STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0035
(916) 319-2035
FAX (916) 319-2135

DISTRICT OFFICE
1150 OSOS STREET SUITE 207
SAN LUIS OBISPO, CA 93401
(805) 549-3381
FAX (805) 549-3400

Assembly
California Legislature

KATCHO ACHADJIAN
ASSEMBLYMEMBER, THIRTY-FIFTH DISTRICT

COMMITTEES
CHAIR: LOCAL GOVERNMENT

February 15, 2013

The Honorable Adam Gray
Chair, Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

Dear Chairman Gray:

I am writing to request an audit to examine whether mental health adjudications/statuses that render an individual a "prohibited person" to possess firearms are being reported to the Department of Justice, as required by law. Inadequate processing and/or reporting of records could prevent the state from keeping firearms out of the hands of dangerous individuals, because state depositories are accessed when a background check is performed to determine whether an individual can lawfully purchase a firearm. Additionally, the Armed Prohibited Persons System [Penal Code Sec. 30000 et seq.] compares records of known firearms ownership to the list of prohibited persons. Keeping the database up to date is vital if we are to keep guns out of the hands of dangerous mentally ill individuals.

A 2010 study from the National Center for State Courts found that, in the 42 participating jurisdictions, less than half of all mental health adjudications were properly reported to state depositories.[1] This represented the proportionately largest gap between expected and reported records for the various reasons why an individual would be prohibited from possessing firearms (e.g. felony conviction, active restraining orders). Unfortunately, California was not one of the 42 jurisdictions that participated in the study. Therefore, an audit is necessary to determine if the same problems exist in California, and to provide recommendations for ensuring that records are reported and processed as efficiently and rapidly as possible.

Existing law requires courts, law enforcement, the Department of State Hospitals (previously the Department of Mental Health), and public and private facilities to make specified information about mental health adjudications and commitments available to the Department of Justice.

Courts are required to "immediately" notify the Department of Justice when an individual is a "prohibited person" because the person: 1) has been adjudicated to be a danger to others as a result of a mental illness, or has been adjudicated to be a mentally disordered sex offender [W&I Code Sec. 8103(a)(2)], 2) has been found not guilty by reason of insanity [W&I Code Sec.

[1] National Center for State Courts, *State Records Estimates Development and Validation Project, September 30, 2010,* https://www.ncjrs.gov/pdffiles1/bjs/grants/232195.pdf (accessed January 28, 2013).

Printed on Recycled Paper

8103(b)(2) and (c)(2)], 3) has been found mentally incompetent to stand trial [W&I Code Sec. 8103(d)(2)], or 4) has been placed under conservatorship by a court with a firearms prohibition [W&I Code Sec. 8103(e)(2)].

Public and private mental health facilities are required to "immediately" notify the Department of Justice when an individual is a "prohibited person" (for a period of five years) because the person has been subject to involuntary civil commitment for mental health treatment [W&I Code Sec. 8103(f)(2) and (g)(2)]. Pursuant to AB 302 (Beall) (Chapter 344, Statutes of 2010), facilities are required to submit these reports "exclusively by electronic means" [W&I Code Sec. 8103(f)(2)(B) and (g)(2)(B)].

Local law enforcement agencies are required to "immediately" notify the Department of Justice upon receiving a report from a licensed psychotherapist identifying an individual who is a "prohibited person" (for a period of six months) because the person has made a serious threat of physical violence against a reasonably identifiable victim or victims [W&I Code Sec. 8105(c) and 8100(b)(1)]. The licensed psychotherapist is required to notify law enforcement "immediately" when such a threat is made.

The Department of State Hospitals is required to "make available" to the Department of Justice "upon request" all records in its possession sufficient to identify prohibited persons [W&I Code Sec. 8104].

The Department of Justice is required to request from each public and private mental health facility the information necessary to identify individuals receiving voluntary treatment, who are "prohibited persons" because they are a danger to self or others, and would otherwise meet the standards for involuntary civil commitment [W&I Code Sec. 8105(a) and 8100(a)].

This audit will examine whether the Department of Justice appropriately processes reports of mentally ill prohibited persons, and will determine for one subset of reporting entities (County Superior Courts), whether reports are appropriately transmitted to the Department of Justice.

For the Department of Justice and a sample of County Superior Courts determined by the State Auditor, please conduct an audit addressing the following questions:

1. Are the Department of Justice and County Superior Courts in compliance with existing laws related to the identification and reporting of mentally ill prohibited persons?
2. For the Department of Justice:
   a. Once reports identifying mentally ill prohibited persons are received by the Department from courts, mental health facilities, and law enforcement agencies, how rapidly are mentally ill prohibited persons added to the appropriate database?
   b. How does the Department interpret requirements that entities report information "immediately?"
   c. Has the requirement on public and private mental health facilities to transmit information electronically, pursuant to AB 302 (Beall) (Chapter 344, Statutes of 2010), improved the efficiency of processing?

d. Does a backlog exist in the processing of reports (including paper reports received from mental health facilities prior to the effective date of AB 302 (Beall)), and, if so, what is the extent of the backlog?
e. Does the Department of Justice appropriately request information about prohibited persons receiving voluntary treatment from public and private mental health facilities, as required by law?
f. Does the Department of Justice adequately request information about prohibited persons from the Department of State Hospitals, as authorized by law?

3. For a sample of County Superior Courts:
   a. Is all relevant information about mentally ill prohibited persons being properly transmitted to the Department of Justice, as required by law?
   b. How rapidly is the information transmitted?
   c. How do courts interpret the requirement to transmit information "immediately"?
   d. Are adequate internal policies and controls in place to ensure consistent compliance with existing law? How do courts monitor compliance with these policies?

Thank you for your consideration of this request. Should you have any questions or would like additional information, please do not hesitate to contact me at (916) 319-2035 or Daniel Ballon in the Assembly Republican Caucus Office of Policy at (916) 319-3900.

Sincerely,

Khatchik H. "Katcho" Achadjian
35th Assembly District

Allan Mansoor
74th Assembly District