun owners filed a lawsuit to challenge these policies, *Churchill v. Harris*, against DOJ, the City and County of San Francisco, and the City of Oakland.

*Churchill* challenged San Francisco and Oakland's refusal to return firearms on the basis that they could not establish ownership of the firearms, largely because of DOJ's statements on the LEGR itself. While the DOJ avoided liability by arguing its statements were "merely opinion" and not binding on San Francisco and Oakland, the parties in the lawsuit ultimately reached a settlement.

---

<sup>113</sup> *Id.* ("Enclosure 3" at p. 1). But even this is potentially problematic as California law does not require an individual to keep ownership records of firearms.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

Although DOJ has since updated the LEGR application, it still suggests law enforcement can only return a firearm to someone who can prove they are the “owner” of the firearm, and that the person must have an AFS entry associated with that firearm before it can be returned. As a result, there is still widespread confusion among gun owners and law enforcement regarding the LEGR process.

## **B. Release of Firearms to Licensed Firearms Dealer**

As noted above, California law generally allows firearms in law enforcement’s custody to be transferred to a California licensed firearms dealer.<sup>114</sup> Doing so can simplify the return process, provided the firearms are eligible for return. If not, the owner will be able to sell the firearms to recover their fair market value.<sup>115</sup>

Before law enforcement agencies can release the firearms to a licensed dealer, however, the agency must first verify that 1) the individual requesting the release is in fact the legal owner of the firearm, 2) the owner is prohibited from possessing the firearm, and 3) the firearm is otherwise legal in California.<sup>116</sup> Significantly, the law does not specify exactly how a law enforcement agency is to make the required determination. In effect, this means the law enforcement agency can adopt specific policies and procedures that the owner will need to satisfy in order to have their firearm transferred to a dealer. Such policies and procedures can be set by local ordinance or the law enforcement agency itself.<sup>117</sup>

### **i. Return of Firearms Temporarily Stored with Licensed Firearms Dealer**

If you stored your firearms with a licensed dealer pending the expiration of a temporary prohibition (such as a restraining order or 5150), the dealer can only return them in accordance with typical firearm transfer

---

<sup>114</sup> See Pen. Code § 33870(a).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Examples of such policies are discussed in greater detail below.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

requirements.<sup>118</sup> This essentially requires the firearm owner to resubmit a Dealer Record of Sale (“DROS”) and undergo a background check. Before initiating the DROS, however, it is suggested the person first submit a Personal Firearms Eligibility Check (“PFEC”) to ensure their firearm prohibition has expired.<sup>119</sup>

Note dealers may charge the owner “a reasonable fee for the storage of the firearm or ammunition” in addition to the fees required to submit a DROS.<sup>120</sup> Because even temporary restrictions can last years, the costs for storage at a dealer may exceed the value of the firearm in such cases. For this reason, be sure to discuss any storage fees with the dealer prior to storing firearms with them.

## ii. Release of Firearms to Non-Prohibited Transferee

Depending on the law enforcement agency and its policies, it may also be possible to release the firearms to a non-prohibited transferee (such as a family member) provided certain requirements are met. Transfers of firearms to “immediate family members” are generally exempt from California’s dealer processing requirements.<sup>121</sup> This means a transfer to an immediate family member need not be processed by a California licensed firearms dealer. Instead, the recipient need only complete and submit a “Report of Operation of Law or Intra-Familial Firearm Transaction Form” to DOJ within 30 days of taking possession.<sup>122</sup>

Processing this form will generate an AFS record for the firearm being transferred. But before the gun can be released to the new owner, a Law Enforcement Gun Release Application must also be submitted to

---

<sup>118</sup> Pen. Code § 29830(d).

<sup>119</sup> You can download the PFEC form from DOJ’s website at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/pfecapp.pdf>.

<sup>120</sup> Pen. Code § 29830(b).

<sup>121</sup> For purposes of this exception, the relationship must be either a parent-child or grandparent-grandchild type relationship. Pen. Code § 16720; See also Pen. Code §§ 27545 (dealer processing requirement), 27875 (exception for transfers of firearms by gift or bequest to immediate family).

<sup>122</sup> A copy of this form is available on DOJ’s website at <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/oplaw.pdf>. See also Pen. Code § 27875.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

DOJ.<sup>123</sup> Alternatively, the new owner could direct the law enforcement agency to transfer the firearms to a dealer who could then DROS the firearm to the new owner as discussed above.

