

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 12. CALIFORNIA RESTRAINING AND PROTECTIVE ORDER SYSTEM
(formerly GUN VIOLENCE RESTRAINING ORDERS)

SECOND ADDENDUM TO INITIAL STATEMENT OF REASONS

On January 22, 2021, the Department of Justice (Department) published proposed regulations pursuant to the authority provided in Penal Code section 14231.5. These and other rulemaking documents are available for review on the Attorney General's website at <https://oag.ca.gov/research-center/regs#gvro>.

The Department received written public comments on the proposed regulations until March 26, 2021. The Department also held a virtual public hearing on March 11, 2021. Oral comments on the proposed regulations were accepted with detailed minutes of the meeting recording the comments. The Department reviewed all comments received during the public comment period. In response to the public comments, and to clarify the regulations as originally proposed, on August 11, 2021, the Department posted on its website notice of modifications to the regulations and documents added to the rulemaking file. Public comments on the first set of modified regulations and additional documents were accepted until August 27, 2021.

Subsequently, Penal Code section 14231.5 was amended by Assembly Bill (AB) 173 (Stats. 2021, Ch. 253) and became effective September 23, 2021. Relatedly, AB 173 added Penal Code section 14240. The Department has revised the proposed regulations to conform to the changes made to Penal Code section 14231.5 and addition of Penal Code section 14240.

The prior version of Penal Code section 14231.5 provided that:

[T]he Department of Justice shall make information relating to gun violence restraining orders that is maintained in the California Restraining and Protective Order System, or any other similar database maintained by the department, available to researchers affiliated with the University of California Firearm Violence Research Center, or at the department's discretion, to any other nonprofit educational institution or public agency immediately concerned with the study and prevention of violence

(See Pen. Code, § 14231.5, eff. Jan. 1, 2018-Sept. 22, 2021.)

AB 173 amended Penal Code section 14231.5 as follows:

(a) [T]he Department of Justice shall make information that is maintained in the California Restraining and Protective Order System or any other data related to prohibitions on firearm ownership, available to researchers affiliated with the California Firearm Violence Research Center at UC Davis upon proper request and following approval by the center's governing institutional review board when required. At the department's discretion, the information may be provided to any other nonprofit bona

fide research institution accredited by the United States Department of Education or the Council for Higher Education Accreditation for the study of the prevention of violence and following approval by the institution’s governing institutional review board or human subjects committee when required. . . .”

(b) If a request for data or letter of support for research using the data is denied, the department shall provide a written statement of the specific reasons for the denial.

(See Pen. Code, § 14231.5, eff. Sept. 23, 2021.)

Additionally, AB 173 added Penal Code section 14240, which states:

(a) The Department of Justice shall establish procedures to implement subdivision (t) of Section 1798.24 of the Civil Code to provide materials relating to individuals for research related to firearm violence. These procedures shall include, but not be limited to, requests for data and timely review of requests. At the department’s discretion, the information may be provided to any nonprofit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education Accreditation for the purpose of studying the prevention of violence, following approval by the institution’s governing institutional review board or human subjects committee, when required.

This Second Addendum to Initial Statement of Reasons explains the modifications and the reasons for these modifications in the “Purpose and Necessity of Modifications to Proposed Regulations” section below.

PURPOSE AND NECESSITY OF MODIFICATIONS TO PROPOSED REGULATIONS

§ 961. Title and Scope.

Owing to the passage of AB 173 and its revisions to Penal Code section 14231.5, the title was amended. This change is necessary to align the regulation with the new statutory authority that CARPOS information be made available to eligible researchers upon proper request. Revised Penal Code section 14231.5 reflects the legislative intent that CARPOS information, not just GVRO information, must be disclosed to eligible researchers. This change also accommodates public comments requesting that the data in CARPOS be provided to eligible researchers.

The authority and reference citations were amended to include Penal Code section 14240, which was also added by AB 173, as it relates to the release and use of the information.

§ 962. Definitions.

This section was revised to change applicant references from “Nonprofit Educational Institution” to “Nonprofit Bona Fide Research Institution.” This change is necessary to align the regulation with the new statutory authority in Penal Code section 14231.5, which changed to whom the Department could release CARPOS information. Additionally, references to Public Agency, including former subdivision (o), were deleted as there is no longer statutory authority to provide

public agencies with access to CARPOS information in Penal Code section 14231.5.

