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March 23, 1998

Hon. Daniel E. Lungren
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Connie Lemus
Initiative Coordinator

Dear Attorney General Lungren:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative entitled the "California Firearms Protection Act" that establishes in the State Constitution the right of Californians to possess firearms, establishes new legal sanctions for criminals using firearms, and changes juvenile court procedures (File No. SA 98 RF 0011).

Background

The U.S. Constitution's Second Amendment guarantees the right of citizens to keep and bear arms and has been subject to significant court review for years. Currently, the State Constitution has no equivalent provision. While the Second Amendment confers specific rights regarding the right to bear arms, the courts have allowed federal, state, and local governments to establish prohibitions and restrictions on firearm ownership. For example, civilians are prohibited from owning certain types of weapons, such as military-style automatic weapons. In addition, federal law prohibits civilian possession of certain types of ammunition, such as armor piercing ammunition. Furthermore, federal law restricts weapons transfers, especially to individuals who have criminal backgrounds or

who are mentally incompetent. The federal government also requires background checks and waiting periods for those wishing to purchase handguns from licensed gun dealers.

In addition, the courts have established that state and local governments can place restrictions on gun purchasers, sellers, and the use of firearms by citizens. For example, California law restricts the types of weapons that individuals can purchase, requires background checks of gun purchasers (including waiting periods), and requires citizens wishing to carry concealed weapons to obtain permits to do so. Currently, firearms dealers collect background information from weapons purchasers and send the information to the state Department of Justice (DOJ), which is responsible for background checks. In addition, the DOJ processes background checks from local agencies for individuals applying for concealed weapons permits. The gun purchaser and concealed weapons permit applicant pay fees to defray the administrative costs of the background checks.

Local governments can establish ordinances regulating where guns may be sold and where they may be carried (for example, prohibiting weapons in public buildings or in recreation areas, such as parks). Generally, law enforcement agencies, primarily county sheriffs, decide who may obtain concealed weapons permits. Most California counties restrict who may obtain a concealed weapons permit and there are no uniform state criteria for obtaining these permits. Carrying a weapon without a permit can be a misdemeanor or felony law violation.

Current law provides for "enhancements" to sentences for individuals who use firearms in the commission of a crime. For example, under current law, an individual convicted of a violent offense while armed with a firearm could receive the base sentence for the violent crime and an additional ten years for possession of the firearm.

Currently, juveniles in California are under the jurisdiction of juvenile courts. For certain offenses, juveniles as young as 14 can be tried as adults, but only after a hearing in juvenile court. Juveniles can be transferred to adult court jurisdiction if they are determined to be "unfit" for juvenile court jurisdiction, but the prosecutor must prove that the juvenile is not fit. This system is known as a judicial waiver system, since it is up to the court to decide which court will have jurisdiction over juvenile offenders.

Proposal

Gun Provisions. This measure adds a new section to the State Constitution that guarantees that all people of the State of California have a right to possess and carry firearms and ammunition. The measure prohibits any state or local restrictions upon these rights.

The measure would also limit the ability of the state and local governments to restrict a person's right to possess and carry a concealed weapon.

The measure states, however, that its provisions do not invalidate federal firearms laws or any laws restricting access to firearms by persons found physically or mentally incompetent, convicted felons, or individuals using firearms for criminal activities. Consequently, while individuals may possess and carry firearms, many of the state's existing systems for background checks, weapons permits, and law enforcement investigations of individuals with weapons would not change. For example:

- Because the measure has no impact on federal law and maintains prohibitions against the possession of weapons by convicted felons and the mentally incompetent, it appears that the state's systems for background checks (including waiting periods) for weapon purchases and concealed weapons permits would remain in place.
- Under the provisions of this constitutional amendment, it would still be illegal to possess and carry a firearm for purposes of committing a criminal act.
- Because this measure makes no direct change to existing state constitutional law, the state and local governments would presumably still be responsible for using their "police powers" to guarantee public safety, thus allowing for the continued prohibition of weapons in certain public places or under certain circumstances (for example, while a person is intoxicated or while operating a motor vehicle).