## VII. LOCAL ORDINANCES AND LAW ENFORCEMENT AGENCY POLICIES

Although California law is relatively comprehensive concerning the disposition of firearms in law enforcement custody, local city or county ordinances and local law enforcement policies regarding the seizure and/or return of a firearm may apply. In addition to providing a better understanding of the return process, knowing these policies in advance may also prove useful when interacting with law enforcement during an unexpected encounter.

While it is impossible to address every local jurisdiction in this bulletin, Los Angeles County and the City of Los Angeles will be discussed as examples. If you happen to live outside of Los Angeles, you can usually find your county's code of ordinances and city's municipal codes through a simple web search. Additionally, your county and city clerk or records office may also be able to assist you in identifying any regulations, ordinances, or resolutions regarding the return of a firearm to its lawful owner.

### A. Los Angeles County & The City of Los Angeles

Currently, the County of Los Angeles itself does not appear to have any codes in addition to state law regarding the disposition of firearms in custody of law enforcement. However, on November 22, 2005, the Board of Supervisors passed a resolution establishing a \$54 "administrative fee" to be charged by the Los Angeles County Sheriff's Department ("LASD") for purposes of "fully recovering personnel costs associated

---

<sup>123</sup> For this reason, it may be prudent to submit both the Intra-Familial Firearm Transaction Form and the Law Enforcement Gun Release application to DOJ at the same time with a brief letter explaining the reason for the submission. Doing so will help reduce the time it would take to submit and process both forms separately.

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.



with the release of seized, stored, or impounded firearms.”<sup>124</sup> This means that LASD will charge a person \$54 per firearm they attempt to retrieve.

The ability to charge this fee is authorized under California law, which allows a city, county, or city and county to “adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of any firearm or ammunition.”<sup>125</sup> However, whether this practice is constitutional, particularly in cases where a large number of firearms have been seized, is unclear.<sup>126</sup>

The City of Los Angeles also charges a fee pursuant to Municipal Code section 22.277, requiring the Los Angeles Police Department (“LAPD”) to charge \$107 per firearm for persons subject to a domestic violence protective order. This appears to be the only City fee. And as is the case with LA County’s \$54 “administrative fee,” it remains to be seen if the City’s \$107 fee is excessive under the Eighth Amendment, particularly in the context of a large quantity of firearms.

In addition to the fees assessed in LA County and the City, both LASD and LAPD have express policies and procedures regarding the seizure and return of a firearm.

---

<sup>124</sup> See [http://file.lacounty.gov/SDSInter/bos/sop/113193\\_112205reg.pdf](http://file.lacounty.gov/SDSInter/bos/sop/113193_112205reg.pdf)

<sup>125</sup> Pen. Code § 33880(a).

<sup>126</sup> In 2019, the United States Supreme Court issued a decision in *Timbs v. Indiana*, which challenged the seizure of a \$42,000 Land Rover SUV in connection with a conviction for dealing in controlled substances and conspiracy to commit theft. *Id.*, 139 S.Ct. 682 (2019). Because the Land Rover was paid for using money received from an insurance policy separate from any criminal activity, and because it was valued over four times the maximum \$10,000 fine, *Timbs* challenged the seizure as a violation of the Eighth Amendment’s Excessive Fines Clause. *Id.* The court ultimately incorporated the Excessive Fines Clause as applicable to the States under the Fourteenth Amendment’s Due Process Clause and remanded the case for further proceedings. *Id.* at 691. Litigation in the lower courts is ongoing. How this case affects “seizure, impounding, storage, or release of any firearm or ammunition” fees in the context of large collections remains to be seen.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

## i. LASD Firearm Return Policy

LASD maintains a policy regarding the release of a firearm to its owner in section 5-04/180.30 of its Manual of Policy and Procedures.<sup>127</sup> As stated in this policy, LASD will only release a firearm to its owner when the following conditions are met:

- An investigating officer and lieutenant approval to release is recorded in LASD's "Property, Evidence and Laboratory Information Management System ("PRELIMS");
- The owner has been notified in writing that the firearm is eligible for release;
- The owner presents proof of identification as well as an official letter from DOJ (a LEGR) stating they are eligible to possess a firearm, which is presented within 30 days from the date of issuance;
- The owner pays the storage/processing fees required by LASD for each firearm released at the station where the firearm was confiscated;
- Each firearm is checked in DOJ's AFS database to confirm it has been recorded in the name of the person who seeks to recover possession and ensure it has not been reported stolen, provided that if AFS does not indicate a registered owner or shows a registered owner with a different name but the firearm was legally possessed prior to confiscation, the firearm will be released as long as the person has an official letter from DOJ stating they are eligible to possess a firearm.<sup>128</sup>

LASD's policy also explains that even if a court orders the release of the firearm, the owner must still satisfy these requirements before LASD will release it to them. And if the owner fails to claim, sell, or transfer the firearm within 180 days of being issued a notice that the firearm is eligible for release, LASD's policy dictates that the firearm "shall be forwarded to the Central Property/Evidence custodian for disposal."