Because revised Penal Code section 14231.5 reflects the legislative intent that CARPOS information, not just GVRO information, be disclosed to eligible researchers, this section was revised to delete the references to GVRO, including prior subdivision (j).

Subdivision (k) (formerly subdivision (l)) was revised to refer to an eligible Nonprofit Bona Fide Research Institution and to delete language pertaining to Nonprofit Educational Institutions because revised Penal Code section 14231.5 no longer requires that eligible institutions be “immediately concerned with the study and prevention of violence.”

Subdivision (k)(5) (formerly subdivision (l)(5)) was revised to include the accreditation standard in the revised Penal code section 14231.5 and new Penal Code section 14240. This change is necessary because the Department no longer has authority to impose a different accreditation standard.

Subdivision (q) (formerly subdivision (s)) was revised from “Study and Prevention of Violence” to “Study of the Prevention of Violence” because this aligns with the new statutory authority in revised Penal Code section 14231.5 and new Penal Code section 14240.

Because of the deletion of several definitions, subsequent subdivisions were renumbered.

The authority and reference citations were amended to include Penal Code section 14240, which was also added by AB 173 as it relates to the release and use of the information.

§ 963. Eligibility for Access to Data.

This section was revised to change applicant references from “Nonprofit Educational Institution” to “Nonprofit Bona Fide Research Institution.” This change is necessary to align the regulations with the new statutory authority in Penal Code section 14231.5, which changed to whom the Department could release CARPOS information. Additionally, references to Public Agency were deleted as there is no longer statutory authority to provide public agencies with access to CARPOS information in Penal Code section 14231.5.

The revised Penal Code section 14231.5 reflects the legislative intent that CARPOS information, not just GVRO information, be disclosed to eligible researchers. In response to revisions to Penal Code section 14231.5, the Department revised subdivision (a) to align the regulation with the new statutory authority that CARPOS information be made available to eligible researchers upon proper request. This change also accommodates public comments requesting that CARPOS data be provided to the eligible researchers.

The authority and reference citations were amended to include Penal Code section 14240, which was also added by AB 173 as it relates to the release and use of the information.

§ 964. Restrictions on Use or Disclosure of CARPOS De-Identified Individual-Level Data or Identified Individual-Level Data.

This section, including the title, was revised to change data references from GVRO to CARPOS. The revised Penal Code section 14231.5 reflects the legislative intent that CARPOS information, not just GVRO information, be disclosed to eligible researchers. This change is necessary to align the regulation with the new statutory authority that CARPOS data be made available to eligible researchers upon proper request. This change also accommodates public comments requesting that CARPOS data be provided to eligible researchers.

This section was revised to change applicant references from Nonprofit Educational Institution to Nonprofit Bona Fide Research Institution. This change is necessary to align the regulation with the new statutory authority in Penal Code section 14231.5, which changed to whom the Department may release CARPOS information. Additionally, references to Public Agency were deleted as there is no longer statutory authority to provide public agencies with access to CARPOS information in Penal Code section 14231.5.

Subdivision (h)(1) was revised for the purpose of brevity to avoid unnecessary word usage regarding the submission of the appeal.

The authority and reference citations were amended to include Penal Code section 14240, which was also added by AB 173, as it relates to the release and use of the information.

§ 965. Procedures for Requesting CARPOS Aggregated Data.

This section, including the title, was revised to change data references from GVRO to CARPOS. This change was necessary to inform other entities of the scope of aggregated data they may receive.

§ 966. Procedures for Requesting CARPOS De-Identified Individual-Level Data or Identified Individual-Level Data.

This section, including the title, was revised to change data references from GVRO to CARPOS. The revised Penal Code section 14231.5 reflects the legislative intent that CARPOS information, not just GVRO information, be disclosed to eligible researchers. Revising GVRO to CARPOS aligns the regulation with the new statutory authority that CARPOS information be made available to eligible researchers upon proper request. This change also accommodates public comments requesting that the data in CARPOS be provided to eligible researchers.

This section was revised to change applicant references from Nonprofit Educational Institution to Nonprofit Bona Fide Research Institution. This change is necessary to align the regulation with the new statutory authority in Penal Code section 14231.5, which changed to whom the Department may release CARPOS information. Additionally, references to Public Agency were deleted as there is no longer statutory authority to provide public agencies with access to CARPOS information in Penal Code section 14231.5.

