

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

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

UPDATED INFORMATIVE DIGEST

Applicable Laws:

Since the filing of the Notice of Proposed Rulemaking on January 22, 2021, Assembly Bill (AB) 173 (Stats. 2021, Ch. 253) was passed and signed into law, modifying the California Firearm Violence Research Act, specifically, amending Penal Code section 14231.5 and adding Penal Code section 14240. The Department of Justice (Department) revised its proposed regulations on October 29, 2021 to accommodate the recent changes in law.

Effects of the Proposed Rulemaking:

On January 22, 2021, the Department published the Notice of Proposed Rulemaking, which included an Informative Digest. The Notice was revised on February 19, 2021 to accommodate a request for a public hearing and again on March 11, 2021 to extend the public comment period. Following the initial 45-day public comment period, the Department modified the proposed regulations, gave notice of such modifications on August 11, 2021, which resulted in an a 15-day public comment period that concluded on August 27, 2021. Following the passage of AB 173, the Department further modified the proposed regulations, giving notice of such modifications on October 29, 2021, which resulted in an additional 15-day public comment period that concluded on November 15, 2021. Subsequently, the Department modified the proposed regulations, gave notice of such modifications on March 10, 2022, which resulted in a 15-day public comment period that concluded on March 27, 2022. The modifications are described below:

General Modifications:

The title for Chapter 12 of the regulations was changed from “Gun Violence Restraining Orders” to “California Restraining and Protective Order System.” The regulations were generally revised to change applicant references from “Nonprofit Educational Institution” to “Nonprofit Bona Fide Research Institution.” Additionally, references to “Public Agency,” were deleted. The regulations were also revised to change data references from GVRO to CARPOS.

Article 1, Title and Scope, and § 961, Title and Scope, were deleted because they were unnecessary, merely repeated the title of the regulations, and the scope of the regulations were elaborated more fully in the remaining regulations.

§ 962. Definitions.

Subdivision (k) was nonsubstantively amended to add an “s” to the United States Code citation.

OAL Register 2021-0112-05

Subdivision (k)(5) was revised to include the accreditation standard in the revised Penal code section 14231.5 and new Penal Code section 14240.

Subdivision (p) was added to define “Statistical Purposes.”

Subdivision (q) was revised from “Study and Prevention of Violence” to “Study of the Prevention of Violence.”

Subdivision (r) was amended to delete the requirement that a “Team Member” be “Affiliated” with a research institution.

§ 963. Eligibility for Access to Data.

This section was amended to delete restrictive eligibility requirements and to authorize greater access to specified data after following specified procedures.

The authority and reference citations were revised to delete inapplicable citations.

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

Subdivision (c) was amended to specify when written approval is unnecessary for the transfer, disclosure, or dissemination of specified data. If written approval is necessary, subdivision (c) was amended to provide a timeframe for the Research Center to respond to any such request.

Subdivision (g) was revised to add a timeframe for reviewing any report, evaluation, or document.

Subdivision (g)(1) adds a timeframe for Department notification in the event that a publication may compromise the identify of an individual.

The Department added subdivision (g)(2) to clarify that if the Research Center determines that data was not used for the purposes for which it was requested, it may require the submission of a new or revised application, depending on how closely the purpose relates to the original purpose stated in the application.

Subdivision (h) was added to provide applicants a method of appeal for certain decisions made by the Department affecting use of specified data. Subdivision (h)(3) clarified which entities may be asked to provide relevant information in any appeal. Subdivision (h)(4) was added to describe how the appeal officer’s decision will be based. Subdivision (h)(6) was nonsubstantively added based on a renumbering and moving of language located in another subdivision.

Subdivision (i) was amended to better define the scope of the prohibition against selling specified data.

Subdivision (k)(3) was amended to delete Team Member liability.

Subdivision (l) was amended to provide the time in which the Research Center must be notified of a project's completion.

The authority and reference citations were revised to delete inapplicable citations.

§ 965. Procedures for Requesting CARPOS Aggregated Data.

Subdivision (a) was revised to replace "public records" with "data request," to replace "Research Center" with "Department," and to delete the word "electronically."

Subdivision (b) was revised to delete superfluous verbiage.

Subdivisions (b) and (c) were revised to replace the under inclusive term "Entity."

The authority and reference citations were revised to include the applicable citations.

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

Subdivision (b)(12)(A)(v) was amended to delete the cohort requirement. Subdivision (b)(12)(D) was amended to strengthen security requirements, to authorize data storage on cloud providers, to delete the title of the document, to delete the url reference for a document, to nonsubstantively delete an "s" from the FBI CJIS Appendix A Cloud Control Catalog, and the position title requirement. Subdivisions (b)(12)(F), (c), and new (i)(6) were amended to add "human subjects committee" as an alternative to "institutional review board."

Subdivision (c)(1) was revised to add an option for researchers to obtain approvals under Civil Code section 1798.24, subdivision (t).

Subdivision (d) was revised to delete the requirement that the official verify whether that the Bona Fide Researcher and Team Members received human subjects and ethics training.

Subdivision (e) was added to require the Bona Fide Researcher and Team Members to submit, as a part of the application, the certificate showing they had received human subjects and ethics training.

Subdivision (f) was added to require background checks as a condition of receiving specified data.

Subdivisions (g) and (h) were added to 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.

Subdivision (i) was added to establish an appeal process to challenge a failed background check or the denial of a letter of support, to clarify which entities may be asked to provide relevant information in any appeal, to describe how the appeal officer's decision will be based.

OAL Register 2021-0112-05

Subdivision (i)(6) was nonsubstantively added based on a renumbering and moving of language located in subdivision (i)(5).

Subdivision (j) was nonsubstantively renumbered to correct a duplicate subdivision (i) and to clarify the renewal request process, including the timeframe.

The authority and reference citations were revised to delete inapplicable citations.

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

Subdivision (a) was revised to clarify that the notice of the project completion in section 964, subdivision (l) and the notice of data destruction would be simultaneously submitted to the Research Center.

Subdivision (a)(7) was revised to clarify that the title of the witnesses to the data destruction would also be included.

Subdivision (b) was added to authorize extensions of time for data destruction. Subdivision (b) also was revised to clarify that the notice of project completion in section 964, subdivision (l) and the request for extension of time for data destruction would be simultaneously submitted to the Research Center. It was also revised to add requirements and information regarding the process for when any subsequent requests for extension would be made, or otherwise informing the Research Center that no further extensions were required and the data had been destroyed.

Subdivisions (c) and (d) were added to allow researchers to retain data for a new project and confirm that the data destruction requirements did not apply if the data was subject to a new project or renewal.

The authority and reference citations were revised to delete inapplicable citations.

§ 968. Enforcement of Regulations by the Department.

Subdivision (a) was amended to limit the scope of any possible inspection to determine compliance with the regulations and ensure the security and protection of data, and to require prior written notice.

Subdivision (b) was amended to require that the Research Center notify the Bona Fide Researcher of its findings within a certain period of time following the inspection, and to add a remedy period.

Subdivision (c) was amended to include the destruction of data as a consequence for non-compliance and to clarify what factors the Research Center would use in determining the consequence for non-compliance.

The Department also added an appeal process in subdivision (e) to contest any findings

OAL Register 2021-0112-05

resulting from the inspection, or any enforcement actions taken in subdivision (c). Subdivision (e) was further amended to clarify which entities may be asked to provide relevant information in any appeal and to describe how the appeal officer's decision will be based. Subdivision (e)(6) was nonsubstantively added based on a renumbering and moving of language located in subdivision (e)(4).

The authority and reference citations were revised to delete inapplicable citations.