What's more, LASD's policy also states any property seized as the result of a search warrant cannot be released unless accompanied by an "Authorization to Release Property or Evidence" form or "Receipt for Property" form as required by Penal Code section 1536. These forms are not readily available on LASD's

---

<sup>127</sup> See Manual of Policy and Procedures, *5-04/180.30: Release of Property/Evidence to Owner – Firearms*, Los Angeles County Sheriff's Department, available online at <http://pars.lasd.org/Viewer/Manuals/11871/Content/11960?showHistorical=True>.

<sup>128</sup> *Id.* These requirements also note that if the firearm was reported stolen prior to coming into possession of LASD, the "storage/processing" fees may be waived.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

website, suggesting they are internal forms used by LASD to obtain an order from the court authorizing the release of the firearm. For this reason, individuals whose firearms have been seized by LASD pursuant to a warrant should request LASD obtain the necessary authorization before initiating return procedures.

## ii. LAPD Firearm Seizure and Return Policies

LAPD maintains a comprehensive firearm seizure and return policy, with specific procedures for seizure, booking, and return.

### a. Seizure and Booking of Firearms by LAPD

LAPD's policies for booking a firearm can generally be found in sections 540.30 and 560.35 of Volume 4 of LAPD's Manual.<sup>129</sup> According to this policy, LAPD treats all firearms in its custody as evidence, even firearms voluntarily surrendered or temporarily seized in connection with non-criminal activity.<sup>130</sup> Upon ensuring the firearm is unloaded, LAPD will complete both a "Property Report" and "Firearms Supplemental Property Report form." It is LAPD's policy that the officer shall, in addition to other steps, do the following:

- Query DOJ's AFS system and the National Crime Information Center ("NCIC") to determine if there are any warrants on the individual and any AFS records associated with the firearm;
- Report any firearms listed as lost or stolen to LAPD's Automated Vehicle and Property Section, Records and Identification Division; and,
- Document the results of the AFS and NCIC query on the Property Report form.

---

<sup>129</sup> Available online at [http://www.lapdonline.org/lapd\\_manual/volume\\_4.htm#540.30](http://www.lapdonline.org/lapd_manual/volume_4.htm#540.30). LAPD's policy also provides for "welfare checks" as outlines in section 260.17 of Volume 4, which appears to simply restate the requirements of Penal Code section 11106.4. See also *Special Order No. 6*, Los Angeles Police Department, Office of the Chief of Police, [http://www.lapdonline.org/detective\\_bureau/pdf\\_view/62554](http://www.lapdonline.org/detective_bureau/pdf_view/62554) (Mar. 16, 2016).

<sup>130</sup> Recall that if the firearm was taken into custody at the scene of a domestic violence incident, it must be made available for return within 48 hours *unless* the firearm is being retained for use as evidence related to criminal charges brought as a result of the incident. See Pen. Code § 18265(b).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

While LAPD will package handguns for storage, its policy states that long guns, including sawed-off long guns, need not be packaged. What happens next depends on whether additional scientific evidentiary procedures, such as a fingerprint analysis, is necessary.<sup>131</sup> Otherwise, LAPD will then place the firearm in the appropriate storage facility.

LAPD's policy also expressly contemplates firearms seized at the scene of domestic violence incidents, stating that such firearms must be made available for release in accordance with Penal Code section 18265. However, LAPD's policy also states that under no circumstances will the firearm be released until DOJ has performed the required background check pursuant to Penal Code sections 33850-33895.