Subdivision (b)(12)(A)(ii) was amended because of the change in Section 962, new subdivision (q), from “Study and Prevention of Violence” to “Study of the Prevention of Violence.” This change is necessary because it aligns the regulation with the new statutory authority in revised Penal Code section 14231.5 and new Penal Code section 14240.

Subdivisions (b)(12)(F), (c), and new (i)(6) were changed to include “human subjects committee” to mirror revised Penal Code section 14231.5 and new Penal Code section 14240. Both of those statutes authorize the Department to release CARPOS information to the eligible Nonprofit Bona Fide Research Institution following approval by the institution’s institutional review board or human subjects committee. It is necessary to make this change to align the regulation with the new statutory authority and not just limit the required approval to the applicant’s institutional review board.

Subdivision (c) was revised to delete the approval requirements for public agencies because Penal Code section 14231.5 no longer allows disclosures to a public agency.

Additionally, because new Penal Code section 14240 mandates that the Department include an option for researchers to obtain approvals under Civil Code section 1798.24, subdivision (t), the Department added this process in subdivision (c)(1). Including this additional process also accommodates a public comment requesting access to CARPOS information as permitted under Civil Code section 1798.24, subdivision (t).

Subdivisions (f) and (g) were added because revised Penal Code section 14231.5, subdivision (b) and new Penal Code section 14240, subdivision (b) require that the Department provide a written statement with the specific reasons for a denial of a data request or letter of support for research. These subdivisions were necessary to comply with the new statutory requirement, as well as to inform the researchers of the process to submit requests for letters of support and related timelines. Since the Department had already established an appeals process in its proposed regulations, and given the legislative intent of Penal Code section 14231.5, denials of a data request or letter of support for research were also added as grounds for appeal as described in new subdivision (h). Including these denials as a reason for an appeal helps further the legislative intent by ensuring that the researchers are provided the information they are entitled to, in a timely manner. Additionally, including these grounds as reasons for appeal led to some duplicative language, so previous (e)(1) and (2) were deleted and revised. The addition of the new subdivisions (f), (g), and (h) required subsequent renumbering.

Subdivision (h)(1) was revised for the purpose of brevity to avoid unnecessary word usage regarding the submission of the appeal.

The authority and reference citations were amended to include Penal Code section 14240, which was also added by AB 173, as it relates to the release and use of the information. Additionally, Civil Code section 1798.24 was also added since that process was mandated under Penal Code section 14240.

§ 967. Procedures for Destruction of CARPOS De-Identified Individual-Level Data or Identified Individual-Level Data.

This section, including the title, was revised to change data references from GVRO to CARPOS. The revised Penal Code section 14231.5 reflects the legislative intent that CARPOS information, not just GVRO information, be disclosed to eligible researchers. Revising GVRO to CARPOS aligns the regulation with the new statutory authority that the CARPOS information be made

available to eligible researchers upon proper request. This change also accommodates public comments requesting that CARPOS data be provided to the eligible researchers.

The authority and reference citations were amended to include Penal Code section 14240, which was also added by AB 173, as it relates to the release and use of the information.

§ 968. Enforcement of Regulations by the Department.

This section, including the title, was revised to change data references from GVRO to CARPOS. The revised Penal Code section 14231.5 reflects the legislative intent that CARPOS information, not just GVRO information, be disclosed to eligible researchers. Revising GVRO to CARPOS aligns the regulation with the new statutory authority that CARPOS information be made available to eligible researchers upon proper request. This change also accommodates public comments requesting that the CARPOS data be provided to the eligible researchers.

This section was revised to change applicant references from Nonprofit Educational Institution to Nonprofit Bona Fide Research Institution. This change was necessary to align the regulation with the new statutory authority in Penal Code section 14231.5, which changed to whom the Department could release CARPOS information. Additionally, references to Public Agency were deleted as there is no longer statutory authority to provide public agencies with access to CARPOS information in Penal Code section 14231.5.

Subdivision (e)(1) was revised for the purpose of brevity to avoid unnecessary word usage regarding the submission of the appeal.

The authority and reference citations were amended to include Penal Code section 14240, which was also added by AB 173, as it relates to the release and use of the information.