However, local jurisdictions would not be able to limit who obtains concealed weapons permits unless the applicant does not meet federal law criteria (being 21 years of age or older, for example) or the applicant is a convicted felon or mentally incompetent. In addition, individuals could no longer be arrested and tried for simple possession of a weapon, unless other circumstances existed. Currently, these types of arrests are misdemeanor offenses where the individual is generally cited and released.

The experience of other states enacting similar measures has been an initial increase in requests for concealed weapons permits, resulting in an increase in the number of background checks.

New Enhancement Provisions. The measure makes a series of changes to existing sanctions for persons who use firearms in the commission of crime. Specifically, the measure:

- Increases the penalty for a felon who possesses a gun from 16 months, two years, or three years in prison, to ten years to life in prison.
- Increases the penalty for a felon who is personally armed with a gun in the commission of a violent crime from ten years to life in prison to 20 years to life in prison.
- Provides that someone personally armed with a gun in the commission of other than a violent crime would get a sentence enhancement of ten years to life. Under existing law, the enhancement is three, four, or ten years.
- Provides that these offenders prosecuted under the above provisions would be placed on parole for life upon their release from prison. Under current law, most offenders are placed under parole supervision for a period of no more than three years.

Juvenile Law Changes. Under current law, a juvenile offender must be proven unfit for trial by a juvenile court. Under this measure, any juvenile 14 years of age or older, who is alleged to have committed certain offenses, must be tried as an adult rather than as a juvenile.

Fiscal Effect

Gun Provisions. The measure will probably not result in any direct net cost to state government because it does not specifically change existing statutes. Rather, it establishes constitutional guidelines which apparently are not in conflict with existing state laws and the systems for their implementation. In addition, while there is a potential for an increase in the number of background checks (primarily concealed weapons permits) processed by DOJ, this department is statutorily authorized to recover such costs through fees.

Local governments could experience some costs and savings. The net fiscal impact is unknown, but probably would not be significant. Specifically, while the request for concealed weapons permits could increase, resulting in additional processing costs, the number of concealed weapons violations would likely decrease, resulting in savings to local law enforcement.

New Sentencing Provisions. We estimate that the measure's changes to sentencing law would increase annual prison operating costs by several hundreds of millions of dollars after a decade, and hundreds of millions of dollars in one-time costs for capital outlay. The costs could be even higher if the higher penalty resulted in some criminal violations

that are now handled as parole violations being handled as new criminal prosecutions. The measure also requires lifetime parole for firearms offenders and we estimate that this would, in the long term, add state costs in the low tens of millions of dollars in parole costs. These parole costs would be in addition to the prison operational costs.

Additionally, because the longer sentences would likely result in more offenders taking their cases to trial rather than agreeing to plea bargains, there would be an unknown, but probably significant, impact on state and local criminal justice systems for trial and jail incarceration costs.

Juvenile Provisions. The measure's changes to juvenile court procedures could add new costs to the state's prison system to the extent that the changes result in more juvenile offenders being sentenced as adults. These costs are unknown because there are no data on the number of juvenile offenders that would be affected by the measure's provisions.

The measure's new provisions would add unknown but significant new costs for local governments. The changes in court procedures might reduce local costs for juvenile fitness hearings, but these savings would be partially offset by higher costs for providing adult trials for these offenders—including the new costs for evidentiary hearings and jury trials that are not part of the current system. In addition, juvenile offenders awaiting trial as adults must be incarcerated in county juvenile halls, and any additional demands on detention space will result in either the need for one-time costs to build new facilities to house offenders or result in more offenders being released without detention because of the lack of space.

Other Effects. Research in other states has shown that the gun provisions contained in similar measures can result in indirect savings and costs. However, much of this research is inconclusive regarding the net effect of such changes. Savings could result from the potential reduction in crime due to the deterrent effect of a larger number of citizens possessing firearms for self-defense. On the other hand, increased costs could result from injuries and death resulting from accidental and unintentional firearms use.

The costs related to new sanctions would be partially offset to the unknown extent that offenders incapacitated by imprisonment would be prevented from committing other crimes or would be deterred from using guns in crimes.

Summary. We estimate that this measure would have the following fiscal effects:

- Hundreds of millions of dollars in one-time and ongoing net incarceration costs to state government.
- Unknown, but probably significant, net costs to local governments.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Craig L. Brown
Director of Finance