#### **b. Requirements for LAPD to Release Firearms**

LAPD's policy for firearm release is described in section 560.40 of Volume 4 of LAPD's Manual.<sup>132</sup> As a threshold matter, this policy states only sworn detective personnel can approve the release of a firearm, and any person requesting the release of a firearm from LAPD must be referred to the Area Detective Division detectives during their normal operating hours. LAPD's policy also requires proof of ownership of the firearm, stating:

*The Department must accept any reasonable proof of ownership. Registration in the name of the lawful owner shall constitute proof of ownership. However, a lack of registration does not constitute a lack of proof of ownership unless registration is required by law for possession and/or ownership of the gun. Unless there is articulable probable cause to disbelieve a sworn declaration from the claimant/owner, a sales receipt, or other proof of ownership from the claimant, shall constitute proof of ownership.*

Assuming the owner can provide proof of ownership in accordance with the above, LAPD will then take the following steps:

---

<sup>131</sup> See, e.g., LAPD Policy 540.32.

<sup>132</sup> Available online at [http://lapdonline.org/lapd\\_manual/volume\\_4.htm#560.40](http://lapdonline.org/lapd_manual/volume_4.htm#560.40).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

- Determine whether the individual is lawfully entitled to possess the firearm to be released, in accordance with federal and state laws;
- Query AFS and NCIC to determine if there are any warrants on the individual and any AFS records associated with the firearm;
- Ensure that the appropriate “Evidence” entry appears in AFS<sup>133</sup>;
- Check the owner’s criminal history, the Domestic Violence Restraining Order System, the Mental Health Firearms Prohibition System, and the Consolidated Criminal history Reporting System to verify there are no legal restrictions to the owner possessing the firearm<sup>134</sup>; and,
- Inquire of the victim, suspect, and person reporting, if any restraining orders exist.

In addition to the above, section 560.40 of LAPD’s policy dictates special procedures to be followed by LAPD staff in the following circumstances:

- Firearms declared nuisances pursuant to Penal Code section 29300: LAPD will only release the firearm at the direction of a written opinion from the City Attorney or a valid court order.
- Release of firearms to persons with a mental illness: LAPD will first contact LAPD’s Mental Evaluation Unit for advice in determining the conditions for release of the firearm.<sup>135</sup>
- Firearms seized at domestic violence incidents: LAPD shall make the firearm available in accordance with California law, ensure the firearm is not restricted (i.e. an “assault weapon”), and ensure the owner completes the Law Enforcement Gun Release Application process with DOJ.
- Release of firearms to licensed firearm dealers: LAPD will only release the firearm to a properly licensed firearms dealer if the firearm was seized pursuant to Penal Code section 18250 (domestic violence incidents).
- Firearms used in suicide: LAPD will book any firearms used in suicide as evidence, and the investigating officer will determine the final disposition of the firearm.

---

<sup>133</sup> It is unclear what exactly is meant by the appropriate evidence entry.

<sup>134</sup> Despite this requirement, LAPD’s policy also states that “DOJ is the only agency authorized by law to conduct the necessary background checks to determine if the owner is prohibited from possessing a firearm.”

<sup>135</sup> It is unclear from LAPD’s policy manual what criteria or procedures are used by the Mental Evaluation Unit in determining the conditions for the release of a firearm.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

### c. Withholding of Firearms by LAPD

LAPD's Policy also addresses certain situations where LAPD will seek to withhold the release of a firearm if there is "reasonable cause to believe that the release . . . would likely result in endangering the victim, reporting party or other party."<sup>136</sup> In such situations LAPD will, in addition to other steps:

- Complete a "Property Disposition/Update Request" form and forward it to the Property Disposition Coordinator to place an investigative hold on the firearm in LAPD's "Automated Property Information Management System ("APIMS"), to prevent the firearms release or destruction prior to the Court's decision;
- Prepare a "Follow-Up Investigation" form, describing the "clear and convincing" evidence in support of a petition to determine if a firearm should be returned;
- Complete a "City Attorney Request for Petition" ("CARP") form; and,
- Notify the owner of the intent to file the petition.

LAPD will then assist the City Attorney by preparing a declaration to accompany the petition, appear in court, and dispose of the firearm only in the manner directed by the court following the outcome of a hearing.

## VIII. EXAMPLES OF FIREARM SEIZURE AND RETURN ISSUES

### A. Pending Lawsuit Against LAPD

In 2004, LAPD arrested a former Glendale Police Officer and war veteran after he allegedly agreed to sell a single firearm to an undercover LAPD officer. Pursuant to warrants issued at the time of arrest, LAPD then seized his collection of 463 firearms that the individual had spent thousands of dollars over the course of six decades to amass. Prior to the arrest, the collection had grown to include firearms that were antique, historically significant, or otherwise collectible. Following the seizure, LAPD referred the case to the Ventura County District Attorney's Office who filed three felony charges—none of which related to the initial arrest.

