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CLIENT BULLETIN

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PROBATION OFFICERS FACE NEW REQUIREMENTS TO IMPLEMENT PROPOSITION 63 BAN ON FIREARMS POSSESSION

Buried in the sweeping gun control provisions of 2016's Proposition 63 were several requirements that added new duties for California probation officers beginning this year. The measure, which voters enacted overwhelmingly in July 2016, primarily restricts the sale of ammunition and bans large-capacity magazines. However, the new law also included requirements that probation officers verify and report to the courts when convicted felons and persons convicted of certain misdemeanors have relinquished any firearms and ammunition to local law enforcement.

Beginning January 1, 2018, courts are required by amended Penal Code section 29810 to inform defendants convicted of felonies and specified misdemeanors that the offender must give power of attorney to a third party or local law enforcement agency to dispose of any firearms, ammunition and magazines in the offender's possession. The courts are to provide a DOJ "Prohibited Persons Relinquishment Form" to the offender to identify the designee and the firearms. The designee, if not a law enforcement agency, must (1) relinquish any firearms, ammunition and magazines to local law enforcement; (2) sell the firearms to a licensed dealer; or (3) store the firearms with a licensed dealer. The convicted offender cannot own, possess or have custody and control of any firearm, ammunition, magazine or other ammunition-feeding device.

Probation Officers Required to Verify Disposition of Firearms

The statute requires that upon a defendant's conviction, the court shall "immediately" assign a probation officer to investigate whether the offender owns or possesses any firearms. The probation officer receives the DOJ form and the designee's receipts for the firearms. Probation also is tasked with ensuring AFIS is updated once the officer verifies the firearms have been turned over to local law enforcement. The presentencing report must include the form, receipts and verification the defendant has complied with the court's order.

If the defendant fails to relinquish any firearms, the court must order the search for and removal of any firearms from the defendant's residence or any other location the judge has probable cause to believe the weapons are stored. Courts also may shorten or extend the statutory time periods of 5 and 14 days within which the defendant or the designee must dispose of the firearms, and may allow an alternative procedure for relinquishing the weapons.

Are Probation Departments Required to Accept Firearms?

Whether a probation department is a "law enforcement agency" qualified to receive a defendant's firearms is not addressed by the statute. Penal Code section 29810 appears to limit the probation officer's role to reporting disposition of the firearms to the court. The statute does not require probation officers or departments to take possession of the firearms. The authors likely intended the firearms would be turned over to local police and sheriff's agencies, not to a probation department.

However, nothing in the statute prohibits probation departments from receiving firearms from convicted offenders or from seizing those firearms during a search ordered by the court when a defendant fails to comply. The third-party designee of a defendant ordered to turn over firearms could show up at the front door of a probation department with the weapons in hand and be in compliance with the statute.

Probation departments are not usually equipped to take custody of large quantities of firearms, ammunition and magazines, or to store or dispose of such items. The **best practice** in response to the new responsibilities assigned to probation officers under Proposition 63 likely is for probation departments to develop a policy or protocol with the local courts and other law enforcement agencies to ensure compliance with the statute.

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