---

<sup>136</sup> See LAPD Policy 561, available online at [http://www.lapdonline.org/lapd\\_manual/volume\\_4.htm#561](http://www.lapdonline.org/lapd_manual/volume_4.htm#561)

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

Instead, the charges were related to California’s firearm laws, including possession of an unregistered “assault weapon.”

A plea agreement was reached which included a temporary firearm possession prohibition. However, the plea agreement preserved his ownership interest in the seized firearms, stating that “[t]he firearms . . . will either be destroyed if they are illegal weapons or they will be sold once proof of ownership has been provided pursuant to [LAPD] Policy.” As noted above, LAPD’s policy requires them to accept “any reasonable proof of ownership,” and also required LAPD to “[d]etermine whether the individual is lawfully entitled to possess the firearm to be released, *in accordance with federal and state laws.*” Naturally, the plea agreement was understood to mean that if LAPD’s firearm return policy requirements were met, LAPD would release the firearms to a California licensed firearms dealer as state law requires.

Upon expiration of the temporary firearms possession prohibition, a motion was filed in Ventura Superior Court in November 2006 for the return of the firearms in LAPD custody. But LAPD opposed the motion and agreed to release only 28 firearms that had associated AFS entries. In doing so, LAPD did not claim the other firearms could not be released because of a failure to prove ownership. Instead, LAPD admitted that it was legally required to return the 28 firearms. As to the remaining firearms, LAPD merely requested the motion be denied.

The Ventura court continued the hearing for further discussion and ultimately took the matter off calendar while the parties continued to negotiate over proof of ownership evidence. Then in May 2007, the same LAPD officer who was working undercover at the time of arrest stated, “those firearms that are legally DROS’d . . . should be available for release within the next week.” However, LAPD would not actually release these firearms for another four years.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

Over the next five years, repeated inquiries were made to LAPD regarding the release of firearms in LAPD's custody, including the status of its review of proof of ownership evidence for the firearms without AFS entries. LAPD was repeatedly asked whether an affidavit would satisfy the proof of ownership requirement. LAPD delayed its response, but eventually stated ambiguously that upon receipt of any document it would "make a determination as to whether satisfactory proof has been shown, or whether probable cause exists to disbelieve the representations made in the [affidavit]."

In July 2009, LAPD was notified that the owner of the collection would object "to [any] proposed plan to destroy the firearms." The owner also submitted receipts for the remaining firearms in May 2010. LAPD was then asked if "any further information [would be] required by LAPD before they would be willing to release the property." LAPD did not respond.

The Lack of response forced the owner to again file a motion in Ventura Superior Court on August 31, 2011. LAPD again opposed the motion, and once again stated it did not oppose the release of the firearms with an AFS entry but opposed the release of any others. Additionally, LAPD asked the Ventura Court to issue an order allowing the remaining firearms to be destroyed.

In response to LAPD's opposition, the owner explained how California law did not require all firearms to have AFS entries, and that requiring all firearms to have AFS entries was not grounds to deny their return. What's more, LAPD acknowledged that it had receipts and other documents that LAPD had yet to review. The court denied LAPD's request to destroy the firearms and expressed that the parties should work together and come to a resolution. Immediately following this hearing, LAPD assured the owner that it would continue to review the information provided and that if proof of ownership was found insufficient, LAPD would say so.

On October 17, 2011, the court issued an order authorizing the release of the firearms with AFS entries but made no mention as to the other firearms. Consistent with the court's prior denial of LAPD's request, both

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.



LAPD and the owner continued to exchange communications regarding the proof of ownership for the remaining firearms.

Unbeknown to the owner and during the period where the owner was told LAPD would be evaluating his ownership claims, LAPD requested a disposition order, *ex parte*<sup>137</sup>, from the Los Angeles Superior Court in December 2013, authorizing the destruction of the remaining firearms. Unaware of this order, the owner continued to engage in discussions with LAPD regarding the required proof of ownership. It wasn't until August 2014 that LAPD finally confessed that it had obtained a destruction order in December 2013 and destroyed the firearms shortly thereafter

Upon learning LAPD had secretly destroyed the majority of his firearm collection, the owner filed a lawsuit raising five causes of action for: 1) violation of civil rights under color of law; 2) violation of the Racketeer Influenced and Corrupt Organizations (“RICO”) Act; 3) conspiracy to violate RICO; 4) state-law conversion and trespass to chattels; and, 5) state-law preemption. As of the time of this document’s publication, the case is currently pending in the United States Court of Appeals for the Ninth Circuit.

### **i. Lessons to Be Learned**

This cautionary tale merely scratches the surface of LAPD’s duplicitous and unlawful actions. To make matters worse, it was only recently disclosed this February that the same undercover officer who initially arrested the owner has previously falsified arrest reports dating back to 1990. This revelation potentially calls into question the entire criminal case—including the plea agreement and the initial arrest.

---

<sup>137</sup> An “*ex parte*” proceeding is one in which last minute notice, or in some cases no notice, is given to the other parties to the litigation. Generally, courts will not act unless all parties are given lengthy periods of notice in which they can put their stance on the issue on the record. *Ex parte* proceedings are commonly used to address administrative and inconsequential requests from the court and are not appropriate for significant request.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

Regardless of the lawsuit's pending outcome, the lessons for gun owners with firearms in custody of law enforcement are very clear. Perhaps most critically, both the court in which any criminal case is held as well as the court that issued any warrant for the seizure of the firearms will have jurisdiction to order disposition of the firearms. As a result, gun owners facing criminal prosecution should take steps to notify any court with jurisdiction over any seized firearms or other property of their intent to seek its return, coordinate transfer to another party, and at a minimum express opposition to destruction. This example also illustrates the importance of keeping ownership records. Had the individual been able to immediately provide clear documentation of his ownership, LAPD likely would not have been able to obstruct return of the firearms.

### **B. The Tidwell Scandal**

In an example of outright corruption, former San Bernardino Sheriff Floyd Tidwell would walk through the evidence rooms “as if shopping, to take his pick of the weapons.”<sup>138</sup> When one couple tried to retrieve their firearms from the San Bernardino County Sheriff's Department during Tidwell's administration, they were told that their guns were lost, when in fact they were probably stolen by Tidwell.<sup>139</sup> And they would be difficult to find because Tidwell “would frequently clean out his garage or storage areas and would have boxes full of firearms he gave away to friends and family.”<sup>140</sup>

---

<sup>138</sup> Lance Pugmire, *Ex-Sheriff Admits Guild on Stolen Property Charges*, Los Angeles Times, <https://www.latimes.com/archives/la-xpm-2004-may-11-me-sheriff11-story.html> (May 11, 2004).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

Tidwell's practices were ultimately uncovered, forcing him to resign and enter into a plea agreement which included a provision requiring Tidwell to pay a \$10,000 fine and cooperate with investigators in their attempt to recover over 500 firearms he was accused of taking from the property room.<sup>141</sup>

### C. Judge Gubler and His Bailiff

In an example of judicial misconduct, a California judge permitted his bailiff to buy confiscated guns from criminal defendants to later resell those guns to other law enforcement officers.<sup>142</sup> In the resulting disciplinary proceedings, the California Supreme Court publicly censured the judge and held that: 1) if the firearms had been used in the commission of a crime or if the defendant was ineligible to own a firearm at the time of the confiscation, the firearms were to be forfeited to the state and disposed of as provided by statute; 2) forfeited firearms are not to be resold for private profit; and, 3) if, at the time of confiscation, the firearms were legally owned and had not been misused, they were the property of the defendant, who is entitled to sell them to a gun store for the maximum obtainable price rather than being forced to sell to a bailiff (for significantly less as was the case here).<sup>143</sup>

## IX. BEST PRACTICES FOR LAW ENFORCEMENT

To better assist law enforcement agencies in handling seized firearms, the following serves as a best practices guide. Adhering to these procedures will ensure the eventual return or disposal of the firearm is as smooth as possible for all parties involved and minimize the risk of liability exposure for the agency.

---

<sup>141</sup> James Ramage, *Former Sheriff Please Guilty to Concealing Stolen Guns*, Desert Dispatch, <http://archive.desertdispatch.com/2004/108428226661043.html> (May 11, 2004).

<sup>142</sup> *Gubler v. Comm'n on Judicial Performance*, 688 P.2d 551 (Cal. 1984).

<sup>143</sup> *Id.* at 590.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

### **A. Photograph the Firearm**

Before any steps are taken to seize a firearm, law enforcement should take digital photographs of the firearm in its condition at the time of seizure. Ideally, initial photographs of the firearm should be taken before handling the firearm in any fashion. Doing so will help clarify what configuration the firearm was in at the time of seizure should that be necessary. Photographs should also depict the firearm's serial number if possible.

### **B. Render Firearm Unloaded and Safe**

When taking a firearm into custody, law enforcement should unload the firearm and render it safe by leaving the action open. Any ammunition magazines removed should be unloaded and kept with the firearm.<sup>144</sup>

### **C. Package the Firearm**

Firearms taken into custody should be placed unloaded with the action open into purpose-built containers. If feasible, secure a zip-tie to the action. Under no circumstances should any firearms (or any other property being seized) be placed in bulk storage bins or otherwise. Such treatment is likely to result in damage to the firearms that can cause liability exposure for the agency.

### **D. Issue A Property Receipt**

As noted above, California law requires law enforcement to issue a property receipt upon taking a firearm into custody. This receipt must describe the firearm, list its serial number, and indicate where and when the firearm may be recovered.<sup>145</sup> In general, this receipt should be generated immediately upon taking a firearm into custody and be furnished to the person who was in possession of the firearm at the scene of the seizure. If

---

<sup>144</sup> In some situations, law enforcement may be unable to unload the firearm due to a lack of technical knowledge of the firearm's action or for some evidentiary purpose. Should this be the case, the law enforcement agency should develop and implement specific procedures to be followed.

<sup>145</sup> A sample property receipt is included with this document. The receipt itself should also include a report number for ease of reference and as much detail about the firearm and its configuration as possible.

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

practicable, the person should be given an opportunity to check the receipt for accuracy and be allowed to sign an acknowledgment to that effect.<sup>146</sup>

### **i. Firearms Lacking Serial Numbers**

If the firearm does not have a serial number or it is not readily apparent, law enforcement should indicate so on property receipt.<sup>147</sup> If the firearms serial number has been obliterated, California law requires the agency to make a reasonable effort to restore it according to the agency's Serial Number Restoration Plan.<sup>148</sup> This includes establishing local programs for restoring serial numbers and accessing resources of DOJ or the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF").

### **ii. Incomplete Firearms**

If the firearm is incomplete or non-functioning, law enforcement should indicate so on the property receipt. If possible, the property receipt should also note what parts are missing.

Regarding "assault weapons," California law and related DOJ regulations generally require the firearm to be "semiautomatic" in order to be classified as such.<sup>149</sup> In defining the term "semiautomatic," DOJ regulations state that firearms lacking a firing pin, bolt carrier, gas tube, or some other crucial part are not "semiautomatic."<sup>150</sup> And as applied to AR-15 style firearms, if a complete upper receiver and complete lower receiver are "completely detached from one another, but still in the possession or under the custody or control

---

<sup>146</sup> If the owner is not present, the officer should still generate a receipt and mail a copy to the person.

<sup>147</sup> Prior to the Gun Control Act ("GCA") of 1968, firearms were not required to be equipped with serial numbers. While many firearms manufactured before the enactment of the GCA did in fact have serial numbers, it was likely for quality control purposes only. Some firearms may also have their serial numbers obscured or hidden from view without removing certain parts such as the grip.

<sup>148</sup> Pen. Code § 11108.9.

<sup>149</sup> See Pen. Code §§ 30510-30515; 11 C.C.R. § 5471(hh).

<sup>150</sup> 11 C.C.R. § 5471(hh).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

of the same person, the firearm is not a semiautomatic firearm.”<sup>151</sup> In other words, *incomplete firearms generally cannot be classified as “assault weapons” under California law*. What’s more, this applies equally to “assault weapon” based on their features and characteristics as well as those expressly listed by make and model.<sup>152</sup>

By noting on the property receipt that the firearm was incomplete, law enforcement can avoid wasting valuable time and resource on the pursuit of unnecessary criminal charges.

### iii. Time Limits for Recovery

California law also requires law enforcement agencies to state on the property receipt where the firearm may be recovered, any applicable time limit for recovery, and the date after which the firearm may be recovered pursuant to California law.<sup>153</sup> Because the incident leading to the seizure of a firearm can affect when and how it may be recovered, all property receipts should include as much general information as possible regarding procedures for the return of a firearm.<sup>154</sup>

## E. Tracing Firearms

After seizing a firearm, law enforcement must submit a description of the firearm directly into DOJ’s AFS database.<sup>155</sup> Law enforcement must also report within seven days information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are

---

<sup>151</sup> 11 C.C.R. § 5471(hh)(3). What’s more, a stripped AR-15 lower receiver is not a semiautomatic firearm because the action type is “undetermined.” 11 C.C.R. § 5471(hh)(4).

<sup>152</sup> Pen. Code § 30510 (listing “designated *semiautomatic* firearms” as “assault weapons”).

<sup>153</sup> Pen. Code § 33800(b).

<sup>154</sup> Examples of such statements are included in the sample property receipt included with this document.

<sup>155</sup> Pen. Code § 11108.2(a).

suspected of use in a crime.<sup>156</sup> Should the firearm have been reported lost or stolen, the law enforcement agency must then notify the owner who made the report within 15 days.<sup>157</sup>

In addition to the above, the law enforcement agency may enter appropriate information regarding the firearm into the United States Department of Justice's National Integrated Ballistic Information Network ("NIBIN") in a manner consistent with DOJ's protocols.<sup>158</sup>

When entering the firearm's information into AFS, information concerning the manufacturer, model, caliber, and serial number is required. Any errors when entering this information could lead to problems. As such, law enforcement should refer to any existing AFS records for the firearm to ensure any information being entered is an exact match.

## **F. Storage of Firearms**

All law enforcement agencies should create procedures for properly storing firearms that ensure proper handling to avoid damage while in the agency's possession. Any damage caused by the agency can result in civil liability.<sup>159</sup>

### **i. Establishing A Storage Fee**

Law enforcement agencies may charge a fee equal to the costs relating to the seizure, impounding, storage, or release of a firearm.<sup>160</sup> But a regulation, ordinance, or resolution imposing this fee must first be

---

<sup>156</sup> Pen. Code § 11108.3(a). When DOJ receives this information, it will then transmit it to ATF's National Tracing Center. Any information received pursuant to this section will be kept by DOJ for at least 10 years.

<sup>157</sup> Pen. Code § 11108.5(a). If the firearm was used as evidence in a criminal case and is no longer needed as evidence, the firearm will be made available for return pursuant to Penal Code section 1417.5.

<sup>158</sup> Pen. Code § 11108.10(a-b).

<sup>159</sup> See *Minsky v. City of Los Angeles*, 11 Cal. 3d 113 (1974).

<sup>160</sup> Pen. Code § 33880(a).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.

adopted, and in no circumstance can the amount “exceed the actual costs incurred” by the agency for its expenses.<sup>161</sup> What’s more, law enforcement can impose the fee only on the person claiming title to the firearm.<sup>162</sup>

As such, law enforcement agencies should attempt to quantify their seizure and storage costs. But as discussed above, it is unclear whether any such fee could be deemed excessive in violation of the Excessive Fines Clause of the Eighth Amendment or other constitutional provisions, particularly if a large firearm collection is seized and the fee charged is on a per-firearm basis. This question of cost incurred seems to present a question likely better suited for accountants or logistics experts than law enforcement.

There are also certain situations in which a fee cannot be charged. For example, if a firearm was seized for purposes of being used of as an exhibit, courts must order the release of the firearm free of charge to the person from whom the firearm was taken into custody or, in the alternative, a person establishing title to the firearm.<sup>163</sup> As a result, any ordinance establishing this fee should provide the agency authority to waive the fee if ordered by a court or otherwise appropriate under the circumstances.

### **For More Information**

For more information on firearm-related issues affecting California gun owners, be sure to visit CRPA’s website at [www.CRPA.org](http://www.CRPA.org). And be sure to subscribe to CRPA email alerts to stay informed on the latest developments regarding this case.

---

<sup>161</sup> Pen. Code § 33880(a-b). Law enforcement may also waive this fee upon verifiable written proof that the firearm was previously reported stolen. Pen. Code § 33880(c).

<sup>162</sup> Pen. Code § 33880(d)(1-2).

<sup>163</sup> Pen. Code § 1417.5(b).

---

**Disclaimer:** This information has been prepared for general information purposes only. The information contained herein is not legal advice, should not to be acted on as such, may not be current, and is subject to change without notice. Michel & Associates, P.C., does not warrant or guarantee the accuracy, completeness, adequacy, or currency of the information contained herein. Users of this information do so at their own risk. This document does not create an attorney-client relationship. Individual facts and circumstances may alter the conclusion(s) drawn. For legal advice consult an attorney.